

Timothy O'Donnell
40 Exchange Place, 19 Floor
New York, New York 10005
Telephone: (212) 598 9660
odohmnaill@aol.com

Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ENNIO MORICONE MUSIC INC.,

Plaintiff,

v.

BIXIO MUSIC GROUP LTD.,

Defendant.

CASE NO.:

COMPLAINT

Plaintiff Ennio Morricone Music Inc. ("Morricone Music") brings this action and alleges against Defendant Bixio Music Group, Ltd. ("Bixio") as follows:

NATURE OF THE ACTION

1. This is a civil action seeking a declaratory judgment under 28 U.S.C. § 2201 that Morricone Music is the sole proprietor of the United States copyright in three film scores composed by Ennio Morricone and that all United States rights to those film scores now being claimed by Bixio were terminated pursuant 17 U.S.C. 203. This case arises out of an actual controversy between Morricone Music and Bixio both of which have asserted competing claims

to public performance royalties collected by the American Society of Composers Authors and Publishers (“ASCAP”) from the public performance of the film scores in the United States.

THE PARTIES

2. Morricone Music is a business corporation organized and existing under the laws of New York. Morricone Music is the assignee of the United States copyright in the film scores by virtue of assignments from Ennio Morricone, the sole author and composer of the film scores (the “Composer”).

3. Bixio is a business corporation organized and existing under the laws of New York. Upon information and belief, Bixio is the assignee of the United States copyright in musical works owned by Edizioni Musicali Bixio, an Italian business entity engaged in the music publishing business (“Edizioni Musicali”).

JURISDICTION AND VENUE

4. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because it involves an actual controversy between the parties, the resolution of which requires construction of the United States Copyright Act (Title 17 U.S.C.), including the termination right of authors under Section 203.

5. Bixio is subject to the personal jurisdiction of this Court because it is a New York corporation doing business in New York with an address for service of process at 285 Mott Street, Suite A-14, New York, NY 10012.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because it is the judicial district where the events giving rise to the controversy occurred, and it is the principal place of business of both Morricone Music, and Bixio.

FACTUAL ALLEGATIONS

7. The Composer in or about 1978 entered into a written agreement with Edizioni Musicali to compose the musical score for the film COSI COME SEI being produced in Rome by San Francisco Film (the “COSI COME SEI Agreement”). Upon information and belief Edizioni Musicali had entered into a contract with San Francisco Film according to the terms of which Edizioni Musicali had agreed to provide the score by the Composer for use in synchronization with the film. The Composer was not a party to the agreement between Edizioni Musicali and San Francisco Film.

8. The COSI COME SEI Agreement granted to Edizioni Musicali the worldwide copyright in the film score entitled COSI COME SEI by the Composer and Edizioni Musicali effectuated the grant when it registered the musical score with SIAE on October 31, 1978.

9. The Composer in or about 1979 entered into a written agreement with Edizioni Musicali to compose the musical score for the film IL GIOCATOLLO being produced in Rome for Rafran Cinematografica (the “IL GIOCATOLLO Agreement”). Upon information and belief Edizioni Musicali had entered into a contract with Rafran Cinematografica according to the terms of which Edizioni Musicali had agreed to provide the score by the Composer for use in synchronization with the film. The Composer was not a party to the agreement between Edizioni Musicali and Rafran Cinematografica.

10. The IL GIOCATOLLO Agreement granted to Edizioni Musicali the worldwide copyright in the film score entitled IL GIOCATOLLO by the Composer and Edizioni Musicali effectuated the grant when it registered the musical score with SIAE on June 30, 1979.

11. The Composer in or about 1980 entered into a written agreement with Edizioni Musicali to compose the musical score for the film UN SACCO BELLO being produced in Rome for Rafran Cinematografica (the “UN SACCO BELLO Agreement”). Upon information and belief Edizioni Musicali had entered into a contract with Rafran Cinematografica according

to the terms of which Edizioni Musicali had agreed to provide the score by the Composer for use in synchronization with the film. The Composer was not a party to the agreement between Edizioni Musicali and Rafran Cinematografica.

