



By Pat Leyland

Breaking Up Is Hard To Do:

Legal Aspects of Band Member Departures

The Nature Of The Beast

Being a member of a band can be incredibly rewarding. It can also be incredibly challenging. The highly competitive nature of the music industry brings significant external pressures to bear on musicians, many of whom are merely seeking to achieve the relatively modest goal of earning a living from their music. Internal pressures, such as writing a great song, can be equally testing.

Perhaps one of the greatest challenges in the music industry is keeping a band together. If all band members are not on the same page in terms of their creative direction, personal relations, and business arrangements, then the train can quickly go off the tracks. A breakdown along any of these lines can result in the departure of a band member. Such situations are rarely easy, and often regrettable. They are also fraught with legal implications that the parties may not have adequately considered in advance.

Your Band Is A Business (Whether You Like It Or Not)

All band members need to understand that a band is a business, in both the general and the legal sense of the word. When a group of individuals works together towards a profit, which is typically the case with a band, the legal relationship between those individuals will generally be deemed to be a partnership, whether or not those individuals have formally established such a business entity. In the context of a band, this means that the band members will be subject to the rights and obligations that apply to "partners" under relevant partnership laws.

If a band wishes to have more control over its business affairs, its members may choose to enter into a band partnership agreement with each other to create exceptions to the standard partnership laws that would otherwise apply by setting out specific terms and conditions to govern their working relationship, such as how decisions are made and income is divided. Other bands may elect to conduct business through a corporation and prepare a related operating agreement to structure relations between the directors, officers, and shareholders of the corporate entity.

The ability to reference such agreements can be extremely helpful, as the issues that arise upon the departure of a band member can be numerous and complex regardless of whether the departure is voluntary and amicable or otherwise. If such an agreement is not in place, however, then the situation may be more difficult to resolve, to say the least.

Cautionary Tales

If there is not an established document to guide the parties in the context of a departing band member scenario, then it is largely up to the parties to find a way to reach a settlement. This is easier said than done, as such circumstances may lead to disputes regarding the ownership and control of fundamental band assets, such as recordings, songs, touring vehicles, and websites. Responsibility for band liabilities may also be at issue.

Some of the more public (and bitter) band member disputes have surrounded the use of band names, which can carry considerable value. The performance by Randy Bachman and Fred

Turner under the band name Bachman & Turner at the 2010 Grey Cup calls to mind the lawsuits exchanged with their former band mates in Bachman-Turner Overdrive over the related names and logos. Similar stories apply to Bachman's "other" band, The Guess Who, and many other notable bands, such as The Beach Boys, The Doors, and Black Sabbath.

One of the more bizarre band member disputes of late was initiated with a lawsuit filed by Marilyn Manson's former keyboardist, who claimed that Manson used band earnings to purchase Nazi paraphernalia, among other oddities. Although there was a band partnership agreement in place, Manson's conduct allegedly constituted a breach of that agreement. While this case certainly contains peculiar details, the general nature of the dispute is rather commonplace in the music industry.

Parting Words On Parting Ways

It is unfortunate that band members part ways so often, but it really is the nature of the beast. Those pesky "creative differences" are just unavoidable at times. Sometimes the best that can be done is to ease the process of separation for the parties. A band partnership or operating agreement can be an effective mechanism towards this end, providing much needed direction and clarity during a difficult time. With a little bit of foresight and legal assistance, a band may avoid the departure of a band member turning into a potentially career-halting legal quagmire.

The views and opinions expressed in this article are not meant to substitute for legal advice, which should be sought in each particular instance.