

MOU 3 NMPA Late Fee Program

Overview

The Copyright Royalty Board (“**CRB**”) is empowered under U.S. copyright law to set compulsory mechanical royalty rates to be paid by music users to music publishers and foreign societies for the right to distribute and/or transmit physical and digital phonorecords, ringtones, interactive streams, and limited digital downloads. In the 2008 CRB proceeding, the National Music Publishers’ Association (“**NMPA**”) requested, and the CRB ruled, that music copyright owners are entitled to collect a late fee of 1.5% per month (18% annually) for late payments of royalties from record companies and other music users (“**Late Fees**”).

In response to the ruling, NMPA and the Recording Industry Association of America (“**RIAA**”) entered into a Memorandum of Understanding on November 10, 2009 (“**MOU 1**”). In April 2012, the parties agreed to extend similar arrangements through at least 2017 (“**MOU 2**”), and in October 2016, the parties agreed to further extend such arrangements through at least 2022 (“**MOU 3**”). MOU 3 extends the program (“**Late Fee Program**” or “**Program**”) whereby record companies and music publishers, including non-U.S. mechanical collecting societies (“**Foreign Societies**”) (music publishers and Foreign Societies referred to together as “**Publishers**”), will work together to improve mechanical licensing practices and encourage prompt dispute resolution.

Under the Late Fee Program, in exchange for waivers of Late Fees and releases from publishers that choose to participate (“**Participating Publishers**”), the major record companies (“**Participating Record Companies**”) will make bulk payments of “pending and unmatched” royalties (“**P&U Royalties**”) to be distributed to Participating Publishers. P&U Royalties are royalties due for the use of musical compositions that the Participating Record Companies have accrued but not paid due to a failure or inability to clear or obtain a license or to associate the royalties with a particular license or Publisher. The product covered by the Late Fee Program under MOU 3 includes CDs, full downloads, ringtones and certain other physical and digital product distributed in the United States, and is divided into two phases: “**Group V, Phase A Product**,” which is product released by a Participating Record Company in the years 2018 and 2019; and “**Group V, Phase B Product**,” released in the years 2020 through 2022.

The NMPA has engaged The Harry Fox Agency LLC (“**HFA**”, the “**Administrator**” or the “**Program Administrator**”) to determine and distribute payments to Participating Publishers through the Late Fee Program for Group V Product. Following the initial distribution, there will be additional distributions to Participating Publishers for Group V Product based on the continued distribution of Group V Product by Participating Record Companies.

The Administrator has established, and will follow, guidelines in distributing funds to Participating Publishers, and in resolving conflicts that arise concerning Participating Publisher market shares. Before calculating and distributing payments to Participating Publishers, the Administrator will deduct an amount to cover fees for administering the Program, which may be adjusted from time to time, and a donation to NMPA (“**NMPA Donation**”) of not more than 10% of the P&U Royalties paid by the Participating Record Companies. Additionally, the Administrator will withhold approximately 10% of the P&U Royalties paid by the Participating Record Companies as a reserve, which reserve will be distributed to Participating Publishers if and when, and to the extent that, the Administrator determines such reserve is no longer necessary. The amount the Administrator chooses to withhold as a reserve may be adjusted over time depending upon experience administering the fund.

As noted above, by participating in the Late Fee Program, Publishers will be granting waivers of Late Fees (“**Late Fee Waivers**”) to the Participating Record Companies. In the case of Group V Product, Participating Publishers are waiving the right to collect Late Fees on P&U Royalties for so long as the Participating Record Companies continue to make payments into the Program, as well as the right to collect Late Fees in certain other circumstances through the term of MOU 3. In addition, by participating in the Program, Publishers will be granting certain other releases, waivers and indemnifications to the Participating Record Companies, RIAA, NMPA, HFA, any Administrator of the Program, and other related persons and entities. Participating Publishers are agreeing to release claims arising out of the reproduction (including synchronization) and distribution of musical compositions embodied in Group V Product for which P&U Royalties are being paid, including claims for nonpayment, late payment and infringement. Participating Publishers are also agreeing to release claims arising out of the Administrator’s and other parties’ activities in connection with the implementation and administration of MOU 3. In addition, by opting in to the Late Fee Program, a Participating Publisher is agreeing to indemnify various parties from any claim arising out of the Participating Publisher’s receipt of funds under the Program, including a claim that another Publisher or entity believes the funds were wrongly claimed or accepted by the Participating Publisher.

MOU 3 and a summary of NMPA Late Fee Program terms are available at the Program website, www.NMPAlatefeesettlement.com. The summary of NMPA Late Fee Program terms explains key aspects of the Late Fee Program and includes two important attachments: Attachment 1, which sets forth the final release, waiver and indemnification provisions (“**Final Release**”), and Attachment 2, which sets forth payment and conflict resolution guidelines established by the Administrator. The Final Release and Attachment 2 also may be viewed separately on the Program website.

To the extent that the provisions of MOU 3, the Final Release, or Attachment 2 are described or summarized herein or on the Program website, the terms of MOU 3, the Final Release, or Attachment 2 will control, and not the description or summary. Please also note that NMPA and the Administrator cannot provide legal advice concerning the Late Fee Program. You should consult your own attorney if you believe you need legal guidance.

How to Participate in Group V

The Publisher (unless it is a Foreign Society) must be a member of NMPA at the time it opts into MOU 3. If a Publisher is not a member of NMPA, it may join by contacting the NMPA as indicated on the NMPA website, at www.NMPA.org.

What to do if you have not previously participated in the Late Fee Program:

An authorized representative of the Publisher must opt into MOU 3 using the HFA Agreement Portal within the Opt-In Period (which, as stated below, closes on July 2, 2018 at 11:59 PM Eastern Time).

To access the HFA Agreement Portal, please visit www.harryfox.com and click “Log into My HFA”. Enter the same email address that received the MOU 3 NMPA Late Fee Program notification. If this is your first time accessing HFA Online, please click the blue “first time here” button to set a password and proceed to your agreements. If this is not your first time accessing HFA Online, enter your password and proceed to the Agreement Portal. Click on the “MOU 3 NMPA Late Fee Program” agreement in your Agreement Portal and follow the prompts to complete the opt-in process. You will have an opportunity to review MOU 3 and the Final Release. Once you have decided to opt into MOU 3, the authorized representative should select “Yes” in response to the prompt asking if you would like to participate.

Publishers that do not opt in through the HFA Agreement Portal will not participate in Group V and cannot receive Group V funds distributed under the Program.

*What to do if you are a current NMPA member and you **have** previously participated in the Late Fee Program:*

You will be deemed to have opted into MOU 3 by default and are not required to take further action.

How to Opt-Out of Group V

NMPA members who have previously participated in the Late Fee Program but do not wish to participate in Group V must opt out of MOU 3 by visiting the HFA Agreement Portal, as described above, and selecting “No” when asked if you would like to participate in MOU 3.

Deadline to Participate / Opt Out of Group V

Publishers must choose to opt in or opt out of the MOU 3 agreement by 11:59 PM (Eastern Time) on July 2, 2018 (“Opt-In Period”). Additional information about MOU 3 and the Late Fee Program may be found at www.NMPAlatefeesettlement.com. Questions regarding this agreement or the HFA Agreement Portal may also be sent to clientservices@harryfox.com.