

Sample this!

Sampling has long since celebrated its coming-of-age, and those of us who in 1987 scoffed that the only soul in Eric B & Rakim's *I Know You Got Soul* was the animus sliced from Bobby Byrd's bass line and backbeat have long since sampled our own kicks, snares, breaks and a whole cornucopia of audio we probably shouldn't have, which still lurks ready for plundering on our hard disks. **NIGEL JOPSON** looks at the ins and outs of the act.

NOW MUSIC HAS BECOME computer-based, sampling is a tool we've all embraced and (probably) secretly love: possessing a pair of ears, technical ability and great musical taste can finally propel the backroom boys and girls onto an equal footing with musicians. After initial uncertainty, labels and publishers have sanctioned and even courted sampling, seeing it as a means of cashing in on back-catalogue.

A new phrase entered the music-biz dictionary: 'sample clearance'. To most production professionals this represents an administrative function handled by someone at the label, probably the deepest we've got involved is compiling a list of samples used. But sooner or later, working on a self-funded or on-spec production, we'll find ourselves wondering just how samples do get cleared and how much it costs.

Being an opaque process for most music people, 'sample clearance' has become an oft-used reason for late delivery. The mordacity of view depends on who you speak to. 'The whole sample clearance thing is such a bloody fiasco,' says The Orb's Alex Paterson, 'legal departments are so damned paranoid, accounting for every sound. Cydonia is filled with both samples we've cleared and samples that we've created ourselves. We had to rerecord several sections of Centuries with an orchestra from Austria because we could not get copyright clearance on a sample from a French orchestra.'

Copyright protects the expression of an idea that is saved in a permanent form, and belongs to the holder (not necessarily the composer). Copyright exists from the moment a work is created, and only the holder has the authority to give permission to copy it. For recorded music there are always two copyrights: copyright in the composition (score) and any lyrics used, normally held by a music publisher, and copyright in the sound recording, normally held by a record label.

In 1997 The Verve seemed on the verge of cracking it in the US as their album *Urban Hymns* climbed up the Billboard top 30. The key track, *Bittersweet Symphony*, was based around a sampled orchestral snippet from an instrumental version of The Stones' track *This Could Be The Last Time*. The Verve had credited Jagger, Richard and Andrew Loog Oldham (the Stones' producer) in the liner notes. They had obtained permission to use the sound recording from Decca, but this was not enough: permission should also have been obtained from Abkco for the publishing. Belatedly The Verve attempted to do so, but by now the single was breaking out and they were 'infringers'. Abkco filed suit against The Verve, there was a bitter and non-sweet battle ending in an out-of-court settlement agreeing that Abkco would be due 100% of royalties on The Verve's hit.

Capitalising on the chart success, Abkco boss Allen Klein licensed *Bittersweet Symphony* to Nike, which

ran a multimillion dollar US TV-ad campaign; later the track was licensed to Vauxhall Motors for a UK campaign. Just to rub salt in the wound, *Bittersweet Symphony* was nominated for a Grammy award ... with Mick and Keith the nominees, not The Verve (who subsequently split up). 'The last thing I ever wanted was for my music to be used in a commercial. I'm still sick about it,' says former Verve vocalist Richard Ashcroft.

Sampling and copyright have various muso-myths attached to them, the most common being the supposed freedom from clearance for samples under 2 bars or 4 seconds. 'All clearance is based on "substantial part" of the new song, there's many misconceptions about taking 30ms or 2 bars of a song, but anything that is in copyright you must clear,' confirms Emma Cummant of the MCPS sample team. There is no concept of a demo in law, so theoretically there is no distinction made between use of a sample on a demo or an album.

Another myth is that collection agencies listen to the radio to identify infringers. 'MCPS's role is not proactive, we don't go looking for sampling. We're instructed about sample use by our members, writers or publishers of music, or by our licensees, record companies. That's the only way we're notified of sample use, we don't go looking for samples!' reassures Cummant. 'Our role is simply to make sure that all the shares go on the work correctly, if there are any discrepancies we will liaise, do research, and try to resolve the issue among our members.'

