

Will Royalties Roll In?

The deal's done, the ink's dry on the licensing agreement, the champagne's fizzed and everyone's gone home happy that there's money to be made. It's the end of another successful licensing negotiation. Well, no. Actually it's the beginning, according to licensing lawyer and royalty audit specialist, Henna Riaz, of 360 Royalty Audit.

Inset: Henna Riaz believes that regular royalty audits can be self-financing.

Too many licensors walk away from the table assuming royalties will simply roll-in. While some carry out audits annually, others don't do it at all, and miss out on substantial amounts of royalty revenue owed to them.

Once the contract is signed, all too often, licensees inaccurately report to licensors. This happens for a variety of reasons, ranging from human error, to poor accounting systems, on occasion complacency and more commonly, misinterpretation of the provisions in the licensing agreement. The end result is that the licensee is likely to underpay the amount of royalties due. Licensors can avoid this scenario by conducting regular royalty audits.

Achieving additional revenue should be a key component of an audit, but too many focus entirely on this. We think it is important to understand that retaining a good relationship between licensor and licensee is also a fundamental part of the royalty audit process. The process has to be carefully managed to ensure that it is commercially valuable for both the licensee and licensor.

We work closely with the licensee during the audit process and having completed the audits we help them to implement our recommendations as to how they can improve their royalty accounting processes and systems.

By assigning the audit process to an impartial third

party, the licensor/licensee relationship is spared the friction that might otherwise arise. What's more, an audit should be self-financing as the underpayments an audit discovers invariably outweigh the costs of the audit.

The licence agreements are a fundamental part of the audit process and it is often as a result of complicated provisions in these agreements that 'grey' areas can arise. To have a lawyer review the licence agreement and work with the auditors to structure the scope of each audit is therefore unique, but in my opinion, necessary. Transparency and fairness are essential to maintaining a long lasting commercial relationship.

High level reviews of the licence agreements post audit are also commercially valuable to licensors and should be carried out to highlight weaknesses in the agreement and enable the licensor to implement the commercial issues that have come out of the audit. We work with the licensor and their legal team and make recommendations as to how the existing licence agreement can be improved.

If regular audits aren't carried out, there is no incentive on the licensee to ensure they are accounting correctly. Failure to act breeds complacency and could be losing you substantial amounts of revenue you are entitled too.

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