

## LAW TALK

By Richard Gee

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Hope the year is going well for you. Keep those questions coming to [rgee@gee4law](mailto:rgee@gee4law). As always, please note that neither the advice nor any opinion set forth in this column is intended to be legal advice, and you should seek the advice of a qualified attorney to pursue any issue I may write about in this column.

***I just got a call from a music coordinator who wants to hire me to play some traditional music in a movie. It is possible I will get my music on the movie soundtrack as well. What should I look out for in a legal sense?***

Well, to start, you need to answer several questions before you quote a price to do the gig. These are important because they establish your bargaining position and help you become aware of any benefits that may accrue from your work on the movie.

In this situation, you may be able to negotiate several fees; a fee for playing in the movie, a fee for appearing in the movie (if applicable) and, if the work involved belongs to you or is a public domain work arranged by you, mechanical royalties on the soundtrack, an artist royalty (prorated by the number of tracks on the soundtrack album) for the soundtrack album as well as a synchronization license for use of the work in the movie. With that in mind, here are the questions:

1. What kind of movie is it? For example, is it a major motion picture release, a small independent film or a documentary? Obviously, the budgets of the latter two types of releases tend to be much less than the music budget for a major motion picture and will affect what you should ask. Always ask what the music budget is for this portion of the project before making a bid.
2. Are you going to appear in the motion picture? If so, for how long and what will you be doing on the film? For example, if you will be speaking any lines before your musical performance, this may affect not only your fee but also such things as admission to AFTRA or the Screen Actors Guild. In such a case, your compensation may be based on the rates set forth in the AFTRA or SAG contracts with the major motion picture producers.
3. Is this producer covered by the collective bargaining agreements negotiated by the American Federation of Musicians, the Screen Actors Guild or AFTRA with the major motion picture producers? If so, there may be benefits over and above whatever you are paid for your work, such as payments from the Film Musicians Secondary Market Fund. This fund pays royalties on performances by non-marquee musicians in a major motion picture.

4. Who is distributing the soundtrack? Sometimes, the soundtrack may spark musical interest far and above the interest the movie generates for itself. What are your royalties for the soundtrack recording? This should be approached much like a negotiation for an artist agreement and a lawyer should review any agreement with you, as there are a myriad of issues that will have to be addressed before you can sign on the dotted line.

5. Are you playing public domain tunes or your own composed tunes? In either case, you may be able to obtain income from licensing the synchronization rights to your work or your arrangement of the public domain work. However, recognize that movie companies may want you to agree that your arrangement of the public domain work will be a “work for hire,” in which case the arrangement would be the property of the producer, not you. If this is the case, you should consider this fact in deciding your fee.

If the producer will agree to give you money for a synchronization license, then the question becomes how much to charge. “Synch” licenses, as they are known, are separately negotiable (unlike the statutory mechanical license) and in many cases consist of a flat fee payable for use of the arrangement. If a flat fee, you may want to consider limiting the way the producer will be allowed to use the arrangement, i.e., only in the motion picture and DVD, but not in a video game based on the movie, etc.

Of course, any such negotiation depends on other factors as well, such as your standing in the industry and your indispensability to the project. The more these factors tend to determine the outcome of your project, the more complicated and high stakes the negotiations become. While for a minor part in a movie, you may not need expert help, the same is not true where synchronization rights, etc. are involved. In these cases, I would recommend the services of a legal professional knowledgeable in the music and film industries.