



NEWSLETTER

An Entertainment Industry Organization

Go Behind Badfinger's 'Breaking Bad' Moment

by Phil Gallo

The President's Corner

Happy New Year!

Thank you for being with us tonight for our first meeting in 2015! I want to give a special thank you to our board members Mary Jo Braun and Eric Palmquist for helping to put this amazing panel together.

Please make sure to check your email for a notice from us to update your CCC membership. Once you log in to your account with the information provided in that email, members will be able to access the videos to our past panels and the discount codes on our Member Privileges page.

We now have an "Internet Only" membership specifically for anyone living outside of the Southern California area who would like to become a member of the CCC to access our panels via live stream and/or our video archive. Any current member that recommends five new members will receive a free dinner to any upcoming CCC panel.

Thank you again for being with us tonight, we hope to see you next month (February 17th) for a super exciting panel on EDM!

Anne Cecere
President, California Copyright Conference

"Baby Blue," the Badfinger song that closed out the finale of AMC's "Breaking Bad" on Sept. 29, sold 5,000 copies in handful of hours after it aired, according to SoundScan.

It remained in iTunes' top 20 throughout the two days following the airing of the "Breaking Bad" finale.

"One of the great things about the digital age are the immediate results," says Bruce Resnikoff, president of Universal Music Enterprises, the catalog division that oversees Badfinger's four albums released on Apple Records. "We trying to use social media to connect this song to the show and increase awareness to a wide market."

"Baby Blue," written by Badfinger leader Pete Ham, appeared on their late-1971 album "Straight Up" and was one of the band's four top 40 hits, reaching No. 14 in 1972. Closely associated with the Beatles -- Paul McCartney wrote and produced their first hit, "Come and Get It," for a film that starred Ringo Starr, and George Harrison produced four tracks on "Straight Up" -- they recorded four albums for Apple Records before moving to Warner Bros.

The idea to use "Baby Blue" came from show creator Vince Gilligan, who wrote and directed the finale. Music supervisor Thomas Golubic submitted the request in June to "Breaking Bad" producer Sony Pictures Television, which went to Universal Music and Apple. Resnikoff says the synch was cleared in two days.

"We were not able to give detailed information," Golubic says,

noting that no plot information was given for any of the show's final eight episodes. Apple and Ham's estate knew it was going to be used in the final scene, and that there was no on-screen violence, drug use, nudity or swearing.

"We really do feel we built up trust over a long time with labels and publishing companies and we're not going to get them to give us a green light for a song and then pull the rug out from under them with something inappropriate," Golubic says. "The (Ham) estate called and said they are absolutely thrilled with this use. The band had a really unfortunate and tragic back history" -- Ham and Tom Evans committed suicide after enduring financial and legal troubles -- "but what I find really nice is that these gifted artists who left the planet really early now get a chance to have some new life breathed into their song. For the estates involved and one remaining member (Joey Molland) I hope this is a nice smile that brings Badfinger back into public light. It's a wonderful, wonderful song."

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Music, Money, Success & the Movies: Part One

By Jeffrey Brabec and Todd Brabec

PART ONE: Whether the score is dramatic, soothing, romantic, comedic or foreboding, it is an integral part of the fabric of any motion picture.

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, or anyone involved in film, or who wants to get involved.

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 excess of \$75 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 2000, close to 200 films had reached 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, with Star Wars: Episode I-The Phantom Menace at \$920 million), 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 as DVDs, video cassettes and laserdiscs for purchase and rental, with subsequent sales to pay-per-view, to pay cable services (HBO, Showtime, Disney, The Movie Channel, etc.), to the television networks (ABC, CBS, NBC, FOX, etc.), to 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 and commercial advertising fees, among many other sources.

TYPES OF MOTION PICTURE MUSIC

Motion picture music falls into three basic categories: underscore (James Horner's score to Titanic, John Williams' score to E.T., or Randy Newman's score to Toy Story 2); the pre-existing song or song and original master recording (Bruce Springsteen's "Hungry Heart" for The Perfect Storm, Steve Miller's "Fly Like An Eagle" for Space Jam, the Guess Who's "American Woman" in American Beauty); and the song written specifically for the film (Diane Warren's "I Don't Want To Miss A Thing" for Armageddon, Phil Collins' "You'll Be In My Heart" for Tarzan and Harold Arlen's and E.Y. Harburg's "Over The Rainbow" for The Wizard Of Oz.) Each of these three distinct types of music in film involve very different negotiations, contracts and considerations and produce very different backend royalties once the film is released.

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 (i.e. vocal performance by an actor on camera, instrumental background, vocal background)
- The overall budget for the film, as well as the music budget
- The type of film (i.e. major studio, independent, foreign, student, web)

- The stature of song being used (i.e. current hit, new song, famous standard, rock n' roll classic)
- The duration of the use (i.e. one minute, four minutes, 10 seconds) and whether there are multiple uses of the song
- The term of the license (i.e. two years, 10 years, life of copyright, perpetual)
- The territory of the license (i.e. 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).

