

This is a paper Shane gave in June 1993 to the Screen Composer's Conference put on by APRA, regarding the rights involved in music for film and television.

"Negotiating your rights"

PANEL A:

The Rights Involved In Music On Film and Television

Tonight, we are going to assume that the audience is reasonably informed and already understands the basic concepts of copyright!

Accordingly, we are not going to regale you about the very basic concepts such as the fact that there is copyright in the composition and a separate copyright in any sound recording delivered by the composer. We are also assuming that you are all familiar with the fact that copyright is in fact a bundle of rights that include reproduction, publication, broadcast and in the case of compositions, diffusion. We are not going to go over the old track of reminding you that the rights of various copyright can be dealt with separately whether by usage, territory, time and so on. If there are queries about these matters, we can deal with them in question time.

I think that it will be more valuable to spend this brief time, talking about specific rights that are contentious in the composer - producer relationship

(i) The nature of the grant of rights.

Is an assignment just as effective as an exclusive licence? I know that there is some disagreement about this in the trade, but my own view is that an exclusive licence is just as effective as an assignment. However, what is more important than worrying about the nature of the grant, is to worry about the extent of the rights granted and the remedies provided the composer in the event of breach by the producer.

Whilst the producer and its financiers have a commercial desire to be sure that the rights cannot be withdrawn, composers have a desire to have effective sanctions available to them in the event that a producer breaches its obligations to the composer. A provision in the agreement that the

composer's sole remedy is to sue the producer for damages, provides only an expensive, time consuming, cumbersome procedure.

(ii) The extent of the grant of rights:

The grant of all rights or only limiting the grant to synch rights:

The traditional ambit claim of producers is to require that the composer transfers all rights in the work (and any sound-recording).

This may have a certain simplistic appeal for the producer but it ignores the all important questions that the composers need to ask, such as "Does the producer have any real possibility of exercising all of the rights?" and "Is the composer going to be properly remunerated for such exploitations?"

The right to make soundtrack albums:

Many of the agreements offered to composers assume that the producer should have the right to make sound-track albums - without providing for a royalty to be paid to the composer. Whilst the use of advances from a record company to fund the music budget may be useful to the producer, it should not operate to the disadvantage of the composer.

Role of moral rights: In particular, the right of the producer to adapt, re-arrange, re-synch, re-record;

There is often conflict between the interests of the producer and the composer as to these matters. Clearly the producer needs certain rights in these regards but composers have a bone fide interest in ensuring that their work is not butchered, that they have an opportunity of performing such revisionary work and that they can expect to get reasonably paid for that extra work.

Re-use rights: prequels, sequels, remakes:

Again this comes down to arriving at an equitable solution so that the use of the music is accords with the composer's intentions and that the composer is fairly remunerated for such additional uses.

Uses for advertising

This is one of the subsidiary uses that is starting to cause problems. Here, the producer licenses music that was created for one purpose (namely, for a film) and then sub-licenses a part of the music to providers of unrelated goods and services. This raises two issues: whether the composer wants his or her music associated with the advertiser's products and whether the composer is sharing equitably in any income derived from that subsidiary use.

(iii) Remuneration for the rights granted and/or exploited.

The issue of equitable remuneration has been already canvassed above. Two additional factors should be mentioned:

- (i) Composers' fees are much lower in Australia than they are in the United States. A large fee in return for a buy-out of rights may be fair, but where the music budgets are as low as most of them are in Australia, a buy-out of all rights is simply not equitable.
- (ii) Some film producers have set up what purport to be publishing companies and yet do not either play the role of the traditional publishing company nor have the usual profit split arrangements with their composers. These often are merely devices for taking a further percentage from the on-going public performance income that the composer might otherwise expect from his or her work.

(iv) The effect of new technologies on rights

The emergence of new technologies is already affecting the ways in which income can be derived from a film. The major example that we are all familiar with is the way that the emergence of the video market has affected income

streams. Now with cable and other forms of diffusion, laser disc, CDV and so on, there are likely to be a range of new means of generating income from films and the music that is such an important factor in their success. This must be taken into account when considering the range of rights to be acquired by the producer and the equitable remuneration of the composer.