

Work For Hire agreements: The producer's perspective

April 4, 2018 Michael Gallant Music Business

If you're hiring musicians (or other contributors) to work on a music project, these tips from a music industry lawyer can help you navigate a Work For Hire agreement.

Whether you're a producer trying to line up a great drummer and bassist for a recording session you're working on or an indie artist who wants a string quartet to overdub tracks on your next release, it's entirely possible you'll find yourself in a situation where asking musicians to sign a Work Made For Hire (a.k.a. Work For Hire or WFH) agreement is a good idea for all involved.

A WFH agreement means, essentially, that if you hire a musician (or producer, or arranger) to contribute to a project or recording session, you will retain copyright ownership of the finished piece and are considered the legal author of the work. In a WFH agreement, typically the contractor (hired musician) is being asked to create something new (e.g. write, arrange, record a part) and is being paid for his or her contribution. Basically, the WFH agreement means these contractors cannot come back in the future to lay claim to copyright ownership and demand royalties — their contributions were compensated for in the agreed-upon payment and this arrangement is what is spelled out in the Work For Hire contract.

Here are some tips from San Francisco music attorney Linda Joy Kattwinkel on how to make such situations work as smoothly as possible and how to generally navigate the often intimidating world of WFH.

In principle, ask everyone to sign WFH agreements

If you're producing a session and want to fully own copyright in the results when all is said and done, legally, you should ask everyone who contributed to the creative process to sign a WFH agreement, says Kattwinkel.

"It's not just the people who play the instruments," she says. "It's engineers and production people as well, and even the assistant to the engineer, if that assistant is contributing to the project. It's standard and good form to get Work For Hire agreements from everybody who touches the project while it's being made."

Engage respectfully

If you're going to ask musicians you hire to sign WFH agreements, follow the golden rule and treat them as you'd like to be treated. Practically speaking, that means giving them the language to review well ahead of time, offering fair compensation for their work, addressing any concerns they have with the WFH form, and making any requested changes to the agreement that are reasonable. In situations like this, basic professionalism will get you far when it comes to getting the signed agreements that you need.

Get the right language

The best way to get the right language in place for a WFH agreement is to find a trustworthy music attorney, describe the situation, and have him or her help you draft a simple-but-effective form that you can use for this session — and hopefully for similar sessions in the future. If you feel that working with a music lawyer is out of your budget, check out organizations like Volunteer Lawyers for the Arts or your local Recording Academy chapter, both of which might be able to help without breaking the bank.

But wait... instead of hiring an expensive attorney, can't you just download something from the Internet? Maybe, says Kattwinkel, but it's probably not a good idea.

"It's a popular and unfortunate fantasy that there is an online resource for legal forms that you can just use," she says. "I'm sure you can find stuff online, but I don't know of any that are truly reliable. Anybody can post any form, and any form is going to have come from one side or another, and is going to have bias or a self-serving aspect that might not serve you.

"The best resource I can recommend in that area is Allworth Press," Kattwinkel continues. "They publish a lot of books with legal discussions and forms by reputable lawyers. If you absolutely want to get a form, and not talk to a lawyer, that's where I would look."

Even if you totally trust your collaborators, ask them to sign

"The people you're working with may have a great level of professionalism and you know they would never sue you," says Kattwinkel, "but there's still a level of risk you assume when you don't ask people to sign WFH agreements, because things can change."

Case in point, she continues, what if the person you love and trust now gets hit by a truck and their brother-in-law inherits everything? "I've seen situations like that where things get nasty," she says. "Remember, asking people to sign WFH agreements isn't personal and it's not about trust. It's about protecting yourself, especially in the rare but real scenario in which somebody inherits someone else's rights, comes back, and makes a problem."

Deal with pushback

When asked to sign WFH agreements, some people will not respond positively, no matter how respectfully you try to engage.

"There are people in the industry who are adverse to contracts of any kind," says Kattwinkel. "A lot of people don't believe in them and get scared. The problem with that is, if your recording is very successful, those people can come out of the woodwork and claim to be co-authors — and, therefore, co-copyright owners of the work — regardless of what they actually contributed, and demand a piece of the revenue. So if you can't get your collaborators to sign a WFH agreement, you need to at least get something that says that they are not co-authors and they will not pursue a

piece of any resulting revenue. If you don't have anything like that, it can lead to real problems if anything comes to legal action."

Be flexible when the risk seems low

Kattwinkel doesn't recommend forcing the issue if a key collaborator seems truly resistant to signing a WFH form — but she does recommend proceeding with open eyes.

"It's really up to you to assess how risky it is to skip having a certain contributor to your recording project sign, and it's a lawyer's job to make sure you are aware of, and protected against, every worst case scenario, even if the chances are one percent. Artists and producers need to understand the legal risks of any WFH situation and try to make the best decisions they can."

