

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

)	
<i>In re</i>)	
)	DOCKET NUMBER 14-CRB-0011-SD
Distribution of Satellite Royalty Funds)	(2010-13)
)	
)	

**JOINT COMMENTS
OF THE 2010-13 SATELLITE PARTICIPANTS
ON PHASE I CLAIMANT CATEGORY DEFINITIONS**

The undersigned parties (“2010-13 Satellite Participants”) submit the following comments in response to the Copyright Royalty Judges’ (“Judges”) “Notice of Participants, Notice of Consolidation, and Order for Preliminary Action to Address Categories of Claims” (dated September 9, 2015) (“Notice”). The Notice states that the Judges intend “to determine the nature and extent of, and to formalize the definitions of claimant categories for purposes of initial allocation of funds.” *Id.* at 2. It requests “briefing by any party in interest regarding claimant categories.” *Id.* at Exhibit B. It also notes that: “Issues may include definition of previously used categories; specification of particular programs included within a category, if classification is ambiguous; [and] creation of additional categories.” *Id.*

The 2010-13 Satellite Participants request that the Judges adopt the same five Phase I claimant categories, and the same Phase I Claimant Category definitions, that have been followed in prior Phase I satellite royalty distribution proceedings and settlements. The Phase I Claimant Category Definitions are attached as Appendix A.

The category definitions set forth in Appendix A track those developed during many years of experience and prior determinations in Phase I cable distribution proceedings, modified for purposes of the satellite proceedings to (1) encompass network programs that are eligible for royalties under the satellite license but not the cable license, and (2) eliminate categories that are not (or are no longer) retransmitted by satellite carriers pursuant to compulsory licensing. The categories are comprehensive and mutually exclusive, covering all eligible programs retransmitted on distant signals. They have worked smoothly for decades, allowing the settlement of cases and the distribution of hundreds of millions of dollars in royalties by the Phase I claimant category representatives to thousands of claimants within their respective categories.

These category definitions have already formed the basis of the Petitions to Participate filed by the 2010-13 Satellite Participants in the 2010, 2011, 2012, and 2013 Satellite Royalty Proceedings. The existing categories and definitions have also been relied upon by the 2010-13 Satellite Participants in preparing their evidentiary cases for both the negotiation and litigation of the 2010-13 satellite royalty distribution proceeding. Those cases include contemporaneous surveys, already conducted, that cannot be redone to reflect new and different program categories and definitions.

Furthermore, there is no controversy concerning the use of these longstanding program categories and definitions in this proceeding. The 2010-13 Satellite Participants, who support use of these categories and definitions, represent all parties that have timely filed a notice of intent to participate in the

2010-13 satellite royalty distribution proceeding, except for the “Multi-Group Claimants” and the “Spanish Language Producers” (collectively, “IPG”). See Notice at Exhibit A (identifying all parties that have timely filed notices of intent to participate).¹ While IPG has reserved the right to seek different categories and definitions in future proceedings, IPG also has advised that it “will not be initiating challenge” to these definitions in the 2010-13 satellite royalty distribution proceeding. See IPG “Notice Regarding Category Definitions” at 1 (dated September 28, 2015).

The Judges have previously recognized the importance of maintaining consistent Phase I categories, declining IPG’s request to restructure them in the 2003 cable proceeding based on the conclusion that continuity of the Phase I categories is “in the interests of promoting certainty and future settlements.” *Order Granting Partial Distribution of 2003 Cable Royalty Fund*, Docket No. 2005-4 CRB CD 2003 (Jan 23, 2008), at 3.

