WHY COMPOSERS LOSE THEIR RIGHTS

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I read, quite often, comments by film music buffs about why a composer allowed something to happen in a film score as heard in the film for which it was written. This presupposes that composers of film scores have any control over how their music is presented in a film. As a general rule: they don't.

There are a lot of reasons for this but principal among them is that, generally, composers are hired by the production company, studio, producer, the people with the money looking for a tax shelter, by way of a contract called "work-made-for-hire." This is especially true in the United States or under the auspices of a US company or production. And one finds the genesis of this kind of contract, essentially, in Title 17 of the United States Code under Section 101 ("definitions"). This was codified in the 1976 Copyright Act. Under it, the "employer-for-hire" (namely the production company) gets all the rights that the "employee-for-hire" (namely the composer) had in their music. All of the copyright, especially, and, as least according to one decision of the United States 9th Circuit Court of Appeals (2003), there just are not any rights left for the composer. None, nada, zip.

Frankly, the composer is not the only creative person who has this happen. The screenwriter has this happen. One big difference between the composer and the screenwriter, however, is that the screenwriter has a powerful organization behind him/her, namely the Writers Guild of America. When the WGA goes on strike, the biz shuts down. When composers have

gone on strike, the biz just went to Europe. However, these are topics for another time. We're talking about CONTROL (and how to lose it)!

One of the first things to happen when a composer is hired: the negotiation and execution of a contract. Normally, this will be in writing (if the studio wants its rights under "work-made-for-hire" this is normally a pre-requisite) and it will call the composer an "employee-for-hire" and the studio the "employer-for-hire." Under this kind of contract, the employer-for-hire will own the entire copyright (every microbe of it) from the very nanosecond it is created, which is simultaneously with the music being "fixed in a tangible medium." Another wonderful term of art.

And that is the key: he/she who owns the copyright controls the legal rights in the music as well as how it will be used and exploited. As owner, then, they can do what they will. Under classic, default "work-made-for-hire" the "employer-for-hire" (or its successor-in-interest) could, theoretically, tell the composer: "…thank you, have a nice life, don't let the door hit you on the way out." This usually doesn't happen, but not because it couldn't.

The only rights which the composer will obtain from the deal: they're stated in the contract. If they're not there they don't exist. And most, if not all contracts will give the "employer-for-hire" the right to do whatever they want with and to the music, forever, everywhere (sometimes including alternate universes and dimensions).

And so, the moral of the story: composers lose their rights at the get-go. But, that is where they ought to fight for their rights and, if they need to, have someone who knows what they're doing represent them. Because afterwards: forgetaboutit.

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