



LCA *Law Guide*

Band Law for Bands

Barry Irwin &
Jason Koransky

LAWYERS FOR THE CREATIVE ARTS

CHICAGO, ILLINOIS

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Nothing in this book should be considered as providing legal advice for a specific case, and readers of this book should obtain such legal advice from their own counsel. This book is intended for educational and informational purposes.

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Table of Contents

Foreword.....	v
About Lawyers for the Creative Arts.....	vii
How to Engage a Lawyer.....	ix
Chapter	
Introduction.....	1
1 Do We Need a Partnership Agreement?.....	3
2 Should We Trademark Our Band Name?.....	7
3 Who Owns Our Music?.....	15
4 Should We Register Our Copyrights, and How?.....	23
5 Can We Use Other People’s Music (And When Can Other People Use Ours)?.....	31
<i>Cover Versions</i>	31
<i>Fair Use Exception: Parodies</i>	36
<i>Fair Use Exception: Mashup Sampling</i>	37
6 How Do We Make Money With Our Music?.....	39
<i>Getting Paid for Our Compositions</i>	39
<i>Getting Paid for Our Sound Recordings</i>	45
<i>Touring and Merchandise</i>	54
7 What Do We Look for in a Recording Contract?.....	59
8 How Do We Get Permission to Use Artwork and Photos?.....	69
9 Partnership, Corporation, or Limited Liability Corporation?.....	71
10 How Do We Break Up?.....	75
Website Resources.....	81
Appendices.....	83

Foreword

In celebration of our 40th year of service to the arts, Lawyers for the Creative Arts (“LCA”) decided to produce a series of books on various entertainment law related legal topics, LCA Law Guides.

LCA is proud to offer to our clients and the general public its second LCA Law Guide, *Band Law for Bands*. We believe that this book will assist you in your creative efforts and point out some legal issues you may face as musicians. If you are able to recognize the issues before they become a problem, then we’ve done our job.

For more than 40 years, LCA has provided an invaluable service to artists. Today, this service is made possible through the dedicated work of the LCA staff, including our Executive Director, Bill Rattner, and our Legal Director, Marci Rolnik. We hope the LCA Law Guides will be a valuable aid in that effort.

My thanks to Barry Irwin and Jason Koransky as authors of this LCA Law Guide, Mary Hutchings Reed and Barry Irwin as the Chairs of the 40th Anniversary Committee responsible for spearheading the production of the LCA Law Guides, Jason Koransky as editor-in-chief of the series, the authors of the other LCA Law Guides, and the LCA Board of Directors for their continued support of this project.

To make sure that our efforts are in line with artists’ needs, we welcome your input on the value this book has for you.

Jerry Glover
President, Board of Directors
Lawyers for the Creative Arts

About Lawyers for the Creative Arts

Since its founding in 1972, Lawyers for the Creative Arts (“LCA”) has been the “go to” resource for legal advice crucial to the creative arts. Regardless of a client’s ability to pay legal fees, LCA provides legal advice to individuals and organizations in the arts and entertainment communities directly and through our network of volunteer attorneys.

LCA serves individuals and organizations in all areas of the arts and entertainment, including the literary, visual, and performing arts. From string quartets to rock bands; from screenwriters to graphic designers; from costumers to sound engineers; from sketch artists to producers; from stage actors to street vendors; from bronze casters to photojournalists; from figure models to fashion designers; from theaters to circuses; from literary publishers to media houses; from museums to digital archivists; LCA helps them all navigate the complex legal system.

We have helped clients start businesses, draft contracts, and protect innovative designs and creations of every nature in every conceivable discipline of the arts. Through the Patricia Felch Arts Mediation Service, we have helped artists resolve disputes quickly, privately, and outside the costly realm of courtroom litigation. When necessary, we have also helped clients pursue lawsuits. Most of our clients are seeking to become financially successful. However, we also specialize in advising new and existing not-for-profit organizations, providing counsel from inception to dissolution. We have helped thousands of organizations, including many of the most prominent and successful arts organizations in the area.

LCA operates with a small full-time staff, but we are backed up by several hundred active volunteer attorneys from the best firms in the area. Our volunteer lawyers are the true heroes who level the playing field when clients are at a disadvantage. They are willing to step up and contribute their time and

valuable expertise to our many thankful clients. They *get it*—that art, in all its forms, is an important and worthwhile piece of American culture, and that art and those who create it should have legal protection.

The long list of volunteer attorneys, together with LCA's dedicated staff, Board of Directors, and Honors Council, are the soul of LCA. With their support, artists are free to do what it is they do—bring color, texture, and wondrous sights and sounds to all of our lives.

To meet the ever increasing demand, we have grown our volunteer base over the years, enlisting thousands of attorneys, and we have networked to place matters in other states and, in fact, in other countries. In the past 12 months, LCA has provided critical legal services, in one form or another, to more than 2,000 individuals and organizations in all areas of the arts. Our phones and e-mail continue to buzz with artists who are in dire need of legal help.

We constantly hear praise from our client artists, entertainers, and writers for the volunteer attorneys who have helped them. Those attorneys make it possible for the artists to concentrate on delving deep into their hearts to produce the most provocative, most beautiful, and most audacious art they can find within themselves because someone else has taken care of their legal concerns.

Education is another key element of LCA. We provide materials, conduct workshops, and give seminars on not-for-profit incorporation and tax exemption, the law of music, publishing, film, copyright, and more. We give presentations to dozens of schools, colleges, law groups, and arts groups each year. And, we mentor hundreds of young lawyers.

As we celebrate 40 years of service, we pledge to continue, with the help of the legal community and other supporters of the arts, to provide our unique, high-quality, and necessary services to the artists and arts organizations throughout Chicago and Illinois.

