

# Songs of Innocence and Experience

## Music Publishing & the Songwriter

By Chris Bourke

**"I have no use for bodyguards, but I have specific uses for two highly trained certified public accountants."**

— Elvis Presley.

Most of us hear a song on the radio and we sing along with the melody. When music publishers hear a song, they also hear the tinkle of a cash register, their eyes lighting up with dollar signs.

A far-fetched Scrooge McDuck scenario perhaps, but publishing is often described as the hidden gold of the music business. The hard part for songwriters though is to make sure they are the ones mining the gold. Copyright control, mechanical royalties, recoupable advances, reversion clauses... no wonder so many songwriters have settled for a couple of beers and a few dollar bills — and regretted it for life.

Publishing is complex field that

almost has to be learnt from experience. Malcolm Black would attest to that. Now working as a lawyer with a special interest in entertainment law, as a member of the Netherworld Dancing Toys he signed a publishing deal with Virgin when the band recorded *Painted Years*.

"In retrospect it was a mistake," he says. "Because there was no real reason to, but we didn't know the ins and outs. Nick Sampson and I assigned to Virgin everything we wrote for two years. We were naive. We were given the recording contract and the publishing contract together, and saw them as the same thing."

Black says the band weren't ripped off, it's just that signing a publishing deal was unnecessary. The split on the mechanical royalties — the 5.6% of the retail price of a record that the composer receives — was 70:30 in the NDT's favour. Of the 10,000 to 12,000 albums they sold, the NDTs got 70% of their 5.6% — but what did they get for the 30% they gave away?

A publisher's role is not only to collect royalty revenue for the composer — which Black now knows you can do yourself within New Zealand — but also to market the songs to reach their potential. Get other acts to cover them, get them inserted into films, TV shows or ads, and chase up overseas royalties. If that's not being done, that cut of the 5.6% is being given away for nothing.

The Netherworlds got their performance royalties for airplay and live work from APRA — "we saw about \$10,000 from the first year *Painted Years* was released, most of it from 'For Today', and since then about \$3000 a year" — and they got their publishing royalties "from day one". As is usual, their artist royalties on record sales — that is, the band's cut rather than the composers' — went back to the record company to re-coup recording costs.

Black now knows the pros and cons of selling your publishing. So for the LP the NDTs are about to release, they want to hold on to their publishing — "for as long as we can. But we'll look at publishers' offers, and see what they can do for us."

"With Virgin we lost nothing and probably gained everything [from signing a publishing deal]. You have to reach a balance between not giving away too much — and not giving away anything, so you never

get to any market at all. Theoretically, hold on to your publishing till you're really successful, and then reap the benefits, or bargain with a publisher. But the disadvantage is that you might not be successful unless you'd given it away earlier."

*"A publishing contract is like giving away your children."*  
— Paul Simon

"The money is in publishing," says Noel Agnew, an Auckland lawyer and musician who specialises in entertainment law. "Because no matter who sings or records your song, you're entitled to a royalty."

"A record contract is important, but because of the nature of it, recording costs are paid by the artist's royalties. So you've got to sell mega amounts before you see any money. The publishing contract is the way you're going to earn money."

Publishing is a commodity that can be bought and sold like a car — take Michael Jackson's purchase of the Beatles catalogue for \$47 million. "Even though as an intellectual property it's intangible, it can earn income like rent," says Gilbert Egde, formerly A&R man for CBS NZ, and now Margaret Ulrich's manager.

Before you can even talk about selling your songs though, it must be decided who owns them. The songwriter, or the whole band? "Normally when groups start out, it's all peace and love, and they share the copyrights," says Agnew. But when things turn sour — or successful — the person who actually wrote the songs might not want to include the others. Or if the songwriter kept all the publishing, and the band becomes successful, they're going to glumly watch the songwriter collect

all the publishing royalties while the artist royalties are soaked up by costs. "The Netherworlds split everything four ways, because we all contributed, even though Nick and I were the main songwriters," says Black.

But Egde says it's a "fatal

band work. It could be a positive pressure to lift the weaker member's performance and contribution."

*"If you don't go for as much money as you can possibly get, then I think you're stupid."*

— Mick Jagger



Pagan's Trevor Reekie



Malcolm Black, NDTs.

mistake" to split all the publishing among the band. "The first single comes out and it's a success. The guy who wrote it sees that the whole success of the band depends on that record: live work, TV, record sales. And it starts to rankle." So reality should come before democratic ideals. "Don't get sidetracked by [internal] politics — just ask, who wrote it?"

