



By Pat Leyland

Live Performance Agreements: Know Your Deal Before You Take The Stage

Many musicians live for that moment when they step in front of the microphone and the stage lights come on. Some are fortunate enough to be able to earn their livelihood from such moments. Wherever a musician may land on the spectrum of live performance earnings, such revenue has been growing in importance over the years. It therefore behooves all performing musicians to pay close attention to the details of such activities, particularly when it comes to live performance agreements.

Whether the terms and conditions of a live performance are confirmed over the phone with a local promoter or set out in a signed pro forma contract prepared by a national booking agency, it is important to keep in mind that both cases would generally result in a binding legal agreement. While lawyers are typically not involved in these dealings, such arrangements are, of course, consequential and worthy of review. This article highlights a few of the main related deal points, namely compensation, riders, and the radius clause.

Compensation

By and large, the issue of compensation will be the focus of discussion when it comes to determining the terms and conditions of a live performance. The compensation will usually be a fixed "guarantee" payment, a percentage of revenue from ticket sales, or a combination thereof. As with all agreements, negotiating the compensation will be subject to the relative bargaining power of the parties as determined by a variety of factors.

Those musicians inclined to extract the largest guarantee payment possible would do well to consider that greater value may

ultimately be found from a mutually beneficial relationship with a promoter based on a more measured approach to guarantee payments and an assessment of the allocation of risk to both parties under the deal. Attention should also be given to the issue of when the compensation is to be provided. For example, if a musician is required to cover significant travel costs in order to fulfill a performance obligation, it may be prudent for the musician to seek a portion of the agreed upon performance payment in advance of the event in order to cover such costs.

Riders

A live performance agreement will often include two related documents: a technical rider and a hospitality rider. Technical riders detail information related to the staging of the production, such as basic sound system requirements, an input list detailing the various microphone connections required, and a stage plot diagram setting out the various locations of the musicians and their equipment. As sound and production quality is one of the most essential elements of a live performance, the importance of the technical rider should not be overlooked. At times, it can be of more value to a musician than the actual compensation for the performance.

Hospitality riders specify the food and drink to be provided to the musicians, as well as dressing room and overnight accommodation details, if applicable. Such documents have been a source of humour due to the numerous and varied outlandish requests by musicians that have come to light over the years, perhaps most notably Van Halen's banning of brown M&Ms from their candy bowls backstage. While people will no doubt continue to snicker at such examples, the as-

urance of a warm meal and place to rest for the night can bring great comfort to those musicians scratching out a living in pursuit of their muse.

Radius Clause

A radius clause stipulates that the performer will not perform another concert within a certain proximity of the concert at issue, in terms of both time and distance. The concept generally protects the interests of the promoter by creating a degree of exclusivity to the services of the performer in the marketplace. The concept of the radius clause was brought to the forefront of discussion in the Canadian music industry in 2014, when the radius clause then applicable to musicians performing at the NXNE music festival in Toronto was discovered to preclude those musicians from also performing at the Canadian Music Week festival. While not present in many live performance agreements, when such a clause is encountered, it should be carefully parsed in order to assess, and perhaps address, the reasonableness of the terms being sought by the promoter.

Certainly, there are many more issues that may arise in the context of live performances and related agreements. But ultimately, whether you are a baby band thrilled to step on stage for your first show or a grizzled veteran of life on the road, be mindful of the details when it comes to live performances. Whatever the situation, know your deal, and thereby know your rights, before you take the stage.

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