

# The Business of Film Scoring



# CHAPTER 20

## Making the Deal: Agents, Attorneys, and Contracts

*When we need a lawyer to navigate through the complexities of modern life, we want one who doesn't "miss a beat."*  
—Don Campbell<sup>1</sup>

Many musicians seem to want to avoid discussing the business aspect of film scoring. They would prefer to be *artistes* who can live in lofty heights above the humdrum, mundane world of money-changing hands. Some are simply scared at having to actually deal with making money doing music. But every artist, every creative person who works for himself, is also in business. Because of the freelance nature of our work, *we are in business for ourselves* and must learn to handle our financial affairs, deal with contracts, conduct ourselves in negotiations, and make the best deals possible. Many young composers have the impression that they will somehow get a gig writing music for films, be compensated handsomely for their music, and then someone else will handle the money. Unfortunately, this is far from the truth. Many composers have made a very good living writing film music for TV, cable, and documentaries and never have had an agent. Some are lucky enough to have an efficient and honest agent, but who oversees the composer's transactions with the agent? Ultimately, it comes down to every musician having control and being knowledgeable about his own business.

There are several key factors in controlling one's own business and one's own financial destiny. The first, as I mentioned, is knowledge. The more you know about your fee structure, royalties, budgets, expense accounts, taxes, and day-to-day expenses, the more informed are the decisions you make. This can be terribly dry stuff, but it is a part of a composer's livelihood.

Another key factor is organization. Keep a file for all those receipts. When you come home from the music store with a new piece of equipment or book, file that receipt right away under “expenses.” Paperwork can be a drag, but if you don’t do it, it can come back to haunt you. Keep another file for all your royalty statements, another for tax papers, completed copyright forms, correspondence, etc. In addition, keep your phone numbers organized and don’t throw any out! You never know when you will need that duduk player again, even though it has been five years since he played on your session.

## **Agents and Attorneys**

A third key factor in keeping your business affairs in order is to have competent and honest people assist you. These are the attorneys, agents, and financial advisors who have expertise in specific areas.

Many film composers have agents who help the composer obtain jobs, and provide career management. The agent negotiates deals and sees that the terms of a contract are honored. An agent has thorough knowledge of projects in various stages of production, and contacts the producer or director to pitch one of his composers for a project. He constantly networks with people in every facet of the entertainment business, always looking for opportunities for his clients.

Agent David May of the Zomba Group:

*What we depend on for our work is, number one, our relationships. This includes the music people out at the studios, the major production companies, and the major music supervisors. We are constantly calling them and they are constantly calling us about what they have on their plate and what they are looking for and who we have that might fit the bill. It’s our business to be providing them with constant information about our clients, and also to suggest appropriate candidates wherever we can.*

*You want to find out when projects are occurring, when they are going to be looking for a composer, who the key people are that will be influencing that decision, whether you are going through*

*a music producer or music supervisor or directly to the director—just who do you deal with. So, at the appropriate time we can make the calls we need to make to that person, and get our people in there. And then, the next step—once we have some kind of entry, when we know what kind of person they are looking for and what kind of budget they have—we put together music or credits, whatever we can put together to hopefully make them interested in our client.*

Most agents have a roster of composers, so the trick for the composer is to find the agent that works best for him. There is no way that an agent can give his full attention to one composer 100% of the time. For the agent, it is a constant juggling act that also involves an intuitive sense as to which of his clients to pitch for a job. So the composer must also be aggressive in searching out work, and then let the agent handle negotiations once the job is offered.

In 1991, composer Cliff Eidelman had already successfully scored several feature films including *Triumph of the Spirit* and *Crazy People*. He knew that a new *Star Trek* movie was in production, and decided he wanted a shot at it. Without the help of his agent he had a meeting with the director, read the script, and thoroughly notated places he thought music would happen. He also did a sequenced mock-up of several possible cues. His persistence, interest, and willingness to go the extra mile paid off and he got the job, leaving the particulars of the contract to his agent.

Agents welcome this kind of aggressive job seeking by a composer; it makes their job easier. But the good agent will always be looking out for your best interest. Also, the agent must be someone you can trust and count on to be honest and up-front with you.

