

Legal Q & A

ANSWERS TO COMMON DJ LEGAL QUESTIONS WITH ATTORNEY COE W. RAMSEY

(Disclaimer: The following should not be construed as legal advice. For specific legal services related to your business, see your attorney. - Ed.)

Does the average DJ service need to incorporate their company?

Incorporation generally refers to the formation of a corporation (Inc.), limited liability company (LLC), or other business entity. Corporations and LLCs are very similar and generally offer the same legal benefits. Once incorporated, a business is treated as a legal entity that is considered separate from the individuals who own it. The principal benefit of operating a business as a corporation or LLC is that doing so can protect the owner's personal assets from the liabilities of the business. It is important, however, that owners respect the corporate entity and keep their personal affairs separate and apart from the business's affairs. For example, and at minimum, the business and its owner(s) should have separate bank accounts and accounting statements. And, it should go without saying, that all activities of the business, including contracts and insurance policies, should be conducted and entered into in the business's complete legal name.

Another benefit of incorporating is that doing so can have the effect of helping to protect against others from using the company's business name. However, in addition to incorporating, a DJ service should consider trademarking its name for stronger protection.

In general, LLCs are afforded special tax treatment that results in tax obligations only for the owner(s), instead of both the company and the owner(s) having to pay taxes on the company's earnings and distributions. However, in many cases, small corporations can also avoid double taxation by electing S-corporation status. Accordingly, for most purposes, there is not much difference between an LLC and a corporation.

I strongly advise the average DJ service to incorporate. Like many businesses, there are risks attendant to running DJ services, such as potential automobile accidents associated with the routine hauling of DJ equipment from venue to venue, fire risks resulting

from faulty equipment and venue power supplies, and other risks inherent in being face-to-face with the public on a regular basis. By being incorporated, a DJ service owner can help protect his or her "kid's milk money" by exposing only the assets of the business to such risks and liabilities.

It is important to understand, however, that incorporating does not necessarily protect the owner(s) from all business liabilities. For example, a DJ service owner generally cannot avoid personal liability for copyright infringement by trying to "hide behind" a corporation. And again, a DJ could have personal liability for a business activity if the DJ commingles his or her personal affairs with the business affairs of the company.

Corporations and LLCs are creatures of state law. As such, in most cases a DJ will wish to consider incorporating in the state where his or her business is located. Incorporating is a relatively simple process, and details are typically available on the secretary of state's website. Nonetheless, it is advisable to consult with legal counsel, particularly if the business will involve more than one owner, as the rights and responsibilities of each owner should be addressed in connection with the corporate formation documents.

What are the keys to building a contract that will stand up in court?

A DJ service should definitely have a solid contract to use with clients. Your contract protects both you and your customers, demonstrates your professionalism, and lets your clients know you take your business seriously.

Perhaps the most important thing to have in your contract

is a deposit and payment policy. Provided you are clear about when you require a deposit and final payment, and provided you stick with your policy, it's unlikely you'll ever find yourself in the awkward position of having to bring a collections action against a client.

A deposit policy should (1) make clear that the event is not confirmed until you receive a non-refundable deposit and (2) have a deposit deadline that is sufficiently in advance of the event so that you don't lose the opportunity to re-book if you don't receive the de-



posit. The non-refundable deposit should be priced at an amount you would be willing live with if the event is cancelled at the last minute and final payment is not made. You may also want to consider including in your payment policy an additional fee in the event the final payment is late.

Other provisions to have in a DJ service contract include ones that: (1) make clear that final payment is due even in the event of inclement weather, particularly if the event is outdoors; (2) specify the scope of your services, including the specific times of the event and the “package” of equipment being provided; (3) clearly define the space needed for setup and power supply requirements; (4) specify the periods of time in advance of the event and after the event required for setup and takedown; (5) specify additional labor charges in the event there are unusual venue access issues; (6) require the client or venue to have performance rights licenses from ASCAP, BMI, and SESAC, in the event the DJ service does not have such licenses; and (7) specify that any dispute shall be resolved by the state law and courts where the DJ service is located (which is particularly relevant to weddings and other events when the contracting client may reside in another state).

What other essential documents should you have for your business?

In addition to making sure a DJ service clearly defines its rights and responsibilities with its clients, a DJ service also needs to make sure that its relationships with the people that work for it are also clearly defined. In particular, the DJ service should understand whether the people working for it are “employees” or “independent contractors.” If workers are “employees,” the DJ service must withhold income taxes, Social Security and Medicare taxes, pay unemployment taxes, have worker’s compensation insurance in some cases, and comply with other employer responsibilities, depending on the applicable state and federal laws. Withholdings and tax payments are not required for independent contractors (though DJ services should issue 1099s to independent contractors).

In general, the more control the DJ service has over its workers, the more likely the workers are “employees.” For example, administrative staff workers are likely employees, whereas independent DJs who perform events for a DJ service may be considered independent contractors.

In cases where a DJ service treats a worker as an independent contractor, the DJ service should consider entering into a formal services agreement with the worker that specifies the scope of services to be provided and specifies that the worker is an independent contractor and is responsible for his or her own taxes. While such a contract is not determinative, it can be helpful in establishing that an independent

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contractor relationship exists.

Furthermore, and particularly with respect to employees who DJ events for a DJ service, the DJ service may wish to consider using non-compete agreements. In general, non-compete agreements restrict an employee from establishing a competing service or working for a competitor for a period of time after the employee is no longer working for the DJ service. Such agreements can help prevent the unfortunate circumstances of a DJ service investing significant time and energy into training and developing its DJ employees who later go on and compete directly

against the DJ service. In general, non-compete agreements must be “reasonable” in both the duration of the restriction and the geographic scope of the restriction to be enforceable. And, you should be careful when using non-competes with workers you characterize as independent contractors, as the nature of a non-compete agreement could suggest that the worker is actually an employee depending on the circumstances. Non-competes are governed by state law, and you should be sure to consult with an attorney in your state before attempting to use one with your employees. **MB**

ABOUT THE ATTORNEY

Coe W. Ramsey is a partner with Brooks, Pierce, McLendon, Humphrey, and Leonard, L.L.P. in Raleigh, NC. He started DJing when he was 15 and continued all the way through law school. “The last time I ‘officially’ DJ’d,” says Coe, “was the weekend after the bar exam—nearly 12 years ago.”

Before making the switch to the legal field, Coe worked as mix show DJ on a top radio station, operated a mobile DJ business, worked in nightclubs, and did re-mix and production work.



As an attorney, he has an entertainment, communications, and media law practice, with clients that include DJs, producers, remixers, radio and television stations, internet broadcasters, music services, record companies, music publishers, bands, singers, songwriters, and other artists and music providers.

In addition to staying connected with the DJ industry through his clients, he operates and programs an internet dance music radio station at www.dancestreams.com.

Coe’s blog on legal issues for DJs and others in the music industry can be accessed at www.djcounsel.com, where you can also find information on his law practice and his law firm.