

# Words, Words, Words . . .

By Bob Sanders

Words have power. Pearl Strachan Hurd has advised using them carefully because they “have more power than atom bombs.” That may be hyperbole, but the words we use to describe ourselves and what we do influence how others perceive us—which in turn, can affect how they treat us and, perhaps, pay us.

## Work and Play

Which of these two verbs best describes what we, as musicians, do? In the English language, we generally use the verb “to play” to describe music performance. Work describes activity in other fields of endeavor. “Play” may not serve us well. The definitions found at *dictionary.reference.com* offer examples of where these two words are in the zeitgeist at present.

*Work—verb (used without object)*

- *To do work; labor.*
- *To be employed, especially as a means of earning one’s livelihood: He hasn’t worked for six weeks.*

*Play—verb (used without object)*

- *To exercise or employ oneself in diversion, amusement, or recreation.*
- *To do something in sport that is not to be taken seriously.*
- *To amuse oneself; toy; trifle (often followed by with).*
- *To take part or engage in a game.*

To someone not predisposed to respect musicians, these words may speak volumes. Recreation, sport, trifle. . . . Employed, earning, livelihood. . . . Consulting the same source, we find:

*Perform—verb (used with object)*

- *To carry out; execute; do: To perform miracles.*
- *To go through or execute in the proper, customary, or established manner.*
- *To carry into effect; fulfill: perform what you promise.*
- *To act (a play, part, etc.), as on the stage, in movies, or on television.*
- *To render (music), as by playing or singing.*
- *To accomplish (any action involving skill or ability).*
- *To complete.*

It is not hard to see that these words matter. Both “work” and “perform” shine a much more serious light on what musicians do. Karl Pituch, Principal Horn of the Detroit Symphony, wrote in his January 3, 2011, article, *Respect and Success*, “When our management . . . addresses us as players and not musicians, it is showing its disrespect for us as musicians.” If we wish to be taken seriously, we need to present ourselves seriously.

## Professional and Amateur

We call ourselves professional musicians. What does it mean to be “professional”? This term can be bandied about quite loosely. Well, there are several definitions. The most time-honored and conservative is “engaged in one of the learned professions.” Another is “participating for gain or livelihood in an activity or field of endeavor often engaged in by amateurs.” The latter fits musicians better.

In the beginning, the “learned professions” were the three vocations: Theology, Law, and Medicine. Those professions were traditionally believed to require advanced learning and high principles. If one wants to hear a derisive harrumph, a musician need only suggest to a doctor or a lawyer that musicians are professionals; it can be entertaining.

In *Ethics and The Learned Professions*, John W. Lewis wrote, “The very word ‘profession’ is a problem. It does not simply mean being paid for services, as opposed to the amateur who does something out of love. Nor does it merely convey an attitude, as in ‘Act like a professional.’ . . . Professions, then, are occupations whose members receive their licenses in return for their pledge, their *profession*, to put the interests of the served society above their own self-interests while acting in the licensed role.” Doctors, lawyers, and clergy are all licensed and *profess* an oath.

Regarding the clergy, “licensed” and “ordained” are terms that may vary with religion and denomination; legally, they may vary by state—sometimes, the standards are minimal. However, the first three definitions of profession found at [www.merriam-webster.com](http://www.merriam-webster.com) refer to taking religious vows or *professing* faith—likely the origin of the term. In any event, by this standard, pledging an oath and the receipt of a license, musicians are probably not “professionals” in the strictest sense.

The *Fair Labor Standards Act* (FLSA) provides an exemption from minimum wage and overtime pay for professional employees. The Department of Labor website specifies that:

*The following tests must be met to qualify for the creative professional employee exemption:*

- *The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week.*
- *The employee’s primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.*

That would appear to describe musicians, except that musicians are generally hourly employees, not on salary, and overtime is an industry standard. While musicians are certainly creative artists, they are probably not “professionals” in the strict sense intended by the FLSA.

