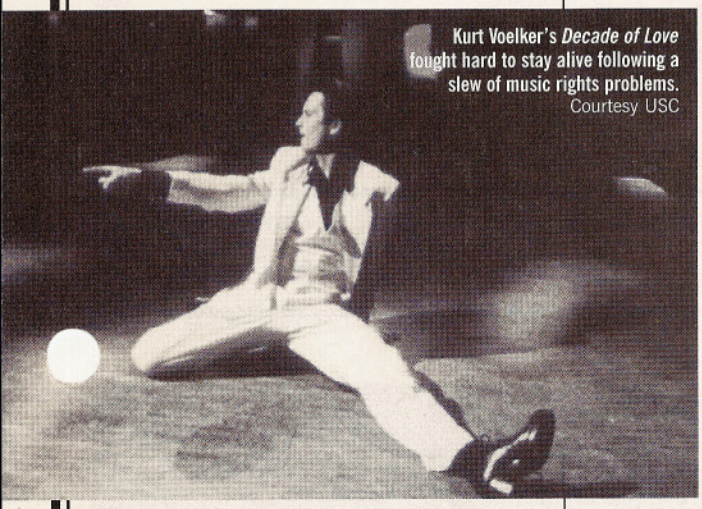
DANGER: HIGH CLEARANCE

Student Films on the Commercial Market

BY LYNN M. ERMANN

KURT VOELKER'S *DECADE OF LOVE* SHOULD have made its television debut in 1996. Stations all over Europe were clamoring to air the University of Southern California (USC) student film that year, especially after it snagged the audience award at the top European shorts festival, Clermont-Ferrand. Instead, two more years—an eternity in show-biz time—would pass before the lively 'disco boy meets girl/love triangle' comedy could be televised, by which point the buzz had faded.



Kurt Voelker's *Decade of Love* fought hard to stay alive following a slew of music rights problems. Courtesy USC

The problem? "Car Wash," "YMCA," and five other disco songs. Voelker, who had already spent an entire year clearing the festival rights for the songs, knew that he couldn't afford commercial distribution. USC, which owns all rights to its student films, also didn't want to foot the bill. Harold Warren, president of Forefront Films, agreed to pick up *Decade* and untangle the rights late in 1996, but only got started in 1997, just in time for a disco revival that made the soundtrack unaffordable in the U.S. After a year-long, painstaking clearance process ("never again," says Warren), involving dozens of phone calls and letters, one publisher still refused to allow a song to be used, and after the aggravating task of redoing the soundtrack, *Decade of Love* could only be shown in a few European venues.

Voelker was in fact a lot luckier than most. More typical is the story of Columbia film school student Mark Millhone, whose short film *Christmas in New York* was also widely sought after by distributors, including Forefront, but had a soundtrack of seasonal ditties that made it prohibitively expensive.

Uncleared story rights, logos, clips, and Screen Actors Guild (SAG) fees have been the main obstacles to getting films aired for other students. "At least fifty percent of the students [we deal with] have clearance issues," says Megan O'Neill, vice-president of Forefront, a problem she attributes to the fact that many students weren't aware of the commercial market in shorts when they made their films.

While student films used to spend at most a few months on the festival circuit before being retired to the vaults, now they can find a home on television, video, or, occasionally, even in a theater. The past few years have seen a surge in commercial interest in shorts, which has been tapped into by entities like New York City's Forefront, and Europe's Jane Balfour and Canal+. Europe, always more interested in shorts, has countless cable programs, like *Kinorama* on the Arte station, that show shorts. In the United States, the Sundance Channel, the Independent Film Channel, and many PBS programs like WNET-New York's Reel New York and Los Angeles' Fine Cut air shorts, often as filler between movies. There is also a growing, if still tiny, market in video compilations of shorts, like Gil Holland's *CineBLAST!*

The tricky part is that these commercial venues, while offering great visibility, pay very little—far less, in fact, than the clearance fees required to air the films. "[Music publishers] don't understand that they are dealing with three-minute films," explains Sandrine Cassidy, who handles festivals and distribution at USC. Because television pays per minute, most shorts don't bring in more than $2,000; PBS stations may pay as little as $500. Popular songs on the soundtrack can cost 10 times that amount ($20,000 in Millhone's case). SAG also often applies the same rules to short films as to features. "Some short films we see have three or four major actors in them," says Gary Garfinkel, vice president of acquisitions at Showtime, which owns the Sundance Channel. "Of course, they're free only until somebody makes an offer." Then SAG wants the money back for every day worked—at scale. Thus one student filmmaker recently found that she would have to pay $15,000 to SAG if she wanted to air her short.

