

A (SOMEWHAT) BRIEF GUIDE TO COMMISSIONING NEW MUSIC

Dominick DiOrio

It is exciting to bring a new composition into the world, not just for the composer, but also for the performers who premiere the work and for the listeners who witness its birth. As conductors, we are often the catalyst for that creative process by initiating the conversations with a composer that lead to the commission.

In May 2018 at the ACDA Leadership Retreat in Kansas City, I heard from regional and state leaders who told me that many of their members are confused about how to begin the commissioning journey, what it entails, and what it might cost. To that end, I've prepared a short primer to help demystify the process.

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The Basics

In its simplest form, someone (the “commissioner”) invites a composer to create a new work (the “commission”) in return for a fee. The terms of this commission are then laid out in a legal agreement or contract between these two parties.

Often, a conductor will approach a composer to begin discussions about a new commissioned work. While the conductor is usually the commissioner, it is also possible for the business side of the commission to be finalized with another member of the conductor’s organization (such as an executive director, academic dean, or finance officer).

Commissioning a new work is similar to buying bespoke clothing: if you want a custom garment tailor made to your body, you pay a premium instead of buying a cheaper garment off the rack. In music, too, the commissioner pays a premium to have a new piece of music designed specifically for their ensemble and its needs.

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STEP 1: Choosing a Composer

This part may seem self-explanatory, but it's worth mentioning because the wrong choice at this stage can negatively impact the entire process. When looking for a composer for your organization or ensemble, there are many avenues to explore, and it may be helpful to categorize them based upon relative level of experience:

- A young, emerging composer (potentially a student)
- A member of your community (or even a member of your ensemble)
- A locally or regionally known composer with a developing reputation
- A nationally known composer with an established record of success
- An internationally known composer regularly writing music for highly visible opportunities at the highest levels of the profession

In general terms, the more well-known and active a composer is, the more expensive it will be to commission them and the further in advance you may need to plan to get on their schedule. So even though an internationally known composer may be flashy and exciting, it may be the wrong choice for your organization based upon your budget, your needs, and your mission. And while a student composer may come with additional challenges—for instance, not much experience writing works for chorus—they would likely be grateful for a commission early in their career.

A few more important tips:

- 1) It goes without saying, I hope, but listen to the works of any composer you are interested in commissioning prior to approaching them. If you like what you hear, chances are you will be happy with your eventual new work too.
- 2) Seek out recommendations of colleagues you trust. If you know that Composer X has written recently for

Choir Y and Conductor Z, call up Z and ask how it went. You might be surprised what you learn.

- 3) If approaching a composer of greater stature and experience, be prepared to pay for their work at the level they can demand. (More on appropriate pay scaling follows below.) If you know you can't afford to pay Superstar Composer Q at \$25,000 for a new work, it's best not to reach out to her agent and hope for a \$500 special deal.

Once you've decided whom you want to commission, then you can move on to Step 2.

STEP 2: The Initial Conversation

For me, commissioning is a holistic process and should begin with an honest and open conversation between the conductor and the composer. This conversation usually takes the form of an in-person coffee meeting or a 30-45-minute phone call. As we are all likely to have preconceived notions about what we "want" from a new piece of music, this conversation helps both people to be on the same page.

As a composer, I seek to learn as much as I can from the conductor about the ensemble. This includes general questions about an organization's mission, history, and aspirations. I may ask questions like:

- Do you have a mission or vision for your ensemble/organization that you could share? (Or if not, are there shared values that your singers embody?)
- What are some concerts or themes you've programmed recently?
- Which recent pieces have your singers enjoyed performing and why?
- Are there any stories or moments you can share with me about your organization or ensemble that have been watershed moments?

