

Before the
COPYRIGHT ROYALTY JUDGES
Washington, DC

DISTRIBUTION OF)
SATELLITE ROYALTY FUNDS)

NO. 14-CRB-0011-SD (2010-13)

REPLY OF THE JOINT SPORTS CLAIMANTS AND COMMERCIAL TELEVISION CLAIMANTS IN SUPPORT OF MOTION TO CLARIFY ORDER GRANTING SDC'S MOTION FOR FINAL DISTRIBUTION OF 2010-13 SATELLITE ROYALTY FUNDS

The undersigned representatives of the Joint Sports Claimants (“JSC”) and Commercial Television Claimants (“CTV”) submit this reply to address Multigroup Claimants’ (“MGC”) Response to JSC and CTV Motion Seeking Clarification of Order Granting SDC Final Distribution of 2010-2013 Satellite Royalties (“Opposition”). As explained below, despite its caption, the Opposition does not respond to the JSC and CTV Motion to Clarify, but instead presents untimely and unfounded arguments in opposition to JSC and CTV’s January 14, 2020 Motion for Final Distribution of 2010-13 Satellite Royalties (“Final Distribution Motion”). MGC states that it generically “opposes” the requested final distribution, and that the Judges should take “certain precautions” before ordering it, including requiring JSC to sign a repayment agreement. Opp. at 3. For the following reasons, MGC’s Opposition fails to state a valid objection to the Final Distribution Motion and should be disregarded.

First, MGC’s objections to the Final Distribution Motion are untimely. Had MGC desired to oppose the motion, the deadline to do so was January 29, 2020. The Motion to Clarify—the motion that MGC is actually opposing—asks for distinct, unrelated relief: clarification that the Judges’ order concerning final distribution to the Settling Devotional Claimants does not require JSC or CTV to disclose certain confidential information to the Licensing Division. Motion to Clarify at 1-2. The Motion to Clarify only refers to the pending Final Distribution Motion in order

to explain why the requested clarification would be appropriate. *Id.* It explains that the Final Distribution Motion is unopposed and therefore should be granted, which would eliminate any need for JSC and CTV to file any further information with the Licensing Division. The reference to the Final Distribution Motion in the Motion to Clarify does not extend the time period to oppose the Final Distribution Motion.¹

Second, even if MGC's opposition were timely, it does not provide a plausible objection to the requested distribution, or explain the necessity for JSC to sign a repayment agreement as a condition of the final distribution. *Opp.* at 3. MGC's claims to 2010-13 satellite royalties in the Joint Sports category have been rejected, and it never made any claims to royalties in the Commercial Television category. The Judges dismissed MGC's Joint Sports claims in their entirety years ago. *Ruling and Order Regarding Objections to Cable and Satellite Claims, Nos. 14-CRB-0010-CD (2010-13) & 14-CRB-0011-SD (2010-13) (Oct. 23, 2017).* The U.S. Court of Appeals for the D.C. Circuit dismissed MGC's appeal for lack of jurisdiction, and recently denied MGC's petitions for rehearing and *en banc* review. *Multigroup Claimants v. Copyright Royalty Bd.*, No. 18-1338, Doc. Nos. 1819031, 1827230, and 1827231 (D.C. Cir.).

Nonetheless, MGC contends that "significant issues surrounding the proceeding remain unresolved." *Opp.* at 3. It neglects to identify these issues, or how they might be resolved; instead, MGC claims only that it *may* "pursue the merits of its objections before a court that has jurisdiction." *Id.* To the extent that MGC is suggesting that it might bring an action before a federal district court, that is impermissible. Under the Copyright Act, the resolution of MGC's

¹ Bizarrely, MGC states that it did not file a timely response to the Final Distribution Motion because it lacked standing to do so. *Opp.* at 2. It does not explain why it now believes it has standing to oppose the Motion to Clarify, which was filed in the same proceeding. But if, as MGC contends, it lacks standing, that is an additional reason to reject the arguments it presents in the Opposition.