One scenario in which it may be pretty safe not to push for a WFH agreement is if you're working with well-known and well-established collaborators. "If somebody already has a strong reputation, he or she is probably not going to jeopardize it by causing a problem over who wrote what," says Kattwinkel. "People who are respected and working at the high end of the profession are inherently more trustworthy than people who are just starting out, or people who are in the middle and don't have a reputation to lose yet, but might start feeling greedy if you hit it big."

However you proceed, she continues, remember that nothing about WFH agreements is a matter of personal trust, or worth taking offense over. "It's all about being pragmatic and protecting everyone involved."

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Work For Hire agreements from a musician's perspective

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In a follow up to our Work For Hire post that looked at these agreements from the producer's perspective, this post gives advice to musicians being asked to perform/record and sign a WFH contract.

Music creation can be wonderfully collaborative — but when you're working with a team in the recording studio, things can become more complicated after the final notes have been played, tracked, mixed, and mastered. One big question that emerges for many indie musicians and bands is, once the song is finished, who owns what?

Ownership-related misunderstandings about money and royalties can turn into big problems if everyone isn't on the same page, especially if a song becomes a hit. That's why, in many situations, independent music makers may encounter the subject of Work Made For Hire — a.k.a. Work For Hire or WFH.

“Work Made for Hire is a concept in copyright law that transfers an independent contractor into the equivalent position of an employee,” says San Francisco copyright attorney Linda Joy Kattwinkel. “The consequence is that the client who is hiring you for work on a Work For Hire basis is considered to be the copyright author and owner of the work that you make as an independent contractor.”

As mentioned in “Work For Hire agreements: The producer's perspective,” a WFH agreement means that you, as the hired musician, are being asked to create something new (e.g. write, arrange, record a part) and are being paid for your contribution. That means that any recorded tracks, arrangement tidbits, or other musical contributions that you create during that session will belong completely to whoever is behind the session — and not to you — in exchange for whatever compensation you've negotiated.

WFH can seem intimidating if you've never dealt with it before, but when used properly, it can be a helpful tool to use and understand. Here are some key tips from Kattwinkel to help you get started.

Expect WFH in a variety of contexts

Kattwinkel says that, when you're working as an independent musician, WFH can come up any time you're hired to participate in a recording project. So regardless of whether you're a backing vocalist or session bassist, synth programmer or string arranger, don't be surprised if you're asked to review and sign a WFH agreement.

“It applies to any situation where you're being paid to contribute your talents, but the person hiring you wants it to be clear that he or she will own the results outright, and that you won't be getting anything for the recording beyond what you're being paid for the gig,” says Kattwinkel.

Do your homework

If you're working on a session and are asked to sign a WFH agreement, make sure you get to review it ahead of time. Also, make sure to get the help you need to fully understand what you're being asked to agree to.

"If it's your first time encountering WFH in your career, I highly recommend getting a brief review by a lawyer, just to make sure you understand what the agreement says and that it all makes sense in your situation," says Kattwinkel. "Once you've had an initial experience with WFH, you'll be informed enough to figure out the next form, and you'll also have enough information to know when something is bothersome and requires more investigation."

Music lawyers can be expensive, so if your budget is tight, organizations like Volunteer Lawyers for the Arts or your local Recording Academy chapter are great places to start.

Be specific about compensation — and don't be afraid to negotiate

When you're asked to sign a WFH agreement, you're basically being asked to give up any ownership over the music you're helping to create — so it's only fair that any document you sign explicitly states how much you're being paid for your work. Depending on how well you know who you're working with, and how much you trust them, you may also want to specify in writing specifically when you will be paid, and whether you'll be receiving those funds via check, cash, or another method.

In short, when it comes to money in the music business, less ambiguity generally leads to happier music-making for everyone involved — so make sure your WFH agreements are no exception.

And whether it's about money or another matter entirely, if you read something in a proposed WFH agreement that feels weird to you, don't be afraid to ask for a revision to the agreement. As long as your suggested changes are reasonable, hopefully any concerns can be resolved quickly and amicably.

Know when not to sign

In many situations, WFH agreements can be fair and useful when it comes to clarifying who owns what and making sure that the producer, artist, or label has the control he/she/it needs of the finished song. In other situations, WFH can be exploitive, unfair, and even inappropriate. How do you smell the difference and avoid signing something you'll later regret?

"WFH is appropriate if you're a gig musician hired for a session, for example, but not so much if you're a headliner or a composer or songwriter," says Kattwinkel, "really, anything where you're trying to market your music in a way where you continue to earn royalties from what you've done."

"Also, if you're in a band, WFH generally doesn't make sense," Kattwinkel says. "There should be agreements in those situations where band members are basically equal partners who share equally in copyright ownership."

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