



Before the
COPYRIGHT ROYALTY JUDGES
The Library of Congress
Washington, D.C.

_____))
In the Matter of))
))
Distribution of the))
2013 Satellite Royalty Funds))
_____))

Docket No. 14-CRB-0011-SD
(2013)

MOTION OF PHASE I CLAIMANTS FOR
PARTIAL DISTRIBUTION OF 2013 SATELLITE ROYALTY FUNDS

The undersigned representatives of all the Phase I claimant categories to which Section 119 satellite royalties have been allocated in prior satellite distribution proceedings (“Phase I Parties”)¹ submit the following motion to the Copyright Royalty Judges (“Judges”) for partial distribution of 60% of the 2013 satellite royalty funds (the “2013 Satellite Funds”).

According to the Licensing Division of the Copyright Office, as of January 16, 2015, the amount of the 2013 Satellite Funds available for distribution totaled approximately \$85,004,088.38. Based on this amount, a 60% partial distribution of the 2013 Satellite Funds would total approximately \$51,002,453.03. The circumstances warrant a partial distribution of 60% of the 2013 Satellite Funds as soon as feasible.

I. The Copyright Royalty Judges Have Authority to Order Precontroversy Partial Distributions.

Section 119 of the Copyright Act favors the early distribution of satellite royalties. *See* 17 U.S.C. § 119(b)(5)(C). Chapter 8 of the Copyright Act vests the Judges with ample

¹ Public Television Claimants, the Canadian Claimants, and National Public Radio, which receive Phase I shares of cable royalties, do not claim Phase I shares of the satellite royalty funds.

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 filing 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).

Each of these conditions is established 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 2013 Satellite Funds is Warranted.

The Judges have consistently granted the Phase I Parties' motions for partial distributions of the annual satellite royalty funds. *See, e.g., Order Granting Phase I Claimants' Motion for Partial Distribution of 2011 Satellite Royalty Funds*, Docket No. 2012-10 CRB SD 2011 (Mar. 13, 2013) (granting Phase I Parties' request for a 50% partial distribution of the 2011 satellite funds); *Order Granting Phase I Claimants' Motion for Partial Distribution of 2010 Satellite Royalty Funds*, 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).

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 fund). Thus, the Phase I Parties do not concede through this motion that a 60% distribution is the maximum partial distribution of satellite royalties that should be made from the 2013 Satellite Funds. The Phase I Parties reserve the right to move for additional partial distributions from the 2013 Satellite 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 2013 Satellite 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 Copyright Act “in favor of early distributions”). Accordingly, pre-proceeding distributions of royalties 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 2013 Satellite 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 note in this regard that, although the Judges recently granted a motion for a 60% partial distribution of the 2012 cable royalty funds, a parallel motion for a 60% partial distribution of the 2012 satellite royalty funds remains pending before the Judges. *See Motion of Phase I Claimants for Partial Distribution*, Docket No. 14-CRB-0008-SD 2010-2012 (Jul. 25, 2014); *see also Notice*, 79 Fed. Reg. 59306 (Oct. 1, 2014) (seeking comments on motion for 60% partial distribution of 2012 satellite royalty funds).

The Phase I Parties have agreed to the amount of the proposed partial distribution of the 2013 Satellite Funds. Furthermore, the Phase I Parties believe that the undistributed amount,

which totals over \$34,001,635.35, along with the Parties' commitment to repay any excess funds will be more than sufficient to satisfy any remaining controversies involving these funds.

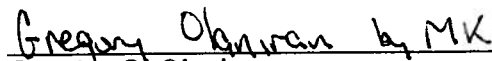
Finally, because the amounts to be distributed to each Phase I Party will remain confidential, the Phase I Parties further move to have the distribution made in bulk to a common agent for all Parties. In this regard, the Phase I Parties have entered into a confidential distribution agreement with the 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.

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 held in the 2013 Satellite Funds, and thereafter grant this Motion and order a 60% partial distribution of the 2013 Satellite Funds to the specified common agent as soon as feasible.