Generally, professionals, in the strictest sense, are considered independent contractors. Musicians are frequently required to sign W-9 forms as independent contractors. There is considerable controversy surrounding this issue. The website, [www.canmybossthat.com](http://www.canmybossthat.com), indicates, “There are two main tests used to decide if a worker is an independent contractor or employee. The Internal Revenue Service uses a ‘right to control test.’ The Fair Labor Standards Act (FLSA) uses an

‘economic reality test.’ All the answers to the tests are looked at together to evaluate a worker’s status – one answer does not decide it either way. You can get a general idea of how status (independent contractor vs. employee) is decided by reading these tests.”

However, according to the *Bailey Class Action Daily* website, the thrust of the economic reality test “is focused on ‘control.’” “On May 20, 2010, the California Supreme Court issued an important opinion . . . concluding that the definition of ‘employer’ contained in the IWC’s [Industrial Welfare Commission] wage orders define the employment relationship. . . . To employ, then, under the IWC’s definition, has three alternative definitions. It means: (a) to exercise control over the wages, hours or working conditions, or (b) to suffer or permit to work, or (c) to engage, thereby creating a common law employment relationship.” This definition is broad, and this issue could get very interesting.

In addition to no minimum wage and no overtime pay, independent contractors do not enjoy these rights:

- unemployment insurance
- workers’ compensation insurance
- disability insurance
- employer contribution to Social Security
- protection under Title VII of the 1964 Civil Rights Act\*
- protection under the Age Discrimination Employment Act
- protection under the National Labor Relations Act
- union representation

(\*Some independent contractors have been re-categorized as employees re Title VII.)

It is to employers’ advantage to hire independent contractors instead of employees.

It is not to musicians’ advantage to be “professionals” in this sense.

### **“Every artist was first an amateur”**

“Amateur” comes from the French and means “lover of.” On the Merriam-Webster site, there is the following discussion, “Amateur often applies to one practicing an art without mastery of its essentials <a painting done by an amateur>; in sports, it may also suggest not so much lack of skill but avoidance of direct remuneration.”

Professional musicians may love music, but they are also “participating for gain or livelihood in an activity or field of endeavor often engaged in by amateurs” (also Merriam-Webster). For example, there are professional golfers because there are hordes of amateur golfers who love playing golf. The same can be said about tennis, baseball, poker, etc. However, by this yardstick, there are no professional electricians—not really—because no one wires a house for the love of it. One may re-wire a friend’s house for love, but probably won’t spend every weekend re-wiring houses for free for the pure joy of doing so—or snaking drains. This is not to diminish the importance and value of the essential work that electricians and plumbers do, but words like “professional” have many meanings.

While Bernard Shaw (he apparently hated “George”) famously wrote, “Hell is full of musical amateurs: music is the brandy of the damned,” there are many talented, highly skilled amateur musicians in the world. But, if the muse has called one (it is a vocation—a calling—not an avocation) to perform music *at the highest level*, one needs to “take the pig to market.”

### **Is there a market?**

This is a serious question. There are many opportunities to examine it. One is symphony orchestra managements’ consideration of a paradigm shift that could be a real game-changer.

The following quotation emerged in a discussion of the 2010 Detroit Symphony strike at [www.adaptistration.com](http://www.adaptistration.com), a well-respected blog on orchestra management. *New York Times* columnist, Joe Horowitz, wrote “. . . that musicians cannot any longer assume that orchestras owe them a ‘living wage’—i.e., a full-time salary, such that they don’t have to supplement their orchestral jobs with other work (typically, also in music). This was commonplace before those Ford Foundation grants in the sixties. In most orchestras, musicians needed ‘second jobs’ because their orchestral employment wasn’t full-time.”

If no musician can earn a living wage—as a full-time performing musician—what will this mean? If music becomes merely a “diversion, amusement, or recreation,” performed “without mastery of its essentials” or “direct remuneration,” if musicians need to be distracted from the mastery of music to put “food on their families” (thank you, Mr. President), it doesn’t bode well for the art.

Professional musicians may love their work—but it is work. Music is not a trivial pursuit; it needs to pay a living wage. The survival of the art—*at the highest level*—depends on the survival of professional musicians. We are going to need to “hang together or . . .” Well, you know the rest.