



NEWSLETTER

An Entertainment Industry Organization

YOUR MUSIC IS AN ASSET: Treat it accordingly

Abbreviated Keynote Address
to Composers at the
**Annual General Membership Meeting
of The Society of Composers & Lyricists**
October 17, 2013

The President's Corner

With this month's panel, I officially complete my term as president of the California Copyright Conference. It's been a great honor to be a part of this wonderful organization and to work with an amazing group of moderators and panelists to present engaging and educational panels each month. I also want to thank our board of directors, past presidents, and Alisha Hall who all did a fantastic job this year.

Tonight's panel, "Bringing a Story to Life – Composers and Writer/Directors in TV and Film", is moderated by Eric Palmquist (VP, BMG Chrysalis) and Jonathan David Neal (The Society of Composer's and Lyricists). I would like to take the opportunity to thank both of them for organizing tonight's panel. In addition, I would like to thank our panelists John Debney, John Rice, David Buckley, and Robert King for sharing their knowledge and insight into the creative process of combining music with TV & Film.

Also tonight, we honor this year's recipient of the 2014 John Braheny Scholarship, Raul Ortiz of CSUN. This is our way of giving back to the entertainment community and laying the foundation for the next generation of music industry professionals.

I hope you all have a great time tonight.

Jeremy Blietz
President, California Copyright Conference

Every time you create a new work, be it a song or an instrumental (like a piece of underscore) you have created an asset...either for yourself or someone else. And if it's for someone else, since *you* are the actual creator of that asset, it's because you have decided to trade or barter with it for some form of compensation—usually money.

As I'm sure you all know, this is then deemed a "work made for hire" or "work for hire." I'll talk about this in a little more depth shortly, but for the moment, let's focus on the asset you've created for yourself. What's it worth?

You might say it's only worth what someone's willing to pay for it. Okay, that's a valid way of valuing it. But the songwriter who writes on a regular basis (a couple of songs a week) doesn't quite think of it in those terms. The songwriter is building a catalogue of indeterminate value. Those songs might be pitched to artists or shopped to publishers, but the point is, those songs don't *have* an agreed value when they are created. So too then, the composer should be thinking of it as building a catalogue, whenever he/she writes.

The U.S. Copyright office defines "work for hire" as follows:

"A work made for hire (sometimes abbreviated as work for hire or WFH) is a work created by an employee as part of his or her job, or a work created on behalf of a client where all parties agree in writing to the WFH designation. It is an exception to the general rule that the person who actually creates a work is the legally recognized author of that work. According to copyright law in the United States and certain other copyright jurisdictions, if a work is "made for hire," the employer—not the employee—is

considered the legal author. In some countries, this is known as corporate authorship. The incorporated entity serving as an employer may be a corporation or other legal entity, an organization, or an individual."

The actual creator may or may not be publicly credited for the work, and this credit does not affect its legal status.

Countries that are party to the Berne Convention for the Protection of Literary and Artistic Works recognize copyrights and moral rights separately, with moral rights including the right of the actual creators to publicly identify themselves as such, and to maintain the integrity of their work.

Understand that “work for hire” as it applies to us, (not software manufacturers, magazine writers, photographers, etc.) just to music, is a purely American concept. It is not set down by *law* in other countries. However, more and more it is becoming the custom in countries that don’t have moral rights protection for their creators, like the U.K., Australia, New Zealand and others. It’s an insidious creep.

Again from the U.S. Copyright Act:

The circumstances in which a work is considered a "work made for hire" is determined by the United States Copyright Act of 1976 as either:

...a work prepared by an employee within the scope of his or her employment;

or

...a work specially ordered or commissioned for use as (1) a contribution to a collective work, (2) a part of a motion picture or other audiovisual work, (3) a translation, (4) a supplementary work, (5) a compilation, (6) an instructional text, (7) a test, (8) answer material for a test, (9) an atlas; if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. (17 U.S.C. § 101)

The first situation applies only when the work's creator is an employee, not an independent contractor and so does not apply to the majority of us.

