

COPYRIGHT ROYALTY JUDGES
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In re

DISTRIBUTION OF CABLE ROYALTY FUNDS

**DOCKET NO. 14-CRB-0007 CD
(2010-12)**

**ORDER GRANTING MOTION OF PHASE I CLAIMANTS
FOR PARTIAL DISTRIBUTION**

On July 25, 2014, representatives of certain groups of claimants (the Phase I Claimants)¹ to 2012 cable royalties deposited with the United States Copyright Office filed with the Copyright Royalty Judges (Judges) a Motion for Partial Distribution of those royalties (Motion). Specifically, the Phase I Claimants seek a distribution of 60% of the 2012 royalties. The Phase I Claimants reiterated their request in a Joint Motion for Expedited Resolution of Pending Motion for Partial Distribution dated September 12, 2014.

On October 1, 2014, the Judges published a Federal Register notice in accordance with 17 U.S.C. § 801(b)(3)(C), seeking comment on the requested partial distribution and inquiring as to the existence of any Phase I or Phase II controversies with regard to 2012 cable royalties.² 79 Fed. Reg. 59306 (Oct. 1, 2014). The Judges received 12 timely responses: eleven from the Phase I Claimants, collectively and individually, and one from Worldwide Subsidy Group LLC dba Independent Producers Group (IPG). Unsurprisingly the Phase I claimants' comments support their Motion. IPG expressed no objection to the Motion insofar as it seeks a partial distribution to claimant categories other than the devotional category. Respecting the devotional category, however, IPG objects to any partial distribution to the self-styled Devotional Claimants group unless the Judges bar them from using such royalties to fund their "Phase II expenditures." *Independent Producers Group's Comments to Partial Distribution of Funds and Existence of Controversy* at 2 (Oct. 30, 2014) ("IPG Comment").

The Judges **GRANT** the Motion for the reasons elaborated below.

¹ The Phase I Claimants are: Program Suppliers, Joint Sports Claimants, Public Television Claimants, Commercial Television Claimants, Music Claimants, Canadian Claimants Group, National Public Radio, and Devotional Claimants. None of the Phase I Claimants identified the claimants that they represent with any more specificity.

² For administrative convenience, cable (and satellite) distribution proceedings have long been bifurcated into a Phase I proceeding, in which the Judges allocate royalties among a small number of categories represented by the various claimant groups that are parties to this Motion, and a Phase II proceeding, in which the Judges determine the distribution of royalties among claimants claiming within the same category.

I. Discussion

A. Statutory Authorization for Partial Distributions of Funds in Controversy

Section 801(b)(3)(C) of the Copyright Act (the Act) grants the Judges authority to make partial distribution of royalties on the motion of an interested claimant at any time after claims are filed. That subparagraph provides:

(C) 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).

The proposed partial distribution to the Phase I Claimants, other than any share that would be allocated to the Devotional Claimants, is unopposed. The deadline for filing claims for 2012 royalties has passed and the Phase I Claimants represent that they are willing to sign a disgorgement agreement and file it with the Judges. Motion at 2. The Judges determine that distribution of 60% of the 2012 royalty funds to the Phase I Claimants, other than the Devotional Claimants, is reasonable and appropriate.

The proposed partial distribution to the Devotional Claimants, however, is opposed by IPG. As a threshold matter, the Judges must determine whether IPG's opposition prevents the Judges from making a partial distribution to the Devotional Claimants because "all such claimants" do not "agree to the partial distribution...." 17 U.S.C. § 801(b)(3)(C).

The antecedent to "all such claimants" in the chapeau to subparagraph (C) is not readily apparent: it could apply to the "one or more claimants" who move for a partial distribution or to the "interested claimants" whose responses to the proposed partial distribution are solicited by the Judges in a Federal Register notice.³ The so-called "rule of the last antecedent" would

³ Since the final reference the chapeau—a "claimant entitled to receive such fees"—is in the singular, rather than the plural, it is not an appropriate antecedent. Even if it were, it appears to refer to the same universe of all "interested claimants" in the second reference.

counsel that the last reference to claimants in the chapeau (all “interested claimants”) is the appropriate antecedent to “such claimants.” Were this the case, though, clauses (ii) and (iii) would require the *entire universe* of claimants to execute and file disgorgement agreements as a condition to making a partial distribution to “one or more of the claimants.” This would make no sense, and it has never been the practice of the Judges. Clearly, then, clauses (ii) and (iii) apply only to the moving claimants. Since the phrase “all such claimants” applies to clauses (i)-(iv), the better interpretation of “all such claimants” as applied to each of those clauses is that it refers to those claimants who are parties to a motion for partial distribution.

The Judges find, therefore, that the existence of an objection by an interested claimant is insufficient, in itself, to block a partial distribution. Rather, the determinative question is whether an interested claimant “has stated a reasonable objection to the partial distribution.” See *Order Denying Independent Producers Group’s Motion for Partial Distribution*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II), at 3 (Jan. 17, 2012).