David May:

*It’s a partnership between an agent and a composer. The theory is that if both of us are doing everything we can, and communicating as frequently as we can, then we’re going to stand a much, much better chance in moving a composer’s career forward.*

For new composers, it is difficult to get an agent. There is a catch-22: you must have done some work before they will take you on. And then, you are at the low end of the food chain, so to speak. It behooves the composer to pursue his own contacts and gigs as much as possible. When the gigs start coming in, this will get the agent's attention.

## Attorneys

Perhaps the most important and most lampooned of all career advisors is the attorney. All shark jokes aside, a good attorney's advice (or an attorney's good advice) is invaluable. For a film score, after the agent negotiates the deal, the attorney reviews the terms of the contract. He may negotiate through your agent, or negotiate directly with movie producers. He also may make deals with publishers and record companies, and will often give career guidance. Your attorney will know exactly how much money you are making, how much you are paying in taxes and how much that new house just cost. Because of this, you need to find an attorney you can trust—someone who you feel is looking out for your best interest. One important thing to remember is *that you are paying this person*. For your hard-earned money, the attorney is performing the services mentioned above. If you don't like the way he conducts himself or his business, you can walk away and find someone else. Many people forget this and feel bound to one lawyer forever. The services of a lawyer are expensive and necessary, but you are the one doing the buying!

Despite all the negative stories we hear about attorneys and agents, there are many good ones out there. In our culture, bad news and negativity get the headlines. Yes, there are many attorneys and agents who are low-lives, and there are some who get tempted by self-serving fortune, but there are also many who are honest and trustworthy. Use your instinct to find someone who works well for you.

One final note about agents and attorneys: any deal they strike with a producer, publisher, or other executive *must be approved and signed by you*. And that brings us full circle. In order to know that you are making the best decision for yourself, and sometimes for your family,

you must be informed and have a good grasp of the issues and items in your contract. Let the attorney and agent give you advice, but don't let them run your life.

## Contracts

For a film composer, the financial bottom line is not just the fee received for writing a score, but also the royalties that can be generated for many years after the film is originally released. There are royalties for when the film is shown on TV or when the music from the film is played on the radio or in concert halls. There are royalties generated for music included on a soundtrack album. There are also additional royalties if the film is shown in foreign countries, either in theaters or on TV. If the composer writes or co-writes a song that is included in the film, it can generate another whole branch of the income river. One film score can generate royalties equal to several times the composer's original fee for writing the score. (Royalties are discussed in detail in chapter 22.)

How does this work? Where does all this money come from? Who keeps track of it? Before any music is written, before any money is generated, the composer signs a contract with the producer that specifies the services the composer will provide and the compensation the producer will pay. The terms of this contract coupled with the popularity of the film and its ability to generate royalty income determines how much the composer will make and where the money comes from.

After the composer is offered the gig, then either a *deal memo* or a *short-form contract* is drawn up. The deal memo summarizes the terms the composer and production office have agreed upon, and is the binding legal agreement until the final contract is completed by the attorneys. A short form contract is a little more detailed than the deal memo, but not as detailed as the final contract.

Agent David May:

*Once we have verbal terms for whatever creative deal we finally come up with, I will typically generate a deal memo. If it's a*

*studio, sometimes they will generate it, and different studios have different policies. Sony does a short form agreement first—they don't do deal memos—followed by a long form (contract). Others go straight to a long form, but I want to make sure that there is something on paper as quickly after the verbal agreement has been transacted as possible. Memories can be hazy, and it also is common for weeks, if not months, to go by between making a deal and actually getting a contract. So I don't want to be at that stage arguing with an attorney saying, "No, wait a second, your client agreed to half the publishing." And the attorney is saying, "Well, I don't have anything in my notes there."*

Based on the deal memo, attorneys draw up a final *long-form contract*. Where the deal memo is a summary of the terms agreed upon, the final contract is a complex legal document. However, every composer should understand the basic items that are covered. There are many clauses in the film composer's contract that must be addressed and approved. Some of the important ones are:

- How much is the fee?
- How will the fee be paid?
- Is it a "package" or "all-in" deal?
- The length of time for composing the score
- Screen credit
- Advertising credit
- Copyright ownership
- Transportation and miscellaneous expenses
- Royalties for other use of the music (other than the film)
- Suspensions/terminations/defaults
- Royalty fees for underscore on soundtrack albums
- Royalties from video sales
- Exclusivity of the composer

Some of these items are fairly straightforward. *Screen credit* refers to how your name appears on-screen and where it is placed in the credits. Before the costume designer, after the cinematographer? Should it read:

**Music by  
Richard Davis**

Or do you want the full treatment:

**Music composed, conducted, and orchestrated by  
Richard Mark Davis**

*Advertising credit* is similar, referring to where and how your name is placed in newspaper, magazine, and billboard ads.

