Keeping Your Artist on the Stage and Off the Witness Stand: Four Ways to Limit Litigation Risk in Live Performance Agreements

By Tom Van Arsdel, Winstead PC

The bread and butter for touring artists today is the revenue received from live performances. Often these are arranged through large promotors, but the industry is increasingly seeing more and more independent promotors trying to put together one-off shows. While these opportunities are enticing for artists and often offer a big payday, the agreements for these performances frequently contain litigation landmines.

Live performance disputes often begin with operational uncertainty: what the artist promised, what the promoter must provide, what rights the artist has in staging the lineup and show production, when payment is due, and what happens if the show cannot proceed. The agreement should function not merely as a booking confirmation, but as a practical risk-allocation document that the artist, agent, promoter, venue, and production team can follow.

Artists and promotors can effectively reduce litigation risk in the following ways:

1. Define the Performance and Payment Obligations Precisely

- Identify the correct contracting parties and confirm that each signer has authority to bind the artist or promoter. Cross check the performance date and location with other tour appearances.

- State the performance date, venue, set length, call time, load-in, soundcheck, doors, show time, and any exclusivity or radius restriction.

- Specify the guarantee, deposit, payment deadline, approved expenses, merchandise split, complimentary tickets, and any percentage compensation.

- If compensation depends on ticket sales or "net profits," define allowable deductions and ensure the artist's settlement and audit rights.

- Attach the current technical and hospitality rider, incorporate it into the agreement, and establish which document controls if terms conflict.

On these provisions, disputes can arise when parties disagree on what is "standard" or "typical." Replace phrases such as "standard set," "usual payment methods," and "appropriate production" with objective requirements, deadlines, and verification procedures.

2. Allocate Production, Safety, and Third-Party Responsibilities

- Assign responsibility for all production elements, including sound, lighting, staging, power, security, credentials, permits, accessibility, medical support, transportation, and artist equipment.

- Require timely approval of the stage plot, input list, backline requirements, and other rider materials. Day-of-show complications on these details can give rise to disputes, so the attention to detail can help mitigate it.

- Address compliance with venue rules and applicable laws without giving the promoter unlimited discretion to change the artist's obligations.

- Clarify who is responsible for injuries, property damage, equipment loss, and claims involving venue personnel, contractors, opening acts, or audience members.

- Negotiate insurance requirements, additional-insured status, certificates of insurance, waivers of subrogation, indemnity obligations, defense control, and monetary liability limits so they correspond to each party's actual control.

The artist should resist indemnifying the promoter for losses caused by the promoter, venue, production contractors, or conditions outside the artist's control.

3. Plan for Cancellation, Force Majeure, and Performance Disruptions

- Distinguish cancellation by the artist, cancellation by the promoter, postponement, and events beyond either party's reasonable control, including force majeure events.

- If the agreement provides for the selection and order of opening acts, be clear about when and how those selections are approved by the artist, and how unexpected changes in the lineups are handled.

- State what happens to the deposit, documented expenses, guarantee, and rescheduling rights in each scenario.

- Clarify the artist's right to suspend or end the performance if conditions threaten health or safety, required equipment is unavailable, or payment is not made as agreed, or if payment has been made, how much the artist is entitled to keep in the event of a default.

- Include notice, mitigation, cure, and decision-making procedures so the parties know who may cancel and when.
- Avoid a broad promoter right to cancel "for any reason" without a clearly stated payment consequence. Cancelled shows, for virtually any reason, cause discontent among ticket buyers, so promotor cancellation rights should be strictly defined.

The goal of these provisions is clarity as to rights and consequences for both parties. A force-majeure clause should not merely excuse performance. It should also answer the financial questions that arise once force majeure or termination rights are invoked.

4. Control Rights, Changes, and Dispute Resolution

- Reserve artist approval over recording, livestreaming, broadcasting, sponsorship association, use of the artist's name and likeness, and post-event exploitation.

- Clarify ownership and permitted use of audio, video, photographs, and promotional materials, including duration, media, territory, and takedown obligations.

- Require amendments, rider changes, and waivers to be in a signed writing, rather than relying on informal conversations.

- Include notices, governing law, venue, attorneys' fees, injunctive-relief rights, and a deliberate choice among litigation, mediation, and arbitration.

- Use an integration clause to prevent alleged oral promises from altering the final written and executed agreement.

- Preserve expedited relief for unauthorized recording, misuse of intellectual property, or conduct threatening an imminent performance.

The agreement should make disputes less likely by addressing all ways the performance can be recorded and broadcast, but it must also provide a predictable and proportionate process if one occurs.

Entertainment lawyers and artist managers want their artists to have the space to create and perform. Unnecessary litigation can present a real risk to that goal. By carefully addressing the rights, obligations, and consequences in a Live Performance Agreement, you can keep your artist off the witness stand and on the stage.

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