



# Future of Music Coalition

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## Payment Processor Best Practices for Online Copyright Infringement: What it Means for Musicians

Intellectual property theft on the internet is as rampant as it is difficult to effectively curtail. Musicians are among those who earn a living — at least in part — from their copyrights, which is why Future of Music Coalition is generally supportive of efforts to protect artists' rights online.

Congress has been trying to find ways to deal with this issue but has yet to enact any legislation. In the meantime, the Obama administration has encouraged members of the private sector to take voluntary measures to address intellectual property and copyright infringement online. One recent effort is a “best practices” system for payment system operators — think credit card companies and PayPal. Below, we will examine the “who’s” and the “how’s” of these best practices, and how they relate to musicians.

### The Who:

American Express, Discover, MasterCard, PayPal and Visa are among the payment processors who have agreed to adopt these measures. Rightsholders — the folks who own the ©s and ®s — can now interface with the payment processors regarding alleged infringement of their rights on the web. The payment processors will then contact the online merchant — a site or service offering the content — about the complaint. A limited number of players are involved, which should make it fairly efficient. But how does it all work?

### The How:

First off, the best practices are about creating pathways of communication and transparency. Payment processors agree to create a mechanism easing the way for rightsholders to bring complaints of infringement. They will also clearly state on their websites that their services will not be provided to companies that sell infringing products. **Email addresses are provided for reporting infringement to the payment processors on their respective sites.** Labels and individual musicians are among those who can contact the payment processor(s) to request action.

If you're a musician signed to a recording contract, you might first contact your label. However, you can also reach out directly to those facilitating the transactions (like the aforementioned credit card companies). Under the agreement, the payment processors will take action when sent a request via email.

### What Do You Do if Someone is Selling Your Intellectual Property?

When a rightsholder sends a complaint to a payment processor there are a few things that need to be included:

a) Specific information regarding the alleged infringement, including the website address and locations on that site where allegedly infringing material is being sold. If non-infringing material is also being sold on the site, a rightsholder must clearly identify only the infringing material.

- b) Evidence that the payment processor's services are being used to purchase the allegedly infringing material — use a screenshot that includes the payment processor's logo.
- c) If you have them, you can send copies of either a Digital Millennium Copyright Act (DMCA) notice or cease-and-desist letter to the allegedly infringing merchant. Or, you can simply attest to the payment processor that the merchant does not have a license to sell their goods.
- d) Statement that the rightsholder is, in fact, the rightsholder. This does not have to be formal; just a basic assertion that you hold the copyright(s) in question.

For the system to work smoothly, it is important that you promptly respond to a payment processor's communications with any relevant information.

### **Payment Processor Responsibilities Following a Rightsholder Complaint**

Under the agreement, the payment processors will investigate claims made by rightsholders to make sure that merchants aren't processing illegal transactions with legitimate payment systems.

The credit card companies will ask for evidence from the merchant to show that they are not selling infringing goods. If the merchant cannot provide such evidence, or the payment processor reasonably determines that the merchant is selling infringing products, they will tell the merchant to prevent such activity in the future.

If the merchant does not heed these warnings than the payment processor will suspend or terminate service to that merchant for U.S. account holders. The payment processors will have procedures in place for a merchant to dispute any complaints made against it. And, if a merchant provides evidence that they are not infringing, the payment processor can ask the rightsholder for an agreement that would reimburse the payment processor for any costs associated with resolving the dispute.

### **Bottom Line for Musicians**

While these best practices may seem to apply mostly to labels and corporate content companies, it is also available for individual musicians to make use of. The system was designed so that any rightsholder can contact payment processors and ask them to stop servicing websites that sell illegitimate goods. As it is a voluntary agreement, however, the best practices are not legally binding. Still, the framework does establish joint participation while offering safeguards that mimic a type of due process for websites that have been lodged with a complaint. We think that for musicians looking for recourse in specific incidents of copyright infringement, this is a good place to start.

If you end up using this system, the Office of the Intellectual Property Enforcement Coordinator (IPEC) would like to hear about how it worked for you. Contact [intellectualproperty@omb.eop.gov](mailto:intellectualproperty@omb.eop.gov) or send an email to [info@futureofmusic.org](mailto:info@futureofmusic.org) and we will make sure it gets reviewed.