

Work For Hire

By Richard Bellis, Composer

Disclaimer: As a member of the board of directors of ASCAP, I have signed a pledge binding me to a code of conduct. I have no intention of breaching that pledge. Consequently, I hereby state that I did not author nor do I offer this piece in my role as a director or in any official capacity with ASCAP. I rather offer it as a film and television composer who has worked under the work-for-hire statute my entire career. The piece does not necessarily represent the view of ASCAP or its Board of Directors.

In the United States, there are two categories for workers; Employee and Independent Contractor. Both hold benefits which, either by design or happenstance, protect workers by creating a degree of equality when negotiating with those on the other side of the table. Recent events have illuminated the fact that film and television composers inhabit a third category, where the rules are not clear and the future is uncertain.

The benefits of Employee status are well known and include collective bargaining (salary, working conditions, etc.), retirement and healthcare plans. In exchange for these benefits, an employee who creates something is most often required to forego ownership. Independent Contractor status, while not allowing for any of the employee benefits mentioned, does allow ownership as an important negotiating tool. Composers who write music for television and cable in the United States are considered to be independent contractors by the National Labor Relations Board (NLRB) and, as such are subject to work-for-hire (WFH) agreements. In the United States, these agreements are considered a non-negotiable, condition-of-employment due to well established industry standards and practices.

In order to better understand this current status of composers in the U.S., here is condensed background summary. WFH, as it pertains to music in a visual medium, was incorporated into the 1976 Copyright Act. This timing coincidentally corresponds with a period in which the composers were suing the studios. The composers were unionized at that time, making them officially employees and giving automatic ownership of their music to their employers — the studios. The composers sued the studios in an attempt to regain ownership of their works, citing the fact that the studios, acting as music "publishers," were not fully exploiting the music in secondary markets as a traditional music publisher would, but instead were merely accepting the publisher's share of the royalty stream. The outcome of that lengthy and expensive litigation led to the decertification of the union. This changed the status of composers to independent contractors but, rather than regaining ownership, with music now included in the Copyright Act's WFH provision, the studios once again owned the music.

An addendum to every WFH composer contract in the United States is a Certificate

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of Authorship (C of A). This is not a writer/publisher contract. It is rather an employee/employer contract granting ownership (actually, "authorship") of the music, in perpetuity, to the production company or studio entity. The composer becomes a pseudo-employee yet receives none of the benefits afforded a regular employee and is additionally denied ownership which is traditionally afforded an independent contractor. Once the C of A is executed, ownership of the music, complete with the right to collect 100% of all royalties and other revenue generated by the music, is transferred to the pseudo-employer. Then, in the composer's contract with the production company and **due only to prevailing standards and practices**, the composer is **granted back** the "right" to collect 50% of the public performance royalties through a performing rights organization (PRO) such as ASCAP or BMI. This represents the so-called "writer's share."

No other country in the world (many of whom have vibrant film production industries) has such a statute. The transfer of rights from composer to producer by WFH agreements could easily be accomplished through regular contract language while, at the same time, securing the "writer's share" of performance royalty revenue from the PRO of the writer's choice.

Again, customary standards and practices in the music industry have dictated that PRO affiliation "follow" the writer, even in WFH situations. Writers may only belong to one of the multiple PROs in the US while publishers belong to all, specifically so that the publishing can follow the writer regardless of which PRO the writer chooses. This means that if the writer is a member of ASCAP, the publishing would reside with that publisher's ASCAP publishing company. Recently, publishers of WFH catalogs, feeling they have the unfettered legal right (if not the ethical one), have begun to move these catalogs, from the PRO to which the writer is affiliated, to a different PRO without consulting the writer. This creates a scenario in which the writer belongs to one PRO and is receiving royalty payments from a different PRO.

Until now, how the writer is to be paid the "writer's share" has seldom if ever needed specification in composer contracts because of this "publishing follows the writer", industry-wide practice. However, for the writer who is concerned about which PRO is negotiating the license, collecting the fee, deducting administration costs and distributing the writer's share, revisiting the language of the composer contract would be prudent.

Like the consent decrees governing the not-for-profit PROs, the WFH regime under which film composers are forced to operate is out of date and out of step with the rest of the world. It excludes composers from both statuses of worker equality and requires significant strengthening of composer contracts in order to preserve what has previously been accepted industry standards and practices.

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Richard Bellis is an Emmy award-winning composer; author of *“The Emerging Film Composer: An Introduction to the People, Problems and Psychology of the Film Music Business”*; is a past president of the Society of Composers & Lyricists; served on the faculty of the University of Southern California’s Scoring for Motion Pictures and Television course and UCLA Extension’s Film Scoring Certificate program; served on the Board of Governors for the Academy of Television Arts and Sciences and is the host/mentor of the “ASCAP Film Scoring Workshop with Richard Bellis”.

In addition to creating The Richard Bellis Masters Series (video tutorials on a variety of composer topics), Bellis currently serves on the Board of Directors of ASCAP and lectures internationally on film and media music.