But, if the work is created by an independent contractor or freelancer (as in the second situation), the work may be considered a “work for hire” *only* if *all* of the above conditions are met.

Mutual agreement that a work is a “work for hire” is not enough; it must be in writing. That’s why we sign the Certificate of Authorship attached to our contracts.

So why am I giving you this long preamble defining “work for hire”?

Let’s go back to the songwriter writing songs on spec. As budgets get lower and competition gets greater, we composers are asked to submit *music* on spec all the time: a cattle call for a new TV theme or scoring a couple of scenes from a movie still in the cutting room.

Whoever puts out the call for these submissions, ultimately compares them all and selects the one they like best. If you’re the winner, they will then most likely ask you to enter an agreement with them deeming this music a “work for hire.” Be under no misapprehension: **IT IS NOT A WORK FOR HIRE.** It was not created as such and, sure, you’re free to sign on to that arrangement, but understand you *do* have leverage; maybe more than you think. You have an asset and they now want it. And if they’ve REALLY fallen in love with it, you REALLY have an asset.

If it’s a studio or major player, they are generally going to want control of the copyright (the publishing), but that doesn’t mean they won’t give you a small share of the publishing, even up to as much as 50%, so long as they are designated the copyright administrator. At the very least, there’s a chance you’ll get a higher upfront fee if they want the entire publisher’s share, when you point out that this work was NOT “made for hire.”

But in the world of independents, it’s a totally different story. Time and again I’ve been able to keep ownership of my copyrights (collect the publisher’s share) while issuing master and sync licenses in perpetuity for them, just as if I were licensing a song.

It’s not uncommon for us to begin working on a project in good faith and possibly even finish it, before any of the contractual details (aside from maybe “how much” and “when”) have actually been finalized. We’re then given a contract that we’re expected to sign, which we’re told is “boilerplate” and that contract will almost always deem the music you’ve created as a “work for hire,” but as we’ve seen absent a *written* document, it simply is not. A “mutual understanding” doesn’t cut it.

Look, I’m not suggesting for a moment you become confrontational with the producer or your director over any of this—far from it. But I am saying we’ve allowed this to happen, to become accepted practice and maybe, in certain situations, it could be time to walk it back a little. At least you know that you’re on solid ground, legally, if there’s an opportunity to begin the conversation.

Most of you have probably not had much to do with the advertising industry. In advertising when they put the call out for a demo, it comes with a small fee (\$1–1.5K), ostensibly to cover talent. Along with the requisite paperwork, it makes it very clear that the submission is a “work for hire.” We have, what I believe to be, terrible precedents being set by composers in our own community spending thousands of dollars of their own money on submissions. Now I’m not about to tell anyone they can’t market or promote themselves however they see fit—no one is a bigger fan of the free market than me. But consider the ramification if this becomes the norm.

Look at mock-ups: Originally they were only done for feature films and the presentations were so simple: a theme here or there, maybe an important scene or two. Now it’s every single cue, in TV and videogames as well, and because they’re expected to be of such high quality, they’re *so* labor-intensive. We are essentially doing the score twice if the parts are going to be replaced by live players. But we can’t blame

anyone else—we created the current situation.

So if composers chose to spend thousands of dollars on a submission, they should not be embarrassed, when the conversation begins, to ask for a slice of the publisher's share. Value your asset, because if *you* don't, nobody else will either.

Now let's go back to something else in the "work for hire" definition note:

"The incorporated entity serving as an employer may be a corporation or other legal entity, an organization, or an individual. The actual creator may or may not be publicly credited for the work, and this credit does not affect its legal status."

