

# Why Every Band Needs a Band Agreement

By Kurt Dahl

## What is it?

The Band Agreement is a contract between band members, much like a partnership agreement is to a partnership. It simply outlines how the band business will be run. If you don't run your band at least somewhat like a business, please stop reading and choose an easier career. You won't make it in this one.

Some of the main issues covered in the Band Agreement include:

- who owns the songs
- who owns the band name
- what happens if a member leaves
- how decisions are made (i.e. majority vote, unanimous decision, etc.)
- how revenue is divided from touring, record sales (they still exist, kind of), merch sales, publishing revenue, etc.
- who owns the music equipment (band or individual members)
- and much more

## Why get one?

The Band Agreement is perhaps *the* single most important document a group of musicians can have to ensure that things in the group run smoothly as their career progresses. Whether you are a new band or a well-established one, you need this agreement. Most of the legal issues that come across my desk could have been avoided with a proper Band Agreement in place.

Yet most bands do not think about signing one until it's too late...and it comes back to haunt them.

## How much does it cost?

Most of my standard band agreements cost \$500 plus tax.

## Is it worth it?

While buying a new guitar, new touring van, or new merch often takes priority over something as mundane as a legal agreement, I can't emphasize enough how important this document will be for you and your band going forward. I like to say it's either \$500 now or \$5000 later, when shit hits the fan. And shit almost always hits the fan.

For example, if a member leaves your band and no agreement is in place, that member may by law have an equal claim to all assets of the band going forward, including the band name, song

catalog, etc. In other words, you would not be able to tour using your band name without the consent of that leaving member. As you can imagine, this consent is not always easy to obtain.

Some examples of high profile, drawn-out legal disputes between band members include **Pink Floyd** (both David Gilmour and Roger Waters laid claim to the use of the band name, and for a time there were actually two versions of Pink Floyd tour simultaneously), and **Guns n Roses** (Axl successfully established his right to the band name, even though more of the original members were together in another band – Velvet Revolver of course). Members from both bands spent hundreds of thousands of dollars to determine what could have been laid out from the outset in a Band Agreement.

### Make it happen!

I have drafted dozens of Band Agreements for all levels of artists, big or small. Feel free to contact me if you have any questions about the process, and whether it is right for you. I would be happy to help.

### Band Agreement Questionnaire

If you would like to have a Band Agreement drafted, please consider and answer the following questions:

- 1. What is the purpose of the partnership?** Recording, songwriting, touring, merchandise - one or all of the above? (typically all, but perhaps only a songwriting partnership, for example)
- 2. Is this going to be an incorporated company or a partnership?** Keep in mind that if you do nothing that your band will probably be considered a partnership under Canadian laws (which vary from province to province). The rule of thumb is that a partnership makes sense until the band is reasonably profitable...I typically say that until you are earning over \$30,000 annually, there is no need to incorporate. Once you are over that threshold, then it makes sense to roll everything into a limited company for tax purposes. Please see my other post about The Benefits of Incorporating Your Band for more details.
- 3. What are the full names and addresses of each of the band members?**
- 4. Have there been band member investments to the band?** In many band situations, certain members have personally invested different amounts into the production of a record or the operation of the band in general. If this is the case, you need to think about how you are going to deal with an unequal investment amongst the band. Perhaps the most heavily invested member gets paid back first, or each member is paid back pro rata from live revenues generated.
- 5. Has there been any third party contributions? Is it a loan or investment?** Similar to the above question, but involving an investment or loan from a family member, friend, fan, etc. In

today's music industry (where development money is scarce), this is becoming more and more common. The difference between a loan and an investment is that with a loan, you are normally obliged to pay it back with interest. With an investment, there is typically only an obligation to pay back from certain revenues, but the investor will get some kind of ongoing share of profit once the band is in a position to pay that. Lenders do not share in profit, but they get the security of repayment.

**6. Who will own the Group Name?** As we've seen with Pink Floyd and Guns n Roses, the answer to this question can be valued in the millions. If someone leaves the group, what happens with the band name?

**7. Who owns the copyrights?** There are copyrights in both the sound recordings and the songs. Often the songs stay with whoever wrote them, and the recordings are controlled by the band as a whole. But not always.

**8. Will you take out insurance?** Sometimes we build in an obligation to maintain gear and liability insurance, either as a band or individually. There are no set rules here. The most important thing is that the equipment is insured and the band has adequate third party liability coverage (for example, if a fan gets hurt at a gig).

**9. Who owns the band equipment?** The group or the individuals? Who will pay for gear repairs, sticks/strings/etc.? Typically this is done on the individual level, but not always.

**10. How will profits be shared?** Equal or unequal? As we've seen, sometimes this depends on the investment made by each member, or the control/commitment of each.

**11. Will there be limitations placed on members?** For example, you may want members to make this group a priority over other groups they might be a member of.

**12. How are decisions made?** Via majority vote or unanimous decision on some issues? Or perhaps you appoint a Managing Partner(s) who makes certain decisions on their own.

**13. How is songwriting split between members?** Perhaps the most difficult and yet most important question to answer. The Chili Peppers split songwriting equally. Pearl Jam on a song-by-song basis. Bob Dylan gets all the credit. There are no rules here, except this: only those that help write the songs should get songwriting credit. Easier said than done.

**14. How will members join/leave the group?** How will the group deal with a leaving member, adding a new member, buying out a member, the death/disability of a member, etc.

**15. What would cause band to break up or dissolve?** For example, if certain key members leave, the band automatically dissolves. Or if 3 out of 4 leave, etc. Or bankruptcy.