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IMPORTANT NOTICE

Pending Ory Class Action Settlement Regarding Record Clubs

Dear Publisher or Society:

A number of publishers have contacted The Harry Fox Agency, Inc. (HFA) because they have received notice of a proposed class action settlement in litigation currently pending in California federal court against the Columbia House and BMG record clubs, *Babette Ory, et al. v. Columbia House Music Club (CHC), BMG Direct (BMG)*. Plaintiffs in the *Ory* action are challenging CHC's and BMG's payment for the use of musical works at less than the full statutory rate in the absence of negotiated licenses from the publishers.

HFA is not a party to or sponsoring this lawsuit. The purpose of this letter is to provide some background information about the lawsuit and notice process based upon what HFA has learned about the lawsuit. It is also to inform you that, due to a number of serious concerns about the proposed settlement, HFA and a number of HFA-affiliated publishers expect to file an objection with the court arguing that the settlement should not be implemented.

While the information in this letter is intended to assist you in responding to the Ory settlement notice, HFA cannot provide you with individual legal advice. Accordingly, you are strongly encouraged to consult with your own legal advisor concerning this important matter. In particular, because your response to this settlement notice will impact the legal rights of other publishers with whom you co-own compositions, it is very important that you and your legal advisor consider the implications of your decisions in connection with the specific terms of any agreements between you and the other co-owners of your compositions.

Some key aspects of the settlement of which you should be aware are as follows:

Instead of ending the record clubs' practice of paying publishers at a 3/4 rate (or less) without taking licenses, the proposed settlement allows the clubs to continue to do just that. If the settlement goes into effect, it will establish a new website-based licensing scheme for the record clubs. To use a song at a reduced rate, CHC and BMG will be allowed simply to list the song on a website, along with the rate the club wishes to pay, without sending *any* notice to the publisher or its representatives. There is no floor to the rate that the clubs can propose to pay under this method and thus no guarantee that it will even be high as 3/4 of the statutory rate. Under this procedure, the publisher has 30 days to search for and identify its song on the website and then to object to the use in writing; if the publisher fails to file a written objection (or if just one of multiple co-owners of a song fails to do so), the club will be deemed to have a license at whatever rate it has chosen. The website licensing process can remain in effect indefinitely. Needless to say, this scheme turns Section 115 of the Copyright Act on its head by putting the burden on publishers to constantly monitor website postings by the clubs if they wish to object to reduced rate licenses. In HFA's opinion, this would be a terrible precedent for the music publishing industry.

In addition to this unprecedented website licensing scheme, the settlement establishes a total settlement fund of \$6.5 million to cover any and all claims class members may have against CHC and BMG for past uses (including but not limited to the claims in the lawsuit), out of which the attorneys representing the plaintiffs are eligible to receive up to one-third (over \$2 million). The settlement also allows additional deductions from the fund to cover the costs of administering the settlement, including up to \$320,000 payable to the clubs to administer the website licensing system.

The court has certified two classes, the CHC class (consisting of copyright owners whose works were used by CHC from March 20, 1999 through 60 days following the date the settlement would be implemented ("settlement period") and the BMG class (copyright owners whose works were used during the same period by BMG). **It is our understanding that BMG and/or CHC have sent class action notices to some but not all publishers in these classes. Thus, you may be a class member but may not have received a notice.**

HFA has reviewed a copy of the class notice (which is posted on and can be downloaded from the class administrator's website, at www.gilardi.com, under "Ory Settlement"). **The class notice is difficult to follow and the procedures for opting out of the settlement and for filing a proof of claim to obtain a settlement award are very burdensome.** In order to be excluded from the class or to file a proof of claim, rather than simply sending a notice in which the publisher provides identifying information about itself, the publisher must research its own records to list every song used by CHC and BMG during the settlement period and, for each title, provide songwriter information, ownership percentage, album title, the club(s) that distributed it, and additional information. (Of course, this task is made more difficult due to the clubs' failure to take licenses.) Even if you cannot supply all the required information, however, rather than submit nothing, you may wish to provide information that is as complete as possible. This is an issue that you should discuss with your legal advisor.

All members of the settlement class have a right to file written objections to the settlement prior to June 17, 2005. HFA has been advised that a number of publishers will file objections to the settlement. Prior to the June 17 deadline for objecting, HFA expects to post on its website information that will be of assistance to any of you who wish to file an objection to the settlement or to join in objections to be filed by other publishers. In choosing between opting out and objecting, it is important that you be aware that the settlement agreement does not clearly state that even a valid request for exclusion will prevent you from being bound by the terms of the new website licensing scheme. Again, this is a highly individualized decision, and you are encouraged to consult with your advisor regarding the risks and benefits of objecting to the proposed settlement.

If the settlement goes into effect, the failure to submit a valid request for exclusion to the class administrator on or before June 24, 2005 means that the publisher will be bound by the terms of the settlement, including the website licensing scheme. (A publisher that has not been excluded from the class will be bound even if the publisher collects no money under the settlement.) Proofs of claim seeking to collect a share of the settlement fund must be postmarked by June 30, 2005.

While we hope that this information is useful to you, it is not intended to be a substitute for individualized legal advice and, as noted above, you should consult your own legal advisor concerning how to proceed in connection with this settlement. At this time, of course, it is unknown how the court will rule on any objection filed by HFA and/or individual publishers. For updates on this matter, please consult www.harryfox.com, where we will post information concerning any significant developments in the case.

The Harry Fox Agency, Inc.