claims to sports royalties is entrusted exclusively to the Judges and the D.C. Circuit. *See* 17 U.S.C. § 803(d)(1). A collateral challenge to the Judges' determination under the Administrative Procedure Act, as MGC has unsuccessfully attempted in the past,² is not allowed. *See, e.g., FCC v. ITT World Commc'ns, Inc.*, 466 U.S. 463, 468 (1984) (explaining that “[l]itigants may not evade” the D.C. Circuit's exclusive jurisdiction to review certain agency actions by seeking declaratory or injunctive relief in district court); *Media Access Project v. FCC*, 883 F.2d 1063, 1069 (D.C. Cir. 1989) (reasoning that “bifurcation for review” between the D.C. Circuit and district courts would “directly contraven[e] the policy goal of unifying review in one forum”).

Third, it would be highly prejudicial to CTV and JSC to further delay the requested distribution on the basis of MGC's untimely and unfounded Opposition. The Copyright Act favors the expeditious distribution of royalties to copyright owners. *See* H.R. Rep. No. 108-408, at 21 (2003) (“the Committee expects that [the Copyright Royalty and Distribution Reform Act of 2003] will make the . . . royalty distribution process less expensive and more expeditious and efficient.”). JSC has spent years consistently demonstrating that MGC is not entitled to 2010-13 satellite royalties in the Joint Sports category. Both JSC and CTV have resolved their Allocation Phase disputes with the other Allocation Phase Parties. Given the resolution of all claims to Joint Sports royalties, and JSC and CTV's significant expenditures of time and effort to reach resolution, there is no justification to delay the final distribution of royalties to JSC and CTV. There is also no possible prejudice to MGC that would result from granting the Final Distribution Motion, because MGC's claims to sports royalties have been rejected and the D.C. Circuit has dismissed its appeal.

² *See Worldwide Subsidy Grp., LLC v. Hayden*, 1:17-cv-02643-RC (D.D.C.). MGC voluntarily dismissed this suit during the pendency of a motion to dismiss for lack of jurisdiction.

Finally, even though MGC has no claim to royalties in the Joint Sports category, if for some reason MGC ultimately prevailed in its challenges to the denial of its claims, the members of JSC are willing and able to meet any obligation to distribute a portion of the royalties to MGC and would honor any such obligation (subject to exercising any available appeal rights). In fact, under the repayment agreements JSC has previously executed in connection with the partial distributions of each of the 2010-13 satellite royalty funds, JSC has already committed to doing so. *See* Order on Motions for Distribution, Nos. 2007-3 CRB CD 2004-2005; 2008-4 CRB CD 2006; 2009-6 CRB CD 2007; 2010-6 CRB CD 2008; 2011-7 CRB CD 2009; 2010-2 CRB SD 2004-07; 2010-7 CRB SD 2008; 2011-8 CRB SD 2009 (Feb. 17, 2012) (in analyzing whether sufficient funds remain to address any controversy following a requested final distribution, Judges consider parties' obligations under partial distribution repayment agreements).

For the foregoing reasons, the Final Distribution Motion should be granted.

Respectfully submitted,

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Proof of Delivery

I hereby certify that on Thursday, February 13, 2020, I provided a true and correct copy of the Reply of JSC and CTV in Support of Motion to Clarify Order Granting SDC's Motion for Final Distribution of 2010-13 Satellite Royalty Funds to the following:

Major League Soccer, LLC, represented by Edward S. Hammerman, served via Electronic Service at ted@copyrightroyalties.com

Multigroup Claimants, represented by Brian D Boydston, served via Electronic Service at brianb@ix.netcom.com

Settling Devotional Claimants, represented by Arnold P Lutzker, served via Electronic Service at arnie@lutzker.com

SESAC Performing Rights, LLC, represented by John C. Beiter, served via Electronic Service at john@beiterlaw.com

MPA-Represented Program Suppliers, represented by Lucy H Plovnick, served via Electronic Service at lhp@msk.com

Spanish Language Producers, represented by Brian D Boydston, served via Electronic Service at brianb@ix.netcom.com

Broadcast Music, Inc., represented by Jennifer T. Criss, served via Electronic Service at jennifer.criss@dbr.com

Signed: /s/ Michael E Kientzle