B. IPG’s Objection

IPG’s objection to a partial distribution to the Devotional Claimants appears to be directed at the use to which those claimants will put the funds. “[T]he claimants identifying themselves as the ‘Devotional Claimants’ have historically utilized such advanced royalties to fund their own Phase II expenditures, and failed to distribute advanced royalties to any other Phase II devotional claimant” IPG Comment at 1.⁴ IPG contends that, in so doing, the Devotional Claimants group acts contrary to a decision by the Register of Copyrights under the CARP system.⁵ IPG relies on an order in the 1993-97 Phase II cable distribution proceeding in which the Register stated that, when one of the Phase I parties negotiated a settlement for the category it represented, it “negotiated on behalf of all claimants entitled to royalties from that fund, not just the claimants” it was then representing in the Phase II proceeding. Order Docket No. 2002-2 CARP CD 93-97, at 5 (Aug. 31, 2000) (“2000 Order”). IPG appears to derive from this order a *general duty* of a Phase I party to act “on behalf of all claimants within such Phase I category” IPG Comment at 1.

Context is important, and the context of the Register’s statement does not support IPG’s interpretation. The Register was granting IPG’s request, over the objection of the Phase I representative of the program suppliers’ group, to be apprised of the amount of funds that were allocated to the syndicated programs category in a confidential settlement agreement reached in Phase I. The Register reasoned that “any Phase II claimant that has a legitimate claim to royalties in the syndicated program category and that is a party to a CARP proceeding that will determine that claimant’s share of the royalties is entitled to know the amount contained in that fund.” 2000 Order at 5. This is a far cry from enunciating what would essentially amount to a fiduciary duty on the part of Phase I participants to act for the benefit of all claimants in a given

⁴ IPG goes on to observe that “[i]n fact, the ‘Devotional Claimants’ is overwhelmingly composed of claimants that have *never* previously partaken in a Phase II proceeding, and *never* been issued an award by the Copyright Royalty Board or its predecessors.” IPG Comment at 1 (emphasis in original). IPG does not elaborate further on this observation or explain why they believe it is relevant to their argument that the Judges should restrict the Devotional Claimants’ use of any funds distributed to them at this time.

⁵ Pursuant to 17 U.S.C. § 803(a)(1), the Judges “shall act in accordance with ... prior determinations and interpretations of the ... Register of Copyrights”

category. It is, rather, an observation that, when a Phase I participant reaches a settlement as to the allocation of funds to a particular category, that allocation is for the benefit of all claimants in that category, and those claimants have a right to know what that allocation is. The same cannot be said for a partial distribution of royalty funds to a group of claimants that has requested it. Those claimants' responsibility is to meet the conditions of section 801(b)(3)(C) of the Act.

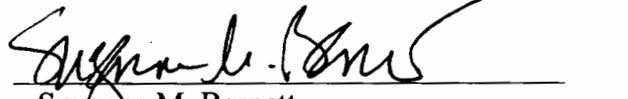
The Judges note that IPG has, on prior occasions, asked the Judges to restrict redistribution of any funds that are distributed to Phase I claimants until the Phase II participants have agreed to such redistribution. *See, e.g., Order Granting Phase I Claimants' Motion for Partial Distribution of 2004 and 2005 Cable Royalty Funds*, Docket No. 2007-3 CRB CD 2004-2005, at 3 (Apr. 10, 2003). The Judges have rejected those requests, noting that "such a restriction on distribution of Phase I funds is contrary to the policy of the Copyright Act to promote settlements because, as a practical matter, it would prevent the distribution of any funds to claimants..." *Order Granting Phase I Claimants' Motion for Partial Distribution of 2008 Cable Royalty Funds*, Docket No. 2010-6 CRB CD 2008, at 2 (Jan. 11, 2011). For the same reason, IPG's instant request that the Judges place restrictions on the use of the funds by members of the Devotional Claimants group fares no better. Additionally, there is no statutory restriction on the use by claimants of funds that have been distributed.⁶ Thus, IPG is requesting that the Judges insert a new limitation into the statutory scheme for partial distributions. The Judges have no authority to alter the statute.

For these reasons, IPG has not stated a reasonable objection to the proposed partial distribution to the Devotional Claimants.

The Motion is **GRANTED**. The Judges **ORDER** that 60% of the royalties held in the 2012 cable funds be distributed in the manner set forth in Attachment A to the Motion, which is appended to this Order.

The Copyright Office shall make such a distribution **PROVIDED THAT** each of the parties receiving a share of these funds provides to the Copyright Office a signed agreement prepared by the Copyright Royalty Board stating that the recipient shall repay to the Copyright Office any overpayment that results from the distribution of these funds, together with interest according to the amount that would have accrued if the principal had remained in the fund. In addition, all pertinent information to effect the transfer of funds must be provided to the Licensing Division of the Copyright Office no later than January 8, 2015. The distribution shall take place on or after January 15, 2015.

SO ORDERED.


Suzanne M. Barnett
Chief Copyright Royalty Judge

Dated: December 23, 2014

⁶ Even if such a restriction existed, it would likely be inconsequential. Money is fungible, and claimants could utilize partially distributed funds for other purposes, freeing alternative monies for use by the Devotional Claimants in funding their "Phase II expenditures."

ATTACHMENT A

**CABLE ROYALTY DISTRIBUTION
2004-2005 BLENDED PERCENTAGES**

A partial distribution of 60% of the 2012 Funds should be distributed in the following percentages: 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%