12. The UN SACCO BELLO Agreement granted to Edizioni Musicali the worldwide copyright in the film score entitled UN SACCO BELLO by the Composer and Edizioni Musicali effectuated the grant when it registered the musical score with SIAE June 24, 1980.

13. Upon information and belief Edizioni Musicali subsequently assigned the United States copyrights to IL GATTO, COSI COME SEI, IL GIOCATOLLO and UN SACCO BELLO to Bixio, and Bixio then registered a claim with ASCAP to all royalties collected from the public performance of those film scores in the United States (the “Bixio Claim”).

14. The Composer by notice dated and served on October 25, 2012 and recorded on January 23, 2013 in the United States Copyright Office at Volume 3625, Document No. 849 terminated the rights of Bixio in the United States to the film score COSI COME SEI effective December 31, 2014.

15. The Composer by notice dated and served on October 25, 2012 and recorded on January 23, 2013 in the United States Copyright Office at Volume 3626, Document No. 376 terminated the rights of Bixio in the United States to the film score IL GIOCATOLLO effective December 31, 2014.

16. The Composer by notice dated and served on October 25, 2012 and recorded on January 23, 2013 in the United States Copyright Office at Volume 3626, Document No. 849 terminated the rights of Bixio in the United States to the film score UN SACCO BELLO effective December 31, 2015.

17. The Composer by assignment dated January 1, 2015 assigned the United States copyrights in COSI COME SEI and IL GIOCATOLLO to Morricone Music.

18. The Composer by assignment dated January 1, 2016 assigned the United States copyright in UN SACCO BELLO to Morricone Music.

19. Morricone Music upon receipt of the assignments from the Composer attempted to register its claim to all royalties collected from the public performance of the film scores COSI COME SEI, IL GIOCATOLLO and UN SACCO BELLO in the United States with ASCAP but Bixio refused to relinquish the Bixio Claim based upon its allegation that the film scores were created as works made for hire and not subject to the termination under 17 U.S.C. 203.

20. Morricone Music disputes the Bixio Claim, denies that the film scores were created as works made for hire because the Composer during his creation of the film scores was at all times acting as an independent contractor who was not in the employ of Edizioni Musicali, and the Composer did not agree in writing that any of the film scores would constitute a work made for hire and that the terminations were, therefore, valid under 17 U.S.C. 203.

CAUSE OF ACTION

21. Morricone Music incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth in this paragraph.

22. An actual controversy exists as to the ownership of the United States copyrights in the film scores scores COSI COME SEI, IL GIOCATOLLO and UN SACCO BELLO.

23. Morricone Music is entitled to a declaratory judgment that the rights of Bixio were terminated and that Morricone Music is the sole proprietor of the United States copyrights in the film scores scores COSI COME SEI, IL GIOCATOLLO and UN SACCO BELLO.

PRAYER FOR RELIEF

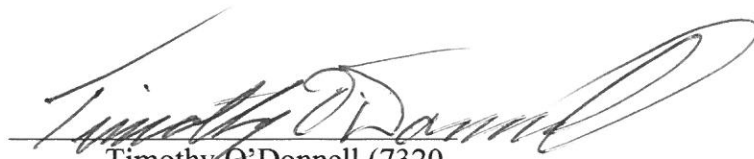
WHEREFORE, Plaintiff requests that this Court enter judgment:

1. Declaring that the rights of Bixio were terminated pursuant to 17 U.S.C. 203 and that Morricone Music is the sole proprietor of the United States copyrights in the film

scores COSI COME SEI, IL GIOCATOLLO and UN SACCO BELLO.

2. Awarding such other relief as the Court deems just and proper.

Dated: New York, NY
October 31, 2016

A handwritten signature in black ink, appearing to read "Timothy O'Donnell", written over a horizontal line.

Timothy O'Donnell (7320)
Attorney for Plaintiff
Ennio Morricone Music Inc.
40 Exchange Place, 19 Floor
New York, NY 10005
212 598 9660