CANADIAN LEAGUE OF COMPOSERS LA LIGUE CANADIENNE DES COMPOSITEURS

Grand Rights – Composing for Dance, Theatre, and Music Theatre

A "grand right" is a dramatic performing right which can encompass several copyrights, i.e. in the libretto, the music, the choreography, etc., and no one of these copyrights has greater rights than any other. Grand rights cover performances of musical theatre works, operas, operettas, ballets, and renditions of independent musical compositions in a dramatic setting where there is narration, a plot, and/or costumes and scenery. The use of a musical work from one of these productions in a non-dramatic public performance OR as an audiovisual production broadcast on television is not a grand right; it is a small performing right (petit droit) licensed through a performing rights society.

Grand rights fall outside the scope of performing rights collectives; thus, they are NOT administered by SOCAN or other performing rights societies like SOCAN . According to the agreement SOCAN has with its members, performing rights do NOT include rights for the following:

- (i) The performance of an opera, operetta, musical play, or similar work in its entirety insofar as it consists of words and music that were written expressly for it and when performed with the dramatic action, costumes or scenery of that work, except in cases where the performance is delivered as part of a pre-recorded audio-visual work (including but not limited to film and video).
- (ii) The performance of a choreographic work in its entirety insofar as it consists of words and music alone written expressly for it and when performed with the live visual representation of that same choreographic work, except in cases where the performance is delivered as part of a pre-recorded audio-visual work (including but not limited to film and video).

The performing rights connected with the types of works described above are typically classified as grand rights. The composer and/or author (or his/her publisher) must negotiate royalties and other payments for works that fall into this category with the producer, promoter or presenter of such a work. A freelance composer or author automatically owns all rights to any work that he/she creates, but it is possible to assign any of those rights to someone else, e.g. a music publisher, by agreement.

It is important when entering into an agreement with a producer, such as a dance or theatrical company, to know what rights you have in your musical work . Composers who do not understand their rights are sometimes disappointed when they find they have signed an agreement that does not work in their favour. Often with smaller companies or producers, such as independent choreographers, there is no contract at all. This can lead to misunderstandings. Occasionally, an inexperienced producer may mistakenly believe that he/she owns the copyright

in a work he/she has commissioned. It is always advisable to have some sort of written agreement that you feel adequately covers the mutual intentions concerning the intended use for that particular work. The following are some of the matters to consider including in an agreement with a dance company, choreographer, opera or theatrical company.

Description of work – How long will the work be? What is the nature of the music to be composed – orchestral, chamber, electronic? Does the work have a title? A "working title?"

Work schedule – Put in writing all dates or time periods pertinent to the particular working process of the commission. Include the date or approximate date for the completion of the score and the dates for the completion of the parts, a piano reduction, a rehearsal tape, a final recording, etc . Always make clear the responsibilities of each party to avoid any misunderstandings.

Payment schedule – State the creative fee, set dates or time periods for payment, and establish the method of payment – e.g. first installment to begin work, second installment upon completion of score, final payment after first performance.

Exclusivity – It should be clearly stated what rights the commissioner has and what rights to the score the composer retains. For example, the commissioner of a choreographic work has commissioned the music for a specific purpose – to be the musical component of a theatrical dance work. This, for example, may give the commissioner an exclusive license to perform the music as part of a choreographic work for a limited period of time or may only give him/her rights to present the premiere. In practical terms, this would mean that if a dance company commissioned a composer to write a musical score for a ballet, the dance company would be the only dance company able to use that music as the score for a ballet for a period of, for example, two years, or for the premiere only. After that time period, the composer could renegotiate with the dance company or sell the music to another dance company to have a completely different choreography devised.

Composer's rights – Unless the composer has assigned the copyright to another party, the composer retains the copyright in his/her musical work and thus all other rights. Performing rights, with the exception of grand performing rights (whether live or recorded performances of the musical work), are granted to and licensed by the composer's performing rights society on his/her behalf. The use of recording rights (reproduction rights) and any other use of the score, such as on film or video, will therefore necessitate entering into a completely new license agreement with the composer or copyright owner.

