

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, including the four major record companies (“Record Companies”), 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 most recent CRB proceeding earlier this year, the National Music Publishers’ Association (“NMPA”) requested, and the CRB ruled, for the first time, that music publishers and foreign societies are entitled to collect a late fee of 18% annually for late payments of royalties from Record Companies and other music distribution services.

In response to the ruling, the NMPA, The Harry Fox Agency (“HFA”), and the Recording Industry Association of America (“RIAA”) entered into a Memorandum of Understanding on November 10, 2009 (the “MOU”). The MOU creates a comprehensive program (“NMPA Late Fee Program” or “Late Fee Program”) whereby the Record Companies and music publishers will work together to improve mechanical licensing practices and encourage prompt dispute resolution. The Record Companies have represented there is approximately \$275 million in “pending and unmatched” accrued royalties (the “P&U Royalties”) that have not been distributed to the music publishers. In exchange for waivers of certain late fees through 2012, the Record Companies must comply with the provisions of the MOU, including paying participating music publishers and foreign societies their respective market share of accrued P&U Royalties. The P&U Royalties will be paid in two installments to participating music publishers. The first installment will be calculated on accrued royalties of approximately \$165 million, and will be paid on a pro-rata basis to participating music publishers sometime in mid-2010. The second installment is scheduled to be distributed in late 2010 or early 2011 based on accrued royalties presently estimated at approximately \$110 million, minus accrued royalties cleared through the cooperative efforts of Record Companies and music publishers, and some P&U royalties accrued for products released since January 1, 2009.

An independent third-party Program Administrator, Kenneth Feinberg of Feinberg Rozen, LLP (the “Program Administrator”), has been engaged by the NMPA to determine and distribute payments to music publishers and foreign societies through the Late Fee Program.

The NMPA Late Fee Program is open to music publishers and foreign societies with musical compositions initially distributed by one or more Record Companies in the United States during the years 2000 through 2008. A Participating Music Publisher (but not a foreign society) must be or become a member of the NMPA on or before the date of the submission of the Opt-In Enrollment Form. Independent Record Companies will have the opportunity to participate in the Late Fee Program in the near future as Participating Record Companies on substantially the same terms as in the MOU.

There are three steps in the initial phase of the Late Fee Program.

First Step: A qualified music publisher or foreign society must submit a registration form (the “Late Fee Program Registration Form”) to the Program Administrator either electronically or by mail. A copy of the Late Fee Program Registration Form can be downloaded from the website at www.NMPALateFeeSettlement.com or the publisher may file electronically. The Program Administrator will also send a Late Fee Program Registration Form to each music publisher and foreign society identified on Record Company direct payee lists, for which the Record Companies have accurate mailing information in their royalty systems. Late Fee Program Registration Forms must be postmarked on or before February 14, 2010. A publisher needing guidance on how to fill out the Registration Form should consult the website.

IMPORTANT POINT - Registering does not commit a publisher to participate in the Late Fee Program. Registration will simply provide the Program Administrator with key information to allow the Program Administrator to determine each publisher's estimated share of the distribution. A registered publisher will not become a party to the Late Fee Program until the registered publisher "opts in" to the Late Fee Program, as described below in the "Third Step."

Second Step: After the initial registration period is over, the Program Administrator will calculate the estimated "market-share" distribution for each registered publisher and foreign society, and will send each registered publisher: (1) an estimate of the amount the publisher can expect to receive from the initial distribution of the P&U Royalties that will be distributed by the Program Administrator; (2) a copy of the MOU; and (3) an opt-in form ("Opt-In Enrollment Form"). The Opt-In Enrollment period will last for approximately 75 days from the date of the initial mailing of the Opt-In Enrollment Forms. The deadline date will be indicated in the Opt-In Enrollment Form and will also be posted on the website.

