

Turning Melodies into Royalties

The real revenue in the music business lies in the ownership rights to the hits. Here's how to publish and not perish.

by Shawn E. Rhea Posted: December 1, 1997

If you are even remotely familiar with popular music these days, you've probably heard of Missy "Misdemeanor" Elliott. Her face and body are the ones moving around inside that hydraulic space-walker suit in the video for her hit single, "The Rain." Earlier this year, Elliott released her long-awaited debut album, *Supa Dupa Fly* (Elektra Records)—on which she wrote every tune—and it immediately shot to the top of the charts. She has appeared in videos, sung and guest-rapped on hit records for artists such as MC Lyte, Jodeci, New Edition and others. Despite her recent in-your-face success, the multitalented artist will be the first to say her biggest success is as a songwriter.

Over the past four years, Elliott has penned chart-topping tunes for such platinum and gold-selling artists as Aaliyah ("4 Page Letter," "One In A Million"), 702 ("Steelo"), SWV ("Can We"), Ginuwine ("It's A G Thing," "I'm Sorry"), Jodeci ("Sweaty," "Want Some More") and LeVert ("Keys to My House"). It was, in fact, Elliott's success as a songwriter that prompted friends and colleagues to push her to record her album. "I wanted to stay behind the scenes," says Elliott. "I didn't really want to [record an album]." The truth is, she admits, there is more than enough money to be made in song writing and if you're good, there's always consistent work.

Early on, Elliott discovered a fact that most key players in the music business know, but seldom speak of: song writing and music publishing are the secret cash-cows of the industry. In 1995 (the most recent year available), music publishing generated \$6.2 billion in sales, and many of those hits songs continue to produce substantial earnings. While most people only think of a song's earning potential in relation to its current radio popularity and record sales, successful songwriters and publishing companies know that the income a song generates can stretch well past the life of its author. If handled properly, music publishing can mean not only life-long income for songwriters, but income for their children, too. Motown founder Berry Gordy recently sold 50% of his publishing arm, Jobette Music Co., for \$132 million to EMI Music Publishing (see "Soul for Sale," *Newspoints*, October 1997).

Being a successful songwriter, however, takes a lot more than creativity. It also takes a willingness to learn the details of a very complex business. If you are a songwriter looking to break into the music publishing game, and want to maximize and protect your earnings, there is a lot you need to know.

HOW DOES MUSIC PUBLISHING WORK?

As a songwriter, when you pen and obtain a copyright for your original tune, it becomes your personal

property. Any record company whose artist performs and records your song, and any person and/or organization that broadcasts, samples or prints copies of your lyrics and music must pay you to do so. In addition, you will continue to receive payment for almost any new and repeated use of your song during the copyright term (which spans the life of the author or last surviving author, plus 50 years). These earnings are called royalties, and sources for royalty income are vast and are continuously growing with the advent of new technology.

Years ago, songwriters looked to earn most of their money through performances and recordings of their songs, lyric sheet sales and radio broadcasts. Today's songwriters can add television, film, elevators, online Web sites, phone lines, restaurants, videos, clubs, stores, office reception areas and other forms of usage to their list of royalty sources. "It really is an extended notion of private property ownership," says attorney Lita Rosario, who through her Washington, D.C. based company, WYZ Girl Entertainment, administers songwriters' catalogs for a number of the major, mid-size and small music publishers.

According to Rosario, royalty sources can be broken down into four general categories: performance (which includes radio, venue and music video broadcasts, as well as concert and live television performances); mechanical (which is the standard \$6.95 per song, per copy sold that a record company and/or artist pays to a songwriter for sampling or recording his tune); synchronization (which covers the linkage of a song to a visual image, such as motion picture scores, background music in a television show or commercial); and print (lyric sheet, hymnal and music book sales). As a professional songwriter, you have two primary goals: to get your songs published through as many royalty sources as possible (so that you earn the maximum amount of money possible); and second, to retain ownership of as large a percentage of your song's copyright as possible (to ensure that you will be the one receiving those earnings).

Reaching out to all of your royalty sources and getting a commitment from them to use your songs is time consuming. Music publishing companies are set up to help you exploit your song catalog and get your songs used by as many royalty sources as possible through arrangements known as co-publishing deals. While a publishing deal is supposed to help maximize your earnings, it also requires that you actually give up a percentage of ownership of your song's copyrights.

In addition to exploiting your song catalog, co-publishing deals are also set up to help you collect certain foreign and domestic royalties, and administer your catalog. That includes registering yourself, your copyrights and your songs with the Harry Fox Agency—the only U.S. licensing agent that collects mechanical royalties—and with a performance rights society such as ASCAP, BMI or SESAC that collects your performance royalties.