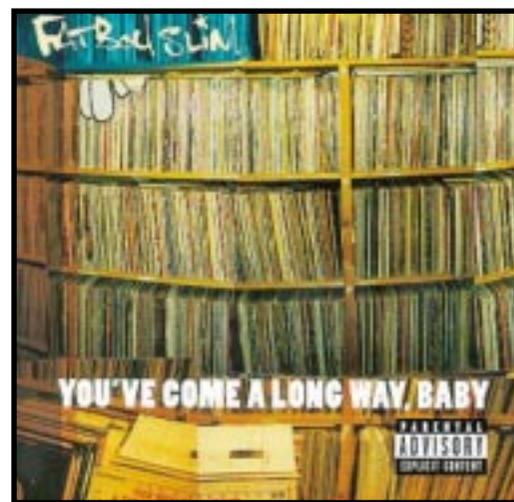
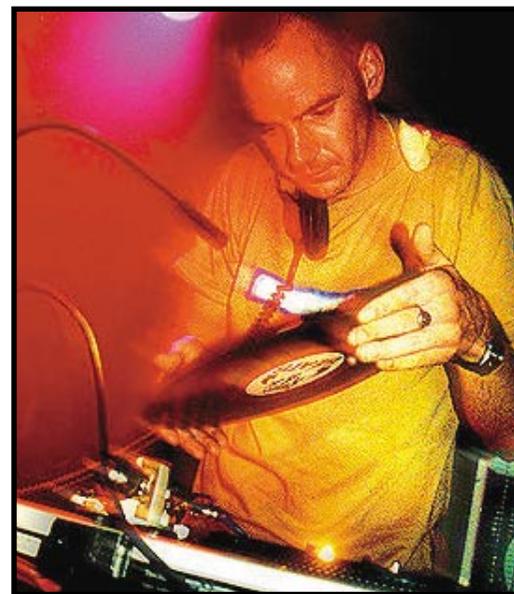
Life of copyright for a tune is the life of the songwriter plus 70 years. After this, the composition is in the public domain. This should always be checked, as many traditional tunes, like *Danny Boy*, are actually in copyright this status having been granted in some past judgement. A sound recording is protected by a 50-year copyright.

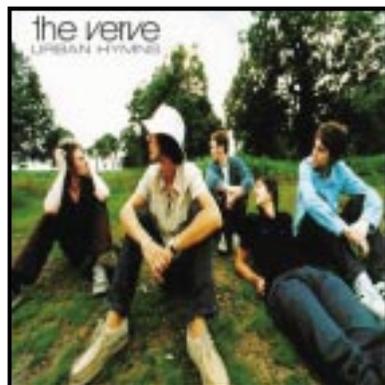
Whether you tackle the job yourself or employ an agent, the first step is to identify the true owners of the two copyrights associated with your sample. When Belgian mixmasters David and Stephen Dewaele, aka *Soulwax*, sampled Bobby Orlando, they discovered 'No one nowhere could say who owned the copyrights and when we finally found out, the guy in question had never heard of this Bobby O. Megamix. Even Ben Liebrand, who actually produced the megamix, asked to let him know who owned the rights to the song.'

In the UK, the MCPS does not clear samples, but has a wonderful resource available. 'We have a database of every work that is licensed in the UK through us, we have all the sound recording rights owners, the publishers of the work, and who owns which shares,' reveals Emma Cummant. 'If you phone us with the title of a song, and an artist or writer, we can provide you with contact names and numbers to organise clearance. It's a free service, anyone making music can phone us, managers, labels, engineers or

college students.'

Clearance of the publishing copyright is a key issue, as there's always the possibility of rerecording the audio yourself – whether this means hiring a new orchestra or faking a 1960s guitar sound – if the sound recording clearance is refused or is too expensive. Specialists agree it's important to tackle clearance at an early stage, with most agents suggesting at least 3 months lead time before release date. 'If you think "I'm only doing a few hundred copies, it might just be an underground club thing, it won't go very far," you'll still get exposure and you never know, it might get licensed to majors and compilations. If you haven't got prior clearance, a major won't touch it with a barge pole,' warns Cummant. 'If you do seek clearance at a later date as the tune is blowing up, you'll lose every





penny of the publishing ... they'll pass it as an infringement and take the full 100%.'

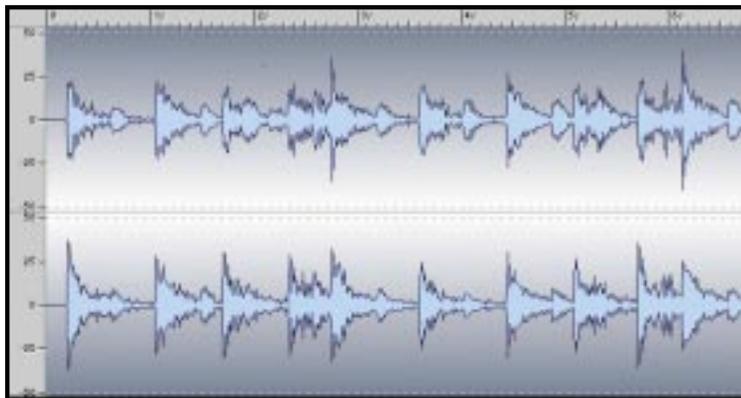
There's a short list of artists who never give permission to sample their work, including The Stones – who also stomped on Janet Jackson for singing the innocuous words 'Hey, hey, hey. That's what I say.' in her song 'What'll I Do' – plus The Beatles, Oasis, Steely Dan, Garbage and ... Kate Bush.

An oft-heard excuse from the ill-informed for some stolen zeitgeist in their mix is 'Well, Fatboy Slim does it.' Norman Cook may be the UK's most famous samplist, having plucked the *essentia* from artists as diverse as Jim Morrison (Sunset) and The John Barry Seven (The Rockafellar Skank), but a quick glance inside his CD sleeves will reveal a list of cleared credits as long as the anatomy in your own sleeves. Even when Norman sampled *Negativeland* – a US ensemble notorious for anti-corporate, pro-sampling, anti-copyright pontificating – he cleared the sample.