I will also ask about some of the nitty-gritty details

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that are critical for delivering the piece (and if you want to commission a new work, it's helpful to think about these details before talking to a composer):

- How long would you like the new piece to be? (3-5 minutes? 6-8 minutes? It's good to work in approximate ranges.)
- What are the forces you are looking to employ? (SATB? SSA? With piano or *a cappella*? A larger group such as chamber orchestra or wind ensemble?)
- How does your ensemble deal with divisi? (Is writing in 8 individual parts SSAATTBB okay, or is it better to be mostly SATB with occasional divisi?)
- What are your reliable high notes in sopranos/tenors and reliable low notes in altos/basses? (You may wish to differentiate between those notes that can be sustained and those that can be briefly touched, and also possible dynamic ranges for each.)
- Are there any soloists in your ensemble you hope to feature, and which parts do they sing?
- Do you have a theme in mind for the concert where the work will be premiered?
- When are you hoping to premiere the work? (2 years from now? 3 months from now?)
- What kind of text are you looking for? (Sacred or secular? An older text by a poet in the public domain or a text by a living poet? If the latter, do you have permission from the poet or their publisher to set the text? Are you interested in commissioning a new poem for this work in addition to music?)

The conductor may also forecast their desires in statements like:

- I'm worried about getting a work that is too "difficult" or "esoteric."
- I'm really looking for an up-tempo work that is exciting

and fresh.

- The sopranos are great this year, but all of them are seniors who are graduating. Can you write a soprano part appropriate for my developing singers?

The conductor should also ask at this stage about the composer's fee scale and share any budgetary constraints:

- What do you usually charge for a piece of this length and scope?
- What other costs might there be if we would like you to attend the premiere?
- Are you available for in-person rehearsals or Skype sessions with the group (and what does that cost)?
- I only have a budget to pay for about half of the fee you've described. What solutions might there be? (In short: budget over two years to pay for the work instead of one; ask for a work half as long; work with a less-experienced composer whose fee scale is more manageable for you; or hope that the composer accepts a lower rate because they really want to work with you.)

Once this conversation is completed, both parties have a good understanding of how to proceed and then it's time to put it all in writing.

STEP 3: The Contract

At this point, it is appropriate for me to issue a disclaimer: I am not a lawyer and this article is not dispensing actual legal advice for you to use. I am offering options based upon my own experience as a composer who has been commissioned by more than fifty different organizations. I wholeheartedly advise you to seek out the advice of a legal professional when reviewing a contract for a commission. With that said, here are my two (or three, or four) cents.

The composer (or occasionally, the commissioner) will prepare a contract based upon the details that were

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discussed in your conversation. After naming and identifying the two parties, the contract should include the following sections (examples in italics):

1. AGREEMENT TO COMMISSION: This spells out exactly what you are asking the composer to do and all of the parameters of the new work.

X Organization (“Commissioner”) commissions Y Composer (“Composer”) to compose an original choral work (“Work”) within the following parameters:

- *Length: 3-5 minutes*
- *Text: Secular public domain text (poetry or prose) to be chosen mutually by Commissioner and Composer*
- *Scoring/Instrumentation: SATB and piano (SA divisi ok, no TB divisi)*
- *Timeline:*
 - i. June 1, 2019: Text to be chosen by this date*
 - ii. October 1, 2019: Draft score provided to Commissioner*
 - iii. October 15, 2019: Commissioner provides feedback*
 - iv. November 1, 2019: Final score delivered*
- *Due Date (for delivery of all final scores and parts): November 1, 2019*

2. FEE: This details the amount to be paid to the Composer and how it will be paid. This section will also include any separate fees for performance parts, for rush delivery, etc.

Commissioner will pay the Composer a fee of \$5,000 in two equal installments. The first (\$2,500) will be due upon the signing of this contract, and the second (\$2,500) will be due two weeks after the Due Date listed above.

3. FIRST PERFORMANCE RIGHT: This section describes the details of the first performance of the work, and usually includes a clause stating how long the Commissioner has been granted the right to the first performance.

Commissioner will have the right to give the first performance of the Work and make best efforts to premiere the Work in February of 2020 at a location of their choosing. If Commissioner is unable to perform the Work at the referenced time, they will retain the right to perform the world premiere, provided it takes place before December 30, 2020, after which—if no premiere performance has occurred—the Work may be premiered by another organization.

