

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

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In the Matter of)				Docket No. 15-CRB-0010-CA-S
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37 C.F.R. Part 387)				
)				
Adjustment of Cable Statutory License Royalty Rates)				
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COMMENTS OF MAJOR LEAGUE SOCCER, L.L.C.

Pursuant to the Notice published at 82 Fed. Reg. 24611 (May 30, 2017) (“Notice”), Major League Soccer, L.L.C. (“MLS”) submits its comments in the above-referenced proceeding related to proposed regulations to require covered cable systems to pay a separate per-telecast royalty (a Sports Surcharge) in addition to other royalties that cable systems must pay under Section 111 of the Copyright Act.

I. Background.

MLS has participated in Copyright Royalty Board’s (“CRB”) proceedings since the CRB’s inception in 2005, but is not a petitioner in this specific proceeding. The comments requested by the Copyright Royalty Judges (“Judges”) via publication in the Notice are not limited to proceeding participants. Interested members of the public were invited to comment. *See* Notice at 24613. The Copyright Act (“Act”) requires that the Judges afford those who “would be bound by the terms, rates or other determination” in a settlement agreement “an opportunity to comment on the agreement.” 17 U.S.C. § 801(b)(7)(A)(i). As the Joint Sports

Claimants (“JSC”) co-authored in their Joint Motion of the Participating Parties to Suspend Procedural Schedule and to Adopt Settlement, filed on January 11, 2017:

As the Judges have concluded:

Section 801(b)(7)(A) of the Act is clear that the Judges have the authority to adopt settlements between some or all of the participants to a proceeding at any time during a proceeding *so long as those that would be bound by those rates and terms are given the opportunity to comment.* *Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2014-CRB-0001-WR (2016-2020), 80 Fed. Reg. 58201, 58203 (Sep. 28, 2015); *accord, Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2014-CRB-0001-WR (2016-2020), 80 Fed. Reg. 59588, 59589 (Oct. 2, 2015) (emphasis added).

Affected by these proposed rules and their terms, MLS takes this opportunity to comment.

While it may be a smaller claimant compared to other professional sports leagues, MLS clearly meets the Copyright Royalty Judges’ “Joint Sports Claimants” Descriptions of Agreed Categories of Claimants.¹ MLS provides live telecasts of professional teams’ sports broadcasts by U.S. and Canadian television stations, exclusive of programs in the Canadian Claimants’ category.² Notwithstanding its eligibility and despite attempts to join the JSCs on a formal basis, MLS has not yet been recognized as a JSC member. To promulgate a rule and definition that excludes a claimant from a defined category or eliminates an eligible copyright holder from receiving its royalties would be inequitable.

To assist the Judges, MLS offers the following specific comments on the proposed regulation in the Notice.

¹ See Notice of Participant Groups, Commencement of Voluntary Negotiation Period (Allocation), and Scheduling Order, Consolidated Proceeding No. 14-CRB-0010-CD (2010-13), In re Distribution of Cable Royalty Funds, Exhibit A (Nov. 25, 2015), attached as Exhibit A.

² See Declaration of William Z. Ordower, attached at Exhibit B

II. Comments on the Proposed Regulation.

A. Proposed Regulation.

MLS favors of a rule that would require cable systems to pay separate per-telecast, sports surcharge royalties in addition to other royalties paid under the Copyright Act for eligible television broadcasts of eligible professional sport events. However, the proposed regulation unfairly excludes MLS, and any other eligible, professional league that broadcasts live team sports. Since JSC are representatives for, and custodians of the funds of, all programs falling within that agreed category, it should represent the interests of the entire category, not only those it deems *members*. The benefits of the regulation should apply to a who fall into the Joint Sports Claimants category.

B. Proposed Section 387.2(e)(4).

Proposed rule 37 C.F.R. § 387.2(e)(4) states, “An ‘eligible professional sports event’ is a game involving teams that are *members* of the National Football League, Major League Baseball, the National Hockey League, the National Basketball Association, or the Women’s Basketball Association;” (emphasis added). The proposed rule is unfair to other professional sports leagues, including, but not limited to MLS, which owns the copyright to eligible professional live team sports events.

MLS qualifies to be a Joint Sports Claimant by definition³, but the JSCs excluded MLS in this rule section. MLS should be entitled to its receive its fair share of royalties, and be included with the above-noted JSC members in 37 C.F.R. § 387.2(e)(4).

³ See Notice of Participant Groups, Commencement of Voluntary Negotiation Period (Allocation), and Scheduling Order, Consolidated Proceeding No. 14-CRB-0010-CD (2010-13), In re Distribution of Cable Royalty Funds, Exhibit A (Nov. 25, 2015); See also e.g., 1984 Cable Royalty Distribution Proceeding, 52 Fed. Reg. 8408, 8416 (Mar. 17, 1987); Advisory Opinion, Docket No. CRT 85-4 84 CD (May 16, 1986).