Co-publishing deals, however, are not the only means to get your songs published, collect royalties or administer your catalog. Deciding whether to sign a co-publishing deal will be one of the most important decisions you make as a songwriter.

THE ART OF THE DEAL: TO SIGN OR NOT TO SIGN?

"There are different kinds of publishing situations," explains Bob Celestin, a New York-based

entertainment lawyer who often negotiates music publishing deals. "In a co-publishing deal, a publisher will ask you to give up a percentage of ownership—usually around 50%—on the copyright on your song in exchange for paying you an advance, collecting your publishing royalties, registering your copyrights and exploiting your songs," he explains.

In an administrative deal, which you can also sign with a publishing company, you pay the company 5%-15% of your publishing income for collecting your royalties during the term of your contract and throughout the world. "The publisher doesn't own any of your copyright, but he also doesn't work to exploit your song catalog," says Celestin.

The third alternative is to set up and administer your own publishing company. "In this situation, you will have to do all of the legwork to exploit your catalog, and you will usually still need to pay a lawyer to collect certain royalties, as well as register your copyrights," he adds. Celestin says the best route to publishing will depend entirely, on your financial needs, the popularity of your music catalog, and how willing you are to handle business details.

THE CO-PUBLISHING DEAL: PROS AND CONS

Claude Mitchell, senior creative director for PolyGram Music Publishing, says the benefit of a co-publishing deal is that it offers songwriters administrative, financial and creative support. "You don't have to worry about administering your catalog, and [the publisher] makes sure your money is collected. You also gain the contacts of your publishing company. I don't know many songwriters who have the time and energy to develop a relationship with every [record] label. Our job is to go out and pursue opportunities. Not only on records, but TV, film and advertising."

But Jocelyn Cooper-Gilstrap, founder and owner of Midnight Publishing, a small publishing house in New York, warns that songwriters should never rely too heavily on a publisher to exploit their catalog. "The disadvantage is that you're competing with a lot of other writers [within the publishing company] and you have to be at the top of your game," Cooper-Gilstrap says. "Having a publishing deal doesn't mean you just sit back and write. You have to pound the pavement and visit A & R [artist & repertoire] reps."

You should also be aware of the differences between the services of a large and a small music publisher. Because the larger publishers (e.g., EMI, PolyGram, Sony, and Warner Chappell) are also affiliated with large record labels, they are often privy to up-and-coming album projects and can get your songs to big-name producers and A & R representatives for consideration. The smaller publishers, however, are often much more vigilant about getting songwriters' music placed.

"Generally, the smaller company is going to work a lot harder because their catalog isn't as large," Rosario explains. "A larger publisher has a lot more songwriters and the onus is usually on the writer to get out and push their material and get it placed."

It is also important to note that small publishing companies are usually more willing to work with and develop songwriters who have never written professionally. This was the case when Cooper-Gilstrap signed multiplatinum writer/producer/artist D'Angelo to her company. When she began working with

D'Angelo, he had neither secured his recording contract with the now-defunct EMI Records, nor had he written professionally. "We shopped his music and were able to get him a song on the Jason's Lyric soundtrack," says Cooper-Gilstrap. "After that, people were interested in him as both a songwriter and an artist. The publishing connection opened the door for him."

Another difference between large and small music publishers is in the amount of advance money a songwriter can receive. Most co-publishing deals will offer you a recoupable advance. The amount of your advance will vary based on whether you are a new or established songwriter, the size and popularity of your song catalog and whether the publisher is large or small. On average, new songwriters can expect to receive \$50,000-\$150,000 in advance money from a large publisher, and \$10,000-\$50,000 from a small publisher.

While many songwriters are lured into co-publishing deals because they are offered sizable advances, Rosario stresses putting the concept of an advance into proper perspective. "You have to remember that in exchange for its co-publishing services, a publishing company receives ownership of a percentage of your copyrights," she explains. "It recoups all advances out of your portion of the catalog's earnings." In short, after signing a deal, the publishing company will earn its 25%-75% of the royalties, and will take your royalties, too, until your advance has been repaid.

Co-publishing deals can offer songwriters sizable advances and substantial services, but they also offer publishers one major benefit: long-term earnings. Most deals cover a service term of three to five years. Since a co-publishing deal actually provides the publishing company ownership of a percentage of a songwriter's copyrights—even after its services to the songwriter have ended—the publishing company can continue to make money off any songs in the catalog at the time of signing. And unless negotiated differently, a publishing company can retain its ownership until the end of a song's copyright.