4. ADDITIONAL PERMISSIONS/RIGHTS: In this section, the Commissioner and Composer each grant some limited rights to the other. Some of the rights that the Composer grants the Commissioner include:

- The right to duplicate the scores/parts for rehearsals and the first performance
- The right to create an archival (non-commercial) audio/video recording of the Work
- The right to use Composer’s name and likeness in media materials surrounding the premiere to market the Work
- The right to assign a dedication to the Work (which will be included on all future scores, including those eventually published more broadly)

In return, the Commissioner provides the Composer with the following:

- A premiere performance of the Work, within a given timeframe
- A video and/or audio recording of that premiere performance for Composer’s non-commercial use, usually provided within ninety days of the premiere
- The right to use the organization’s name and likeness in media materials for Composer’s own marketing purposes
- Travel expenses to attend the premiere performance (to include airfare/mileage, lodging, meal per diem, and ground transportation)

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- An agreed-upon number of complimentary tickets to the premiere and any subsequent performances of the Work

5. COPYRIGHT: There is usually a statement in the contract that makes explicit that the Composer retains the copyright in the Work, and that is it not “work made for hire.”

Both parties attest that the Composer is not an employee of Commissioner; thus Composer retains the copyright of the Work and all other rights associated with the Work not mentioned herein; and that this agreement is not “work made for hire” as determined by the United States Copyright Act of 1976.

6. FULFILLMENT: This section describes what happens if either party does not hold up their side of the agreement. It usually takes the form of a statement like:

If, for any cause beyond the control of the Composer, Composer is unable to fulfill the terms of this agreement, their sole liability to Commissioner will be the refund of all monies paid to date.

If, after executing this agreement and paying the Composer the first payment, Commissioner decides to withdraw from the agreement, Commissioner will forfeit any monies already paid to Composer.

7. ADDITIONAL CONSIDERATIONS: Maybe you want to make a commercial recording in addition to an archival recording? Maybe you want the composer to attend a certain number of rehearsals prior to the premiere? Great. All of those details should also be spelled out in the contract, and you can add them anywhere you want after the items above. You can also explicitly state that those items would be subject to a new agreement. A few examples:

Commercial Recording: If Commissioner wishes to record the work for commercial release, a separate agreement will be drawn up between Commissioner and Composer detailing the apportionment of those rights and any associated fees.

Rehearsals/Clinics: If Commissioner wishes to have Composer attend rehearsals, workshops, or clinics (including Skype sessions, etc.) to work with the performers, this will incur separate clinician fees of \$75 per hour.

8. THE LEGAL STUFF: Finally, before the agreement is finished, it should touch upon items that are typical in contracts of this nature, such as indemnification clauses, liability, construction, binding effect, etc. This is where a lawyer is necessary and helpful.

9. THE AGREEMENT AND SIGNATURE: Most contracts of this nature end with a statement similar to the one below, followed by signatures, printed names, and dates by all parties involved.

This agreement embodies the entire understanding of the parties hereto with respect to the commission and may not be modified except in writing, signed by duly authorized representatives of both parties hereto.

And there you have it! Once this agreement is drawn up, it is typical for the parties to have a chance to suggest amendments, revisions, and changes before signing. This negotiation stage can and should include any adjustments to the fee structure, if it has not yet been worked out. This bears discussing in greater detail.

STEP 4: Negotiations and Fee Considerations

Ah, the money. This is the part that tends to stymie even the best of us... and for good reason! The real costs of commissions tend to be veiled in secrecy. Many professional composers are unwilling to discuss their rates, and emerging composers may not know what to charge. I hope to alleviate some of that anxiety.