What does this mean? You know that clause in your "work for hire" contract that says something like, "you are entitled to collect what is customarily known as the Writer's share of performance royalties"? Well, guess what? Under the current "work for hire" statute that share is NOT guaranteed. It's accepted industry practice and has been forever, but in this "wild west" of the digital age and with everyone jockeying for position at what's believed be an upcoming major overhaul to the Copyright Act, it could go away in a heartbeat. That's why the creators' organizations like the SCL, in concert with the PROs, are the best chance we have to be heard in Washington when these hearings come around.

Personally, I would like to see an end to "work for hire" altogether. Bring the U.S. in line with the rest of the world. It's a daunting, if not impossible task, but maybe if we begin by setting some of our own precedents, with some of the smaller players who live outside the studio system, we can slowly turn the tide. If we don't try, we'll never know.

However, many of us think it's possible have the Writer's share clearly defined in any copyright revision as no less than 50%—by law not "general industry practice."

It's a fine line, but there are times when we're better off presenting ourselves in Washington as small business people rather than artists. To "manufacture" our product we need thousands of dollars worth of equipment housed in a specifically designed space. Congress understands "plant and equipment." We produce music by the pound and we produce pounds of it. We're not rock stars or even household names. We pick up our kids from school, we buy our own groceries, and we have mortgages. We're normal working people who own small businesses that create widgets that, in turn, generate a lot of revenue for the U.S. around the world. Congress understands revenue.

Look, it's a business and we're in it: the *Music Business*. I know you worked hard to learn the musical aspect: you're here in Hollywood—the entertainment mecca. But make sure you also educate yourself on the business aspect: contracts, copyright and so on—the things that will protect your assets. Because just like real estate or a good stock portfolio, your musical assets will look after you for years to come.

Thanks for coming tonight and enjoy the evening.

Ashley Irwin, President of the Society of Composers & Lyricists

PANELIST BIOS

DAVID BUCKLEY

David is a British film composer working in LA. He has worked with many of the leading filmmakers of the day including Ridley and Tony Scott, Ben Affleck, Joel Schumacher, Rob Minkoff, Luc Besson, Pierre Morel and Taylor Hackford. Recent film scores include *The Town*, *Book of Dragons* and *The Forbidden Kingdom*. He is also the composer for the hit CBS TV show *The Good Wife*, that just completed their fifth season, and has recently provided the score for Infinty Ward/Activision's *Call of Duty: Ghosts* and the WB/Rocksteady game: *Batman, Arkham Knight*.

David's first involvement with film music was as a choirboy performing on Peter Gabriel's score for Martin Scorsese's *The Last Temptation of Christ*. He continued his musical education at Cambridge University where he subsequently taught. After graduating, he moved to London and began a successful career writing music for TV shows and commercials. In 2006 David moved to LA to become an additional writer on a number of Harry Gregson-Williams' scores including *Shrek*, *Gone Baby Gone*, *Flushed Away* and *The Number 23*. He has also contributed music to the video game, *Metal Gear Solid 4*, and the TV show, *Shrek the Walls* and has written additional music for Danny Elfman on a number of projects. David was recently honored as a Brit to Watch by BAFTA and has been the recipient of numerous BMI Awards.

JOHN DEBNEY

Academy® Award-nominated composer John Debney has the ability to create memorable music across a variety of genres, and has garnered a reputation of being remarkably collaborative. Debney has received numerous accolades for his talents. He is the youngest recipient of ASCAP's prestigious Henry Mancini Career Achievement Award. Variety named Debney the "Billion-Dollar Composer of the Year," highlighting his tremendous box office successes, including *The Passion of the Christ*, *Elf*, *Bruce Almighty*, *The Princess Diaries 1 & 2*, *Spy Kids 1 & 2*, *Sin City*, and *Iron Man 2*. Blending symphonic orchestra, a wide range of world instruments, and the beauty of the human voice, Debney's landmark score for *The Passion of the Christ* became a world-wide success and earned him an Academy® Award nomination, a Gold record and a live concert performance in Rome. Debney's other accolades include three Emmy awards. John Debney recently scored *The Call*, starring Halle Berry and Abigail Breslin, and *Jobs* starring Ashton Kutcher. He is currently scoring *Walk of Shame*, *Eliza Graves*, and *Mary, Mother of Christ* as well as the TV mini-series *Bonnie & Clyde*.

