

## LEGAL CORNER

# Don't Look a Gift Score in the Mouth

## *Lending your music to others? Watch out!*

By Harvey Mars, Esq.

This is a story about the danger of gifting gifts. "Neither a borrower nor a lender be," wrote Shakespeare. That's extreme advice. Maybe it's O.K. to lend — as long as you put it in writing!

First, as usual, some legal background.

After writing a composition or arrangement, composers have two basic choices about what to do with their finished product.

- They can sell the piece, which means losing ownership and control. This makes sense if sufficient compensation is provided.

- Or they can rent use of the work to others and thus retain ownership.

*Harvey Mars is one of Local 802's lawyers. Legal questions are welcome from 802 members. E-mail them to [JurMars566@aol.com](mailto:JurMars566@aol.com). For those who are interested in reading additional articles that Mars has authored, please check out his new Web site at [www.HarveyMarsAttorney.com](http://www.HarveyMarsAttorney.com). Click on "Publications & Articles" from the top menu. All of his past Allegro articles can be found there as well. Nothing in these articles should be construed as formal legal advice given in the context of an attorney-client relationship.*

This called a license.

Licenses come in two varieties: exclusive and non-exclusive.

- An exclusive license means that there is only one rental agreement and that no one else can use the music except the owner of the music and the individual who leases it.

- A non-exclusive license means that multiple parties can rent and use the same piece of music at the same time.

Obviously, an exclusive license is more valuable to the individual holding the license. (That person is known as the "licensee, by the way.")

Sometimes the line is blurry about whether an individual using or performing someone else's original music is the actual owner of the music — or whether they are only a licensee. (This almost always happens when there is no written agreement between the parties, which leads to my cardinal rule: always get a written contract.)

When there is lack of clarity and agreement over the relationship of the parties to a such a transaction, litigation is often the result. Take for instance a suit recently initiated in New York County Civil Court.

### THE CASE

A relatively well-known arranger had lent several opera scores to a

small New York City opera company approximately ten years ago. (I will not provide names since this is ongoing litigation.)

According to the arranger, who had a long-standing relationship with the company, it was understood that the scores were being lent to the company and that they were meant only to be utilized by the company.

No money was exchanged nor was a written agreement ever prepared or signed.

Earlier this year the arranger discovered that his scores were being leased for a considerable fee by the company through its Web site. The company did not obtain the arranger's consent to this nor have any royalties been paid to him.

Not unexpectedly, the company has taken the position that the scores were presented to it as a gift and that the company, having full ownership of them, can do with them as they please.

Of course, whether the items were a gift — legally speaking — depends upon the intention of the arranger. This will have to be demonstrated during the course of the litigation through testimony and documentary evidence, such as correspondence between the parties.

Ultimately, I believe the arranger will prevail in his claim since the concept of

"equity" — fairness — is on his side.

Nonetheless, a considerable degree of expense and aggravation could have easily been avoided if the parties had first retained counsel and drafted a formal understanding documenting the nature of their transaction.

That leads to the obvious moral of this story: one ounce of prevention is worth a pound of cure. If you sell, lease or donate music, you can avoid future difficulties if you put your agreement in writing. ☐

### CAN YOU HELP?

In May 2007, Local 802 obtained a \$29,342.28 judgment against Vanjo Productions and Charles West for wages and benefits owed to copyists for work performed on Mr. West's Off Broadway Production "If This Hat Could Talk," a show depicting the life of civil rights activist Rosa Parks. To date this judgment has been unpaid. Local 802 is attempting to track down Mr. West and Vanjo Productions' assets. Anyone having information that could help should contact union attorney Harvey Mars at (212) 765-4300, ext. 16, or [JurMars566@aol.com](mailto:JurMars566@aol.com).

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