Rosario advises songwriters to try to negotiate a "right of reversion" clause into their co-publishing contracts. This would limit the amount of time a publisher can hold interest in your copyright. She adds, however, that this can be a difficult concession for new songwriters to obtain. Established songwriters, however, can more easily limit the time a co-publisher can retain ownership in their copyrights. This was the case for Jimmy Jam and Terry Lewis when they signed a copublishing deal for their company, Flyte Tyme Tunes, with EMI Music Publishing three years ago. The terms of their deal call for an eight figure advance and a 50-150 split of the publishing royalties, with EMI's interest decreasing over the life of the five-year deal. When the deal expires, so does EMI's interest in their copyright.

"We were able to cut a deal like that because we held 100% of the publishing on our songs," says Jam. "There were no skeletons in the closet." The prolific songwriter/producer explains that after writing the S.O.S. Band's chart-topping single Just Be Good To Me in 1983, he and Lewis decided to set up their own publishing company and retain exclusive rights to every song they wrote thereafter. Over the years, Flyte Tyme Tune's catalog—which now contains nearly 400 tunes—has grown to include all of the songs that they penned for superstar Janet Jackson's three multi-platinum albums, as well as Boyz II Men's debut single, "4 Seasons of Loneliness," from their Evolution CD, "Can You Stand the Rain" by

New Edition, "Encore" by Cheryl Lynn, "Too Late, Too Soon" by Jon Secada, and "Saturday Love" by Cherrelle and Alexander O'Neal. At press time, Jam and Lewis had been signed to produce the soundtrack to the upcoming movie *How Stella Got Her Groove Back*, which is based on Terry McMillan's book. Jam says that he and Lewis decided to do a co-publishing deal because, even though they have little problem getting their new songs placed, they cannot spend time soliciting artists to cover their older tunes, or pitching these songs for music compilations, advertising and other publishing opportunities. To a great extent, a co-publishing deal helps the songwriters earn new income from their old songs.

These days, one of the most lucrative means for established writers to earn income off their catalog is through sampling. Jam and Lewis have had a number of their songs sampled; including Foxy Brown's recent use of "No One's Gonna Love You" (originally recorded by the S.O.S. Band) on her hit single "No One." Songwriter/producer James Mtume, who hit it big in the late 1970s and early '80s with such hits as "The Closer I Get To You" (Roberta Flack), "You Know How To Love Me" (Phyllis Hyman) and his own singles "Juicy Fruit" and "You, Me and He," has also had a number of his tunes sampled by other songwriters. "I've had more than 200 samples on 'Juicy Fruit' alone," he says.

Though Mtume has earned substantial income from sampling, he warns that songwriters need to realize they give up a significant amount of their own publishing royalties every time they sample someone else's composition. "I get 50% of the publishing [royalties] every time someone uses one of my songs," he says. In addition, he notes that unless writers hold rights to the original song, publishers are going to be reluctant to exploit a tune that has samples because they lose part of their income to another songwriter.

DO IT YOURSELF: ADMINISTRATIVE DEALS AND SELF-PUBLISHING

Few songwriters, however, have the leverage to negotiate the kind of co-publishing deal that Jam and Lewis secured. Nor do they have a catalog that contains as many hits as Mtume's. Because of this, many songwriters opt for administrative deals, which pay a publisher 5%-15% of a catalog's earnings over the life of the contract (usually three to five years). Others choose to self-publish. The key thing to remember about either of these publishing situations is that you bear total responsibility for getting your songs placed.

An administrative deal can help a songwriter in several ways. To begin with, if you have a catalog with music that already has been published, you can receive an advance. An administrative advance, however, is usually much smaller than a co-publishing advance. Under an administrative deal, the publisher will register you and each of your songs with the Harry Fox Agency and with whichever performing rights society you choose. The publisher also will be responsible for collecting all of your synchronization and print royalties, and handling legal issues.

"Administrative deals tend to work best for songwriters who have huge catalogs, and are able to get their own song published," says Rosario. "Usually, these songwriters are hooked up with successful producers, or they may be recording artists themselves and have a vehicle for getting their music published," she explains.

Missy Elliott is a songwriter who opted for an administrative deal for exactly those reasons. "I've just always felt like publishing deals were for people who were trying to make quick money," says Elliott of her decision to sign an administrative deal. Last year, she inked a deal with Warner Chappell Music to administer her Mass Confusion Publishing catalog. Back in 1993, Elliott was a member of Sista, a group that was signed to Elektra Records through Devante Swing's (of Jodeci) production deal. Though the group never released its album, some of the songs that Elliott penned impressed Swing enough to enlist her to write for Jodeci. That work turned into requests to write for other artists. But Elliott admits that in the beginning, she really had to push herself. That meant using her connections and being creative about getting to artists with whom she wanted to work. One tactic she found useful was approaching A & R representatives directly with her songs.

While A & R representatives are generally thought of as the people who ink record deals, signing talent is only a small part of their job. The other part is finding songs for artists who are in production on their albums. Elliott notes A & R people are always looking for good songs and are often very open to someone who is more interested in having their music recorded by an existing artist than in getting signed themselves.

