

Music, Money, Success *and* *the* Movies

The Basics of "Music in Film" Deals

- *The Pre-Existing Hit Song Used in a Film*
- *The Song Written for a Film*
- *The Score*

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ASCAP

American Society of Composers, Authors and Publishers

Updated November 2008

By Todd Brabec and Jeff Brabec

About ASCAP

ASCAP – the American Society of Composers, Authors and Publishers – is a membership association of more than 230,000 U.S. composers, songwriters, lyricists, and publishers of every kind of music. ASCAP also represents in the United States the copyrighted works of hundreds of thousands of foreign country writers and publishers. ASCAP's function is to protect the rights of its members by licensing and distributing royalties for the non-dramatic public performances of their copyrighted works. These royalties are paid to members based on surveys of performances of the works they wrote or published. ASCAP's customers, or licensees, encompass all who want to perform copyrighted music publicly: radio and television broadcasters, cable programmers, live concert promoters, symphony orchestras, shopping malls, bars, web sites, etc. Under the U.S. Copyright Law, they must have the permission of the copyright owner to do so. As a clearinghouse, ASCAP makes giving and obtaining permission to perform music simple for both creators and users of music. ASCAP also offers a wide array of benefits and services to its members, ranging from career development programs, such as showcases and workshops, to a Member Card providing access to insurance programs, low-cost musical equipment, and discounts on travel, music supplies, CD manufacturing, and much more. ASCAP's award-winning website, www.ascap.com, contains a wealth of valuable information and articles about music and the music business for professionals and aspirants alike. The site also hosts ACE – the ASCAP Clearance Express – which provides quick and easy access to title, writer and publisher information on over one million performed music works in the ASCAP repertory.

About the authors: Todd Brabec, Executive Vice President of Membership for ASCAP, and Jeff Brabec, Vice President Business Affairs for the Chrysalis Music Group, are graduates of NYU School of Law, Deems Taylor Award-winning writers for excellence in music journalism, adjunct professors at the USC Thornton School of Music/Music Industry Department and authors of the book, *MUSIC, MONEY AND SUCCESS: THE INSIDER'S GUIDE TO MAKING MONEY IN THE MUSIC BUSINESS* (6th Edition, 505 pages, Schirmer Trade Books/Music Sales) from which much of the information contained in this article is taken.

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Note: The figures and comments contained in this article are based upon the authors' experiences over the years with many specific situations. Ranges of fees, as well as comments, do vary based upon individual negotiations and situations. Many dollar figures are based upon major U.S. studio releases and can be different for all other types of releases (independents, smaller budget features, foreign country produced films, etc.).

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INTRODUCTION

Music in the movies is an essential element of the filmmaking process and is one of the main factors that helps to determine box office success or failure. Think of a motion picture without music – whether it’s an orchestral or synthesizer score, a brand new hit song or a long time standard – and you’ll begin to realize the value and contribution of music and lyrics to film. And whether you’re a producer, a director, an agent, a composer, a songwriter, a studio executive, a music supervisor, a business affairs executive, a film student or anyone involved in film, or who wants to be in film – you need to know what type of music you’re looking for, what the music is intended to accomplish, how do you license or acquire it, how much it will cost and how much it will earn.

THE FILM BUSINESS

Most feature films are produced either by the major Hollywood studios or by hundreds of U.S. and foreign independent production companies. The independents range from major companies just below the rank of the well-financed, all-purpose studios, to medium and small continuing companies, to firms that fold up their tents after just one production.

Filmmaking costs have skyrocketed in recent years. The average cost to produce, market and advertise a film in today’s industry is in the area of \$100 million versus a 1980 figure of \$16 million. Out of necessity, films are now financed in a variety of complex ways including major studio backing, joint ventures, outside private or public investors, limited partnerships and pre-sales of ancillary and distribution rights, among others. Regardless of how a film is financed, though, all parties involved normally have a good idea of the principal revenue-producing areas from which their investment will be recouped and, they hope, a profit made. They usually are also familiar with the various stages of production which ultimately lead to the release of a finished motion picture.

Though the stakes are high, the returns for a blockbuster hit can be monumental. In 1976 only one film had generated over \$100 million in U.S. and Canadian box office receipts; by 2009, over 400 films had surpassed the \$100 million mark. Considering also that foreign markets can equal or surpass the U.S. and Canadian gross (the film *Titanic* grossed over \$1.8 billion worldwide), the profit potential for a hit can be astronomical despite the high cost of producing a film as well as the odds against box office success. Blockbusters aside though, there are many thousands of films produced each year worldwide which do well, make money, and create income opportunities for composers and songwriters, both in the initial year of release and for many years afterward.

THE MARKET

The initial market for any film is the exhibition in U.S. and foreign motion picture theaters. Films are then released for download and to home video for purchase or rental and to video-on-demand services with subsequent sales to pay-per-view, pay cable services (HBO, Showtime, Disney, the Movie Channel, etc.), the television networks (ABC, CBS, NBC, Fox, etc.), local television stations or basic non-pay cable services (USA Network, Lifetime, etc.) and to foreign television and cable stations. Soundtrack albums and singles are also often released with many of them becoming major chart hits, in turn creating additional income from such ancillary sources as U.S. and foreign performance income from radio, television, cable and theater performances, worldwide mechanical royalties from tape and CD sales, download and streaming royalties, commercial advertising fees and ringtones among many other sources.

