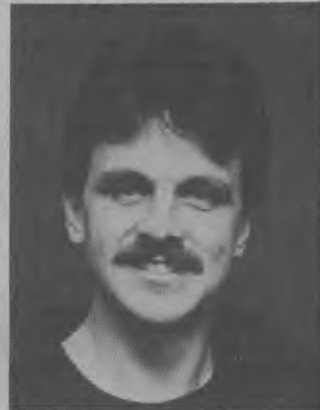


What kind of deal should you go for? "Analyse the proposal and it should pan out easily," says Eggedell. "Work out what it is you're selling and how much it's worth. When there are one or two songs it's easy, you look at the goods, the term of contract, percentage points, and estimate the



Gilbert Eggedell

value. But the potential for a con is when the writer sells the rights for what he'll be doing in one, two or five years time. There's far less idea of what it is worth. Usually the publishing is sold too cheaply. I would strongly advise people, if you can't evaluate what you're selling, don't sell it."

How to determine the value? Eggedell: "One of the ways is to forget advances, talk [percentage] points and future rights. The advantage is you're not putting a dollar figure on it, just a percentage."

"There's a very practical way to calculate what an advance should be. Look at the prospects of what you've got. Say you've got an LP out soon, with five songs on it. The sales might be 20,000 so the publishing is worth, say \$5,000. They shouldn't be advancing any more than that; maybe an extra \$1,000."

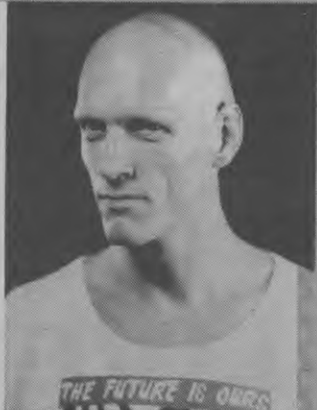
"The great danger is when you do the figures and they're offering more. The flag should go up — why are they offering so much? Are the points too low?"

Publishing royalties should be kept separate from artist's royalties — that's something to be wary of when a publishing contract is signed with a record company. Their publishing and recording divisions should be completely separate entities, but a contract might say that advances are *recoupable against income* and therefore recover costs from the mechanical royalties.

That 5.6% mechanical royalty for the songwriter/publisher is divided by the number of tracks they've written. So if only one of 12 album tracks is original, that writer gets one-twelfth of 5.6%. With singles, it doesn't matter if it's the A-side or the

B-side — the latter is worth just as much. So if the A-side is a cover, it's in your interest to have the B-side an original; of course, the more original material, the better.

"The standard American recording contract is a greater work of art than



the standard pop song. Far greater. It's been draughted by superb craftspeople to make sure no musician gets his five cents worth at any point unless it can't be helped. They never told us that in law school."
— Peter Garret, *Midnight Oil*.

Copyright is a property. Like a car it can be owned, bought, sold or "rented". One of the most crucial points in publishing is whether to *assign or license* your songs to a publisher. To assign your publishing is like selling it, whereas licensing is the same as leasing — you retain the title to your publishing, but have licensed another party to use it, usually for a "split" in the income.

"The problem with assignment is you lose all control," says Black. "It's like selling a car, you have no control over how it's used. Whereas with licensing you can stipulate how you want it used." For example, you may not want the song used in an advertisement, or the lyrics reprinted on shower curtains and beer coasters. Agnew: "If you assign your copyright, watch that they can't change the lyrics without your consent." He cites the song 'Eagle Rock' which was used to sell Eagle jeans; the first the composer knew about it was when he saw the ad on television. But his feelings on the matter were inconsequential, since his publisher had the right to use the song in this way, due to the nature of his contract.

You can hold on to your publishing in New Zealand and sub-license it overseas, perhaps to an agent who will just collect royalty revenue, or to a publisher, who will hopefully actively promote your songs. Flying Nun are about to sign a sub-licensing

deal in Australia for the publishing they hold, says business manager Gary Cope, and they are looking at doing the same in Britain and America. "Once we sub-license, we'll have a publisher actively pushing our catalogue. We want someone who's more than a collection agency."

Whether assigning or licensing, the terms of the contract are important to consider. "The time limit is crucial," says Black. "There's got to be a cut-off point where you're out of the contract." And hopefully the copyrights revert back to the ownership of the composer. A possible clause to insert in the contract is that if the publisher hasn't got a commercial release of a song within a certain period, say two years, then the artist can give notice to quit the contract. "But some major publishers won't have that clause, because it can take years to get a song covered," says Agnew. Gary Cope cites the example of the Clean, who six years after they split up had a record released in Britain. "Most contracts I see, there's very little reversion of any songs at the end of

their period," he says. "The contracts might be for five years — and a certain amount of time after that."

Gilbert Eggedell recommends that the terms of any agreements should be synchronised, so they terminate at the same time. "A clean break strengthens your position," he says. "Avoid the situation where a record deal finishes three years before a publishing deal, and you're in limbo. Nothing annoys a new company more than thinking another company is getting all the money from publishing. Your first LP for the new company will probably be a good one, because you'll try harder to prove yourself — and the old company knows that."

But the most important part of any contract, says Eggedell, is not the size of the advances or the points, but the definitions. "It's a fatal mistake not to read the definitions," he says. "Advance or royalty can have different meanings. Shrewd dealmakers can play tricks in the way they phrase things. 'Licensed territory' — does that mean New Zealand or the world? Read the

contract so you're not giving away options you shouldn't be. Look at the points, advance, territories, term. Don't look at your insurance policy for the first time when your house burns down."

New Zealand doesn't have an active industry of publishers marketing their catalogues of songs. Publishing here is generally restricted to the "banking" role — the collection of royalties. So given the size of the market, songwriters should be able to hold on and look after their own publishing. "You can retain your rights and look after it," says Gilbert Eggedell. "Chase your mechanical royalties and join APRA [the Australasian Performing Rights Association, for performance/broadcast royalties]. But once your songs get outside New Zealand, you need representation. It baffles me when people say they're 'holding their own publishing.' Somebody has to administer it."

Gary Cope: "I advise songwriters that unless they're getting an overseas release, there's no point in signing a publishing deal. If a band is

organised, they can do their own APRA returns. But some bands aren't made like that. Once you know how publishing works, it's quite easy, but if you don't, it seems complex."

Are there any advantages in signing with a New Zealand publisher? Trevor Reekie of Pagan Records: "I believe you should have someone protecting your interests. Songwriters can write the songs, but publishers have the expertise to look after them. They know how to negotiate, how to talk to the industry, whereas the artist can't. They can get things into films and jingles, and can negotiate quicker with an international company that's interested, if the publishing is locally sourced. When you're hustling a film producer to get your song in their film, competition is fierce and so is the bargaining. When a US company says they're interested in a song — for \$200 — that's a joke, but you say 'yes please'. It's incremental income and also important promotionally."

"Administering publishing overseas is a headache; it's impossible. That's when you ask ▶



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