Recording of music – If a recording of the music is needed, it should be clear who is responsible for producing that recording and who is responsible for each aspect – hiring the musicians, booking the studio, paying for it, etc. A reproduction rights license (also referred to as a mechanical rights license) from the composer/copyright owner of the musical work is also required to make a recording of a musical work. This may involve the payment of a royalty to the composer/copyright owner. If the dance company pays for a recording of the work to be used for performance, the recording should only be used for that purpose. It should be made clear that any other purpose should require the composer's written consent. (There have been composers who have discovered extra revenues being earned by a company through lobby sales of cassettes

or CDs of their music. This is why it is a good idea to obtain payment in return for granting a mechanical rights license for the production of any recordings that may be offered for sale.) It is generally accepted that with permission, but without payment – a producer or promoting company is permitted to use recordings of the musical work for public service announcements or any other publicity purpose.

Score and parts – In the event that a choreographic work, opera, or other theatrical work is performed live, it should be clearly understood by the parties how the company acquires the score and parts. If the company commissioned the work and paid for the production of the score and/or parts, it should be entitled to retain a copy; however, the composer should retain the originals and not relinquish the only copies in case the company's copies are lost. If the company did not commission the work, does the company purchase or rent the score and parts? Is there a publisher? If there is a publisher, it may wish to retain control over the rental of the score and all parts.

Royalties – Include what the amount of the performance royalty payment will be and the method and schedule of payment. The amount of the royalty will no doubt vary depending on the financial situation of the company. There is no set schedule of royalty fees, but consider a per performance payment of approximately ten percent of box office receipts. You will probably find that royalties for a choreographic work are considerably lower than for a concert work; however, choreographic works often receive many more performances than concert works. As with choreographic works, there is no set schedule of royalty payments for operatic and musical theatre works; however, as noted above, a percentage of the box office receipts is sometimes included in the negotiated fee. You may also agree to a lump sum payment for each performance or a single sum for a limited run. Again, this is entirely negotiable and the sum may depend on a number of factors. If the agreed royalty is a percentage, you may also wish to include a clause in any written agreement that gives you the right to audit in order to verify the amounts upon which the royalty is calculated.

Credits – How are you to be acknowledged in any programme, publicity material, etc.? How do you want the title of your work listed? Does it have a different title than the choreographic work?

Smaller and other arrangements of the work – Often downsized versions of large-scale productions are created to allow schools and community theatres to stage the works with fewer resources. It should be made clear if such an arrangement of the work is permissible, and, if so, who is going to create it – the original creator? The commissioning company? Someone else? The royalty sharing for such arrangements should also be made clear in a written agreement.

Recording for broadcast – If a radio or television broadcaster wishes to record the work for broadcast, a license agreement separate from the commission agreement must be negotiated among the broadcaster, the producer/commissioner, and the writer(s). This agreement takes the place of a synchronization license. Fees paid for this license are in addition to the SOCAN fees paid for the broadcast of the music.

Collaborative works – If a work is a collaboration of two or more people and if one component of the work, i.e. the music, might be performed as a concert work, i.e. without the dramatic action and/or choreography, the allocation of additional rights should be set out in a

Collaboration Agreement . Without a collaboration agreement, the librettist and choreographer might not have a right to performance royalties. This, however, may depend upon the notification and the rules of the performing rights society that licenses the performance.

Dispute settlement – If a dispute arises, the parties to the agreement may wish to resort to a dispute settlement process other than having to go to court. If so, the agreement should provide clear language that facilitates this.

Release from contract – A way of terminating the contract and, if desired, ending or continuing any contractual obligations for one or both parties should one not live up to their end of the agreement, should be considered.

The above is provided for the general information of the reader only and does not constitute legal advice and should not be relied on in this way. Individuals should seek independent, professional and specific advice that may vary depending upon their personal circumstances.

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