



# NEWSLETTER

An Entertainment Industry Organization

## HOW MUCH WILL THAT SONG COST US?

by John Houlihan

### The President's Corner

Welcome, friends!

Tonight we are excited to be hosting an informative and interactive panel co-sponsored by the Guild of Music Supervisors.

I would like to take the opportunity to thank John Houlihan and Maureen Crowe for all of their work in organizing tonight's panel.

In addition, I'd like to thank John for serving as tonight's moderator, as well as speakers Kevin Edelman, Season Kent, Jason Kramer and Keith Zajic for sharing their expertise and valuable insight. I look forward to what is sure to be a fascinating discussion on the topic of synch licensing.

Please join us next month for "Artist Management" a panel moderated by Eric Polin and Michael Morris.

See you soon!

**Jeremy Blietz**  
President, California Copyright Conference

In 1995 I was a rookie Music Coordinator and eager to soak up as much knowledge as I possibly could on my first major studio film. I vividly remember my first conference call about song synchronization fees. There was an impressive set of Hollywood heavyweights on the call: a film production company President, two veteran film Producers, a top music clearance person from a major studio and my boss who was a seasoned Music Supervisor. We starting discussing a song that was written into the opening scene of the movie and one of the Producers asked a reasonable question, "How much will that song cost us?" The formal quote request letters had not been sent to the Licensors yet and the studio clearance person was hesitant to commit to a firm estimate because she felt there were too many variables. My boss was bold enough to toss out a caveat-laced "guesstimate" but without engaging in real negotiations it was clear that we had no idea what the song might cost. My job was to create a chart to track the music synch fees of the film but unfortunately I was not sure if this first song license would be \$10,000.00 or \$60,000.00. And that was assuming we were able to get creative approval from the song owners which is not always the case. As we discussed the additional songs slated for the film the potential costs continued to elude us. I wondered why film music experts and prolific film producers had no dependable basis from which to plan for music licensing costs. I did learn one eternal truth on that first film: a song licensing fee can be just about anything. I've heard it put politely, "synch fess are priced on a case-by-case basis." And I've heard it put bluntly, "synch fess are completely fucking arbitrary." And so it began, my journey through the Bermuda Triangle of synchronization license negotiations...

### Upcoming Events

**November 12, 2013**

Artist Management

Moderated by Eric Polin and Michael

It starts innocently enough. During pre-production the Hollywood creative community can explore music ideas without limitation. The concepts flow as quickly as the Production Assistants can return with new trays of Frappuccinos. Luckily there are no synch fee price tags to impede the brainstorming. I think this unrestricted phase is good for the creative process. I remember reading the first script for the film "13 Going On 30" and the screenwriter had created a big dance number that was very specifically based on Michael Jackson's "Thriller." The famous Thriller dance moves from the music video were also an integral part of the scene. Licensing "Thriller" was a completely

unrealistic idea based on the film's music budget. We also faced the challenge of making a deal with Michael Jackson who was on trial at the time. It's never good for a Music Supervisor to see the person who has to approve the quote on Court TV and CNN everyday. Somehow we pulled the rabbit out of the hat to close that deal at terms that we could handle (barely) and it was the writer's dream and naiveté that led the way. In other more painful situations I have learned that the Licensors have quite a few dreams of their own! I'm sure at some point there has been a seven figure sync deal where a song owner went against the advice of those around them and succeeded despite the odds. In that case it was their naiveté that led the way to the unlikely windfall. I suppose the fun part is figuring out what the final dollar amount will be when the briefcase is flung open in our own version of Howie Mandel's "Deal Or No Deal."

For feature films and advertising it seems that each quote request starts a game of cat-and-mouse where the Licensor tries to feel out the highest possible fee and the Licensee is angling for the lowest possible fee. No shocking revelations there- that is free-market capitalism at work. But unlike a more normal market selling a simple commodity like Pork Bellies in the film classic "Trading Places," each song license is a unique piece of business that can be loaded with emotional factors on each side. There can be a different dynamic for every single deal. Both parties have a lot to gain so most license negotiations go down smoothly. But at times these deals can combine the worst aspects of the music business with the worst aspects of the film/television business. Money is usually the sticking point but creative factors related to obtaining approval to use the song in a certain way can also weigh in heavily. I have witnessed brutal ground wars over song pricing complete with drama that could be made into a movie itself. From sending a fleet of messengers on Vespas up into the French Alps for heirs letter signatures to having a custom Bentley delivered as a bonus that made a rich deal even richer in order to hold it in place, the world of music clearance has seen it all.

