

Group II Summary of NMPA Late Fee Program Terms

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, 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, Inc., 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. 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. Registration for the distribution of the first installment of P&U royalties accrued for products released on or before December 31, 2006 (“Group I”) has ended. Registration for distribution of the second installment of P&U royalties accrued for products released from January 1, 2007 through December 31, 2008 (“Group II”) will commence in mid-October 2010. The distribution – involving potentially up to about \$36 million – will be based on accrued royalties that have not been cleared through the cooperative efforts of Record Companies and music publishers.

Group I of the Late Fee Program was administered by Kenneth Feinberg of Feinberg Rozen, LLP. For Group II, the NMPA has engaged The Harry Fox Agency, Inc. (“HFA” or the “Program Administrator”) to determine and distribute payments to music publishers and foreign societies through the Late Fee Program. In addition, the NMPA engaged HFA to handle continuing quarterly payments for Group I Product after the initial Group I Fund is distributed.

Group II of the 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 2007 and 2008. **Publishers and foreign societies that have already opted into the Late Fee Program have already agreed to participate in the Group II phase.** Publishers who did not participate in Group I may participate in Group II by registering and opting into the Group II program. 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.

Publishers and foreign societies who have already opted into the Late Fee Program were sent a Group II Late Fee Program Confirmation Form to confirm certain information necessary to process their Group II distributions. The Group II Program Confirmation Forms were due on or before December 15, 2010 to ensure timely distribution. Publishers and foreign societies who have already opted into the Late Fee Program will be provided with a Confirmation Update Form estimating the amount the publisher or society can expect to receive from the initial distribution of the Group II P&U Royalties that will be distributed by the Program Administrator.

For publishers and foreign societies who did not participate in Group I of the Late Fee Program, there are three steps in participating in the Group II phase of the Late Fee Program:

First Step: A music publisher or foreign society must have submitted a registration form to the Program Administrator either electronically or by mail. Group II Program Registration Forms were due on or before December 15, 2010.

IMPORTANT POINT - Registering did not commit a publisher who did not opt into the Group I of the Late Fee Program to participate in Group II of the Late Fee Program. Registration simply provided the Program Administrator with key information to allow the Program Administrator to determine each publisher’s estimated

share of the Group II 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: Now that the initial registration period is over, the Program Administrator will calculate the estimated “market-share” distribution for each newly registered publisher and foreign society, and will send each newly registered publisher and foreign society: (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; and (2) an opt-in form (“Opt-In Enrollment Form”). The Group II Opt-In Enrollment period ends on March 4, 2011.

Third Step: If a registered publisher who did not opt into Group I of the Late Fee Program decides to participate in the Late Fee Program, the registered publisher must submit the Group II Opt-In Enrollment Form and it must be received by the Program Administration on or before March 4, 2011. 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.

A fuller 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 (i) the MOU, which is available at www.NMPAlatefeesettlement.com; and (ii) 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, 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.

Summary of Key Provisions of the Late Fee MOU

Term: The MOU terminates on December 31, 2012. However, certain provisions, including those 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 first quarter of 2011, Participating Publishers will begin receiving distributions of funds from the Program Administrator for accrued P&U Royalties for Group II Product based on a market share distribution methodology. Distribution of accrued royalties for Group II Product is net of the costs and fees identified in the Registration materials, Opt-In materials and the MOU.

Product Clearance: The MOU requires each Participating Record Company and Participating Publisher to take certain actions to facilitate clearance of products, including implementing certain Default Rules and Best Practices (as described below). To the extent a Participating Record Company clears a product, royalties due will be payable under the applicable licenses and will not be treated as P&U Royalties under the MOU.

Future Payments: We anticipate that Participating Publishers will begin receiving market share distributions for then-accrued P&U Royalties for Group II Product that remains uncleared during the first quarter of 2011 on a date to be determined by the Program Administrator. 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 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 product released on or after January 1, 2009 will terminate upon the expiration of the MOU on December 31, 2012.

Market Share Methodology: In order to permit the Program Administrator to determine distribution amounts for Participating Publishers, the Participating Record Companies and HFA have provided 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 have engaged 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 was 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 period, and similar calculations will be made for the Group II period, which, in turn, will be used as the basis for distributing the 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.

Attachment 1

Final Release, Waiver and Indemnification Provisions

These Final Release, Waiver and Indemnification Provisions supersede and replace Exhibit H of the MOU. The capitalized terms in this Attachment 1 have the same meaning as they do in the MOU. For clarity, “Participating Publisher” includes a Foreign Society that chooses to participate in the Late Fee Program.

