

**Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, DC**

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**In the Matter of**

**Distribution of the  
2008 Cable Royalty Funds**

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**Docket No. 2010-6 CRB CD 2008**

**COMMENTS OF  
THE PHASE I PARTIES**

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”) submit the following Comments in response to the October 20, 2010 Notice published at 75 Fed. Reg. 66798 (October 29, 2010) (“Notice”). The Phase I Parties are identified in the Notice. *See id.* at 66799, fn 1. The Notice seeks comments related to the Motion of Phase I Claimants for Partial Distribution (filed September 21, 2010) (“Motion”), which requests an initial distribution of 50% of the 2008 cable royalties. In addition, the Notice seeks comments regarding the existence of Phase I and Phase II controversies as to the 2008 fund.

The Phase I Parties support the Motion. In addition, with due recognition that a partial distribution process may take over a month and that the Copyright Royalty Judges (“Judges”) have many pending matters, the Phase I Parties seek a prompt distribution. Given the current condition of the economy, obtaining an order authorizing partial distribution prior to December 15, 2010 is important to the Phase I Parties, some of whose fiscal years conclude in December. The Phase I Parties, therefore, respectfully request that the Judges authorize distribution of these

funds as expeditiously as possible and, in any event, enter an order authorizing a 50% distribution of 2008 cable royalties no later than December 15, 2010.

1. As the Notice recognizes, the Motion requests a distribution pursuant to Section 801(b)(3)(C) of the Copyright Act, 17 U.S.C. § 801(b)(3)(C), which provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111, 119, or 1007, 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); *see* Notice at 66799.

In the Motion, the Phase I Parties stated that they (1) agree to the partial distribution; (2) would sign a separate agreement as contemplated by subparagraph (ii) of Section 801(b)(3)(C); (3) would file the agreement with the Judges; and (4) agree that the requested funds are available for distribution. Motion at 3. Consequently, under Section 801(b)(3)(C), the Judges may distribute the royalty fees sought by the Motion if, “based upon” responses timely received in response to the Notice, the Judges conclude that “no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution.” 17 U.S.C. § 801(b)(3)(C).

2. The Phase I Parties strongly support distributing the requested funds in accordance with the Motion, as described in Attachment A thereto. As the Motion indicates, there is ample

precedent for partial distribution of statutory royalties in advance of the declaration of a controversy. *See, e.g.*, Order Granting Phase I Claimants' Motion for Partial Distribution of 2007 Cable Royalty Funds, *In the Matter of Distribution of the 2007 Cable Royalty Funds*, Docket No. 2009-6 CRB CD 2007 (October 22, 2009) (granting a 50% partial distribution under 801(b)(3)(C) in the 2007 cable distribution proceeding).

The Notice requested comments on the “existence and extent of any controversies to the 2008 cable royalty funds at Phase I or Phase II with respect to those funds that would remain if the partial distribution is granted.” Notice at 66799. The Phase I Parties maintain that 100% of the 2008 cable royalty funds remain in controversy, but the existence of such a controversy does not preclude the Judges from ordering a partial distribution even where the controversy exists over the funds subject to the partial distribution. As the Judges recognized in a prior proceeding, there is a clear distinction between motions requesting partial distribution under Section 801(b)(3)(A) of the Copyright Act, 17 U.S.C. § 801(b)(3)(A), and those (such as the underlying Motion) requesting distribution under Section 801(b)(3)(C). While Section 801(b)(3)(A) authorizes the Judges to distribute royalties collected under Sections 111, 119 and 1005 “to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not in controversy,” Section 801(b)(3)(C) authorizes the Judges to distribute such royalties without regard to whether the fees are in controversy. In ruling upon a request to distribute the 2003 cable royalties, the Judges aptly explained:

Section 801(b)(3)(A) was crafted to enable the Board to make a distribution of royalties without conducting a proceeding, either in full or in part, *provided* that the parties agreed that the requested amount was not in controversy. This provision is in contrast to 801(b)(3)(C), where a partial distribution may be made of royalties, with the agreement of the parties, regardless of whether these royalties are in controversy.