The same is true here. Making changes to the category definitions that have been followed by all the Phase I parties for decades, and have already been relied upon in preparing for this proceeding, would impede the parties’ ability to settle

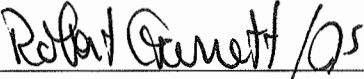
¹ The 2010-13 Satellite Participants understand that Professional Bull Riders will not take a position regarding the Phase I category definitions. While National Public Radio, Inc., is listed in Exhibit A to the Notice as having filed a Petition to Participate in the 2010-12 proceedings, its filing under a combined 2010-12 cable and satellite proceeding caption stated that “NPR has not filed a claim for satellite royalties for any of the 2010, 2011, and 2012 claim years, and it is not petitioning to participate in the distribution of those funds.” Joint Petition to Participate of National Public Radio, Inc., filed January 21, 2015, at 1 n.1.

this and future satellite distribution proceedings, contrary to statutory intent.² It would also greatly increase the time and resources the 2010-13 Satellite Participants and the Judges would be required to expend in the 2010-13 satellite royalty distribution proceedings, without any offsetting benefit.

There has never been a determination in a fully litigated Phase I satellite royalty distribution proceeding. But in settling every Phase I distribution since 1989, the Phase I Parties have necessarily relied on fixed category definitions, which were derived from category definitions the parties, the CRT, and the CARPs had developed and followed over years of cable royalty distribution proceedings. The Judges should adopt those same Phase I categories and definitions, set forth in Appendix A, for the 2010-13 Satellite Royalty Distribution Proceeding.

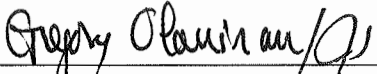
Respectfully submitted,

Joint Sports Claimants



Robert Alan Garrett
DC Bar No. 239681

MPAA-Represented Program Suppliers



Gregory O. Olaniran
DC Bar No. 455784

² See *Indep. Producers Grp. v. Library of Cong.*, 759 F.3d 100, 102 (D.C. Cir., 2014) (recognizing that “to promote efficient distribution of royalty fees, Congress crafted distribution procedures that encourage the private resolution of fee disputes” regarding the cable royalty funds). See also *Indep. Producers Grp. v. Librarian of Cong.*, 792 F.3d 132, 136 (D.C. Cir. 2015) (“During Phase I, the participating claimants grouped themselves into eight categories, relying on the traditional definitions of those categories, and reached a partial settlement.”).

M. Sean Laane
DC Bar No. 422267
Michael Kientzle
DC Bar No. 1008361
Arnold & Porter LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
Robert.garrett@aporter.com
Sean.laane@aporter.com
Michael.kientzle@aporter.com
P: 202-924-5000
F: 202-942-5999

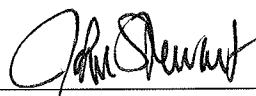
Thomas J. Ostertag
NY Bar No. 1801224
Office of the Commissioner of Baseball
245 Park Avenue
New York, NY 10167
Tom.ostertag@mlb.com
P: 212-931-7800
F: 212-949-5653

Phillip R. Hochberg
DC Bar No. 5942
Law Offices of Phillip R. Hochberg
12505 Park Potomac Avenue
Sixth Floor
Potomac, MD 20854
phochberg@shulmanrogers.com
P: 301-230-6572

Ritchie T. Thomas
DC Bar No. 28936
Iain R. McPhie
DC Bar No. 473951
Squire, Sanders & Dempsey LLP
1207 Pennsylvania Ave. NW
Washington, DC 20004
rtthomas@ssd.com
iain.mcphie@squirepb.com
P: 202-626-6600
F: 202-626-6700

Lucy Holmes Plovnick
DC Bar No. 488752
Whitney S. Nonnette
CA Bar No. 295222
Mitchell Silberberg & Knupp LLP
118 N Street NW, 8th Floor
Washington, DC 20036
goo@msk.com
lh@msk.com
P: 202-355-7917
F: 202-355-7887

Broadcaster Claimants Group



John I. Stewart, Jr.
DC Bar No. 913905
David Ervin
DC Bar No. 445013
Ann Mace
DC Bar No. 980945
Emily S. Parsons
DC Bar No. 1026101
Crowell & Moring LLP
1001 Pennsylvania Ave. NW
Washington, DC 20004
jstewart@crowell.com
P: 202-624-2685
F: 202-628-5116