(a) Release of Product-Related Claims

Participating Publisher, on its own behalf and on behalf of its Related Persons, hereby Waives, solely and to the full extent of its legal authority to do so, and solely with respect to any shares of any musical composition owned, administered or otherwise controlled by such Participating Publisher, any Claims against (i) the Participating Record Companies, the Parties, any Group I Administrator (including Feinberg Rozen, LLP) and any Group II Administrator; (ii) persons or entities acting under authority of a Participating Record Company in connection with Covered Product (e.g., authorized manufacturers, distributors, customers, and joint ventures and so-called “distributed labels” of the Participating Record Company to the extent that the Participating Record Company is obligated to pay royalties for such joint ventures and distributed labels’ Product); (iii) any vendor, service provider, or other person or entity acting under the authority of the Parties, any Group I Administrator or any Group II Administrator in connection with the MOU (and predecessor TOA) (including The Garden City Group, Inc.); (iv) any of the respective Affiliates, shareholders, predecessors, successors and assigns of the persons and entities in clauses (i) through (iii); and (v) any of the respective officers, directors, employees, agents and attorneys of the persons and entities in clauses (i) through (iv) (collectively, “**Product-Related Releasees**”) arising from the reproduction (including, as applicable under the terms of the MOU, synchronization) and distribution in the United States of musical compositions as embodied in Covered Product, including but not limited to Claims for payment, late payment, nonpayment and infringement relating to Covered Product (collectively, “**Product-Related Claims**”), from the inception of such activities with respect to Covered Product for so long thereafter as such Covered Product continues to be distributed in accordance with Section 4.22 or 5.11 of the MOU, as applicable; provided, however, that such release shall be effective only to the extent that payment of accrued P&U Royalties is made by a Participating Record Company for such musical compositions embodied in such Covered Product in accordance with the MOU and is received by the Participating Publisher (or Participating Publisher’s designee). Participating Publisher also hereby covenants not to assert Product-Related Claims that are Waived pursuant to this release, through a lawsuit or otherwise, and not to encourage litigation of such Product-Related Claims by third parties. With respect to any particular Covered Product, such release and covenant for Product-Related Claims shall be effective upon the receipt by Participating Publisher (or Participating Publisher’s designee) of funds resulting from a Participating Record Company’s payment for such Covered Product under the MOU, and thereafter shall be effective forever with respect to such Covered Product. For the avoidance of doubt, the release granted hereunder does not extend to (a) any right of public performance; (b) any right of public display; or (c) any right to prepare a derivative work, except (I) to the extent of creation of a sound recording of a musical composition in the manner permitted under Section 115, including the arrangement privilege embodied in 17 U.S.C. § 115(a)(2), or (II) use of a sound recording of a musical composition to create an audiovisual work, but solely to the extent such audiovisual work is embodied in Covered Product.

(b) Release of Process-Related Claims

Participating Publisher, on its own behalf and on behalf of its Related Persons, hereby Waives, solely and to the full extent of its legal authority to do so, any Claims against (i) the Participating Record Companies, the Parties, any Group I Administrator (including Feinberg Rozen, LLP) and any Group II Administrator; (ii) any vendor, service provider, or other person or entity acting under the authority of a person or entity in clause (i) (including The Garden City Group, Inc.); (iii) any of the respective Affiliates, shareholders, predecessors, successors and assigns of the persons and entities in clause (i) and (ii); and (iv) any of the respective officers, directors, employees, agents and attorneys of the persons and entities in clauses (i) through (iii) (collectively, “**Process-Related Releasees**”) arising from the activities of Process-Related Releasees in connection with the formation of the MOU (and the predecessor TOA) and the implementation and administration of the processes set forth in the MOU (and predecessor TOA); provided that, in the case of Participating Record Companies and any vendors, service providers or other persons or entities acting under their authority as described in clause (ii), the activities covered by this release of Process-Related Claims do not include the determination or making of payments (including deposits, advances or payment of royalties or Late Fees) pursuant to the MOU, or the