TYPES OF MOTION PICTURE MUSIC

Motion picture music falls into three basic categories:

■ The pre-existing song

AC/DC’s “Back in Black” in *Iron Man*, Al Dubin and Harry Warren’s “I Only Have Eyes For You” in *Spider-Man 2*, and Paul and Linda McCartney’s “Live And Let Die” in *Shrek the Third*.

■ The song written specifically for the film

U2’s “The Hands That Built America” from *Gangs of New York*, Diane Warren’s “I Don’t Want To Miss A Thing” for *Armageddon* and Annie Lennox, Howard Shore and Fran Walsh’s “Into The West” for *The Lord of the Rings*

■ The score

Hans Zimmer’s scores to *The Pirates of the Caribbean* films, Howard Shore’s scores to *The Lord of the Rings* trilogy, and Michael Giacchino’s scores to *The Incredibles* and *Ratatouille*

Each of these three distinct types of music in film involve very different negotiations, contracts and considerations and produce very different backend royalties.

Marco Beltrami



Elliot Goldenthal



Carter Burwell



Alf Clausen



Eddie Vedder



Michael Giacchino



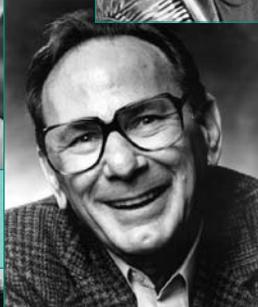
Glen Hansard & Marketa Irglova (IMRO)



Mark Snow



John Debney



Hans Zimmer



Hal David



Stephen Schwartz



Glen Ballard



James Newton Howard



Rufus Wainwright



THE PRE-EXISTING HIT SONG USED IN A FILM

Most successful motion pictures use hit songs to create a period flavor, establish a mood, give an actor a chance to sing, make people laugh, make people cry, elicit emotions, and create interest in the movie through successful soundtrack albums and hit singles. A film producer who wants to use an existing song in a motion picture must secure the permission of the music publisher to use the composition in the film. Once an agreement is reached as to a fee, the producer will sign what is known as a synchronization or broad rights license, which will give the studio the right to distribute the film theatrically, sell it to television, use the song in motion picture theater trailers or television and radio promos, and sell videos. The synchronization fee received by the music publisher is shared by contract with the songwriter.

Determining How Much To Charge For A Song. When the call comes in from the music supervisor of a motion picture, there are a number of factors that must be considered in determining how much to charge for the inclusion of a song in a film, including:

- How the song is used (e.g. vocal performance by an actor on camera, instrumental background, vocal background, themes)
- The overall budget for the film, as well as the music budget
- The type of film (e.g. major studio, independent, foreign, student, web)
- The stature of song being used (e.g. current hit, new song, famous standard, rock n' roll classic)
- The duration of the use (e.g. one minute, four minutes, 10 seconds) and whether there are multiple uses of the song
- The term of the license (e.g. two years, 10 years, life of copyright, perpetual)
- The territory of the license (e.g. the world, the universe, specific foreign countries)
- Whether there is a guarantee that the song will be used on the film's soundtrack album
- Whether the producer also wants to use the original hit recording of a song, rather than re-recording a new version for use in the film
- Whether the motion picture uses the song as its musical theme as well as its title

Actual Fees Paid For Existing Songs. The synchronization fees charged by music publishers for major studio films are usually between \$15,000 and \$60,000 (with the majority ranging from \$20,000 to \$45,000) but can be lower if the music budget is small or higher if the song is used several times in the motion picture, if the use is under the opening or closing credits, if the song is a major hit, or if it is vital to the plot or particular scene of the motion picture. There are no hard and fast rules in this area as the fees are negotiated in the context of each individual film; the same song may be licensed at very different rates for different projects (i.e. major studio release, independent film, foreign film, film festival license only, web production, or student film).

It should also be mentioned that record companies normally charge between \$15,000 and \$70,000 for the use of existing master recordings in a major studio film but, depending on the stature of the artist, the length of the use, the music budget and how the recording is being used, these fees can be greater or less.

Opening And Closing Credits. Because the songs used over the opening credits of a motion picture many times reflect the theme or ambiance of the film, they are many times more important to the film than other songs used for background. The same is often true for use of a song over the end credits, although it is becoming more common for many songs to be run during the closing credits in order to complete the requirements for a soundtrack album. The fees charged by publishers are almost always higher than other uses of music in a film and usually range from between \$30,000 to \$65,000 for synchronization and video rights, but each negotiation and final price depends upon many of the factors mentioned earlier (i.e. budget of the film, music budget, importance of the song, whether there are replacement songs available, etc.). If the title of one of these opening credit songs is also used as the title of the film (but the film's plot is not based on the story line of the song) the fees are increased further (i.e. from \$75,000 to over \$500,000).

Multiple Uses Of A Song. If a producer uses a song more than once in a motion picture (i.e. over the opening credits and in two scenes of the film), the fees charged by music publishers will be higher than if the song is only used once. The importance of the song to the plot development or movement of the film (i.e. if it becomes a signature song for an important character) can also be a factor that raises the price.