William E. Rattner
Executive Director
Lawyers for the Creative Arts

How to Engage a Lawyer

Whether you are an aspiring artist ready to pour your heart and soul into your first work, regularly writing or performing, or you are already working with editors, managers, producers, or agents, it is important to slow down, step back, and remember to seek legal advice on the content of your work.

So when is the right time to consult a lawyer? The truth is that it is never too soon and that more often than not, a client will approach a lawyer well after mistakes are made that could expose the client to legal problems.

Lawyers for the Creative Arts (“LCA”) has been conducting client outreach for the past 40 years in order to educate the public about legal issues and help artists like you to know not only when to reach out to a lawyer, but also to know that pro bono and low-cost legal assistance is available.

LCA is one of roughly 30 Volunteer Lawyers for the Arts, or “VLA,” organizations in the United States which offer free legal services to income-eligible applicants. To determine eligibility, an individual or business generally needs to submit a request for legal help and disclose the individual’s gross annual household income and/or the gross annual revenue of the business. VLA staff attorneys will then conduct an intake meeting to assess the scope of legal work needed and follow up to seek pro bono (no legal fees) or low-cost legal assistance from a pool of willing volunteer attorneys.

If you are not in need of pro bono legal assistance, the best referral source is often from a fellow musician who has experience working with his/her own lawyer. You may want to ask around and then do some homework online by checking the attorney’s record.

Every state maintains an attorney registration and disciplinary website that provides public information on licensed attorneys. You should check to be sure the attorney you are considering is: (1) licensed to practice; (2) carries malpractice insurance; and (3) does not have a disciplinary record.

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Although many states do not generally require lawyers to carry malpractice insurance, having it is an indicator that the lawyer is responsible in running his/her law practice. If you find past disciplinary complaints, weigh the information prudently and inquire with the attorney to obtain an explanation. The complaint may have been unwarranted and dismissed.

You can also find an attorney through your local or state bar association, as each generally maintains a referral program. For example, in Illinois you can search for legal counsel at illinoislawyerfinder.com, a service offered by the Illinois State Bar Association. In the Chicago area, you can obtain a referral from the Chicago Bar Association by calling (312) 554-2001.

Lawyers are also the best (and sometimes worst) critics of other lawyers. Reliable sources of information on the best lawyers in particular fields of practice include lists published by Leading Lawyers, Super Lawyers, and Martindale-Hubbell, which all award attorneys based on a peer-to-peer rating system.

Once you find the attorney who is right for you, the attorney will usually present you with a letter describing the scope of offered legal services along with information on the lawyer's legal fees. This is called an "engagement letter" and is customary in the legal profession.

The engagement letter serves as your contract with your lawyer. Attorneys write engagement letters often to signal the beginning of representation and to tell the client what to expect, including whether others at the law firm may work on the file and the way that fees are calculated.

If an attorney agrees to provide pro bono legal services, the attorney may still write an engagement letter for you to sign, indicating that all regular legal fees will be waived. Nonetheless, you, the client, are often responsible for any out-of-pocket costs, such as business filing or copyright or trademark registration fees charged by the government.

Artists able to pay an attorney often want to know how much legal fees

should cost. Unfortunately, there is no easy answer to this question other than the age-old “it depends.” This is an honest answer, as it is quite hard to predict how much time, for example, it may take an attorney to negotiate with someone on the other side of a contract or how time consuming a dispute may be.

That said, you can expect that an experienced attorney who has worked for ten or more years in a major metropolitan area likely charges several hundred dollars an hour or more and that attorneys in less populated areas with less experience often charge less. If an attorney works for a major law firm with multiple offices nationwide or globally, you may often notice his/her rates are also higher than an attorney in a mid-sized, small, or solo practice.

Attorneys in these smaller practices are more autonomous and generally have more flexibility to adjust their rates if they so choose by capping the number of hours spent, offering a fixed fee, charging a rate lower than their regular hourly rate, or charging a deferred fee such as payment that comes out of a record label’s advance to a band. You should discuss these options carefully and make sure that you understand the fee calculation so there are no surprises at the end of the day. Remember that you are never bound to any one lawyer and can terminate the attorney-client relationship at any point in time and ask for a copy of your file.

If problems ever arise, try to communicate the issue to the attorney and recognize that attorneys are often juggling many legal problems for a range of clients all at once. The attorney may need to read over his/her notes from your file prior to taking a call, so be as patient as you can be when working with your lawyer. This can help create and maintain a productive relationship, which can in turn allow you to focus on your art.

Marci A. Rolnik
Legal Director
Lawyers for the Creative Arts

Introduction

The creative aspects of making music are arguably the most rewarding reasons to be in a band. The thrill of performing live and being in a group of people who come together and create music from a blank slate can be magical. But simply making music will not pay the bills. You must take care of business, including all of the legal issues that confront a band—from its formation through breaking up.

This book was written to help you understand and address the most common legal issues that emerge with a band. We have not written this book to be a comprehensive analysis of the legal issues. And given the rapidly shifting dynamics of the music industry, new issues emerge seemingly every day involving various digital technologies and new business models. Huge treatises and textbooks have been published that address all the details and minutiae of the music industry, which are updated regularly. This book addresses at an introductory level the fundamental issues bands face, including entering into a partnership agreement, song ownership rights, licensing issues, registering copyrights, and negotiating recording contracts.

Hopefully you can use this book as a first resource when wondering what the law may say about a particular issue. And as we mention throughout this book, times will emerge when you should consult with an attorney for advice or to handle a particular situation. But if you keep this book handy, you should be able at least to recognize some of the important issues your band faces, and handle them with knowledge and confidence . . . just how your band performs on stage night after night!