But even if you manage to convince a big-name artist to record one of your songs, you need to be prepared to make sacrifices for the opportunity to work with that artist. One such sacrifice may be that the artist asks for a percentage of your copyright to include your song on his or her album—the philosophy being that since he or she is popular, your song will get greater exposure, thereby increasing your earnings. "You may not want to do it, but sometimes you have to get your foot in the door," advises Elliott.

In addition to being savvy about getting your songs to the right people, Elliott says if you are strictly a lyricist, it's important to hook up with a producer who can compose musical tracks and create demo tapes of your tunes. In her case, Elliott hooked up with long-time friend and producer Timothy Mosley, a.k.a. Timbaland. "That was important, because we were able to go to the labels with a full musical package," she explains.

While self-publishing requires the greatest amount of time, effort and personal connections, a new songwriter is often in the best position to go this route. Since new songwriters do not have a catalog of already recorded tunes, they are not in need of someone to find new royalty sources for their old songs. Additionally, new songwriters aren't going to be in the studio as frequently as a Jimmy Jam or Elliott, so they have more time to shop their songs and handle the administrative details of their publishing company.

Songwriter/recording artist Nokio, a member of the singing group Dru Hill, is someone who decided to go the self-publishing route. Through his publishing company, North Avenue Music, Nokio penned nearly half of the songs on Dru Hill's 1996 debut album, as well as tunes for such recording artists as Montell Jordan, up-and-comer Mya Harrison and groups such as Pure Soul. Instead of immediately going out and signing with an existing music publishing company, Nokio, decided to take on the challenge of publishing and administer his own song catalog. "I knew that as a new songwriter, I wouldn't get the best deal from a publisher," he explains.

Nokio advises anyone wishing to self-publish to take the time to really understand what they are getting into. "It's best to set up your publishing situation before you ever release a song," he says. "I ran into trouble because I hadn't registered with ASCAP before I started writing professionally." Because Nokio, his song titles and his publishing company were not registered with a performance rights agency, he says he chanced not earning his performance royalties early on.

In addition to making sure that you stay on top of administering your catalog, Nokio says you have to really hustle to get your songs recorded. "It's a constant challenge. You have to go out and make deals yourself, and any opportunity that you get, you have to let artists know that you want to work with them." Songwriters say music conferences are often good places to gain access to producers and artists.

Finally, Nokio advises that you get a lawyer as soon as you can afford one. While you can register yourself with a performance rights society and a licensing agent, you will definitely need a lawyer to register and establish your company's name and to make sure your copyrights are in order. While some lawyers will charge an hourly rate for their services, others will ask for the 5%-15% that a publishing company would take to administer your catalog. The advantage to having a good entertainment lawyer, however, is that he or she will often have the connections to help you exploit your catalog. Some may only ask for a percentage of the copyright on songs that they actually get placed or a percentage of the publishing deal they actually made for you.

"The good thing about self-publishing," says Nokio, "is that you always know what's going on with your business. It's really important that you protect your publishing because it's like your pension. If you're a good songwriter, you can always earn a living."

6 Keys to Fine-Tuning the Contract

If you decide to pursue a co-publishing deal, here are some tips to keep in mind when negotiating your contract.

1) How income is being distributed. Fifty percent of the royalties a song generates are considered the "writer's royalties." The remaining 50% are the "publishing royalties." The writer's royalties are never up for negotiation and remain the property of the songwriter. Therefore, a 50/50 royalty split is actually only 50% of the publishing royalties. Ultimately, the songwriter should retain 75% of the total royalties.

2) Gross income definition. You want to make sure 100% of the income that your songs generate is included in the definition of "gross income." Publishers will often try to remove their 25% interest from that definition to avoid bearing any of the expenses of administering your catalog and collecting your royalties. Since, however, they have 25% ownership; they should bear 25% of these costs.

3) Length of contract. Try to keep the terms of your contract to three or four years since the publishing company will retain ownership of a percentage of the copyrights on any songs that you write during this period. Also, try to negotiate a "right of reversion" clause so that you limit the time they retain ownership.

4) A means to get out of a contract if you are dissatisfied. Try to negotiate a clause that stipulates that the publisher will place a certain number of songs by a set date or you will have the option to terminate the contract.

5) Advance clause. You can ask for a clause that spells out future advances based on your songs' chart performances.

6) Mechanical royalties. If you are a songwriter with a recording contract and you record your own songs, make sure your label pays you your mechanical royalties. It is standard for a record label to make an artist bear a percentage of the mechanical royalties. But if you will be paid for your songs. The company's reasoning for not wanting to pay you is that you also earn royalties from record sales.

---END---