*Distribution of the 2003 Cable Royalty Fund*, 72 Fed. Reg. 46516, 46517 (August 20, 2007) (quoting Distribution Order, Docket No. 2005-4 CRB CD 2003, at 2 (October 26, 2005)) (emphasis in original). Thus, the Judges can order a partial distribution even though a controversy remains with respect to the funds to be distributed.<sup>1</sup>

3. There are no Phase I settlements concerning any portion of the 2008 cable royalties. As a result, Phase I controversies exist among all of the different Phase I categories as to the distribution of the 2008 royalty fund. The individual Phase I Parties will separately file comments apprising the Judges about the status of any Phase II controversies existing in and among those Parties. The Motion did not identify any Phase I or Phase II settlement and, as explained above, settlement is not a prerequisite to receiving a partial distribution under Section 801(b)(3)(C). As the Motion states, each Party has agreed to accept a percentage share of the requested 2008 partial distribution share that is in the same relative proportions of the average awards that the respective Phase I Parties received in the 2004-2005 Cable Royalty Distribution Proceeding, as announced in the Judges' Final Distribution Order of July 21, 2010, *In the Matter of Distribution of 2004 and 2005 Cable Royalty Funds*, 75 Fed. Reg. 57063 (September 17, 2010). As stated above, the relative percentage shares of all the Phase I Parties are set forth in Attachment A to the Motion.<sup>2</sup> If a Phase I Party's final allocation is less than what it would receive if the Motion were granted (based upon the 2004-2005 percentage shares), that Party will,

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<sup>1</sup> In 2006, Section 801(b)(3)(C) was amended in the Copyright Royalty Judges Technical Corrections Act, Pub. L. No. 109-303 §§ 3, 5 109<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2006), 120 Stat. 1478. The amendment made it clear that the Judges could make partial distributions of royalties from funds in controversy at any time, including before the initiation of a formal royalty distribution proceeding.

<sup>2</sup> These comments do not reflect agreement that the final 2008 cable royalty distribution should be based on the awards made in the 2004-2005 cable royalty proceeding or agreement by all the Parties with the awards made by the Judges in the 2004-2005 proceeding, as those awards are still subject to appellate review. Each Phase I Party reserves the right to seek shares of the 2008 Funds for itself and for other parties that differ from those awarded in the 2004-2005 cable royalty proceeding. In addition, the Phase I Parties do not concede through this motion that a 50% distribution is the maximum partial distribution of cable or satellite royalties that should be made for any given year.

of course, be obligated to refund the excess royalties with interest in accordance with the agreement to be executed under Section 801(b)(3)(C)(ii) of the Copyright Act.

### CONCLUSION

Accordingly, the Phase I Parties request that the Judges, after consideration of comments filed by other interested claimants, grant the Motion and proceed promptly with the partial distribution of 2008 cable royalties pursuant to 17 U.S.C. §801(b)(3)(C) as requested by the Motion, so that the order authorizing distribution will be entered on or before December 15, 2010.

Respectfully submitted,

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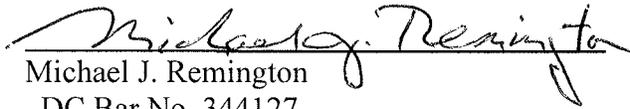
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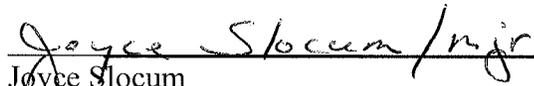
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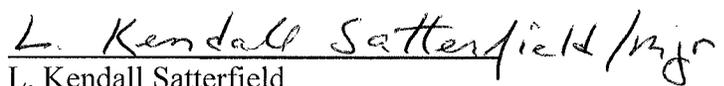
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Dated: November 24, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of November, 2010, a copy of the foregoing Comments of the Phase I Parties for Partial Distribution of the 2008 Cable Royalty Funds was sent by Federal Express to the individual listed below:

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