All this raises the question: do students need to pay closer attention to clearance issues while still in school? "No one is ever going to see this film, so don't worry about it," a professor patronizingly told one student (who prefers to remain anonymous) two years ago when the 1997 UCLA graduate asked about a clearance issue (that is still unresolved). But this "it's only a student film" attitude is changing. Beginning last year, partly due to the *Decade of Love* fiasco, USC began requiring all current students to get worldwide commercial clearance on all songs. Of course, USC was also partly motivated by the fact that they own many student films with clearance problems, like the Robert Zemeckis student short with a Beatles soundtrack (only footage of past presidents could have made it any pricier). And other schools are following USC's lead with less Draconian measures. At New York University, lawyer Marilyn G. Haft, an attorney and adjunct professor, teaches a class on entertainment law and business in which she often advises students on the specifics of clearing shorts for cable and video

After its initial soundtrack rights proved too costly, the entire soundtrack for *Spin the Bottle* was redone with lesser known bands like Los Straightjackets. Courtesy CineBLAST

versus theater, the United States versus Europe. One option for students who don't want to pay money upfront is to mention the possibility that a film might get picked up for television when getting the festival rights. Christopher suggests that students be candid: "Just plead your case as a starving filmmaker and tell them how you won't make any money on the film, but it will be good for your career."

Using original music is one way to skirt the issue altogether. Millhone, the student who used prohibitively expensive Christmas songs on his last short, had a friend compose the music on *It's Not About You*, a short which aired on *American Playhouse* in ear May of this year. "Composers are working on careers just as film students are," says Doreen Ringer-Ross, assistant vice president, film/TV relations with broadcast music industry body BMI in Los Angeles. To this end, UCLA and USC are also forging partnerships between music and film departments.

Music libraries are also a great resource—for a certain kind of music. Student filmmakers can find a generic 'jazz sound' as filler or even 'circus music' for those Felliniesque moments. USC last year made arrangements with several music libraries whereby "they make available several sections—sometimes the entire library—to students," according to Larry Auerbach, executive director of student industry relations at USC. Although Auerbach admits that "some films cry for recognizable music," he says that the advantage of music libraries is that he always "knows what rights the students have upfront."

Students also have the option of changing the music after a festival debut, which is a hassle, but may be worthwhile. When USC student David Birdsell won an award for *Blue City* at the 1997 Independent Feature Film Market in New York City, and the prize was a screening on the Independent Film Channel, he quickly realized that his soundtrack would be too expensive. Birdsell replaced two of the songs with tracks from the USC music library and kept the most indispensable song, "The Thrill is Gone," for a screening of the film on IFC and *Fine Cut*, only paying clearance on those individual venues. Another student filmmaker, NYU's Jamie Yerkes, is replacing the entire soundtrack—formerly filled with Nina Simone and Squirrel Nut Zippers—on his feature *Spin the Bottle* with music from smaller bands at the suggestion of his executive producer Gil Holland.

There are also ways to cut back on the expense of using SAG actors. Filmmakers often get themselves into the most trouble by not discussing terms with SAG. "If we find out that a student has sold a film without contacting us, we will file a claim for everything as a breach of contract," says Ron Bennett, executive administrator of theatrical/television contracts at SAG. When students are honest, "SAG is flexible," says Bennett. While a student is legally obligated to pay actors back at low budget scale—$466 a day plus a 13.5 percent pension and health payment—when a film makes any money, the involved actors can waive the full obligation requirements (most do) and allow the filmmaker to pay it back over time. Legally, the full amount made on the sale must still go to the actors first, before the producer, before even the music publisher.

Economy—that is one of the most essential parts of filmmaking. Is this song indispensable? Should I send the actors home who aren't needed? As commercial options open up for students, they may not be making much money, but they are getting unprecedented opportunities to learn about all these issues. "As frustrating as [getting clearances] is for students," says Cynthia Bechet, distribution manager at the American Film Institute, which also owns its student films, "it can be a good way of forcing them to understand that this process is the real world." Better to make the mistakes in school than on a feature-length independent production, right?

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