reproduction or distribution of musical compositions or obtaining of license authority therefor (it being understood that Claims with respect to such activities of Participating Record Companies are Waived only in accordance with the terms of the above release of Product-Related Claims to the extent they constitute Product-Related Claims) (collectively, “**Process-Related Claims**”). Participating Publisher also hereby covenants not to assert such Process-Related Claims that are Waived pursuant to this release, through a lawsuit or otherwise, and not to encourage litigation of such Process-Related Claims by third parties. To the extent any Process-Related Claim is based on rights in a musical composition, the foregoing release (but not the foregoing covenant) shall be effective solely with respect to any shares of any musical composition owned, administered or otherwise controlled by Participating Publisher and to the extent of such Participating Publisher’s legal authority to grant such release. Such release and covenant shall (a) become effective as of the date of receipt by Participating Publisher (or Participating Publisher’s designee) of any payment of accrued P&U Royalties by the Group I Administrator or Group II Administrator under the MOU; (b) be effective only with respect to Process-Related Claims arising through the date of such receipt, and thereafter, with respect to Process-Related Claims arising through the date of each successive receipt of a payment; and (c) as so limited, shall be effective forever with respect to such Process-Related Claims.

(c) Waiver of Unknown Claims

Participating Publisher hereby Waives, solely and to the full extent of its legal authority to do so, any right or benefit that may be available under Section 1542 of the California Civil Code or any similar laws of any other jurisdiction. Section 1542 of the California Civil Code provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Notwithstanding the provisions of Section 1542 or any similar law of any other jurisdiction, and to provide a full and complete release of the beneficiaries of the releases set forth herein, Participating Publisher expressly acknowledges that the releases set forth herein are intended to include, without limitation, Claims as described in such releases that Participating Publisher does not know or suspect to exist in his favor at the time of execution of this document, and that the provisions hereof and payments under the MOU extinguish all such Claims to the extent provided in the releases set forth herein.

(d) Indemnification for Payments

Participating Publisher, on its own behalf and on behalf of its Related Persons (“**Indemnitor**”), hereby agrees and undertakes to secure, indemnify and hold harmless (i) the Parties, any Group I Administrator (including Feinberg Rozen, LLP) and any Group II Administrator; (ii) any vendor, service provider, or other person or entity acting under the authority of any person or entity in clause (i) (including The Garden City Group, Inc.); (iii) any of the respective Affiliates, predecessors, successors and assigns of the persons and entities in clauses (i) and (ii); and (iv) any of the respective officers, directors, employees, agents and attorneys of the persons and entities in clauses (i), (ii) and (iii) (clauses (i), (ii), (iii) and (iv) collectively, “**Indemnitees**”), to the fullest extent permitted by law, against all losses, costs, expenses (including but not limited to court costs and reasonable experts’ and attorneys’ fees), claims, demands, penalties, assessments, interest charges, fees, liabilities and damages of any kind including, without limitation, exemplary or punitive damages, known or unknown, that are asserted against an Indemnitee arising out of, relating to, or in connection with an Indemnitor’s claim or receipt of funds under the MOU, including but not limited to a claim by another Publisher or third party that such funds were wrongly claimed by, paid to or accepted by such Indemnitor.

(e) Acknowledgments

Participating Publisher acknowledges and shall never dispute that (i) the Opt-In Form, which incorporates the releases, waiver and indemnification set forth above, is voluntarily entered into by Participating Publisher; (ii) Participating Publisher has been advised, and has had a reasonable opportunity, to consult with Participating Publisher’s attorney in deciding whether to execute the Opt-In Form; (iii) the releases set forth herein are of a continuing nature and will apply to certain activities occurring after the date of execution, provided that the conditions of the releases are satisfied; (iv)

payments made by Participating Record Companies under the MOU and received by the Participating Publisher (or Participating Publisher's designee) constitute good and valuable consideration for the releases set forth herein; (v) the MOU, the Opt-In Form and participation in the MOU by a beneficiary of the releases set forth herein shall not constitute an admission by such person or entity of any wrongful action or inaction; and (vi) no agreement or representation, express or implied, has been made to, or is being relied upon by, Participating Publisher with respect to the releases set forth herein, except as expressly set forth in the Opt-In Form, the MOU, this Attachment 1 to the Summary of NMPA Late Fee Terms, and Attachment 2 to the Summary of NMPA Late Fee Terms.

(f) Miscellaneous

The Opt-In Form and all matters arising out of or relating to the Opt-In Form, including the releases, waiver and indemnification set forth above that are incorporated into the Opt-In Form, shall be governed by the internal laws of the State of New York without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New York hereto. This document, in combination with the MOU and Opt-In Form, represents the entire understanding with respect to the releases, waiver and indemnification set forth herein and may not be altered or amended with respect to any beneficiary of the releases, waiver and indemnification set forth herein except by a written instrument executed by such beneficiary.