Lyric Changes. Occasionally a film producer will request permission for a lyric change in a song which will either be re-recorded for the film or sung by one of the characters in the motion picture. When such a request is received, a music publisher should ask for a copy of the new lyrics, a plot summary of the film, and a scene description including script pages so that it knows exactly

how the song will be used before making a decision. A publisher may have certain restrictions in its agreement with the songwriter (i.e. all changes in the English lyrics to a composition must be with the approval of the writer), that require additional consents from the songwriter or his or her estate.

Duration Of License. The term of the license is virtually always for the entire copyright life of the song unless the film is a documentary or other noncommercial film intended for only limited theatrical release.

Rights Granted To The Film Producer. The motion picture synchronization fee paid to the music publisher (which is shared with the songwriter) for the use of a song includes the right to distribute the film to network, local, syndicated, pay-per-view, pay, satellite, cable and subscription television stations; the right to show the film in motion picture theaters in the United States; and the right to include the song in trailers, previews and advertisements of the motion picture.

Foreign theatrical distribution rights (i.e. the right to show a film in motion picture theaters outside the United States) are also given to the producer, but such rights are subject to the payment of performance fees by theaters to the various performance rights organizations in countries outside the United States.

Territory. The territory of the license is normally the universe or world but, in the case of certain television miniseries, made-for-TV movies, and weekly series that are broadcast on television in the United States and shown as a feature in foreign theaters, the territory may be for the universe or world excluding the United States.

Limited Theatrical Distribution. Depending on the nature of the film (normally in the case of documentaries or art films which do not have mass market appeal), the license may be for a limited duration and apply to the distribution of a film on a limited theater engagement or "film festival" basis. Fees for this type of license are less than those charged for commercial theatrical features with wide distribution. In many cases, the producer will also have the option to theatrically distribute the film on a broader basis for an additional fee and put it on home video for another prenegotiated fee – important rights if a film is well received or receives an award from an important film festival competition and goes into national distribution. For example, a "film festival" license may give the producer the right within 18 months after the initial showing of the film to extend the territory and the duration of the license for an additional fee.

New Multimedia Uses. The grant of rights clauses with respect to new media are somewhat negotiable, with some film companies providing for a good-faith negotiation provision as to “not currently in existence new technologies” or “new technologies not currently widely available;” other companies being amenable to an increased fee for the addition of new technology uses; some companies adding a set, non-negotiated dollar amount to the license fee, which will cover new technology uses; and still other companies negotiating the inclusion or non-inclusion of such language and the corresponding fees on a case-by-case basis.

Soundtrack Album Guarantees. On occasion, a music publisher will reduce the motion picture synchronization fee for a song if the producer guarantees that the song will be on a soundtrack album released by a major label. Sometimes there are even guarantees of an “A” side single release, but these usually occur only when a successful recording artist on a major label records the song for the film. In this case, the publisher may give two price quotes; a higher figure if the song does not make the soundtrack album or if an album is not released and, because of the possibility of additional ancillary album income, a lower quote if the soundtrack provision actually takes effect. For example, if a publisher gives a \$30,000 quote for the use of a song in a film, it also might agree to reduce the price to \$28,000 if there is a guarantee of a nationally distributed soundtrack album and may even further reduce the fee if the song becomes an “A” side single from the album.

Trailers and Advertisements. As previously indicated, the synchronization license usually grants the producer the right to use all music in the film in theatrical trailers (previews of upcoming films which are shown in movie theaters) as well as in television and radio promos. An extra fee is charged for promos which use the song out of context (i.e. when the song is used throughout the entire commercial over many scenes, as opposed to just in the scene in which it actually occurs).

Deferred Payments. On occasion, producers of documentaries, lower budget films or films which have substantially exceeded their production budgets at the time music is being selected will ask a publisher to reduce its up-front synch fee for a song and, in return, guarantee an additional payment or payments at some time in the future if the motion picture turns a profit or exceeds certain agreed-upon gross or net dollar plateaus.

Student-Produced Films. Because student-produced films have limited chances for commercial success and small budgets, many music publishers will license their songs for substantially reduced fees. In such cases, most publishers recognize the importance of assisting young filmmakers, since they are an integral part of the future of the entertainment industry.

Songs will sometimes be given to these young producers via a limited license for free or for a nominal cost so that their projects will be realized and their careers advanced. Most publishers, however, will provide that if the project has any type of commercial success or secures more than just film festival or art house distribution, an additional fee or fees will be paid; a proviso which not only helps young producers get their projects off the ground but also ensures adequate compensation to the publisher and songwriter for their generosity if the film realizes national distribution or achieves some kind of financial success.

Screen Credit. Virtually all motion picture producers will give screen credit for the use of pre-existing songs in motion pictures. This credit is almost always included during the credit crawl at the end of the film. If a pre-existing master recording is used, the name of the record company and the recording artist will also be included. Credit in advertisements for the film is rare, but does occasionally occur at the film producer’s option, particularly if the recording artist is well known or the song is a current hit.

Will Smith



Mark Isham



Patrick Doyle (PRS)



Timbaland



John Powell



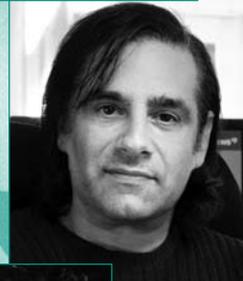
Randy Newman



Sean Callery



Alan & Marilyn Bergman



Russ Landau



Diane Warren



Madonna



Geoff Zanelli

Michael Brook



Barbra Streisand



John Rzeznik



THE SONG WRITTEN FOR A FILM

Most songs written for films produced by the major film studios and production companies are by professional writers living in or near the major film producing capitals of the world (Los Angeles, New York, Toronto, London, etc.). Many of these writers are also recording artists or record producers. Because of the tight time limits of film production and release dates as well as the amount of money invested in films, film producers look for professional and disciplined writers who many times can also produce and record the song for the film. They are almost always hired on a non-exclusive basis whereby the writer can work on other projects during the term of employment with the film studio. Most writers, before they start writing, will be given a description of the film as well as what the song will be about as well as where the song will be in the film.

