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The Southern District of New York Finds “Work Made For Hire” Under Italian Copyright Law

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Musical scores incorporated into films are usually produced with the specific film in mind. In the U.S., we call such works “works made for hire,” meaning that the artist does not retain authorship rights to the music. Instead, the commissioning party, which is typically the film producer or music publisher, is the author of the musical score for copyright purposes.

Internationally, however, most countries attribute authorship only to natural persons. To permit the exploitation of collaborative works, like motion pictures, the legal regimes of most of these countries grant the commissioning party the right to exclusively exercise the economic rights in the work. This does not, however, change the status of each individual creator as the “author” of his or her distinct contribution to the work.

This definitional conflict presents practical problems when United States courts, applying choice of law rules, apply foreign copyright laws through U.S. “work for hire” lenses. In situations where the protections afforded under U.S. copyright law depend on the definition of “authorship,” courts must ask first, what law applies: the U.S. “works made for hire” doctrine or the principle that authorship vests solely in individuals?

Ennio Morricone, an Italian composer who was recently awarded an Oscar for his composition for the movie “The Hateful Eight,” discovered the answer to this question this month. In his case, *Ennio Morricone Music Inc. v. Bixio Music Group Ltd.*, No. 1:16-cv-08475, (S.D.N.Y. 2017) (“*Ennio*”), Ennio sought to exercise his rights as “author” under Section 203 of the Copyright Act by serving a Notice of Termination of his prior assignment of copyrights to an Italian publisher which, in turn, transferred its rights to Bixio Music Group, Ltd., a New York publishing company. The court needed to determine whether the work was a “work for hire,” a finding that would trigger the statutory exclusion of such works from the benefits of the Notice of Termination provisions.

Under the generally accepted, copyright choice of law principles, U.S. courts should apply the law of the source country of a work when determining issues surrounding authorship and initial ownership of copyrighted works. Although Italian copyright law names the composer as a joint author in motion pictures, the Southern District of New York still held that Morricone was not the author of the music

which was, instead, a “work made for hire.” After hearing from conflicting Italian law experts, the Court found that Italian law impliedly contained a “work for hire” doctrine because its provisions granted, by statute, a wide array of economic rights to the commissioning party. Accordingly, Morricone’s musical scores, which were made in Italy on commission, were works made for hire excluded from termination under Section 203.

Although the term “work made for hire” is nowhere to be found in the statutes or legal jurisprudence of most other countries, the Morricone decision is not an outlier among cases dealing with the legal effect of foreign authorship when pursuing statutory rights granted under U.S. law.
Instead, *Ennio*continues the line of cases extending the uniquely U.S. “work for hire” concept to foreign works when determining copyright ownership questions even when applying the laws of such foreign countries. For example, both the Fifth and Ninth Circuits, in *Laparade v. Ivanova*, 72 USPQ2d 1927 (9th Cir. 2004) and *Alameda Films S.A. de C.V. v. Authors Rights Restoration Corp.*, 66 USPQ2d 1767 (5th Cir. 2003), found that the musical compositions, sound recordings, and screenplays created for certain Mexican films were “works for hire” although Mexican law seemingly limited the definition of authorship to natural persons.

The practical effect of these holdings is to vest control, if not ownership, of copyrighted foreign works in companies, which, in turn, denies to individual creators the benefits of certain provisions of U.S. law which exclude protection for works that are deemed “works made for hire.”

Given the Morricone and other similar “for hire” decisions, care should be given when drafting and interpreting contracts with foreign creators or authors. Drafters should determine what practical effect such contracts may be given when applied or enforced by the courts respectively in the U.S. and abroad.

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