

# **Royalty Investors Getting Paid Royalties ©**

**Arthur Lipper**

**One of the key elements of the U.S. patent which I received in 2010\* regarding royalties is the requirement that the royalty be paid to the investor simultaneously with the receipt of revenue by the royalty issuer.**

**In reviewing the available references regarding royalties I continue to note the number of legal actions taken by royalty owners against royalty issuing companies, having to do with the collection of the royalties due and payable.**

**With the so-called “lock-box” approach we recommend, the royalty issuer agrees to deposit all revenues in the company’s account at one or two banks approved by the royalty owner. "All revenues" includes all forms of revenue received by the company, whether by cash, check, wire transfer, direct deposit, credit card, barter, or new forms of electronic currency. The controlling shareholders and CEO of the royalty issuer personally attest that all revenues have been deposited in these banks.**

**The royalty issuer irrevocably instructs the bank to deduct from all deposits the agreed royalty percentage and remit these funds to the account(s) designated by the royalty owners. If a bank is unwilling to accept such an instruction itself, the royalty issuer gives an agent of the royalty owners a Limited Power of Attorney, as accepted by the bank, empowering the agent to deduct the agreed percentage immediately, upon notice from the bank of the deposit of revenues. Normally, the lockbox account resides in the same bank where revenues are deposited by the issuing company, so the royalty payments are made by internal transfer and do not incur ongoing costs.**

**This procedure precludes royalty-issuing companies from not paying the agreed royalties. If there are any disputes, the royalty investors have the benefit of having already been paid the agreed funds before becoming involved in procedures involving the validity of the deduction and payment of the royalties.**

**The royalty owners are entitled to an audit of all revenues received, at least annually and possibly more frequently, or on demand with notice.**

**Another element of the patent is the requirement that the royalty issuer transfer or assign to an independent party the critical assets of the royalty issuing company, without which the company cannot function, to assure the contractual compliance of the issuer.**

**The independent party who becomes owner or assignee of the critical assets immediately gives the company an exclusive, international license to use these assets, without cost (or for a nominal \$1.00 annual fee if contractually required in the jurisdiction where the issuing company is registered) for so long as the company is in compliance with its obligations to the royalty owners. As the contractual requirement is primarily the payment of royalties as they come due, the determination of compliance is easy. It is agreed that, upon completion of an agreed level of cumulative royalty payments, ownership of the critical assets will be returned to the royalty issuing company.**

**Although the combination of the lock-box collection process and securing compliance with critical assets is intended to be very effective, some investors may be concerned that revenues of the issuing company could be siphoned off or directed to another company. This possibility is addressed by requiring the controlling shareholders of the royalty issuing company to personally attest that**

**all revenues, in whatever form, are appropriately deposited. These assets include all of the present and future intellectual property of the royalty issuing company.**

**In most case, the royalties we recommend feature a redemption right, allowing the royalty issuer to terminate royalty payments upon payment of a negotiated fee. The terms of royalty redemption are negotiated at the time of purchase and should result in the royalty investors receiving a fair and equitable return, possibly based on the net present value of the future royalty income stream they are surrendering at the time of redemption.**

**Risk cannot be entirely eliminated; that is not the goal here. Any transaction involves some degree of risk if it is based on future events and performance. Royalty investors may still lose money if the projected revenues are not achieved, and if no provisions for this possibility (for example, a third-party assurance) are in place. Companies may be forced to close, and some of them will be reorganized.**

**However, it is logical to believe that if reorganized and refinanced, as frequently happens, the successor company will need to use the intellectual property and other critical assets of the original royalty issuer. In this case it should be possible to negotiate a new royalty agreement, or simply keep the original agreement in place.**

**Royalties are the better way of both investing in and financing of privately owned companies.**

**\* <http://j.mp/lipperroyaltiespatent>**

**Arthur Lipper, Chairman  
British Far East Holdings Ltd,**

**© Copyright 2015 British Far East Holdings Ltd.  
All rights reserved.**