The Contract. When a producer hires a composer or lyricist to write a song for a film, the compensation as well as the rights of all parties are set forth in a commissioning agreement. These contracts typically state that the producer employs the composer or lyricist to write a song within a stated period of time in accordance with certain ideas and instructions supplied by the producer. A due date for a demo record is set forth in the agreement, and the producer almost always reserves the right to make any changes. Upon delivery of the song, the writer receives an initial fee (for example, \$25,000 for a song; \$7,500 for the lyrics) as well as a guarantee of additional future compensation in the form of songwriter royalties which are contained either in the body of the agreement or attached as a separate schedule (i.e. 50 percent of mechanical income earned from record, tape, CD and download sales; a set rate for sheet music; 50 percent of any synchronization income from the uses of the song in a television series, other motion pictures, or advertising commercials, etc.). The writer also normally receives screen credit for the composition. In consideration for the writing fee, the writer usually grants all rights to the producer (with the exception of his or her share of royalty income) under an employee-for-hire or work-for-hire contract.

Writer Services. The songwriter is employed by the film producer to write a new and original song (or songs) for the motion picture entitled (Name of Picture). The contract will specify whether the writer is being hired to write a complete song or to provide lyrics to new or already composed music. In some cases, the contract will be a joint agreement between the producer, the composer of the music, and a separate lyricist. The "work" shall be written in accordance with such ideas and instructions as producer may supply to the composer and lyricist and shall be suitable, in producer's opinion, for use in the film. A delivery date for the song and/or the master recording will be set with acceptance of the song conditioned on the sole discretion of the producer.

Writing Fee. The writing fee will be negotiated depending upon whether lyrics, music or both are being contracted for as well as whether a producer and artist is involved. Some of the main considerations as to the amount of the fee are the nature of the production (major studio release, independent studio feature, film festival release, student film, etc.), the stature and past success of the writers, the music budget, the type of use (visual vocal, background, etc.) and the experience and clout of the agent involved. Fees can range from below \$1,000 to well over \$100,000 for a song with additional monies due for a master recording.

If the writer is a record producer or an artist, the fees will normally be separated according to the different aspects of the services (e.g. \$120,000 payable \$25,000 to write the song, \$45,000 to cover the costs of recording and producing the song and \$50,000 as an artist advance against royalties).

Screen Credit. Most song credits will appear in the closing credits of the film but some writers negotiate single frame credit as well as a “most favored nations” credit whereby no other song will receive more favorable credit size and placement. Occasionally, a major writer/artist is able to negotiate a single frame credit in the opening credits, but such placement is rare.

Ownership and Publishing. The song will normally be specified as a “work for hire” with practically all rights and publishing owned by the Producer. Most major studios and production “companies” own their own publishing companies and assign the film songs to these entities. Some major writers are able to negotiate a retention of all music publishing or a co-publishing deal with the studio or production company but this is the exception rather than the norm. Also, some writers are able to get the song back (a reversion) from the studio if the song is not used in the picture, but again, this is a matter of negotiation.

Grant of Rights. The Grant of Rights provision is usually a very broad one and is similar to the grant given in the composer score contract. For instance, a clause might read “Composition is specifically ordered or commissioned by the Producer for use as part of a motion picture entitled, _____, and is a “work made for hire”. Producer is the author and composer for all purposes and the owner of all right, title and interest, throughout the world, for all purposes, without condition, restriction or limitation subject only to royalty compensation as set forth herein”.

Songwriter Royalties. A list of all the standard songwriter royalties will always be made part of the contract. This is so regardless of whether the contract is a “work for hire” or a standard songwriter or songwriter co-publishing agreement. These include the writer’s share

of performance, synchronization and mechanical income, sheet music and folio income, digital download income, foreign income, etc. If the writer is also the record producer of the song as well as the recording artist, artist and producer percentage royalties will also be negotiated and set forth in the contract.

Songwriter/Recording Artist Agreement. There is a growing trend for film producers to contact songwriters who are signed to exclusive agreements with music publishers to write a song or songs for an upcoming motion picture. In most of these cases, the songwriter (who is usually a recording artist) and his or her music publisher will give the motion picture company a 50 percent interest in the copyright to the newly created composition. In virtually all instances where the writer is a recording artist, the terms of the soundtrack album will also be negotiated, including artist/producer royalties, mechanical licensing arrangements, recording procedures, recording costs, artist royalty percentages, advances, and any restrictions placed on the record company distributing the soundtrack by the record company to which the artist is signed.

In some cases, the film company will provide the writer with a demo budget so that the producer will be able to hear the newly created composition with further payments due upon delivery of the final composition to the film company and inclusion in the motion picture. For example, the film company might pay the writer to produce a demo recording and make an additional payment upon completion of the composition and another payment if the composition is actually put in the motion picture.