Third Step: If a registered publisher decides to participate in the Late Fee Program, the registered publisher must submit the Opt-In Enrollment Form before the deadline set by the Program Administrator. The deadline will be clearly identified on the Opt-in Enrollment Form, and will also be available through the Late Fee Program website. It is anticipated the Opt-In Enrollment Form deadline will be during the second quarter of 2010. When a publisher opts in by sending the Opt-In Enrollment Form to the Program Administrator, the publisher then becomes a Participating Publisher ("Participating Publishers") under the MOU, and will be eligible to receive its share of the distributed royalties. Once the Opt-In Enrollment period is closed, the Program Administrator will entertain limited appeals from registered publishers for 45 business days regarding the accuracy of the Program Administrator's market-share calculation.

A more elaborate description of the key provisions of the MOU follows. The NMPA strongly encourages all interested music publishers and foreign societies to register as soon as possible and to carefully review the more detailed materials they will then receive concerning the NMPA Late Fee Program.

Each publisher should seek independent legal counsel regarding all matters relating to the Late Fee Program. The NMPA, the Program Administrator, the HFA, or any vendor, agent or attorney representing the same, will not act as legal counsel to any publisher, and should not be relied on for legal advice. Each publisher seeking legal advice should obtain its own legal counsel.

Late Fee Program Description

Participation: Initially, the NMPA Late Fee Program is open to music publishers and foreign societies with musical works distributed by one or more major Record Company in the United States during the years 2000 through 2008. Music publishers who wish to participate must first register for the NMPA Late Fee Program by returning a completed Late Fee Program Registration Form.

Once registered and after the deadline for registration has passed, registered publishers will receive more detailed information about the NMPA Late Fee Program, including an estimate of their anticipated initial Group I distribution amount, and will be notified of a 75-day enrollment period during which they can opt-in to the Late Fee Program. By submitting the Opt-In Enrollment Form, a music publisher will become a Participating Publisher with respect to the distribution program for "Group I Product" (product released in the years 2006 and prior) and "Group II Product" (product released in the years 2007 and 2008). Administration costs, legal fees and the NMPA's assessments, will be recouped before market share is determined and distribution occurs.

To participate in the Late Fee Program, each publisher (but not a foreign society) must be a member of the NMPA. If the music publisher is not a member of the NMPA, it may join at the same time it registers or at any time so long as it is before or contemporaneous with filing the Opt-In Enrollment Form with the Program

Administrator. As a courtesy, payment of the first year NMPA membership of \$100 for new members is not required. Such publishers need to complete and send the NMPA Membership Application to the NMPA offices in Washington, D.C. or by filing electronically at www.NMPA.org. Instructions on how a new member will complete the NMPA Membership Application Form will be posted on the official website. For those music publishers choosing not to participate in the Late Fee Program, their respective shares of P&U Royalties will be excluded from the NMPA Late Fee Program and will remain with the major Record Companies that are participating in the NMPA Late Fee Program (“Participating Record Companies”).

A separate opt-in enrollment process will be instituted for the distribution of the Group II Product, but those publishers that enroll in the Late Fee Program only with respect to the Group II Distribution Process will not be eligible to participate in the Group I Distribution Process. Publishers who participate in the Group I Distribution Process will automatically be enrolled in the Group II Distribution Process.

Term: The MOU terminates on December 31, 2012. However, certain provisions relating to payments of P&U Royalties by Participating Record Companies for sale of Group I Product and Group II Product after that date, as described below, will remain in effect past the termination date.

Territory: The MOU covers product made and distributed in the United States, its territories and possessions.

Initial Payments: We estimate that in the second quarter of 2010, Participating Publishers will begin receiving distribution funds from the Program Administrator for accrued P&U Royalties for Group I Product based on a market share distribution methodology. Accrued royalties for Group I Product are net of the costs and fees identified above.

Product Clearance: Each Participating Record Company will use good faith, commercially reasonable efforts to clear Group II Product and product released on or after January 1, 2009 (“Group III Product”), and to implement certain Default Rules and Best Practices (as described below). To the extent a Participating Record Company clears Group II Product or Group III Product, royalties due will be payable under the applicable licenses and will no longer be treated as P&U Royalties under the MOU.

Future Payments: On a date to be determined by the Program Administrator, but after October 2010, Participating Publishers will begin receiving market share distributions for then-accrued P&U Royalties for Group II Product that remains uncleared. In addition, Participating Record Companies will continue to accrue P&U Royalties for ongoing sales of Group I Product and Group II Product and contribute them to the Group I and Group II funds on a quarterly basis. The Program Administrator will continue to make market share distributions for these ongoing sales to Participating Publishers for the indefinite future.

