

HIRING THE COMPOSER

By
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Introduction

Most filmmakers appreciate the importance of the film score, but their method of budgeting time and money often make it difficult, if not impossible for the composer to do the best job possible. Composers are generally hired during post-production, a hectic time, when the composer is given a very short time to create a "masterpiece." Composer's agent, Linda Kordek, believes these expectations can sometimes be unrealistic, since the composing process is a creative one which requires time. She feels that filmmakers greatly compromise the quality of the score when they make composers rush through the process. Ms. Kordek believes that the filmmaker should hire the composer as early on in the process as possible. In fact, she suggests that the composer be hired during preproduction so that he/she may immerse him/herself in the film and the director's vision. Unfortunately, the reality of the business is such that independent filmmakers are always underbudgeted and they seldom, if ever, have the luxury of time on their hands.

Music Budget & Costs

It is key that filmmakers understand the importance of actually budgeting for the score and soundtrack. Filmmakers make the mistake of thinking that the soundtrack deal is going to pay for the expenses associated with the film's music. The theory behind the soundtrack deal is that the record company will advance the filmmakers monies against future sales, and the filmmaker uses the advance to hire the composer and license music to create the score and soundtrack for the film. Novice filmmakers erroneously believe that budgeting for music is unnecessary. Filmmakers with more experience know that most record companies will not make a soundtrack deal unless distribution is in place. In other words, do not count on the record company advance to finance your score and soundtrack unless distribution is in place. To be safe, filmmakers should set aside five to six percent of the film's budget for the score, and up to ten percent if the filmmaker intends to hire a music supervisor and license pre-recorded music¹.

The filmmaker can expect to pay a top quality composer \$75,000 - \$250,000² for films with budgets in excess of \$15 million. An independent filmmaker producing a low budget film can hire a lesser known composer for \$25,000, and one without a feature credit for \$10,000. The composer's fee compensates the composer for writing, arranging, and orchestrating all of the dramatic underscoring and theme music in the film and, in addition, conducting the musicians during the soundtrack recording session. If the composer doesn't orchestrate his/her own music, as is the case with the top film composers, then a separate orchestrator will have to be hired. Orchestrator services are covered by the American Federation and these fees are in the \$25,000 range. The composer's fee also does not include the cost of hiring the musicians and the actual production costs.

Publishing Royalties

Music publishing royalties are divided into a composer's share and a publisher's share with the composer being entitled to the composer's share and the filmmaker to the publisher's share. Publishing royalties are generated from exploitation of the film³, its soundtrack album and it's publishing i.e., sheet

¹See Music Licensing Article.

² Composers are paid on a flat fee basis and seldom, if ever, receive back-end participation.

³American theaters do not pay fees for public performances of soundtracks, but European theaters pay, via various music performance societies, the equivalent of two to five percent of the cost of the theater ticket.

music, public performances, and synchronization⁴ and mechanical licenses and, hence, can be a substantial source of income. Composers, as such, are always interested in obtaining as much of the publishing royalties as possible. A filmmaker, with a deficient music budget, may be able to convince a composer to work for less than his/her customary fee, if the filmmaker is willing to part with some or all of the publisher's share of the music publishing income. Music publishing royalties can be a substantial source of revenue. It's always best for filmmakers to properly budget for music so that they can keep their publisher's share of the music publishing royalties.

“Work for Hire”

The filmmaker needs complete freedom to exploit the film's score and masters and, as such, must hire the composer on a “work for hire⁵” basis. If the filmmaker does not employ the composer on a “work for hire” basis then he/she may lack the legal right to distribute the film or the soundtrack album embodying the score. The composer will create a “work made for hire” if he/she is hired so that the score is created within the regular course of the composer's employment, and when the composer is hired as an independent contractor, or based upon a loan out agreement, so that the score is specially ordered or commissioned. If the composer is not hired on a “work for hire” basis, then the filmmaker will have to acquire the right to use the music via a copyright assignment; this complicates the process and creates risks, since the composer can cause the rights to music to revert to him/her at a later date by notifying the Copyright Office and the copyright owner. The filmmaker, in order to avoid unnecessary complications, should have the composer sign a deal memo, contract or Certificate of Authorship, prior to allowing the composer commence services.

Credit

The composer will expect to receive credit in three media: the picture, paid advertisements and the soundtrack album. Composers are not members of a guild, therefore, there is no union to control the composer's credit. The most common credit is “Music By . . .” The credit appears on a separate card with size and type equal to the producer, writer and director credits. The composer will expect to have his credit appear whenever the producer, writer, or director appears.

Conclusion

Producing a film is a lengthy and expensive process. Filmmakers must take care not to sabotage the process by not budgeting sufficient time and money where music is concerned, and by not adhering to the appropriate legal formalities. The composer's deal is at least as, if not more complicated than the literary purchase deal. The filmmaker should not venture forward unless he/she has consulted with an attorney. Needless-to-say, the composer agreement should be drafted by an attorney.

This article is not a complete review of the subject matter and, as such, the reader should not make decisions on the basis of the above without consulting with an attorney.

⁴See Music Licensing Article.

⁵ The employer of a “work for hire” is considered the author of the work under copyright law.