The following represents the basic format of this type of agreement, which is many times a 7- to 10-page “short form” agreement rather than the much longer score agreement.

Basic Project Information. The title of the film, plus the names of the director, the stars appearing in the film, the identity of the distributing film company, and the projected release date are mentioned.

Record Company Waiver: The writer-artist acknowledges the right of his or her current record company to the exclusive recording services of the artist and agrees to cause the record company to grant a written waiver of the exclusivity provisions to allow the film company to hire the writer/artist to record the composition for use in the film and soundtrack album.

Publishing Company Waiver: If the writer/artist is signed exclusively to a music publisher, the writer/artist will also secure a waiver from the music publisher to allow the writing of the composition for the film project.

Work-For-Hire: The writer/artist will, in most cases, agree that the newly written composition is a work-for-hire and that the copyright (or a portion thereof) is assigned to the film company. The film company will also secure the right to utilize the composition in the motion picture and in advertisements, trailers, and other promotions, as well as to distribute the film on video.

Use: The actual placement of the composition and master in the film will usually be mentioned. For example, if the use is to be over the end credits, such will be referenced. The actual timing of the usage in the film will not be mentioned since this may not be determined until the final distribution cut.

Co-Ownership: Many successful writer/artists are able to retain 50% of the copyright in the music publishing rights, with the film company securing the other 50%. If this is the case, the agreement will specify the ownership percentages of the new composition. Even though it is not the norm, certain very successful writer/artists are able to retain 100% of the copyright and publishing rights.

Administration: If the writer/artist is able to retain a portion of the publishing, the film company will many times jointly allow the writer/artist's music publisher to administer the composition throughout the world. If the writer/artist's publishing company is able to secure co-administration rights (where each party represents, licenses, and collects royalties for its respective share of the composition), the film company usually places some negotiated use restrictions on the writer's publishing representative.

Controlled Composition Clause: The composing agreement will always contain acceptance by the writer/artist of the controlled composition clause provisions of the recording agreement for the soundtrack album, which dictate, among other things, the amount of mechanical royalties that will be paid for the sale of the soundtrack album or singles.

Rights and Restrictions of the Various Record Companies: Considering that most well known artists who record songs for motion pictures are signed exclusively to record labels, negotiations always take place between the film company and/or the record company releasing the soundtrack album and the artist's current record company as to who

can use the new master. For example, the soundtrack record label may secure the right to put the recording on the film's soundtrack album but might only be able to release it as a single with the permission of the artist's record label, etc.

Fees: When a film company is dealing with a very successful writer/artist, the fees will be substantial. In many cases, there is a so-called "all-in" lump-sum recording fund which covers not only the creative fee for writing the composition and for being the recording artist and producer of the composition, but also all the costs of recording the master (studio, tape, engineers, musicians, vocalists, equipment rentals, and mixing costs).

Artist Royalty: The agreement will also specify what the artist royalty will be and will, many times—since the percentage royalty is pro-rated depending on the number of other artists and masters on the soundtrack album—guarantee a minimum percentage below which the artist's rate will not go.

Because there is a real complexity to the many interlocking and interrelated provisions of the recording agreement and how they impact on an artist's royalties and rights, it is essential to include in the film agreement as much definitive information as possible on how royalties are to be calculated.

Credit: Songwriter and performer credit will be guaranteed in the film (almost always in the closing credits). Credits may also be guaranteed for certain ads for the soundtrack album and, on occasion, for ads for the motion picture, but all this is negotiable.

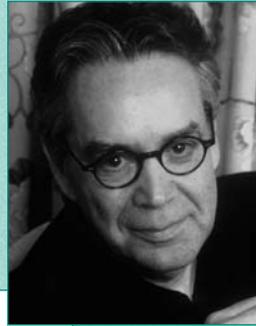
Marc Streitenfeld



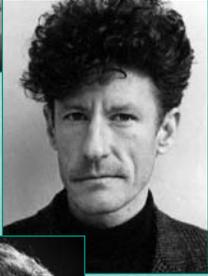
Blake Neely



Howard Shore



Lyle Lovett



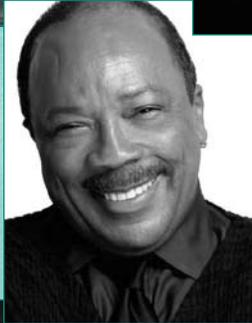
Marc Shaiman



Marvin Hamlisch



Quincy Jones



Ramin Djawadi



John Corigliano



David Vanacore



Brian Tyler



Alan Silvestri



Cathy Dennis (PRS)



Gabriel Yared



Prince



THE SCORE

The score, sometimes referred to as the background music score or underscore, is the music that makes up the majority of music used in film. It is the music you hear under dialogue, in chase scenes, in romantic settings and throughout the picture. Sometimes it is an orchestral score using the services of a 60-person orchestra; other times it is a small chamber ensemble, or a solo instrument (i.e. a piano or guitar), or created on synthesizers.

THE FEATURE FILM SCORE CONTRACT

The contract that a film scorer signs with a major studio or independent production company is standard for almost all composers in some areas, yet completely negotiable in others. Three of the primary factors affecting whether a standard or nonstandard contract is finally settled upon are the stature and past success of the composer, the size of the music budget, and the knowledge, power and stature of the composer's agent negotiating the deal.