*Transportation and expenses* is for going out of town to record or do research. Will they fly you first class or coach? Will they pay for your spouse? How much per-diem? Many composers think this item is unnecessary, as they do all their work in Los Angeles or New York. But with many sessions happening outside of these cities for various reasons, this item needs to be negotiated up-front, and not left to see if it is actually needed.

*Exclusivity of the composer* means that the composer will not work on other projects during the time that he is committed to the one indicated in the contract. This is a protection for the producer to insure that they get your full attention. Composers are freelance and are always juggling schedules and projects, and the producer is investing a lot of money in your coming through for him. So it makes sense from the producers standpoint that you are working exclusively for him during the specified time. Another variation of this clause is "*non-exclusive, but first priority*." This means that the composer may work on other projects at the same time, but must give the other party of the contract first priority.

It is worth adding at this point that I believe in putting everything in writing, even when dealing with friends. There is nothing like a written agreement in the form of a contract or deal memo to prevent misunderstandings down the line. It is actually a protection for both parties in the event that one person has a different interpretation of

what was agreed upon several months before. Or in a worst-case scenario, if one party tries to deliberately misrepresent or distort the agreement, a written contract can settle the dispute. Gentleman's agreements are lovely, altruistic, and philosophically desirable—we all want to believe that our business partners are honorable. But in reality, verbal agreements sealed on a handshake can be somewhat quaint if not just plain bad business. If ever someone actually tries to avoid signing a written contract or a deal memo with you, walk out the door as fast as possible! This is a sure indication of a person who knows they cannot or will not honor the terms of your verbal agreement and just wants to take you for a ride.

The contract is a supremely important document. It is your security that certain terms have been agreed to by both sides. It must be clear, complete, and fully understandable by an unrelated third person (another attorney, etc.)

Two of the most important issues in the film composer's contract are the composer's fee, and package deals. There are several dimensions to both these items, and they require in-depth discussion.

## Composer Fees

The first payment the composer receives on a film is the first installment of his composing fee. When we refer to a fee in this sense, it means that the producer is paying the composer for writing the music. If the composer accepts a straight fee, as opposed to a "package deal," then he is not responsible for any music production costs, e.g., studio time, orchestrators, musicians, etc. Fees for a feature film can cover a wide range, from about \$25,000 for a low-budget film and a relatively unknown composer, to over \$700,000 for a "name" composer on a big-budget feature. For TV, cable TV, documentaries, and cartoons, fees are less and depend on the total budget of the project.

Note: It used to be the rule of thumb that the complete music budget, including composer, musicians, music editors, recording studio, etc., would be a certain percentage of the film's overall budget, often in the range of 1.5 to 3%. If the film's total budget was \$50 million, the music

budget would be between \$500,000 and \$1.5 million. However, that practice is no longer in use. Some movie budgets are as high as \$200 million, and music costs have not risen proportionately.

There are several ways the composer's fee can be paid. Often the fee is paid in three parts: the first when the spotting is completed and the composer begins writing, the second at the beginning of recording the music, and the third at the completion of the dubbing session. Sometimes a specific number of weeks are written in the contract, like "*the composer shall commence services on the spotting date of the picture and will complete the score within 12 consecutive weeks from that date.*" Sometimes the completion date is tied into the post-production schedule. Other contracts give a specific month, day, and year by which the composer shall deliver the finished (recorded) score. If the composer is needed beyond the set time frame in the contract, there is another clause that provides additional compensation.

## Package Deals

One of the newest wrinkles of the past decade, and most important factors in determining fees, fee payment schedules, and music delivery dates, is the *package deal*. Also known as the *all-in deal*, this is when the composer agrees to accept a certain amount of money in return for getting the music produced and recorded. Many low-budget films, cable and television films, and episodic television shows work this way. As opposed to receiving a fee for composing the music with the producer paying for all production-related costs, in the package deal, the composer is responsible for these costs with some possible exceptions.

