

statutory authority to order the precontroversy distribution of satellite royalties. In the Copyright Royalty Judges Program Technical Corrections Act, Congress amended Section 801(b)(3)(C) to clarify that a partial distribution of royalties could be made at any time after the tiling of claims. Pub. L. No. 109-303 §§ 3, 5, 109th Cong., 2nd Sess. (2006), 120 Stat. 1478. Congress reaffirmed the Judges' authority to partially distribute statutory royalties in advance of the declaration of a controversy. Section 801(b)(3)(C) provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section . . . 119 . . . may, upon motion of one or more of the claimants and after publication in the *Federal Register* of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants –

- (i) agree to the partial distribution;
- (ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);
- (iii) file the agreement with the Copyright Royalty Judges; and
- (iv) agree that such funds are available for distribution.

17 U.S.C. § 801(b)(3)(C). The statutorily prescribed deadline for filing claims for the 2011 Funds has passed. Furthermore, the Phase I Parties (1) agree to the partial distribution; (2) agree that the requested funds are available for distribution; (3) agree to sign the separate agreement contemplated in Section 801(b)(3)(C)(ii) obligating them to return any excess royalty amounts received, in a form to be provided by the Office or the Copyright Royalty Judges, in advance of the requested distribution; and (4) agree to file such an agreement with the Copyright

Royalty Judges or as otherwise directed.

II. Distribution of 50% of the 2011 Funds is Warranted.

The Judges have consistently granted the Phase I Parties' requests for 50% distributions of the annual cable and satellite royalty funds, including recent partial distributions of the 2010 cable and satellite royalty funds. *See* Order in Docket No. 2012-4 CRB 2010 CD (Sept. 14, 2012) (granting Phase I Parties' request for a 50% partial distribution of the 2010 cable royalty funds); Order in Docket No. 2012-5 CRB 2010 SD (Sept. 18, 2012) (granting Phase I Parties' request for a 50% partial distribution of the 2010 satellite royalty funds); *see also* Order in Docket No. 2011-7 CRB 2009 CD (Oct. 13, 2011) (granting Phase I Parties' request for a 50% partial distribution of the 2009 cable royalty funds); Order in Docket No. 2011-8 CRB 2009 SD (Oct. 13, 2011) (granting Phase I Parties' request for a 50% partial distribution of the 2009 satellite funds).

A partial distribution of the 2011 Funds would ensure that Phase I Parties are not deprived of a substantial amount of the royalties that belong to them during a period that may be several years long. In the past, the Copyright Office recognized that the earliest possible receipt of the maximum available royalties by copyright owners is an important objective of the Copyright Act. *See, e.g.,* Order in Docket Nos. 94 CARP (92-CD & 93-CD) at 2, 5 (Sept. 26, 1994) ("September 26, 1994 Order") (Office distributed 80% of the 1992 and 1993 cable royalties, noting that the "intent of the law favored early distribution"); *see also* Order in Docket No. 94 CARP (92-CD & 93-CD) at 2 (Sept. 12, 1994) ("September 12, 1994 Order") (referring to the "overall intent of the subparagraphs in [Section 111(d)(4)] in favor of early distributions"). Accordingly, pre-proceeding distributions of satellite royalties under Section 119(b)(5)(C) may be made in circumstances where there may be a significant delay

between the filing of claims and the initiation of proceedings. *See Order, In the Matter of Distribution of the 2001, 2002 and 2003 Satellite Royalty Funds*, Docket No. 2005-2 CRB SD 2001-2003 (Sept. 13, 2005) (making a precontroversy partial distribution of satellite royalties “without prejudice concerning the final distribution percentages that shall be determined at a future time”).

A distribution of at least 50% of the 2011 Funds would ensure that the Phase I Parties are not further deprived of a substantial amount of the royalties paid for the use of their copyrighted works. The Phase I Parties have agreed to the amount of the proposed partial distribution. Furthermore, the Phase I Parties believe that the size of the remaining undistributed amount, along with the parties’ commitment to repay any excess distributions, would be more than sufficient to satisfy any Phase II claims and the costs of any distribution proceedings involving these funds.

Finally, because the amounts to be distributed to each Phase I Party will remain confidential, the Phase I Parties further move to have the distribution made in bulk to a common agent for all the Parties. In this regard, the Phase I Parties have signed a confidential distribution agreement with the Office of the Commissioner of Baseball (“Baseball”), agreeing that Baseball will serve as the common agent for the distribution of royalties among the individual Phase I Parties.²

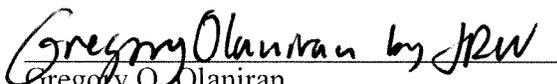
² Although this request seeks partial distribution of only 50% of the available royalties, the Phase I Parties do not concede that 50% is the maximum partial distribution of available cable or satellite royalties that may properly be made for any given year.

CONCLUSION

For the reasons set forth above, the Phase I Parties respectfully request that the Judges, pursuant to 17 U.S.C. § 801(b)(3)(C), publish for comment in the *Federal Register* the proposed partial distribution of 50% of the satellite royalties held in the 2011 Funds, and thereafter, grant the Motion and order a 50% partial distribution of the 2011 Funds to the specified common agent by no later than March 15, 2013.

Respectfully submitted,

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Dated: December 12, 2012

CERTIFICATE OF SERVICE

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