

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

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_____))
In the Matter of))
))
Distribution of the))
2014 Cable Royalty Funds))
_____)

Docket No. 16-CRB-0009CD
2014

**MOTION OF THE PHASE I PARTIES FOR
PARTIAL DISTRIBUTION OF 2014 CABLE ROYALTY FUNDS**

The undersigned representatives of all the Phase I claimant categories to which Section 111 cable royalties have been allocated in prior cable distribution proceedings (“Phase I Parties”) hereby move the Copyright Royalty Judges (“Judges”) to order a partial distribution of 60% of the 2014 cable royalty funds (the “2014 Cable Funds”) to the Phase I Parties.

According to the Licensing Division of the Copyright Office, as of December 31, 2015, the amount of the 2014 Cable Funds available for distribution totaled approximately \$233,557,040.34. Based on this amount, a 60% partial distribution of the 2014 Cable Funds would total approximately \$140,134,224.20. The circumstances warrant a partial distribution of 60% of the 2014 Cable Funds as soon as feasible.

I. THE JUDGES HAVE AUTHORITY TO ORDER PRECONTROVERSY PARTIAL DISTRIBUTIONS

Section 111 of the Copyright Act favors the early distribution of cable royalties. *See* 17 U.S.C. § 111(d)(4)(C). Chapter 8 of the Copyright Act vests the Judges with ample statutory authority to order the precontroversy distribution of cable 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 can be made at any time after the filing of claims. *See* Pub.

L. No. 109-303 §§ 3, 5, 109th Cong., 2nd Sess. (2006), 120 Stat. 1478. Congress reaffirmed the Judges' authority to order partial distributions of 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 111 . . . 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).

Here, the statutorily prescribed deadline for filing claims has now 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 Judges or the Copyright Office; and (4) agree to file such an agreement with the Judges or as otherwise directed.

II. DISTRIBUTION OF 60% OF THE 2014 CABLE FUNDS IS REASONABLE AND APPROPRIATE

The Judges have consistently granted the Phase I Parties' motions for partial distributions of the annual cable royalty funds, most recently a 60% partial distribution of the 2013 cable royalty funds. *See Order Granting Motion of Phase I Claimants for Partial Distribution*, Docket No. 14-CRB-0010 CD (2013) (May 28, 2015) ("May 28 Order") (finding requested 60% partial distribution to be "reasonable and appropriate"); *see also Order Granting Motion of Phase I Claimants For Partial Distribution*, Docket No. 14-CRB-0007 CD 2010-12 (Dec. 23, 2014) (finding requested 60% partial distribution to be "reasonable and appropriate"); *Order Granting Phase I Claimants' Motion for Partial Distribution of 2011 Cable Royalty Funds*, Docket No. 2012-9 CRB CD 2011 (Mar. 13, 2013) (granting Phase I Parties' request for a 50% partial distribution of the 2011 cable royalty funds); *Order Granting Phase I Claimants' Motion for Partial Distribution of 2010 Cable Royalty Funds*, Docket No. 2012-4 CRB CD 2010 (Sept. 14, 2012) (granting Phase I Parties' request for a 50% partial distribution of the 2010 cable royalty funds).

Indeed, the Copyright Office has previously determined that partial distributions well in excess of 60% were reasonable and appropriate under the circumstances. *See, e.g., Order*, Docket No. 94 CARP (92-CD & 93-CD) at 2, 5 (Sept. 26, 1994) (granting motion for partial distribution of 80% of 1992 and 1993 cable royalty funds) ("September 26, 1994 Order"); *Order*, Docket No. 2000-6 CARP CD 98 (Oct. 12, 2000) (granting Phase I Parties' motion for partial distribution of 75% of the available cable royalties on deposit for the 1998 cable royalty fund and acknowledging that retention of 25% of the available royalties would suffice to resolve any outstanding controversies related to those funds); *Distribution Order*, Docket No. 2000-7 CARP SD 96-98 (Oct. 12, 2000) (granting Phase I Parties' request for partial distribution of 75% of the

available satellite royalties on deposit for the 1996, 1997, and 1998 satellite royalty funds). Thus, the Phase I Parties do not concede through this motion that a 60% distribution is the maximum partial distribution of royalties that should be made from the 2014 Cable Funds. The Phase I Parties reserve the right to move for additional partial distributions from the 2014 Cable Funds as may be appropriate after the nature and extent of any *bona fide* disputes come into better focus.

A partial distribution of 60% of the 2014 Cable Funds would ensure that the 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 has 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.*, September 26, 1994 Order at 2, 5 (Office distributed 80% of the 1992 and 1993 cable royalties, noting that “the intent of the law favored early distribution”); *see also Order*, 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 cable royalties under Section 111(d)(4)(C) may be made in circumstances where there may be a significant delay between the filing of claims and the initiation of proceedings. *See, e.g.*, September 12, 1994 Order at 2; September 26, 1994 Order at 2; *see also Order*, Docket No. 2007-3 CRB CD 2004-2005 at 3-4 (Apr. 10, 2008).

A distribution of at least 60% of the 2014 Cable Funds to the Phase I Parties would ensure that they 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 submit that the undistributed amount, which

totals over \$93,422,816.00, along with each party's commitment to repay any excess funds will be more than sufficient to satisfy any remaining controversies involving these funds.

Finally, the Phase I Parties request that the Judges allocate to each Phase I Party a percentage share of the 60% partial distribution as set forth in Attachment A to this Motion. The percentage shares in Attachment A to this Motion are based on the percentages awarded pursuant to the Judges' May 28 Order.¹

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 60% of the royalties contained in the 2014 Cable Funds, and thereafter grant this Motion and order a 60% partial distribution of the 2014 Cable Funds to the Phase I Parties as soon as feasible.

¹ This motion does not reflect agreement among the Phase I Parties that the *final* 2014 cable royalty distributions should be based on the allocation percentages set forth in Attachment A to this Motion or in the May 28 Order, nor does it reflect any agreement by all of the parties with the awards made by the Copyright Royalty Judges in the 2004-2005 proceedings, which provided the basis for the allocation percentages in Attachment A of the Judges' May 28 Order. Each Phase I Party reserves the right to seek shares of the 2014 Cable Funds for itself and for other parties that differ from those awarded in the 2004-2005 proceedings or reflected in Attachment A.

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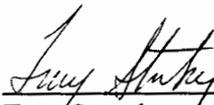
Dated: February 5, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2016, a copy of the foregoing Joint Motion of Phase I Claimants for Partial Distribution of the 2014 Cable Royalty Funds was sent by Federal Express to the following:

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ATTACHMENT A

The following are the percentage shares agreed to by the Phase I Parties for purposes of allocating any partial distribution of the 2014 cable funds ordered by the Judges pursuant to this Motion: NPR should first receive 0.18% of the entire amount to be distributed after which the remaining amount should be distributed as follows:

<u>CLAIMANT GROUP</u>	<u>ROYALTY FUND</u>		
	<u>BASIC</u>	<u>3.75</u>	<u>SYNDEX</u>
Program Suppliers	33.7%	36.8%	96.2%
Joint Sports Claimants	33.8%	36.9%	0.0%
U.S. Commercial Television (NAB)	16.1%	17.5%	0.0%
Public Television	7.3%	0.0%	0.0%
Music Claimants	3.8%	3.8%	3.8%
Devotional Claimants	3.4%	3.7%	0.0%
Canadian Claimants	1.9%	1.3%	0.0%