

MOU 2 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 for the first time, 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, The Harry Fox Agency, Inc. (“**HFA**”), and the Recording Industry Association of America (“**RIAA**”) entered into a Memorandum of Understanding on November 10, 2009 (the “**MOU**”). In April 2012, the parties agreed to extend similar arrangements through at least 2017 (“**MOU 2**”). MOU 2 creates a comprehensive 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 certain waivers of Late Fees and releases from Publishers that choose to participate (“**Participating Publishers**”), the four major record companies (“**Participating Record Companies**”) will make certain 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 2 includes CDs, full downloads, ringtones and certain other physical and digital product distributed in the United States, and is divided into four phases: “**Group III, Phase A Product**,” which is product released by a Participating Record Company in the years 2009 and 2010; “**Group III, Phase B Product**,” released in the years 2011 and 2012; and “**Group IV, Phase A Product**,” released in the years 2013 and 2014; and “**Group IV, Phase B Product**,” released in the years 2015 through 2017. Registration for the distribution of P&U Royalties accrued for Group I and Group II Product for product released prior to 2009 has ended.

The NMPA has engaged The Harry Fox Agency, Inc. (“**HFA**”, the “**Administrator**” or the “**Program Administrator**”) to determine and distribute payments to music publishers and foreign societies through the Late Fee Program for Group III and Group IV Product. Following the initial distribution, there will be additional distributions to Participating Publishers for Group III and Group IV Product based on the continued distribution of Group III and Group IV Product by Participating Record Companies. (The NMPA has also engaged HFA to handle continuing quarterly payments for Group I and Group II Product under the original MOU.) HFA has retained The Garden City Group, Inc., a respected class action administration firm, to assist with the Group III and Group IV distribution process.

The Administrator has established, and will follow, certain guidelines in distributing funds to Participating Publishers, and in resolving any conflicts that arise concerning which Participating Publisher should be paid a particular market share. Before calculating and distributing payments to Participating Publishers, the Administrator will deduct an amount to cover administrative and legal expenses associated with 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 the actual experience administering the fund.

As noted above, by participating in the Late Fee Program, Publishers will be granting certain waivers of Late Fees (“**Late Fee Waivers**”) to the Participating Record Companies. In the case of Group III Product and Group IV 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 2.

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, entities acting under the authority of these parties (including The Garden City Group, Inc.), 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 III Product or Group IV 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 2. 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 2 and a Summary of NMPA Late Fee Program Terms—Groups III and IV are available at the Program website, www.NMPAlatefeesettlement.com or by requesting copies to be mailed by calling the Administrator at 1-866-249-8110. The Summary of NMPA Late Fee Program Terms—Groups III and IV 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, and Attachment 2, which sets forth Payment and Conflict Resolution Guidelines established by the Administrator.

Please note that in any case where MOU 2 terms, or provisions set forth in Attachment 1 or Attachment 2 to the Summary of NMPA Late Fee Program Terms—Groups III and IV are described or summarized in this Opt-In Information or other Program materials, the actual terms of the MOU 2, Attachment 1 or Attachment 2 will control, and not the description or summary. Please also note that NMPA and the Administrator are not able to 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 Groups III and IV

Publishers must complete three steps to participate in the Late Fee Program and receive a distribution of P&U Royalties accrued with respect to Group III and Group IV Product:

1. The Publisher (unless it is a Foreign Society) must be a member of NMPA at the time it submits its MOU 2 NMPA Late Fee Program, Group III-B Opt-In Form ("MOU 2 Opt-In Form"). 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.
2. An authorized representative of the Publisher must complete and submit an MOU 2 Opt-In Form to the Administrator. Unless the Publisher returns a valid MOU 2 Opt-In Form that is timely received, it will not participate in the Program for Group III, Phase B and cannot receive Group III, Phase B funds distributed under the Program.
3. The Publisher must submit a completed Late Fee Program Catalog Registration Form ("Catalog Registration Form") or, if the Publisher participated in Group I and Group II of the Late Fee Program, a Catalog Confirmation Form ("Catalog Confirmation Form") to the Administrator.

The MOU 2 Opt-In Form and the accompanying Catalog Registration/Confirmation Form must be returned to the Administrator on or before October 1, 2014 ("Opt-In Period"). The completed Forms may be submitted (i) by mailing them to the Administrator, (ii) by email in .PDF format to optin@gcginc.com or (iii) by submitting an electronically signed MOU 2 Opt-In Form via the website, www.NMPAlatefeesettlement.com.