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.

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 \$25,000 quote for the use of a song in a film, it also might agree to reduce the price to \$22,000 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.

Part Two reveals what you need to know about getting your songs into movies and making the right deal. There is nothing worse than to see a film open to rave reviews with a hit soundtrack and an Oscar nomination and know that your song could have been in it... but wasn't...

© 2007 Todd Brabec, Jeff Brabec For more information, check out the book *Music, Money and Success: The Insider's Guide To Making Money In The Music Business* (Schirmer Trade Books/Music Sales/502 pages) available for sale at Amazon.com, Barnes & Noble, Borders, Music Sales Group and www.musicandmoney.com. Parts 2, 3 and 4 of *Music, Money, Success and the Movies* can be found on-line.

PANELIST BIOS

MICHELLE BELCHER

Michelle Belcher, is currently at Sony Music Entertainment where she is the V.P. of Film & Trailer Music/Licensing on behalf of their in-house branded division SYNC SHOP. Michelle's primary responsibilities include pitching and clearing music for film projects and movie trailers in addition to creating marketing strategies for the various labels artists. She previously held stints at Morgan Creek, Columbia Records, Arista Records, BMG Music Publishing, Primary Wave Music and Universal Music Publishing. She has also music supervised films District 9 and The Resident. Michelle is also a member of FIND (Film Independent), NARAS, and a former board member of the Los Angeles Chapter of the AIMP.

MARY JO BRAUN

Mary Jo Braun is Director of Music Clearance, Paramount Pictures. Mary Jo Braun has worked in the music industry for over 25 years. She has worked for Virgin Records, Rysher Entertainment, Famous Music, Paramount Vantage, DreamWorks, CBS Home Entertainment Business and Legal Affairs Division (Mandich/Gum) and is currently working as Director, Clearance at Paramount Pictures.

ROB CHRISTENSEN

Rob Christensen, currently holding the position of Director, Film & TV Licensing with BMG Chrysalis, Rob has years of music publishing and synchronization licensing experience, including an impressive history of maximizing the synch earnings for the BMG Chrysalis catalog. Before joining BMG Chrysalis in 2011, Rob worked at Bug Music handling a range of synchronization licensing, including films, television, commercials and other media for both domestic and international deals. Prior to moving to Los Angeles to pursue a career in the music business, Rob was at Comcast Spotlight in Seattle, WA, as an Inventory Sales Analyst, responsible for reporting and pricing structures.

THOMAS GOLUBIC

Thomas Golubić, is a Los Angeles-based music supervisor, DJ, and Grammy-nominated record producer. His music supervision credits include the AMC series 'Breaking Bad', 'The Walking Dead', and 'The Killing', the Showtime series 'Ray Donovan', and the HBO series 'Six Feet Under' among other high-profile film and television projects. Musically speaking, his formative years were spent over the 10 years he spent as a DJ and music programmer for tastemaker LA radio station KCRW 89.9FM. After ending his radio show in 2008, Thomas turned his attention to music production forming The Arbiters, a music collective creating mash-ups with synchronized visuals. Thomas has become known as an innovated club DJ spinning wildly eclectic sets often with live synchronized visuals. His SYNCHRONIZE re-score project, featuring live DJ re-scores of feature films has been featured at the Sundance Film Festival, Bonnaroo Dubrovnik Film Festival and U.S. Comedy Arts Festivals. Thomas was nominated twice for Grammy Awards for producing each of the 'Six Feet Under' soundtrack albums.

MORGAN RHODES

Morgan Rhodes, is a Los Angeles-based music supervisor. Her career began in 2012 on Ava DuVernay's critically acclaimed Sundance hit "Middle of Nowhere" - work which led to her winning the African-American Film Critics Award for Best Music. Her collaboration with Ava continued on short films "The Door" for Miu Miu's 2013 Spring campaign, "Say Yes" for Fashion Fair, the world's largest black cosmetics company and most recently as music supervisor for Golden Globe-nominated SELMA. Since the early days of cutting her teeth as an on-air personality at influential independent radio station KCRW, Morgan has spent the last several years as a music programmer with shows on Philadelphia's WURD 900AM and LA's KPFK. Her blend of avant-garde R&B, left-field soul, electropop, beats, dance and world music has won listeners both domestically and globally. She is also one of the featured music critics on KPCC's weekly new music installment, "Tuesday Reviewsday." Morgan's love of discovering rare music finds lends itself to digging for precious archival material and long forgotten releases as well as scouring record stores for compelling new supplemental sounds. She is always in search of the perfect beat, song and conversation about music.