ROBERT and MICHELLE KING

The EMMY nominated writing team, Robert and Michelle King, have been creative collaborators for over a decade and married for over two decades. Their CBS drama, *THE GOOD WIFE*, starring EMMY and GOLDEN GLOBE award winning actress, Julianna Margulies, premiered in the Fall of 2009 to critical and popular acclaim.

They previously created the 2006 ABC drama about the wrongly accused and imprisoned, *IN JUSTICE*, starred Kyle MacLachlan and Jason O'Mara.

Prior to their work in Television, Robert wrote a dozen produced feature films – including the mountain-climbing action feature, *VERTICAL LIMIT*, starring Chris O'Donnell and *RED CORNER*, starring Richard Gere, while Michelle worked in development at various studios and production companies.

For their work on *THE GOOD WIFE*, Robert and Michelle have been honored by their peers with recognition from the WGA, and the Academy of Television Arts & Sciences, as well as the Television Critics Association. In addition to creative recognition the Kings have been awarded the *SIDNEY LUMET AWARD* for Integrity in Entertainment, the *HUMANITAS PRIZE* and the prestigious *PEABODY* award.

JOHN RICE

Screenwriter/Executive Producer John Rice is originally from Minot, North Dakota. Rice received an undergraduate degree from the University of North Dakota. He then attended graduate school at USC where he studied film production on a Warner Bros. Scholarship which was awarded based on a short film he directed. He met his writing partner at USC, Joe Batteer and they have been writing together ever since. Their first screenwriting credit was for the cable film, *Curiosity Kills* which led to other scripts being made into films including *Blown Away* starring Jeff Bridges and Tommy Lee Jones as well as the critically-acclaimed war drama, *Windtalkers*, directed by John Woo and starring Nicholas Cage. The original script for *Bonnie and Clyde* was written over ten years ago for TNT and Craig Zadan and Neil Meron were on-board to produce. Ten years later Zadan and Meron came back to the writing team and asked, "Can you make it a four hour mini-series?." Rice and Batteer then rewrote the original script. In addition to screenwriting credit for the mini-series, John Rice and Joe Batteer also serve as co-executive producers. Upcoming for the writing team is a Manson mini-series for TNT along with *The Office of Mercy* and the mini-series, *The Cotton Club* for Lifetime.

JONATHAN DAVID NEAL

Jonathan David Neal is a composer and orchestrator with 25+ years of experience in composing music for film, TV and record projects in L.A., Nashville, London and Budapest, as well as composing for and working with ethnic instruments and musicians in Indonesia, Africa, Eastern Europe and the Middle East. His credits include *Film Maker's Son*, to be released soon, among other feature films in Europe; several documentaries, and music on TV shows such as "Sponge Bob Squarepants," "Christmas Child" (Lifetime feature), NFL Films, and "E.R.," among others. He currently sits on the board of the Society of Composers and Lyricists as Recording Secretary and is on the Music Rights and Social Media Committees.

ERIC PALMQUIST

An industry veteran of nearly twenty years, jazz trumpeter and songwriter Eric Palmquist has an extensive background in all facets of music administration, and has held executive positions with Warner/Chappell Music, Disney Music Group, and Quincy Jones Music Publishing. He currently is Vice President, Audit & Income Tracking BMG Chrysalis. He has served as President of the California Copyright Conference, and was Jazz Program Director at KUOP FM. He received NARIP's Best In The Biz award in 2009 & 2011 for audit/income tracking, and is a frequent guest lecturer at UCLA, CSUN and Musician's Institute, as well as ASCAP's Expo and SESAC's Songwriter's Bootcamp.