**Broadcast Music, Inc. (BMI) and
American Society of Composers,
Authors, Publishers (ASCAP)**



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

michael.remington@dbr.com

jeffrey.lopez@dbr.com

jennifer.criss@dbr.com

P: 202-842-8800

F: 202-842-8465

Joseph J. DiMona

DC Bar No. 412159

Broadcast Music, Inc.
7 World Trade Center
250 Greenwich Street
New York, NY 10007-0030

jdimona@bmi.com

P: 212-220-3149

F: 212-220-4456

Samuel Mosenkis

NY Bar No. 2628915

Jackson Wagener

NY Bar No. 4555819

ASCAP

One Lincoln Plaza

New York, NY 10023

smosenkis@ascap.com

jwagener@ascap.com

P: 212-621-6450

F: 212-787-1381

SESAC



John Beiter

TN Bar No. 12564

Shackelford, Zumwalt & Hayes, LLP

1014 16th Avenue South

Nashville, TN 37212

jbeiter@shackelfordlaw.net

P: 615-256-7200

F: 615-256-7106

Certain Devotional Claimants

Arnold Lutzker / QS
Arnold Lutzker
DC Bar No. 101816
Benjamin Sternberg
DC Bar No. 108106
Jeannette Carmadella
DC Bar No. 500586
Lutzker & Lutzker LLP
1233 20th Street NW, Suite 703
Washington, DC 20036
arnie@lutzker.com
P: 202-408-7600, ext. 1
F: 202-408-7677

Clifford M. Harrington
DC Bar No. 218107
Matthew J. MacLean
DC Bar No. 478257
Victoria N. Lynch
DC Bar No. 1001445
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW
Washington, DC 20036-3006
Clifford.harrington@pillsburylaw.com
P: 202-663-8525
F: 202-663-8007

**Arena Football One, LLC
Major League Soccer, LLC**

Edward Hammerman / QS
Edward S. Hammerman
DC Bar No. 460506
Hammerman PPLC
dba Intermediary Copyright Royalty
Services
5335 Wisconsin Avenue, NW #440
Washington, DC 20015-2054
ted@copyrightroyalties.com
P: 202-686-2887
F: 202-318-5633

APPENDIX A

Phase I Claimant Category Definitions (Satellite)

“Program Suppliers.” Network and nonnetwork syndicated series, specials and movies, other than Devotional Claimants programs as defined below.

Network and nonnetwork 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 video shows, cartoon shows, “PM Magazine,” and locally hosted movie shows.

“Joint Sports Claimants.” Live telecasts of professional and college team sports broadcast by U.S. television stations.

“Commercial Television Claimants.” Programs produced by or for a U.S. commercial television station and broadcast only by that one station during the calendar year in question and not coming within the exception described in subpart 3) of the “Program Suppliers” definition.

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

“Music Claimants.” Musical works performed during the course of programs that are themselves separately represented as parts of the preceding categories.

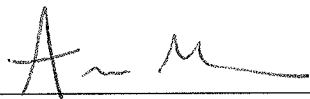
CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2015, a copy of the foregoing “Joint Comments of the 2010-13 Satellite Participants on Phase I Claimant Category Definitions” was sent by Federal Express overnight delivery to the individuals listed below:

Brian D. Boydston
Pick & Boydston, LLP
10786 LeConte Avenue
Los Angeles, CA 90024
Counsel for Multigroup Claimants and
Spanish Language Producers

Jonathan Hart
Gregory Lewis
National Public Radio, Inc.
1111 North Capitol Street, NE
Washington, DC 20002

Arnold Lutzker
Benjamin Sternberg
Jeannette Carmadella
Lutzker & Lutzker LLP
1233 20th Street, NW, #703
Washington, DC 20036
Counsel for Professional Bull Riders



Ann Mace