It is important to understand the many factors that can impact the cost of a commission. They include (but are not limited to):

1.DURATION/length (in minutes or, less frequently, measures) It may seem obvious, but in general, longer pieces cost more than shorter pieces. Many

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composers operate on a dollars-per-minute scale. The industry standard scale often cited is \$1,000 per finished minute of music, but even this is a bit overly simplified, as this varies by experience, geographical region, and instrumentation of the score.

Example 1: A young composer may charge \$500/minute for a 3-5 minute a cappella SATB work, for a total fee of \$2,000.

Example 2: An established composer with a national reputation may charge \$1,000/minute for a 3-5 minute a cappella SATB work, for a total fee of \$4,000.

Example 3: A superstar composer may charge \$3,000/minute for a 3-5 minute a cappella SATB work, for a total fee of \$12,000.

While these rates vary widely, no amount of money is too small to create an agreement in writing. This serves to protect both the composer and the commissioner, as there are many stories in the world of late and never-received payments and/or scores. Naturally, the higher the fee and the larger the work, the smarter it is to have an agreement in place.

2. SCOPE/size of performing forces A work for chorus and orchestra will generally cost more than a work for chorus *a cappella*. Please note that this refers to the base commission fee (which is distinct from additional fees for the creation of piano-vocal scores and orchestral parts).

Example 1: That same young composer may charge \$1,000/minute for a 3-5 minute choral-orchestral work, for a total fee of \$4,000 + costs for the creation of parts and vocal score.

Example 2: That same established composer may charge \$2,000/minute for a 3-5 minute choral-orchestral work for a total fee of \$8,000 + costs for the creation of parts and vocal score.

Example 3: That same superstar composer may charge \$5,000/minute for a 3-5 minute choral-orchestral work for a total fee of \$20,000 + costs for the creation of parts and vocal score.

3. COMPOSITION TIMEFRAME (rush fees, etc.)
The typical commissioning agreement for an active

composer begins over a year before the eventual due date for the work. In the event of a major work such as an opera or symphony, a commissioning discussion may begin years before the premiere.

Asking a composer to write a new work with less than six months before the due date necessitates a rush fee, often equivalent to about 20-30% of the original commission fee.

Asking a composer to write a new work with less than three months before the due date necessitates a more substantial rush fee, often equivalent to about 50-100% of the original commission fee.

Example 1: The rush fee for a \$4,000 work due in less than six months might be an additional \$1,000 (for a total of \$5,000).

Example 2: The rush fee for a \$4,000 work due in less than three months might be an additional \$2,000-\$4,000, depending on the composer's schedule (for a total of \$6,000-\$8,000).

Remember: When you are paying a composer a commission fee, you are essentially reserving time in their schedule for them to write your music. If you ask a composer to compose something with a tight turnaround window, they may be giving up other things to do that for you (like family time, work-life balance, vacations, weekends, sleep, etc.), so please do not be offended if the composer asks for a rush fee. That is the real cost of the time that they are rearranging for you.

4. FEES FOR PERMISSION to set texts not in the public domain This is critical: if you want a composer to set a text to music, but the copyright in that text is owned by someone currently (and not in the public domain), you cannot legally set that text without a letter of written permission from the copyright holder.

If this is a living author and the text is not published, a simple signed letter from the author will suffice. Often, a text's copyright will now be owned by a publisher. In either case, the publisher and/or the author are within their rights to:

1. Charge you for the non-exclusive right to set that text;
2. Give you permission to set the text free of charge, if they wish; or

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3. Deny you permission to set the text.

If they deny you permission to set the text, you're stuck. You can't use it. But if they do give you permission, they have the right to ask for a fee if they so choose. All publishers will ask for a percentage of the royalties on all sales of the musical work (which is standard), but some may also ask for an additional flat fee (\$50, \$200, etc.).¹

If the commissioner is asking for a specific text to be set, it's typical for the commissioner to pay this flat fee, when applicable. If the composer chooses the text themselves, then the composer usually pays the fee.

Example: Commissioner wants to set an E. E. Cummings text and the copyright holder asks for a fee of \$100 for the permission to set it. Commissioner is responsible for this cost above and beyond the Composer's commission fee.