The basic areas covered in every motion picture score contract relate to:

- The types of services to be performed by the composer
- The length of time during which they are to be completed
- The fee for those services
- How that fee is to be paid
- Transportation and living expenses
- Screen, as well as all types of advertising credit
- The ownership of the copyright
- Composer and artist royalties for uses of the music outside of the film
- The handling of performing rights payments

The following clauses form the basis of any composer contract in the world of movies.

Composer Services. The scorer is hired to compose all of the score (and in some cases, individual songs) for the film as well as to arrange and orchestrate the score; to conduct an orchestra to record the work; to produce, supervise, and edit the recording of the score; and to deliver the final, fully edited and mixed master recording in accordance with the film's postproduction schedule. Some composers will do everything themselves whereas others will "farm out" some of the duties (i.e. orchestration, conducting, etc.).

Starting and Completion Dates. As many composers are brought into the film shortly before the film is in post production (the point at which the film has been shot and edited), the time to compose and record the score is usually relatively short (for instance, 4 to 12 weeks) and depends on the post production schedule as well as release date of the picture. In some circumstances, a major composer hired to score a big budget picture will be brought in during the early stages of pre-production or shooting, but that is the exception. A sample contract clause might read “Services are to be commenced on the “spotting date of the picture and completed within 12 consecutive weeks from that date”.

Composing Fees. The composing fees paid to a feature film composer vary considerably depending on the past success and stature of the composer; the amount of music needed in the film; the type of music required; the total budget for the film; the total music budget, including the cost for licensing preexisting outside songs or master recordings; whether the film producer is a major studio, a major independent, or a minor player in the film world; the size of the orchestra needed to record the score; whether the composer is contracting to bear all or most of the costs of music (a package) or only negotiating the composing fee; whether the film is intended for wide distribution or only a limited release; the standard fees paid by a particular studio versus the fees of other studios; and the skills of the individuals on both sides of the negotiation fence--the studio and the composer’s agent. Depending on many of the above factors, composing fees can range from \$20,000 for a lower-budget film to in excess of \$1,000,000 for a big-budget studio release using the services of a well-known composer.

A sample clause might read:

\$150,000 payable as follows:

\$50,000 upon the signing of the contract or the commencement of spotting (i.e., the composer, director, producer, film editor, music editor and music supervisor watch the film and discuss where the music should be).

\$50,000 upon the commencement of the recording of the motion picture score.

\$50,000 upon completion of all composer services as well as timely delivery of the master recording to the producer. The master recording has to be acceptable to the producer.

Package Deals. One of the considerations that dictates the amount of the fee negotiated in the composer-studio contract is whether the composer is assuming responsibility for all costs of his or her efforts (i.e., costs of musicians, recording, copying, orchestrators, instruments and instrument rentals, cartage, payroll and payroll taxes, etc.), or is solely contracting for composing and conducting services. If one is contracting for the whole package, all items that the composer is agreeing to furnish (as well as all exclusions) should be specifically spelled out in the contract. Some items that should be excluded include the licensing cost of any music not written by the composer (outside songs), and any re-scoring or re-recording costs required for creative reasons after the delivery of the master recording that are outside the control of the composer.

Screen Credit. The type and placement of screen credit for a composer is a negotiable item. A separate card will usually read “Music by (the composer’s name).” The credit can be in the main titles and of the same size as the star, the producer, writer of the screenplay, or director, or it can be at the end of the film in a size somewhat less than the other principals. Most well-known composers are able to negotiate the inclusion of their names in all paid advertising (newspapers, magazines, etc.) as well as on soundtrack albums and all printed publications (sheet music, song folios, songbooks, etc.).

Exclusivity. Most film composer agreements state that the composer’s services are exclusive to the producer or company during the entire term of the scoring agreement or exclusive during the recording and mix down of the score per the post production schedule and non-exclusive during all other times. Other contracts state that the services are non-exclusive but on a first priority basis.

Transportation and Expenses. Many composers either live or have accommodations in the cities where the primary movie production and recording facilities are located. For certain motion pictures, though, the producer will require the composer to travel. A sample clause might read:

“\$1,500 a week while away from Los Angeles for hotel, meals, local transportation, and phone (accommodations and expenses), as well as first-class round-trip transportation for the composer and spouse.”

Ownership of the Copyright. Practically all composer score agreements are employee-for-hire or work-made-for-hire agreements; that is, the musical score is created at the specific request of and under the direct supervision of the film producer. For the all-inclusive composing and services fee, the composer “grants to the producer all rights, title, and interest throughout the world in perpetuity, in and to the work and the recordings.” By this grant, the producer owns

the worldwide copyright for the entire term of copyright protection. The typical grant-of-rights provision signed by composers gives the studio the exclusive right to publish the composition, to make and sell sound recordings, to execute all licenses regarding the use of the work, to change the work, to combine the work with other works, and to transmit the work by any means now available or to be available in the future. This clause is normally of the broadest nature possible, and it is not unusual to see in the contract the inclusion of phrases such as “all other rights of any nature whatsoever,” “perpetual and unlimited rights,” or “any rights throughout the entire universe whether now or hereafter existing”.

Under an employee-for-hire contract (“work for hire”), the producer (normally the movie studio or production company) becomes the author pursuant to the U.S. Copyright Law. Any specific rights to the music that the composer may retain must be stated in writing and signed by all parties. The duration of copyright protection for “works for hire” created on or after January 1, 1978 is 120 years from the year of creation or 95 years from the year of publication, whichever is shorter. The copyright duration for other types of works written on or after January 1, 1978 is life of the author(s) plus 70 years. Through this grant, the studio becomes the owner of all rights of copyright and is usually free to assign or license those rights to others.

