

Why Media Composers And Lyricists Should Embrace Affiliation With The Teamsters

Employment = Money

The employer is offering to give an employee money. The negotiation centers around whether or not the potential employee is willing to do the things required in order to accept that money. This negotiation is uneven from its very inception. The potential employee is obviously not currently employed or he/she would not be looking for employment. This gives the significant advantage to the employer.

When many people are unemployed either due to an economic state such as we are currently experiencing or, due to an abundance of potential employees such as the composer community is currently experiencing, the employer's advantage increases. What people are willing to put up with in order to land that job, varies. We might think of this as people with various pain thresholds.

So, what mechanism is necessary to "level the playing field" between employer and potential employee?

In the United States there are two statuses for workers designed to act as equalizers. The first of these is the official status, "Employee". In its purist sense, employee status is given to those who meet certain criteria such as (but not limited to) being told where and when to do their work and being provided the tools with which to do that work. Workers who are deemed Employees are allowed to collectively bargain with the employer and are afforded a benefits package consisting of a pension or retirement fund and some kind of healthcare coverage. Those employees who create something as part of their job description are, most often, required to concede ownership rights to the employer.

The second status, for those who do not meet the Employee criteria, is "Independent Contractor". Independent contractors who create something actually do own it. It is that ownership and the subsequent negotiation for access to that which has been created - either by license or sale - which is considered the equalizing factor for the independent contractor.

Composers and lyricists who worked on the studio lot in the forties and fifties, writing on paper provided by the studio and working in an office and on a piano or typewriter which the studio owned, were considered Employees and consequently allowed to form a guild or union and collectively bargain with their employers.

Today, there would be reason for great deliberation over which classification (Employee or Independent Contractor) would be most beneficial to media composers and lyricists if it wasn't for one significant wrinkle - Work-Made-For-Hire.

Without going into the establishment of work-made-for-hire, suffice it to say that it is today, for media composers in all but the most innocent or ignorant production circumstances, a "condition of employment".

Here, then, is the situation in which media composers and lyricists find themselves:

We are currently Independent Contractors working under a Work-Made-for-Hire agreement (the contract document is the Certificate of Authorship). The result of this is to strip the Independent Contractor of ownership making him/her a "temporary" Employee without the right to collectively bargain nor the benefits package normally appropriate for Employees.

It is, for the media composer/lyricist, the worst of both worlds. For the employer, it is the best of both worlds thereby increasing the employer's advantage exponentially.

The possibility of overturning work-made-for-hire is remote as it is part of the U.S. Copyright Act. The possibility of becoming, officially, Employees and achieving the right to collectively bargain and receive benefits is before us and obtainable.

The status quo should not be a consideration as it offers us a continuation of hybrid status which only benefits the employer in what can only be considered a "buyer's market".

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