Respectfully submitted,

PROGRAM SUPPLIERS



Gregory O. Olaniran
D.C. Bar No. 455784
Lucy Holmes Plovnick
D.C. Bar No. 488752
MITCHELL SILBERBERG & KNUPP LLP
1818 N Street, NW, 8th Floor
Washington, DC 20036
Telephone: (202) 355-7917
Fax: (202) 355-7887
goo@msk.com
lhp@msk.com

JOINT SPORTS CLAIMANTS



Robert Alan Garrett
DC Bar No. 239681
Charles G. Curtis, Jr.
DC Bar No. 990767
Michael Kientzle
DC Bar No. 1008361
ARNOLD & PORTER LLP
555 Twelfth Street, NW
Washington, DC 20004-1206
Telephone: (202) 942-5000
Fax: (202) 942-5999
robert.garrett@aporter.com
charles.curtis@aporter.com
michael.kientzle@aporter.com

BROADCASTER CLAIMANTS GROUP

John Stewart by MK

John I. Stewart, Jr.

D.C. Bar No. 913905

Ann Mace

D.C. Bar No. 980845

CROWELL & MORING LLP

1001 Pennsylvania Ave., N.W.

Washington, D.C. 20004-2595

Telephone: (202) 624-2685

Fax: (202) 628-5116

jstewart@crowell.com

MUSIC CLAIMANTS

**AMERICAN SOCIETY OF COMPOSERS, BROADCAST MUSIC, INC.
AUTHORS AND PUBLISHERS**

Samuel Mosenkis by MK

Samuel Mosenkis
NY Bar No. 2628915
ASCAP
One Lincoln Plaza
New York, NY 10023
Telephone: (212) 621-6450
Fax: (212) 787-1381
smosenkis@ascap.com

Joseph J. DiMona
DC Bar No. 412159
BROADCAST MUSIC, INC.
7 World Trade Center
250 Greenwich Street
New York, NY 10007-0030
Telephone: (212) 220-3149
Fax: (212) 220-4447
jdimona@bmi.com

Jennifer Criss by MK

Michael J. Remington
DC Bar No. 344127
Jeffrey J. Lopez
DC Bar No. 453052
Jennifer T. Criss
DC Bar No. 981982
DRINKER BIDDLE & REATH LLP
1500 K Street, NW – Suite 1100
Washington, DC 20005
Telephone: (202) 842-8800
Fax: (202) 842-8465
michael.remington@dbr.com

SESAC, INC.

John Beiter by MK

John C. Beiter
TN Bar No. 12564
Shackelford, Zumwalt & Hayes
1014 16th Avenue South
Nashville, TN 37212
Phone: 615.256.7200
Fax: 615.256.7106
Email: jbeiter@shackelfordlaw.net

DEVOTIONAL CLAIMANTS

Arnold Lutzker by MK

Arnold P. Lutzker
DC Bar No. 101816
Allison L. Rapp
Member Maryland Bar
Jeannette M. Carmadella
DC Bar No. 500586
LUTZKER & LUTZKER LLP
1233 20th Street, NW, Suite 703
Washington, DC 20036
Telephone: (202) 408-7600
Fax: (202) 408-7677
arnie@lutzker.com

Clifford H. Harrington
D.C. Bar No. 218107
PILLSBURY WINTHROP SHAW PITTMAN
LLP
2300 N Street, N.W.
Washington, D.C. 20037
Telephone: (202) 663-8525
Fax: (202) 663-8007
clifford.harrington@pillsburylaw.com

Gregory H. Guillot
DC Bar No. 457539
GUILLOT LAW
13455 Noel Road, Suite 1000
Dallas, TX 75240
Telephone: (972) 774-4560
Fax: (214) 515-0411
gregory@guillot-law.com

Edward S. Hammerman
D.C. Bar No. 460506
HAMMERMAN, PLLC
5335 Wisconsin Avenue, NW
Suite 440
Washington, D.C. 20015-2052
Telephone: (202) 686-2887
Fax: (202) 318-5633
ted@copyrightroyalties.com

Wendell R. Bird, P.C.
Ga. Bar No. 057875
Jonathan T. McCants
Ga. Bar No. 480485
BIRD, LOECHL, BRITTAIN & McCANTS,
LLC
1150 Monarch Plaza
3414 Peachtree Road, N.E.
Atlanta, GA 30326
Telephone: (404) 264-9400
Fax: (404) 365-9731
jmccants@birdlawfirm.com

George R. Grange, Esq.
(VA Bar No. 34120)
Kenneth E. Liu, Esq.
(VA Bar No. 42327)
GAMMON & GRANGE, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102

Dated: January 21, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January, 2015, a copy of the foregoing Joint Motion of Phase I Claimants for Partial Distribution of the 2013 Satellite Royalty Funds was sent by Federal Express to the following individual:

Brian D. Boydston
Pick & Boydston LLP
10786 Le Conte Avenue
Los Angeles, CA 90024



Troy Strunkey