5. ADDITIONAL COSTS for piano-vocal score and/or instrumental parts Composers are busy people, and they are often juggling multiple projects at once. To this end, many of them outsource the creation of piano-vocal scores and instrumental parts to engravers for a fee. For this reason (and because the creation of parts and vocal scores is not "composing" in the same way as the creation of the original score is), the cost to create parts and vocal scores is considered separately from the commission fee.

In general, this does not apply to the vast majority of choral music written today, as most choral works are for voices alone or voices with piano/organ, so there is no necessity for the creation of any separate scores. In this instance, there would be no additional fee.

However, if a substantial work is being created for chorus and instrumental ensemble, it is typical for separate fees to be a part of the contract for the creation of the instrumental parts and piano-vocal score. These are usually a percentage (10-25%) of the original commission fee.

Example: An established composer may charge a \$20,000 commission fee for a 15-minute choral-orchestral work plus a \$2,000 fee for the creation of the piano-vocal score (10%) and a \$2,000 fee for the creation of the instrumental parts (10%), resulting in a

total cost of \$24,000.

Nota Bene 1: If a choral work has a small instrumental component (less than five additional instruments), the composer will usually create the instrumental parts *gratis*, though they may still ask for a fee for the piano-vocal score if it entails creating a piano reduction from which the choir will rehearse (especially if there is no piano part in the chamber instrumentation).

Nota Bene 2: Rush fees may also apply to the creation of instrumental parts and vocal scores, if the commissioner is asking for them in an expedited timeframe.

6. TRAVEL EXPENSES to attend the premiere

As mentioned above, if the commissioner desires to have the composer present for the premiere, it is typical to pay the composer's expenses (airfare or mileage, lodging, meal per diem, and ground transportation). These expenses do not come out of the commission fee and are usually processed after the fact as reimbursements (or paid as direct costs by the commissioner). These costs may vary widely, depending on the composer's point of departure, from a few hundred dollars to several thousand. It's important to budget for these costs at the outset, even if they aren't explicitly enumerated upfront.

Example 1: A local composer was paid a commission fee to write a new work for SSA and string quartet. As the composer lives locally, there is no need for lodging, airfare, or any other travel expense beyond complimentary tickets.

Example 2: A composer is flying across the country to be present for the premiere of your new commissioned work. After the premiere, the composer submits receipts for airfare (\$450), lodging (2 nights hotel at \$320), taxi to and from the airport (\$65) and 5 meal receipts (\$115). Note that even with this composer's modest and conservative taste, the cost for reimbursement is still \$950.

STEP 5: Staying in Communication

Well, now that the contract is signed and the agreement is in place, you're done, right? Not quite. It's important to stay in contact with the composer through-

out the composition process, especially if circumstances change on your end in any significant way (i.e., a change in the premiere date, a sudden loss of funding, a soloist who can no longer sing at the last minute, etc.). Be upfront about possible issues and seek to resolve them amicably. Conversation is crucial not just at the beginning of the process but from start to finish.

Likewise, if the composer is behind on their obligations (late to choose a text, late to get you a draft score, etc.), be friendly but stern in your admonition that you really need the scores according to the timeline you agreed to. Make the point this way: the longer it takes to get the score to you, the fewer rehearsals you will have with the ensemble, and the less successful the premiere will likely be. There is a sad reality in the composing profession of composers missing deadlines. It's terribly outdated and non-professional behavior. If a composer is late, let them know that it is unacceptable (and let them know that this reputation will follow them). At the same time, be grateful if you find the rare composer who is not only on time but early. They deserve your repeated business!