Attachment 2
Group II Payment and Conflict Resolution Guidelines

The following guidelines will be interpreted and applied by the Administrator in a manner to promote fairness in the distribution process, and are subject to the Administrator's discretion further to establish reasonable payment procedures, as provided in Section 4.20 of the MOU.

- (1) Each Publisher that has registered for Group II or previously opted into the Late Fee Program (“**Registered Publisher**”) will receive an Opt-In Form or Confirmation Update Form, as applicable, in which the Administrator will provide the estimated total market share and associated dollar amount potentially to be distributed to that Registered Publisher, exclusive of any Unassigned Shares (see below) (“**Estimated Total Publisher Share**”). The Opt-In Form or Confirmation Update Form will break down the Estimated Total Publisher Share into the market shares of particular entities owned or administered by the Registered Publisher that constitute the Estimated Total Publisher Share. In addition, the Opt-In Form or Confirmation Update Form will list any market share(s) identified by the Registered Publisher in response to Section II of the Group I or Group II Program Registration or Confirmation Forms that were also identified by one or more other Registered Publishers in response to Section II of the Group I or Group II Program Registration or Confirmation Forms (“**Unassigned Shares**”), along with the identity(ies) of the other Registered Publisher(s) that identified such Unassigned Share(s).
- (2) In returning the Opt-In or Confirmation Update Form, the Registered Publisher will be asked to review any Unassigned Shares and indicate those Unassigned Shares for which the Registered Publisher is entitled to payment, if any. If only one Participating Publisher claims an Unassigned Share through this process, it will be added to that Participating Publisher's Estimated Total Publisher Share. If more than one Participating Publisher claims an Unassigned Share, that Unassigned Share will be deemed a “**Contested Share**,” and the Participating Publishers claiming such Contested Share will be deemed “**Claiming Publishers**.” (Any Unassigned Shares that are not claimed by at least one Participating Publisher will not be included in the distribution process or used to determine Participating Record Company payments.)
- (3) The Administrator will distribute funds without waiting for resolution of the Contested Shares. The Administrator will hold funds attributable to Contested Shares in the Group I Escrow Account or Group II Escrow Account, as applicable, to permit resolution of the Contested Shares between or among the Claiming Publishers, as described below.
- (4) Claiming Publishers will have a period of forty-five (45) days from the end of the Opt-In Period (“**Initial Resolution Period**”) to submit a letter of direction (“**LOD**”) signed by all Contesting Publishers instructing the Administrator to pay the Contested Share to a specified party (or parties). The Administrator will honor LODs that provide sufficient information for the Administrator to make payment and are properly executed by all necessary parties.
- (5) If the Administrator has not received an LOD resolving a Contested Share by the end of the Initial Resolution Period, it will send a notice to all Claiming Publishers to remind them of the Contested Share and will provide an additional thirty (30) days (“**Extended Resolution Period**”) to resolve the Contested Share.
- (6) If the Administrator has not received an LOD resolving a Contested Share at the conclusion of the Extended Resolution Period, and the Administrator determines that one of the Claiming Publishers is listed as the payee for the Conflicted Share in the payment data provided to the Administrator by the Participating Record Companies or HFA (“**Payment Data-Identified Publisher**”), the Administrator will resolve the Contested Share in favor of the Payment Data-Identified Publisher. (If there is more than one Payment Data-Identified Publisher, each will receive its respective market share as reflected in the payment data.)
- (7) If none of the Claiming Publishers is a Payment Data-Identified Publisher (i.e., because the Payment Data-Identified Publisher did not opt in to the Late Fee Program) and the Contested Share is not otherwise resolved by the end of the Extended Resolution Period, the Administrator will hold the Contested Share in escrow for at least two (2) additional months (the “**Escrow Period**”), during which time a Claiming Publisher may (but is not required to) obtain and submit an LOD from the nonparticipating Payment Data-Identified Publisher, also signed

by any other necessary parties, instructing the Administrator to make payment to one or more of the Claiming Publishers, which LOD the Administrator will honor, subject to confirmation of its authenticity.

- (8) At the end of the Escrow Period, if no Claiming Publisher has submitted an LOD from a Payment Data-Identified Publisher with respect to the Contested Share, the Administrator will return the funds attributable to the Contested Share to the Participating Record Companies.
- (9) If any party files a legal or equitable action in a U.S. court of competent jurisdiction asserting rights to a Contested Share or other market share before distribution is made, the Administrator may hold the Contested Share or other market share pending direction from the court, or notification that the action has been resolved or concluded.