Composer Royalties. The primary composer royalties, in addition to the composing and services fee contained in most composer score contracts include all or most of the royalties as set forth in the standard songwriter agreement including the right to receive performance royalties, mechanical royalties, sheet music and folio royalties, foreign royalties and synchronization royalties, among others. If the composer is also the producer of the soundtrack album as well as the conductor on the album, additional producer and artist royalties will be negotiated. For example, a sample clause might provide 3% of the suggested retail price of a CD/album (6% wholesale) as a producer and 7% of retail (14% of wholesale) as a conductor with a pro-ration based upon the number of other “outside” tracks on the CD/album.

Performing Right Society Membership. For most film composers, performing right payments represent their main source of royalty income. There is a performing right organization (PRO) in every major country of the world with the largest in terms of revenue and royalties, ASCAP, located in the United States. These PROs negotiate music license fees with the users of music (television stations, cable, radio, web sites, live concerts, etc.), collect those fees and then distribute them to writers and music publishers based upon surveys of performances in different media. Practically all composer contracts will have a clause requiring membership in a PRO. For example, “the composer must be a member in good standing of a performing right society as well as any other applicable labor organization, guild, or union that may have jurisdiction”.

For composers who are members of societies outside of the U.S. (i.e. a writer who is a member of PRS in the UK, or APRA in Australia and New Zealand, SOCAN in Canada, SACEM in France, SIAE in Italy, IMRO in Ireland, GEMA in Germany, or SGAE in Spain, etc.), they can choose on a per film basis who will represent them for licensing in the U.S. The reason for this is that the U.S. is one of the few countries which has multiple PROs, all of which are in competition with each other. That is why it is important that foreign composers writing for film always specify in their contracts what U.S. organization will represent them for the negotiation, collection and payment of performing right payments for each film as each U.S. PRO has entirely different payment schedules, both short term and long term, as well as very different owners, philosophy and contracts.

Based upon agreements between societies, U.S. writers are covered for performances of their works outside the U.S. just as foreign composers, by being a member of a foreign society, are covered for U.S. performances of their works.

Finally, many contracts have clauses specifying what would happen to performing right payments “if a broadcasting station (or other user) does not have a current valid license agreement with ASCAP or BMI or if it becomes unlawful for the performance right society to issue a license or if a station or producer requires a direct or source license”.

Disposition of the Score. The producer has no obligation to accept the finished score, to use the score in the picture, to promote or exploit it, to release it on a soundtrack album, or even to release the picture. Further, the producer may request certain changes, deletions, or additions to the finished score prior to accepting it.

Warranties/Re-Recording Restriction. The warranty clause states that the composer is free to enter into the agreement, that the music will be entirely original, that the composer’s services and skills are unique and of the highest caliber, and that he or she can grant all rights in the music (including the copyright) to the film’s producer. The composer will normally submit a Certificate of Authorship to this effect. Under the re-recording restriction clause, the composer agrees not to conduct, produce recordings, or re-record the motion picture score for anyone else for a stated period of time (3 to 5 years normally) commencing from the date of the delivery of the score and master recordings to the producer.

Instructions and Requests of the Producer. The composer agrees to comply with all of the producer’s reasonable instructions and requests, to compose the score to the best of his or her ability, and to consult with the producer as to the style, content, and all other elements of the score. In addition, the composer agrees to meet with the producer or the producer’s representatives for approval of the recording budget.

Suspensions, Terminations and Force Majeure. Scoring contracts will always have provisions dealing with what happens if a composer is unable to, fails to or is unwilling to perform his or her duties (illness or other disability, disagreements, etc.) as well as if the film company has to interrupt the preparation, production or completion of a film due to reasons beyond the producer's control – a Force Majeure (i.e. fire, war, labor dispute, etc.). The rights of both the composer and the film company are specifically set forth in the contract and can range from suspensions, to holding the production in abeyance for a certain period of time to termination if the condition continues for a specific period of time (i.e. a physical disability that lasts for 4 weeks or a labor dispute lasting for 8 weeks).

Infringements. In the event that any infringement or other claim is made against the producer or the publisher in regard to the musical score, any monies payable to the composer shall be withheld until a final determination is made as to the claim.

Notices and Governing Law. All notices, payments, statements, or other documents are made in writing and are sent either by personal delivery, telegram, telex, telefax, or registered or certified mail. The laws of the relevant state govern the agreement, and any modifications or changes in the agreement must be in writing and signed by all the parties.

MUSIC CUE SHEETS AND THEIR IMPORTANCE

After a motion picture has been produced and a final version has been edited, the producer will prepare a music cue sheet.

The cue sheet lists:

- All of the music used in the film
- How the music was used
- Its timing in seconds
- The identity of the writers and music publishers
- Writers' and publishers' performing rights affiliation
- If pre-existing master recordings have been used, the identity of recording artists and record companies

The cue sheet is the cornerstone of all royalty payments for a film. Considering the amount of music used in most films, this cue sheet is usually completed within 30 days after theatrical release, but depending on the producer and available staff, it can be longer.