For a while I observed many Licensors computing their quotes based on the elements of the film that they could gather from news sources. This is understandable and a logical approach. If Tom Cruise is the star of the film "Song X" publishing fee will cost \$75,000.00. But if Tom Arnold is the star of the film the fee for the same "Song X" might only cost \$7,500.00. One problem with that method of calculation is that a Tom Cruise film can indeed pay \$75,000.00 (per side, so that's \$150,000.00 all-in) for a song or two, but they cannot pay that for every single song in the film. Yet every Licensor solicited for a quote on that film is likely to quote in the super high range. Dozens of times I've seen Licensors price themselves out of the running. Most Licensors don't mind because they believe they are protecting the long term value of the catalog. I've begged people to reduce a high quote and take the very decent fee of \$25,000.00 per side for a film with big name actors. But for the most part they held out for high quotes and netted zero dollars because the filmmakers had to stay on budget and use the back-up songs that were ready as affordable options. Unfortunately the budget parameters often shape the final set of song selections more than the creative dreams.

It is counterintuitive but true that big budget films frequently have low music budgets. One reason is that the music licensing budget is one of the last chunks of money to actually be spent by a production. Often times other departments have already run significantly over budget during the feverish effort to shoot the film. When the Music Department finally gets a turn at bat the reality of the film's money problems have hit the producer and studio executives. I have received pre-emptive calls along these lines, "We just want to let you know there will be no additional money coming into the music budget, despite what some may think, so you need get rid of those expensive songs and be prepared to stick to your original budget." That original licensing budget that was referenced is not usually realistic based on what the film edit calls for musically. There may have been a proper amount at some early juncture, but often the figure gets slashed down to an impractical, low number in order for the film as a whole to get a green light. Many major studio film music budgets seem to be "house poor" in this way.

When it comes to finding a fee that the Licensee can afford I think Licensors should really take the long view before they leave money on the table. Especially in the wonderful "new Hollywood" of recent years where there seems to be just a handful of big budget films at each studio and the other films they make are budgeted like a slasher sequel despite having top talent involved. Yes the film industry has money but perhaps not as much as the music industry suspects. I'm no music streaming royalty expert, but at the alleged current Spotify rate of approximately \$0.005 per stream, a publisher must get approximately 5 Million plays on Spotify to equal that \$25,000.00 license fee opportunity that they walked away from in my earlier hypothetical.

But alas, the momentum of a deal can go either way. I have seen Licensors hold out for a \$250,000.00 publishing fee for one use of a well-known song. Against the odds, and despite a great deal of behind the scenes drama to try to remove the song from the film, the resolute publisher ended up getting their full fee. Ca-ching! That publishing synch deal just captured the same amount of money as approximately (and allegedly) 50 Million Spotify spins.

In television licensing I've found that the synch fees are much more predictable and there are some fairly well defined tiers of pricing based on the scope of the song and the network. The fees are not set in stone but norms have developed and that helps increase the speed and volume of deals. There are always exceptions and indeed some good old fashioned haggling, but there is so little time in the compressed post production schedule of a television show this unwritten default pricing schedule really helps the process for all.

More good news for Licensees: The seismic changes in the way individual consumers purchase their music, or avoid purchasing their music, have forced publishers and record labels to maximize their synch revenue. Most Licensors have readied their catalog titles and primed their approval parties for a quick "yes." It is clear that the Licensors are open for business and many major artists greet synch requests with enthusiasm which is a positive change. For many brand new releases the majors

have been strategic and extremely accommodating with lower synch fees in order to gain the commercial upside of timely exposure for their new songs and artists.

I believe in protecting the value of music and honoring the work of composers and performers with good synch fees. Healthy licensing fees will foster a healthy creative industry. I do work for the Licensee, however, and I feel that it is equally important for the long term that Licensees do not overpay.

It has been 18 years and hundreds of song licensing deals since my first synch fee conference call. Have I learned how to predict synch costs since then? I'm not sure, but either way I have happily called the synch fee underworld my home. I am passionate about song clearances because of the creative achievement that they can leave behind on the screen. I strive to have compelling music moments in film and TV scenes and usually the most creative songs have the most complicated situations surrounding them. It is always worth the extra effort. I am a perpetual student of the game because negotiating synch fees is a core skill that I need in order to be good at my role of Music Supervisor. Please join me and some of my favorite film, television and advertising colleagues as we take the CCC on a fun tour through the synch music jungle on the evening of October 15, 2013. We hope to provide insight from the Licensee perspective and discuss specifics of legendary synch deals from the past as well as licensing practices that are defining the marketplace today.

## **PANELIST BIOGRAPHIES**

### **JOHN HOULIHAN**

Following the good fortune of working on the critically acclaimed music film "Mr. Holland's Opus" John Houlihan has become a veteran Music Supervisor/Music Producer/Composer/Music Editor/Music Consultant/Soundtrack Producer who has helped shape more than 68 feature films and dozens of popular soundtrack albums. Music Supervision highlights include "Training Day" which earned a Best Actor Academy Award for Denzel Washington, all 3 Austin Powers films, and both of the Charlie's Angels films. Recent film projects include the sci-fi thriller "Looper", the summer 2013 action-comedy "RED 2" starring John Malkovich, Bruce Willis, Helen Mirren, Anthony Hopkins, Mary-Louise Parker and Catherine Zeta-Jones, and "Don Jon" the writer-director debut from Joseph Gordon-Levitt in which Joseph also stars with Scarlett Johansson. John was film Co-Producer and Co-Music Supervisor for the entertainment industry documentary film "SUPER MENSCH: The Legend Of Shep Gordon" which marks the directing debut of Mike Myers and will be released in theaters by The Weinstein Company in early 2014.