MLS proposes the following revised language for Proposed Section 387.2(e)(4) (with the proposed additional language shown in bold):

An “eligible professional sports event” is a game involving teams that are members of the National Football League, Major League Baseball, **Major League Soccer**, the National Hockey League, the National Basketball Association, or the Women’s Basketball Association;

The Judges should not exclude any eligible and qualified entities from the “eligible professional sports event” definition. To do so would be unjust.

III. Conclusion.

MLS welcomes this opportunity to provide comments to the Judges in response to this Notice. For the reasons set forth above, MLS respectfully requests that the Judges include MLS as an eligible entity in rule 37 C.F.R. § 387.2(e)(4).

Respectfully submitted,

MAJOR LEAGUE SOCCER, L.L.C.



June 19, 2017

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EXHIBIT A

**NOTICE OF PARTICIPANT GROUPS, COMMENCEMENT OF VOLUNTARY
NEGOTIATION PERIOD (ALLOCATION), AND SCHEDULING ORDER,
CONSOLIDATED PROCEEDING NO. 14-CRB-0010-CD (2010-13), IN RE
DISTRIBUTION OF CABLE ROYALTY FUNDS, EXHIBIT A (NOV. 25, 2015)**

COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**DISTRIBUTION OF CABLE ROYALTY
FUNDS**

**CONSOLIDATED PROCEEDING
NO. 14-CRB-0010-CD
(2010-13)**

**NOTICE OF PARTICIPANT GROUPS,
COMMENCEMENT OF VOLUNTARY NEGOTIATION PERIOD (ALLOCATION),
AND SCHEDULING ORDER**

Title 8 of the Copyright Act (Act) and the procedural regulations adopted by the Copyright Royalty Judges (Judges) and codified in Chapter III of title 37 of the Code of Federal Regulations (Rules) govern royalty distribution proceedings. By notices published in the *Federal Register*,¹ the Judges commenced two proceedings, which proceedings the Judges consolidated under the above caption.²

The Judges included in the consolidation order a request for briefing regarding claimant categories. Based upon the responses of participants, including the agreement of certain participants to forego a request for additional categories for Spanish Language Programming and “Multi-Group” claims, the Judges now schedule proceedings to determine distribution of the funds at issue. In this proceeding, the Judges shall determine allocations of funds for retransmissions during the years 2010 to 2013, inclusive, by category and shall determine the final distribution of royalties to or on behalf of claimants only by reference to the categories. The categories (Agreed Categories) are described in “Exhibit A” to this Notice and Order.³

Participation in the Proceeding

Participation in this proceeding is limited to copyright owners (or their designated representatives) that (1) filed claims during the month of July following the end of at least one royalty year at issue in this proceeding and (2) are listed on a timely Petition to Participate (PTP). Claims include those filed individually by copyright owners and those filed jointly on behalf of more than one claimant *provided that* the entity filing any joint claim was, at the time it filed the claim, an authorized representative of the claimant. Individuals who are copyright owners may participate in this proceeding personally. Organizational or corporate claimants or claimant representatives must appear by and through legal counsel.

¹ 79 FR 76396 (Dec. 22, 2014); 80 F.R. 32182 (June 5, 2015).

² See Notice of Participants, Notice of Consolidation, and Order for Preliminary Action to Address Categories of Claims (Sept. 9, 2015).

³ The Judges edited the definitions the participants provided. The descriptions as written in Exhibit A control in this proceeding.

A participant must engage fully and in good faith, and must follow the proceeding schedule outlined in “Exhibit B” to this order (or as modified by further order) unless the participant (1) withdraws its PTP, thereby opting to forego any share of distributions for any of the years at issue or (2) notifies the Judges by written filing of its intention to participate by and through a program category representative that is an active participant in compliance with the proceeding schedule. In the latter case, the participant joining an existing category will thereafter be bound by the filings and presentations of the category representative.

Any participant seeking a distribution of royalties on account of any program retransmitted during any of the years at issue in this proceeding must assert that claim against the funds allocable to one and only one of the Agreed Categories. Representatives of claimants who previously have not asserted program placement in one of the Agreed Categories must participate fully in the negotiations regarding allocation of funds among categories. The Judges will not adopt any proposed agreed allocation unless the authorized representative of all entities seeking royalty distributions for any program retransmission for any year at issue in this proceeding approves and subscribes the proposal. The Judges will not consider issues relating to proper category allocation or the alignment of claims and categories after the conclusion of the allocation portion⁴ of this proceeding.