Since the biggest cost outside of the composer's fee is hiring the musicians and recording studio, when a composer accepts a package deal, they are often planning on producing most, if not all of the music electronically. Many high profile composers now accept deals like this. For example, Mark Snow's music for the *X-Files* TV series is produced in his home studio with the occasional live musician (that *he* must pay). James Horner and Mark Isham are but two prominent composers who have recently done feature films as package deals. Many other com-

posers with extensive electronic set-ups are happy to accept a package deal for they know how fast they can work, and what is financially viable for them.

The danger to the composer in a package deal is that if he miscalculates, the recording session, or other related costs, may escalate beyond his original budget. Then the composer can be responsible for paying the extra costs out-of-pocket in order to deliver the final music. However, there are often exclusions to what the composer is responsible for, and these vary from deal to deal. In lower-budget deals, the composer tends to be responsible for more of the music production costs than in major feature films. Some of these exclusions for which the feature film producer is normally responsible are:

- Music editing costs
- Licensing of songs if not written by the composer
- Dolby and noise-reduction system costs
- Mag stock and transfer
- Reuse, new use, and other payments to union musicians
- Rescoring for creative reasons not due to the fault or omission of the composer

The final item on this list is extremely important. It protects the composer from directors or producers that make arbitrary, capricious, and frequent changes in the film, or ask for many changes in the music. Often a specific number of minutes of music will be agreed upon as a ceiling, and if this number is exceeded, the composer is entitled to extra fees.

The advantage to the composer of a package deal is that if he works quickly and enjoys working with synthesizers and samplers, a good profit can be made. And don't forget all those royalties coming down the road. The disadvantage is that the pressure of music production and the music budget is on the composer's shoulders. The reality of

the film scoring business today is that in many instances, if a composer does not agree to the package deal, they will not get the job. The producer will simply find someone who will agree.

Mark Isham speaks about package deals:

*A real important point for newcomers to understand is, because you're a newcomer you're probably going to get package-dealed from the beginning these days. It's very rare to just walk in and have someone say, "Here's a fee and we'll pay any costs you have." That's not going to happen unless you have a champion who says, "Look, I really want you to score this and I'll take care of it. Don't worry about a thing."*

*The important thing to remember is that everything is negotiable. You can negotiate for gross points. You can negotiate for album points. You can negotiate for publishing. You can negotiate for how many musicians you guarantee to employ. Every aspect of a package deal is negotiable. And make sure you do your homework, because if you miscalculate, and you agree contractually to supply 20 strings for 40 minutes of music, you better know what that's going to cost you. And you better do things like go to the director and say, "I will accept this on the terms that you sign off on everything that I play for you in demo form." Sometimes the director is sitting on the scoring stage and says, "What if this were faster?" Then you're looking at writing more music, changing your tempo, and somehow getting new music on the stand while the musicians are waiting for you. That could eat up your profit right there. So it's very crucial that you have a good line of communication with your director. Even if you can't get it in writing that they'll sign-off on the mock-ups, at least, man-to-man, get them to agree that this is a package deal, and you're going to try to help each other.*

Agent and attorney David May also speaks to the package deal issue:

*The package needs more definition and it needs to be more limited [than a "straight fee" deal]. Otherwise the composer can lose*

*his shirt. What we'll do then is define what the package includes, and what it doesn't. What I try to do is limit it to certain number of minutes of music, limit to a certain number of live players, so if we agree to a package of \$65,000 but for that there is no more than 35 minutes of music, no more than ten live musicians. We try to limit it in every way possible so that they realize that if they want more than that, then they've got to pay more than the package amount. I really talk to the composer to make sure, before we agree to it, that the composer does a rough budget to make sure he can make what he wants to make. I'm always telling composers, you are in fact entitled to make a living at this.... But things happen, you want this, the director wants that, and that \$30,000 profit ends up being whittled down to \$17,000. I'm trying to avoid that.*

Package deals need to be approached with care and planning. Everything must be in writing, and communication with the director/production office must be clear. The best package-deal situation is when you are planning to produce most, if not all, of the music in your home studio. As soon as you venture into the world of studios, engineers, and live musicians, you are leaving yourself open to cost overruns for which you may or may not be protected contractually. But the package deal is a way of life, especially for low-budget features, episodic television, and television movies. Learn how to budget a package deal so you can make a reasonable amount of money when you get the opportunity.