Documentary projects with Oscar-winning Director Davis Guggenheim include the public education exploration "Waiting For 'Superman'," the Showtime/BBC documentary about the band U2 called "From The Sky Down" and several films that were part the 2008 and 2012 presidential campaigns for President Barack Obama. In television he was recently Music Supervisor and Music Producer for CBS' 1961 period drama "Vegas" starring Dennis Quaid and Michael Chiklis as well as the pilot for Fox's new hit "Sleepy Hollow." John is currently working on the 2014 animated feature film "The Book Of Life" being produced by Fox Animation Studios and the 2014 comedy feature film "Let's Be Cops." John founded and is currently serving as Vice President of the Guild Of Music Supervisors.

### **KEVIN EDELMAN**

Kevin Edelman, owner of Metalman Media, built the foundation for his music supervision career as a musician and radio DJ, while attending the University of Florida. After moving to Los Angeles, Kevin combined his knowledge of music, recording, and business with his passion for film and television production and started Metalman. Combined, Kevin has music-supervised thousands of hours of network and cable television, MOW's, pilots and features.

His credits include tv shows such as Homeland, Criminal Minds, Bones, Elementary, My Name is Earl, Carnivale and Boston Legal as well as films like The Baytown Disco, Sleepwalking and The Butterfly Effect.

### **SEASON KENT**

With over a decade of film music experience, Season Kent has been the Music Supervisor for over 20 films including the 2010 Academy Award winner The Fighter and the 2011 Golden Globe Nominated film Machine Gun Preacher which included a Best Song nomination for "The Keeper" by Chris Cornell. Other film highlights include The Spectacular Now, End of Watch, Limitless, Dear John, Brothers, Harold And Kumar Escape From Guantanamo Bay, The Strangers and The Lake House.

Season is active in the world of television with ABC's hit series *Revenge* and The CW's breakout *Arrow*, as well as supervising the final season of HBO's *Entourage*. Current projects include the upcoming DreamWorks action feature *Need for Speed* and 20th Century Fox dramatic film *The Fault in Our Stars*.

## **JASON KRAMER**

Jason Kramer is currently the concept music supervisor for Elias Arts, a prestigious music production company based in Santa Monica and New York. Elias Arts specializes in original music composition, sound design, music supervision, and audio branding for television, film, and commercials, and has won countless awards for over the years. Jason's extensive knowledge of music coupled with a great intuition makes him an integral part of the Elias Team. His job is to help find the perfect music solution for every project.

Jason also curates an interview/ recording session with artists that have visited the Elias Arts Santa Monica studio. Starting off in the 90's Jason was working with Skunk Records, the label known for the band *Sublime*, Jason has been in all avenues of music business from radio to publishing. He also wanted to get familiar in radio so he answered phones at KLOS radio which lead him years later to producing syndicated radio shows for Fox Sports. He was also one of the original music supervisors for Fox Sports TV in the 90's.

Besides music supervision, Jason has been on air at KCRW radio in Los Angeles for the last 15 years. Jason started off as a KCRW volunteer in the mid 90's and has been on air since 1997 during late night shifts. Today, Jason takes the reins of his radio program every Tuesday night giving you the listener a very special unique musical adventure on his widely popular show.

## **KEITH ZAJIC**

Keith Zajic is a veteran music lawyer who has returned to private practice in 2011 specializing in his "music in film/television" niche. Keith is using his entertainment business experience and contacts to be an advocate for his clients.

Keith began his career with the Los Angeles law firm of Loeb & Loeb. In 1982, Mr. Zajic was hired by Columbia Pictures Music Group to handle music agreements for the film slate and to help establish a music publishing operation. Keith joined Warner Bros. in June 1989 and provided operational leadership by negotiating deals and monetizing assets in overseeing the studio's music business and legal affairs for over twenty years.

During his career, Keith has negotiated music deals for successful film soundtracks such as "THE BIG CHILL", "GHOSTBUSTERS", "THE BODYGUARD", "SPACE JAM" and "CITY OF ANGELS". Soundtrack albums from these films were multiplatinum (i.e. over 2,000,000 units sold), and "Ghostbusters", "I Will Always Love You" and "I Believe I Can Fly" were successful cross-promotional singles/music videos.

Mr. Zajic is a graduate of the University of Southern California and the University of California at Davis School of Law. Keith is a member of the State Bar of California and the American Bar Association.