Voluntary Negotiation Period-Allocation

All participants shall participate in good faith settlement negotiations aimed at resolving controversies regarding ultimate distribution of the royalty funds for the years at issue in this proceeding. During this Voluntary Negotiation Period-Allocation (VNP-A) the participants shall address expressly issues regarding (1) allocation of available funds among the Agreed Categories, (2) categorization of any program within the Agreed Categories, and (3) the validity of claims for each year. During this VNP-A, or at any time during the proceeding, participants also may, and are encouraged to, negotiate final distribution by category representatives to individual claimants within the respective Agreed Categories.

Five days after the end of the VNP-A, the participants shall (1) file a Notice of Final Settlement, *only if* all participants have agreed on (a) the categorization of every retransmitted program, (b) the amount and validity of all claims, and (c) a final royalty distribution plan or (2) file (a) a Notice of Allocation Settlement Only, if all participants agree to the allocation of available funds among Agreed Categories **or** (b) a Notice of Claims Settlement Only, if all participants have agreed to the amount and validity of all program claims, but have not resolved all issues relating to the distribution of funds, **and** (c) a Notice of Controversy.

⁴ In prior proceedings, the Judges or their predecessors denominated the category allocation portion of a proceeding “Phase I” and the claim distribution portion “Phase II.” The Judges or their predecessors established consecutive multi-year timelines for each “Phase I” and “Phase II” proceeding, sometimes with years intervening and sometimes assigning separate docket numbers for “Phase I” and “Phase II” proceedings. The captioned docket number for this proceeding shall remain the docket number throughout the proceeding until final determination of all issues and the Judges order final distribution of all funds deposited for the years at issue. During this proceeding, the Judges shall schedule and resolve all issues, whether previously characterized as “Phase I” or “Phase II” issues.

If the participants do not file a Notice of Final Settlement, they shall include in the Notice of Controversy a statement of the nature of the controversy(ies), identification of legal and factual issues that the participants intend to submit to the Judges, and a proposal for further proceedings, including proposed summary or paper proceedings or the timing and length of any proposed hearing(s). The participants shall identify and list separately any program claim in controversy that (1) the owner agrees is valued at less than \$10,000; or (2) as to which the owner agrees to limit recovery to a maximum of \$10,000; or (3) as to which the owner expressly seeks resolution by “paper proceedings.” The Judges will issue a separate case schedule regarding resolution of “small” claims or conduct of paper proceedings.

Following the filing of a Notice of Controversy, the Judges will structure the conclusion of the captioned proceeding around the issues the parties identify in the Notice. The Judges will consider and resolve only issues the parties identify in the Notice of Controversy, except upon a determination of good cause upon motion of a participant in good standing or upon the Judges’ determination of need to clarify or reexamine settled issues in the context of an overall determination of the proceeding.

Bifurcation by Issue

Nothing in the Act or Rules requires a bifurcation of proceedings to distribute retransmission royalties. References to “Phase I” and “Phase II” arose in determinations by the predecessors of the Copyright Royalty Board paradigm. *See* Cable Royalty Distribution Proceeding, 45 FR 50621 (July 30, 1980) (noting that the Copyright Royalty Tribunal ruled on February 14, 1980, that “the current proceeding would be conducted in two phases”). The Rules include reference to phases, but do not mandate the bifurcation giving rise to the terminology. *See* 37 C.F.R. §§ 351.1(b)(2)(i)(B), (ii)(C). The Judges appreciate the practical wisdom of bifurcating issues, but abhor the distribution delays inherent in a bifurcation giving rise to consecutive proceedings. In this proceeding, the Judges shall permit such bifurcation of issues as the parties may require, but will not commence separate proceedings for separate issues within the captioned proceeding. The Judges shall conduct a single proceeding encompassing all issues to accomplish the goal of efficient distribution of royalties to copyright owners. If the participants are able to resolve categorization and claim issues, they should proceed apace to negotiate distribution within categories. As soon as the participants resolve satisfactorily all program distribution issues the Judges can and will order a final disbursement of funds without delay. If the participants cannot resolve their differences, the Judges shall announce the immediate commencement of a second VNP to address remaining issues and schedule necessary steps, if any, to occur concurrently with the ongoing Allocation adjudication.

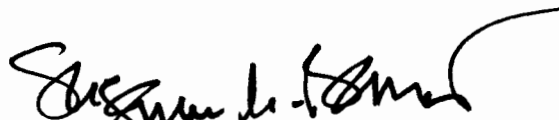
Joint Administration

Unless any participant establishes compelling cause, the Judges intend to administer this portion of the captioned proceeding jointly with the companion consolidated proceeding relating to distribution of royalties for satellite retransmission⁵. The Judges expressly do not, at this time, consolidate these proceedings for any purposes other than negotiation and category allocation. In other words, participants shall continue to file papers separately in the cable and satellite

⁵ *In re* Distribution of Satellite Royalty Funds, 14-CRB-0011-SD (2010-13).

proceedings. Only cable participants shall file papers in the captioned proceeding and only satellite participants shall file papers in the companion proceeding. Notwithstanding the limited nature of the Judges' joint administration at this stage of the proceedings, the participants in either proceeding or both proceedings may coordinate settlement efforts with regard to any issue with the aim of complete settlement of and expedited distribution from both cable and satellite funds.