Some music cue sheets contain scene explanations and dialogue details, but most cue sheets do not have specific scene reference points as to how and when music is used in a motion picture. Most contain only chronological information on the titles, writers, publishers, performance right membership, master recording information, timing (20 seconds, two minutes, etc.) and generic usage (visual vocal, score, etc.) without detailed scene descriptions.

Since performing right organizations and other representatives of rights holders use music cue sheets to determine how music is used, who owns the music and how much in royalty payments are to be made when a film is aired on television or shown in a theater, it is essential that a cue sheet be completed accurately. Because a motion picture uses so much music in so many ways (score, visual vocals, background vocals, background instrumentals, opening and closing themes, etc.), it is not unusual for mistakes to be made on cue sheets, whether it be a false timing, a mislabeling of a song's use or an incorrect identification of the writer and publisher and their performance rights affiliation. By reviewing a copy of the cue sheet, the writer and publisher can correct any inaccuracies before the producer distributes the cue sheet to performance right

and other organizations throughout the world. To this effect, many composer score contracts specifically state that the composer will be involved in the preparation of the cue sheet.

SAMPLE CUE SHEET

Film Title: _____ Production Company: _____
 Version: Domestic Address: _____
 Running Time: 113:45
 Expected Release Date: June 2009 Phone number: _____
 Director: _____ Fax number: _____
 Distribution: _____ E-mail address: _____

Cue #	Cue Title	Entitled Parties (Composer/Songwriter/Publisher/PRO)	Ownership Share	Usage	Timing
1	Film Company Logo	Henry Doe (ASCAP) Film Co. Publishing Co. (ASCAP)	100% 100%	BI	:10
2	Main Title Theme	John Composer (ASCAP) Film Co. Publishing Co. (ASCAP)	100% 100%	BI	1:40
3	Beach Scene	John Composer (ASCAP) Film Co. Publishing Co. (ASCAP)	100% 100%	BI	2:45
4	Existing Hit Song	Jane Writer (ASCAP) John Writer (ASCAP) Outside Publishing (ASCAP)	50% 50% 100%	BV	:35
5	City Landscape Scene	John Composer (ASCAP) Film Co. Publishing Co. (ASCAP)	100% 100%	BI	1:48
6	Song Written for Film	Jim Songwriter (ASCAP) Film Co. Publishing Co. (ASCAP)	100% 100%	VV	:47
7	Existing Hit Song (Master Licensed from ___ Record Company)	Joan Songwriter (ASCAP) Outside Publishing Co. (ASCAP)	100% 100%	BV	1:15
8	Car Chase scene	John Composer (ASCAP) Film Co. Publishing Co. (ASCAP)	100% 100%	BI	2:24
9	Romance scene	John Composer (ASCAP) Film Co. Publishing Co. (ASCAP)	100% 100%	BI	3:22
10	End Title Theme	John Composer (ASCAP) Film Co. Publishing Co. (ASCAP)	100% 100%	BI	3:30

Types of Use: Background Instrumental (BI), Background Vocal (BV),
 Visual Vocal (VV), Visual Instrumental (VI), etc.

CONCLUSION

Scoring a film or having a song in a film can provide a lifetime of earnings to a composer or songwriter. In addition to the initial writing or synchronization fee, composers and songwriters can earn royalties from many sources including record, CD and tape sales (mechanicals), U.S. and foreign television, cable and radio performances, theater performances, downloads, streaming and artist and record producer royalties, among others.

In order though to make sure you receive what you are due, you must know what is in the contracts you are signing, the many considerations involved, and the areas that are open for negotiation as well as those that are standard for everyone.

Writing for film involves creativity but it also involves a multi-billion dollar worldwide business. Knowledge of how the business works is essential for success in this area.

THE ASCAP FILM & TELEVISION MUSIC DEPARTMENT

- What It Can Do For You
- The Connection It Can Help You Make
- Your Career Resource

As part of the Membership Group, ASCAP's Film and Television Music Department provides a variety of programs and services for composers and songwriters, including film scoring and musical theater workshops, and seminars on the varied creative and business aspects of writing for film and TV. Based both in Los Angeles and New York, the Film and TV staff provides career guidance and networking opportunities within the industry for ASCAP members, and also serves as a resource for filmmakers, music supervisors and production companies looking for music for their projects. The staff represents ASCAP at film festivals and music conferences worldwide, promoting the importance of the Society's repertory and celebrating the successes of ASCAP members.

ASCAP Offices

ATLANTA

950 Joseph E. Lowery Blvd. NW, Suite 23, Atlanta, GA 30318
404.685.8699 • 404.685.8701 fax

LONDON

8 Cork Street, London W1S 3LJ, England
011 44 207 439-0909 • 011 44 207 434-0073 fax

LOS ANGELES

7920 W. Sunset Blvd., Third Floor, Los Angeles, CA 90046
323.883.1000 • 323.883.1049 fax

MIAMI

420 Lincoln Road, Suite 385, Miami Beach, FL 33139
305.673.3446 • 305.673.2446 fax

NASHVILLE

Two Music Square West, Nashville, TN 37203
615.742.5000 • 615.742.5020 fax

NEW YORK

One Lincoln Plaza, New York, NY 10023
212.621.6000 administrative
212.621.6240 membership • 212.794.9064 fax

PUERTO RICO

Ave. Martinez Nadal, c/o Hill Side 623, San Juan, PR 00920
787.707.0782 • 787.707.0783 fax

www.ascap.com