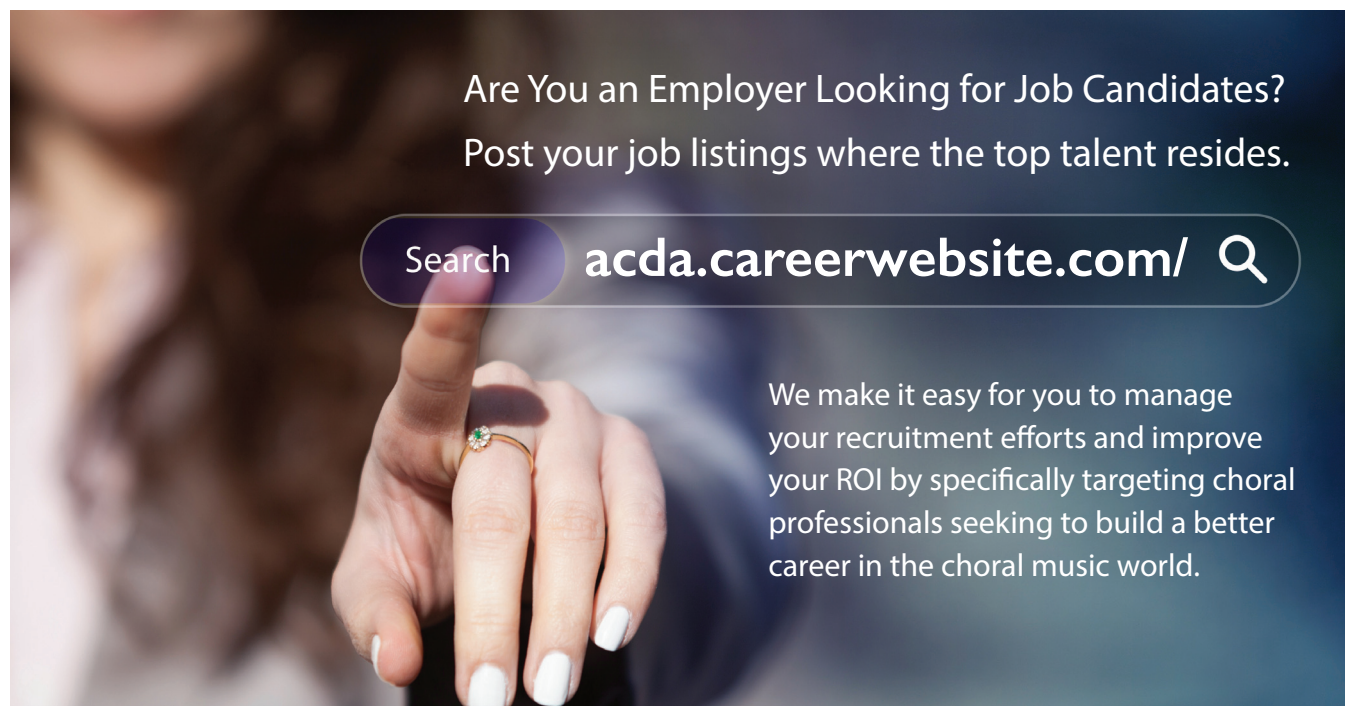
In the best of all possible worlds, going through this process of detail-oriented planning at the front-end will give you confidence that you're ready for any eventuality. It will also allow you, your partner composer, your singers, and your greater community of listeners to be set up

for a life-changing collaborative experience together. 


The author is indebted to Craig Carnahan, Andrew Crane, Brandon Elliott, Susan LaBarr, Nancy Menk, and Dale Trumbore. These individuals served as crucial early readers of the article and offered valuable editorial comments and insights.

NOTES

- 1 It's worth mentioning that the composer and the author of the text are also each entitled to an equal share of the writer-portion of performance royalties from a performing rights organization (such as ASCAP, BMI, SESAC, etc.), and the publisher of the text and the publisher of the music are also each entitled to an equal share of the publisher-portion of performance royalties. Discussion of performing rights organizations goes beyond the scope of this article, but conductors should know that it is a critical part of every composer's compensation. If a composer has asked the conductor for a PDF copy of the program, this is often so that the program can be submitted to a performing rights organization as evidence of a performance, and so the composer can be compensated.



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