SO ORDERED.



Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: November 25, 2015.

EXHIBIT A

Descriptions of Agreed Categories of Claimants

Following are non-exhaustive descriptions of the types of programs or other creative works that fall within each of the agreed categories of claimants (Agreed Categories) to which categories the Judges may approve an allocation of cable retransmission royalties.

“Canadian Claimants.” All programs broadcast on Canadian television stations, except: (1) live telecasts of Major League Baseball, National Hockey League, and U.S. college team sports, and (2) programs owned by U.S. copyright owners.

“Commercial Television Claimants.” Programs produced by or for a U.S. commercial television station and broadcast only by that station during the calendar year in question, except those listed in subpart 3) of the Program Suppliers category.

“Devotional Claimants.” Syndicated programs of a primarily religious theme, but not limited to programs produced by or for religious institutions.

“Joint Sports Claimants.” Live telecasts of professional and college team sports broadcast by U.S. and Canadian television stations, except programs in the Canadian Claimants category.

“Music Claimants.” Musical works performed during programs that are in the following categories: Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, Public Television Claimants, Devotional Claimants, Canadian Claimants.

“National Public Radio.” All non-music programs that are broadcast on NPR Member Stations.

“Program Suppliers.” Syndicated series, specials, and movies, except those included in the Devotional Claimants category. Syndicated series and specials are defined as including (1) programs licensed to and broadcast by at least one U.S. commercial television station during the calendar year in question, (2) programs produced by or for a broadcast station that are broadcast by two or more U.S. television stations during the calendar year in question, and (3) programs produced by or for a U.S. commercial television station that are comprised predominantly of syndicated elements, such as music videos, cartoons, "PM Magazine," and locally-hosted movies.

“Public Television Claimants.” All programs broadcast on U.S. noncommercial educational television stations.

The parties and the Judges intend that these category descriptions define mutually exclusive claimant groups. The Judges will not approve a retransmission royalty distribution from more than one Agreed Category for any one claimed program.

EXHIBIT B

Initial Schedule for Proceeding

Case Event	Date
Commencement of Voluntary Negotiation Period-Allocation (VNP-A)	November 30, 2015
End of VNP-A ⁶	February 29, 2016
Deadline for (1) Notice of Final Settlement or (2) Notice of Partial Settlement (allocation or claims) and Notice of Controversy	March 7, 2016
In the event of Notice of Final Settlement	
Order of Final Distribution	March 2016
In the event of Notice of Controversy	
Order for Further Proceedings and Further Scheduling Order ⁷	March 2016

⁶ Nothing prohibits continuing good faith negotiations among the participants, notwithstanding the end of VNP-A.

⁷ Depending upon the issues in controversy, the Judges may order preliminary discovery to encourage greater efficiency in presentation of evidence in the required Written Direct Statements.

EXHIBIT B

DECLARATION OF WILLIAM Z. ORDOWER, ESQ.

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

In the Matter of)))
37 C.F.R. Part 387))	Docket No. 15-CRB-0010-CA-S
Adjustment of Cable Statutory License Royalty Rates))	

DECLARATION OF WILLIAM Z. ORDOWER, ESQ.

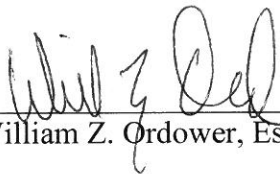
My name is William Z. Ordower. I am an adult over the age of 18 years and I declare the following based on my personal knowledge:

1. I am employed as the Executive Vice President and General Counsel of Major League Soccer, L.L.C. (“MLS”).
2. MLS owns the copyright to the soccer matches transmitted via free-to-air broadcast television in the United States and MLS Canada LP, a wholly-owned subsidiary of MLS, owns the copyright to the soccer matches transmitted via free-to-air broadcast television in Canada.
3. MLS has participated in cable and/or satellite retransmission royalty proceedings before the Copyright Royalty Board since 2005.
4. MLS provides live telecasts of professional teams’ sports broadcasts by U.S. and Canadian television stations, exclusive of programs in the Canadian Claimants’ category

5. MLS meets the Copyright Royalty Judges' "Joint Sports Claimants" Descriptions of Agreed Categories of Claimants.

I declare under penalty of perjury under the laws of the state of New York that the foregoing is true and correct, and of my personal knowledge.

Executed this 6th day of June, 2017, in New York, New York.



William Z. Ordower, Esq.