Fatboy sampled the *Negativeland* track Michael Jackson (Escape From Noise, 1987) for his own track Michael Jackson (Better Living Through Chemistry, 1998) clearing the sample with *Negativeland's* former label SST for a modest one-off fee. Norman then trousered a large wad when Coca-Cola licensed the Fatboy track for a TV commercial. Of course, when I say 'he' cleared the sample, I mean an industrious person at Skint records actually did the work: Saranne Reid now runs the UK's largest independent sample clearance specialists (www.sampleclearance.com), and does the business for artists like Jamiroquai and Gorillaz, and for labels including Sony, Virgin, Skint, MOS and BMG.

When I spoke to Saranne she was busy working for the Slim one. 'He doesn't come with a very detailed list, he just says "this might have been taken from here ..." there's quite a lot of work involved! But they are invariably great tracks to clear, so it's well worth it.' Saranne revealed things have changed considerably since the world was introduced to *Better Living Through Chemistry*. 'When we first started, it was simple to get buy-out deals and it was easy to negotiate terms because people didn't really understand how sampling works, it was seen as an extension of licensing; publishers were very unsure, offering deals for 2 years, they didn't realise that sample clearance is in perpetuity. As artists like Fatboy Slim made sampling into a very lucrative business, people became aware. Now I'm clearing his third album, it's a very different affair. People are coming with "Ooh, it's Fatboy Slim, let's get a massive advance on it" – of course! They'll always ask for a royalty and an advance.'

Professional fees to specialists like Saranne are fixed, with prices between £200 and £300 for each



A bottle of the Editor's favourite cheap Spanish brandy to the first reader to identify this well-known drum break.

clearance (two clearances for each sample, normally half the fee in advance.) The compensation to the copyright holder is a matter for negotiation, but could be any of three main options: a buy-out or flat fee (e.g. £1000 for all rights with no further payments or royalties); an initial fee plus a percentage of the new work (e.g. £500 upon signing, £1000 upon release by a major label, and £1000 for every 100,000 units sold); or an ongoing royalty (e.g. 2% of the statutory mechanical license rate for every unit sold).

'The royalty deals mean you are giving away a percentage of your new composition, and for any third party licensing use, you have to go back for approval,' warns Saranne. 'So if you get a nice sync for a film in America, you've got to go back for approval – every time. It's in the new composer's interest to go for a buy-out – it's paid once. You can buy out the publishing as well.'

There's also the tricky question of samples within samples – perhaps your source track has a vocal or orchestral flourish in the background – which the original artist sampled from another artist. 'The track will come to us, we'll find out who controls it, if there's a sample in the track already, then you have to clear both copyrights,' explains Saranne. 'What tends to happen with a lot of old hip-hop samples, where there's a sample within a sample, is that the original is in dispute over ownership, and then the sample unfortunately cannot be cleared.'

Those who have built careers from sampling are wise to the pitfalls and experienced enough to take a lateral approach. 2 Many DJs spoke of the problems they encountered in sampling the *Destiny's Child* track *Independent Women*: 'The people from their management were getting a bit nervous. Because this track is on the *Charlie's Angels* soundtrack they said it was impossible to license it for any compilation. But

then we came across some weird tribute-compilation that featured the track but rerecorded by a band called The Countdown Singers. We could've used that one instead but they gave it a go in the end!'

None of the experts I spoke to could point to a legal judgement in which artists had been taken to task for sampling a drum loop (no notes). Indeed, listening to Danni Minogue's song *Don't Wanna Lose This Feeling/Groove*, the mere handful of bass notes (cleared and rerecorded) define the whole single, yet would anyone have noticed if they'd sampled the entire drum track from Madonna's *Get Into the Groove*?

Also borrowing with impunity are those who've moved on from Grand Master Flash looping techniques, towards a more engineer-style approach, such as DJ Vadim who says 'Every kick, snare, high hat, roll, it's all from separate records, and I spend a hell of a lot of time around the world hunting for drum breaks that haven't been used.'

Listening to Vadim and others such as Amon Tobin, it's clear their work owes more to *musique concrete* than *Afrika Bambaataa*, and music is surely the better if it is no longer fashionable to copy out great chunks of Roy Orbison (*2 Live Crew*) and Roberta Flack (*The Fugees*). The fact that there is now a formalised legal framework opens the door to more musical constructions ... for example, Sandy Denny's beautiful voice polished and placed in a new setting by *Groove Armada* (*Remember from Lovebox*, 2002, sampling *Autopsy from Unhalfbricking*, 1969.)

While the process of copyright discovery is essentially procedural, the strategy of clearance negotiation can be a fiddly business that benefits from an extensive knowledge of current practise. Financial settlements will have a lot to do with the relationship that exists, or can be established on your behalf, between the sampler and original artist.

If the process is to be delegated and there's more than a handful of clearances, the initial budget is clearly going to be equivalent to a week or more in a top recording studio. It is possible to do it yourself, Cariad Morris, *Groove Armada's* former manager, cleared the samples on the album *Vertigo* with no prior experience, including their 1999 hit *At The River* (Old Cape Cod, licensed from K-Tel and Ambassador). 'It's very straightforward,' she says optimistically, 'you just have to understand how things work.' ■

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