Audit Rights: The Program Administrator will have the right to audit Participating Record Companies on behalf of Participating Publishers for ongoing sales of Group I Product and Group II Product, and will be able to examine the P&U accrual rates used by the Participating Record Companies with respect to ongoing sales of digital product.

Default Rules: Participating Record Companies and Participating Publishers will implement certain rules to govern future licensing and payment procedures. Among other procedures, the Default Rules require Participating Record Companies to seek claims information from writers and their representatives prior to release and pay royalties through in certain situations, including some split disputes, if they are not to be potentially subject to statutory late fees (where applicable).

Best Practices: Participating Record Companies and Participating Publishers will adopt certain additional measures to improve the clearance process. Best Practices include various efforts to improve communications between Participating Publishers and Participating Record Companies, including regular meetings to review lists

of unlicensed product. A Best Practices Group, composed of representatives from Participating Record Companies and Participating Publishers, will oversee implementation of the Best Practices and Default Rules.

Releases: In consideration for making Group I and Group II payments, Participating Record Companies will receive a release from Participating Publishers for claims arising from the reproduction and distribution of Group I Product and Group II Product as to which P&U Royalties have accrued, including claims for nonpayment, late payment and infringement. The signed release will be submitted with a Participating Publisher's Opt-In Enrollment Form, but will not be effective with respect to any particular units of product until the Participating Publisher has received payment based on P&U Royalty accruals for those units under the MOU. The release will roll forward to cover additional units of product as the Participating Publisher receives additional payments based on sale of those units. Additionally, upon receiving payments under the MOU, Participating Publishers will release the parties to the MOU, Participating Record Companies, the Program Administrator and its vendors for claims relating to the implementation and administration of the MOU itself.

Late Fee Waivers: In consideration for receiving Group I and Group II payments and implementation of the Default Rules and Best Practices, Participating Publishers will agree not to collect certain late fees that would otherwise apply to Group I, Group II and Group III Product pursuant to the Section 115 statutory license or another mechanical license such as a Section 115 variance mechanical license (e.g., an HFA license). While a late fee waiver will apply to P&U Royalties attributable to ongoing distributions of Group I and Group II Product so long as a Participating Record Company continues to make its required payments of P&U Royalties, late fee waivers for Group III product will terminate upon the expiration of the MOU on December 31, 2012.

Program Administrator: Kenneth Feinberg and his firm Feinberg Rozen, LLP, will serve as the initial Program Administrator. (The NMPA may substitute a different Program Administrator in the future.) Mr. Feinberg is highly regarded and has served as the Special Master for the September 11th Victims' Compensation Fund, distributing compensation from the United States Government to the victims and victims' families. Mr. Feinberg also designed and administered a similar distribution fund for the victims of the Virginia Tech attacks. He is also currently serving as an advisor to President Obama as the Special Master for TARP Executive Compensation.

Market Share Methodology: In order to permit the Program Administrator to determine distribution amounts for Participating Publishers, the Participating Record Companies and the HFA will provide the Program Administrator with records of payments made by the Participating Record Companies to music publishers and foreign societies during the Group I period (2000-2006) and the Group II period (2007-2008). In addition, Participating Record Companies will engage outside auditors to attest to the accuracy of historical payment information and the amount of their accrued P&U Royalties for Group I Product and Group II Product. The payment data will be used by the Program Administrator to calculate the relative market shares of publishers who received payments from the Participating Record Companies during the Group I and Group II periods, which in turn will be used as the basis for distributing the Group I and Group II funds.

A Participating Publisher will have the right to make a claim to the Program Administrator to contest the determination of the market share calculated by the Program Administrator. The Program Administrator will have sole discretion to alter the market share calculation for a particular publisher or to maintain the first calculation. There will be no right of appeal after the Program Administrator adjudicates the Participating Publisher's claim.

We will update the official website – www.NMPAlatefeesettlement.com – with additional information as warranted. You may also learn more by calling our toll-free number at 1-866-249-8110.