Songwriting credits should be broken down into the exact proportions of the various contributions, be it 80:20 or 50:50. "What appears on the record label doesn't necessarily fit the proportions," says Egde, who thinks the maximum number of splits that is still workable is eight. "Democracy can be a recipe for disaster — but then if the personalities are close, it could be a cement that makes the

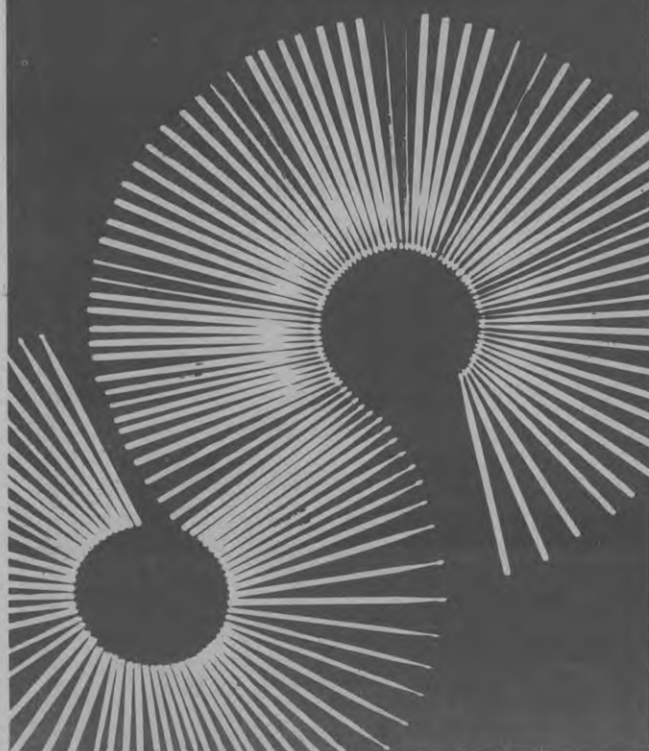
Composer sorted out, it's time to negotiate. Though the advice for songwriters is "don't sell yourselves short," a struggling unknown talking terms with an experienced publisher or record company doesn't exactly hold the balance of power. Negotiating strength is all, says Agnew — it depends on how good you are and how successful you've been. "Where you stand depends on where you sit," he says.

A publisher might offer a large advance, which could be very handy at the time, but not the best deal in the long term. Is that advance recoupable against your royalties, or recoverable. Recoupable means what you earn in royalties goes back towards paying the advance. But if the advance is recoverable, the company gets all the advance back even if the royalties don't cover it.

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- 58 Blams, Teardrops, Hall & Oates, Bill Wyman, Kotke/Redbone interviews.
- 61 Graham Brazier & Harry Lyon, Fall, Jim Carroll, Daggy & The Dickheads, Hip Sings, Dropbeats.
- 63 Simple Minds (Jim Kerr interview), Split Enz Pt 2, Renee Geyer, Nocturnal Projections, Willie Dayson Blues Band, Hunters & Collectors.
- 65 Yazoo (Alison Moyet interview), Joe Cocker, Zoo (ex-Pop Mechanix), Gariz, Jo Jo Zep.
- 69 Joni Mitchell, Dance Exponents, Who, Neighbours,

- Dire Straits, Talk Talk, Milltown Stowaways, Blond Comed.
- 73 Wham, Dead Kennedys, Coconut Rough, Angels, Marginal Era, Grammar Boys, Fishschool, John Cale.
- 75 Malcolm McLaren, Heaven 17, Joan Armatrading, Sharon O'Neill, Children's Hour.
- 75 Tim Finn, John Cale, Jonathan Richman, Hammond Gamble, Dick Driver.
- 80 Police, Paul Young, Molown feature, John Peel, Bryan Adams.
- 81 Smiths, Mockers, Def Leppard, Violent Femmes, Milltown Stowaways, Chills, Doublehappys, Marvin Gaye.
- 82 Billy Idol, Pamela Stephenson, Four Tops, Temptations, Verlaines.
- 83 Elvis Costello, Thompson Twins, Netherworld Dancing Toys, Mockers, Paul Morley.
- 84 Style Council (Paul Weller interview), Echo & The Bunnymen, Midnight Oil, Kiwi Animal, Sneaky Feelings, Depeche Mode.
- 88 Herbs, Talking Heads, Aztec Camera, Narcs, Car Crash Set, Axemen, SPK.
- 90 Lou Reed, Go-Betweens, Paul Hewson, Topp Twins.
- 91 Neil Young, Giorgio Moroder, Waterboys, David Putnam, Freudian Slips.
- 92 Hunters & Collectors, Lloyd Cole, Pelicans, Peter Carroll (Midnight Oil).
- 93 Dance Exponents, Huey Lewis, Robert Palmer (Power Station), Peking Man, This Kind of Punishment.
- 95 Chills, Killing Jake, Dazz Band, Expendables, Jason & the Scorchers, Last Man Down.
- 96 Netherworld Dancing Toys, China Crisis, Robert Plant, Doublehappys, Nils Lofgren.

- 97 Bryan Ferry, Dynamic Hepnotics, Men At Work, Bats, Shriekback.
- 98 Mockers, Mental As Anything, Reggae, John Boorman, Bird Nest Roys.
- 99 Narcs, Bangles, REM, Jerry Harrison, Christchurch 100 NZ Music 1977-85, RIL's Believe It Or Not, Tina Turner, Damned.
- 101 Verlaines, Damned, Sam Hunt, WASP.
- 102 Thompson Twins, Tom Petty, Violent Femmes, Chills.
- 103 Feargal Sharkey, INXS, Fetus Productions.
- 104 Atlantic Soul, Bob Dylan, Stevie Ray, Go-Betweens, BiFM LP, Johnny's, Roy Harper.
- 105 Hunters & Collectors, Nico, Tim Finn, Flesh D-Vice, Kiwis in Oz.
- 106 DD Smash, National Anthem, Terry Gilliam, Music Quota, Everything That Flies, Chrome Safari.
- 107 Peking Man, Cramps, Ardijah, Martin Plaza, Psychic Pet Healers, Ruby Turner.
- 108 Pogues, Bats, Flaming Groovies, Wilko Johnson, Tex Pistol.
- 109 Young One's Vix, Cramps, Residents, Herbs, Fetus Film, Saints.
- 110 Patea Moon Club, Husker Du, Patti Labelle, Art of Noise, Last Man Down, Alpaca Bros.
- 111 Simple Minds, Dance Exponents, Shriekback, Jason & Scorchers, Texas Rangers, Screaming Blue Messiahs.
- 112 Genesis, Def Jam, OMD, Jean-Paul Satre.
- 113 Hello Sailor, Sneaky Feelings, Dream Syndicate, Frankie.
- 114 Beastie Boys, Sly & Robbie, Wayne Glespie, Queen City Rocker.

- 115 ZZ Top, Billy Bragg, Look Blue Go Purple.
- 116 Shriekback, Jay Clarkson, Paul Kelly, Al Hunter.
- 117 Chills, David & David, Aotearoa.
- 118 Chrissie Hynde, Kiwi Music, Elephant, Cof's Away.
- 119 Ardijah, Crowded House, 1977-87 retrospective.
- 120 Herbs, Housemartins, Robert Cray, Triffids.
- 121 Dwight Yoakam, Simply Red, Knightsnade, A Certain Ratio.
- 122 Suzanne Vega, Los Lobos, Billy Idol, Tex Pistol.
- 123 Shona Laing, Bats, Echo & The Bunnymen, Warratohs.
- 124 Midnight Oil, Marianne Faithfull, Cult, Hunters & Collectors, Painters & Dockers.
- 125 Chills, Pogues, Nona Hendryx, Def Leppard, Jennifer Warnes.
- 126 James Brown, Los Lobos, Roy Orbison.
- 127 Warratohs, Graham Brazier, Koko Taylor, Neon Picnic.
- 128 Bryan Ferry, Gaye Bykers, Rhythm Cage, Dave Dobbyn.
- 129 Robbie Robertson, Wynton Marsalis, Feargal Sharkey, Tall Dwarfs.
- 130 Iron Maiden, Judy Mowatt, Aztec Camera, Triffids, Holidaymakers.
- 131 Headless Chickens, Sisters Of Mercy, Bailor Space, Proclaimers, Six Vials.
- 132 Ziggy Marley, Afrika Bambaataa, Verlaines, Joni Mitchell, Sinead O'Connor.
- 133 Paul Kelly, Jerry Harrison, Nick Cave, Georgia Satellites, Johnny Devlin.
- 134 Crowded House, Jesus & Mary Chain, Toy Love retro, Hothouse Flowers.
- 135 Mick Jagger, Keith Richards, Scritti Politti, NZ

- Bands 1979-82, Guns n' Roses.
- 136 Tex Pistol, Straitjacket Fits, Run DMC, Derek B, Funny Business, Robert Cray, NZ Comics.
- 137 Toni Childs, UB40, Joe Satriani, Snapper, Cassandra's Ears, Bobby McFerrin, Steve Earle.
- 138 REM, Headless Chickens in Sydney, BB King, Sonic Youth, Iggy Pop.
- 139 Sneaky Feelings, REM, Acid House special, Go-Betweens, John Dix, NZ film.
- 140 Billy Bragg, Robert Palmer, Upper Hutt Posse, Def Leppard (Phil Colleen interview), Phil Judd, Randy Newman, 60s style.
- 141 Was Not Was, Lou Reed, The Clean, Metallica, Warners, Julian Cope, Richard Thompson, Buckwheat Zydeco, America!
- 142 Mica Paris, Dusty Springfield, Yello (Dieter Meier interview), Front Lawn, NZ Xpressway music, Ozzy Osbourne, Ice-T, Cowboy Junkies, Terry Gilliam.
- 143 Simple Minds (Jim Kerr interview), Tama Janowitz, Crowded House, Metallica, Tackhead, Living Colour, Chicago Smoke Shop, Ten City, New Orleans.
- 144 The Cult, Bailor Space, Tim Machine, The The, Young Ones' Ben Elton, Anthrax, Womack & Womack, Neville Bros, Warratohs, Triffids.

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