

**Before the
COPYRIGHT ROYALTY JUDGES
The Library of Congress**

<i>In re</i> DISTRIBUTION OF CABLE ROYALTY FUNDS	CONSOLIDATED DOCKET NO. 14-CRB-0010-CD/SD (2010-13)
DISTRIBUTION OF SATELLITE ROYALTY FUNDS	
<i>In re</i> DISTRIBUTION OF SATELLITE ROYALTY FUNDS	CONSOLIDATED DOCKET NO. 14-CRB-0011-SD (2010-13)

**ORDER GRANTING JSC AND CTV MOTION FOR
FINAL DISTRIBUTION OF 2010-13 SATELLITE ROYALTY FUNDS**

On January 14, 2020, the Joint Sports Claimants (JSC) and Commercial Television Claimants (CTV) filed a joint motion ([Motion](#)) with the Copyright Royalty Judges (Judges) in Docket No. 14-CRB-0011-SD (2010-13) seeking final distribution of the 2010-13 satellite royalty funds allocated to the Joint Sports and Commercial Television Categories. JSC and CTV (Movants) ask the Judges to distribute \$101,391,574.98 to a common agent for further distribution to JSC and CTV. Movants state that their respective shares of these undistributed 2010-13 satellite royalties are not subject to controversy. They point out that no claimant other than CTV claimed royalties in the Commercial Television category and that the Judges dismissed all Joint Sports category claims of Multigroup Claimants (MGC), the only claimant other than JSC that had claims in that category. MGC appealed the Judges' distribution phase order dismissing their claims to Joint Sports category royalties, but on December 6, 2019, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) dismissed the appeal for lack of jurisdiction. Motion at 3. The Motion was unopposed.

On January 15, 2020 (one day after Movants filed the Motion), MGC filed a Petition for Panel Rehearing and/or Petition for *En Banc* Review (Petition) in its DC Circuit appeal. The Judges refrained from ruling on the Motion pending the outcome of the Petition. The DC Circuit denied the Petition on February 5, 2020, and issued its mandate on February 18, 2020.

On February 7, 2020, Movants filed a Motion to Clarify Order Granting SDC's Motion for Final Distribution of 2010-13 Satellite Royalty Funds ([Motion for Clarification](#)), seeking relief unrelated to the Motion. In the Motion for Clarification, Movants refer to the Motion, stating that

The deadline for objecting to the Motion has passed, and no objections have been filed. Nor could any party validly object to the distribution requested in the Motion. No other party ever filed a Distribution Phase claim to Commercial Television royalties. Only one entity, [MGC], attempted to claim Joint Sports royalties, but that claim has been rejected by the Judges and the United States Court of Appeals for the District of Columbia Circuit. Just this week, the D.C. Circuit denied MGC's requests for rehearing and en banc review of its order dismissing MGC's appeal of this issue. Accordingly, the Motion should be granted.

Motion for Clarification at 1 (citation omitted).

MGC filed a timely [Response](#) to the Motion for Clarification, seeking not a denial of the particular relief sought by Movants, but of any final distribution of satellite royalties to JSC. In effect, the Opposition was to the Motion, not the Motion for Clarification. Movants filed a timely [Reply](#).

For the reasons described below, the Judges **GRANT** the Motion.

Arguments

MGC “opposes any motion for final distribution of 2010-2013 satellite royalties in the sports programming category” because it “is inclined” to pursue its objections to the Judges’ distribution phase ruling dismissing its Joint Sports category claims “before a court that has jurisdiction to review such objections,” and will likely do so “no later than March 27, 2020.” *Response* at 3. MGC further argues that, if the Judges do order a final distribution to JSC, they must take the precaution of requiring JSC to represent that it will return any royalties “that are later deemed to have been inappropriately distributed.” *Id.* MGC states that it did not oppose the Motion because the Movants filed it in the instant allocation proceeding, MGC is not a participant in that proceeding, and MGC thus “lacked standing to respond.” *Id.* at 2.

Movants respond that the MGC's objections in the *Response* are untimely because MGC failed to oppose the Motion by the deadline set forth in the Judges' procedural rules.¹ *See Reply* at 1-2. Moreover, if, as MGC asserts, it did not have standing to oppose the Motion, MGC also lacks standing to oppose final distribution to JSC by means of a response to the Motion for Clarification. *See id.* at 2 n.1. Movants assert that the reference to the Motion in the Motion for Clarification “does not extend the time period to oppose the Final Distribution Motion.” *Id.* at 2.

Movants also contest the merits of MGC's objections. Movants argue that “[u]nder the Copyright Act, the resolution of MGC's 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, is not allowed.” *Id.* at 3 (footnote omitted).

Regarding MGC's assertion that any distribution to JSC be conditioned on a representation that it will return any overpayment of royalties, Movants state that “the members of JSC are willing and able to meet any obligation to distribute a portion of the royalties to MGC

¹ In accordance with 37 C.F.R. § 303.6(f), responses in support of or opposition to the Motion were due on January 29, 2020.

and would honor any such obligation (subject to exercising any available appeal rights).” *Id.* at 4. Movants elaborate further that, “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.” *Id.*²

Discussion

MGC’s objections to the Motion are untimely. MGC had ten business days to respond to the Motion and failed to do so. 37 C.F.R. § 303.6(f).

The Judges reject MGC’s explanation for not filing a timely response in opposition to the Motion. MGC filed a [Petition to Participate](#) in this proceeding on July 2, 2015. MGC has not withdrawn its Petition; nor have the Judges dismissed it. MGC has been included on the [Participant List](#) and has received electronic delivery of all filings throughout the proceeding. In short, MGC has been and remains a participant in this proceeding. MGC had standing to object to the Motion, and was obligated to make its objection within the time limit set by the Judges’ rules.³

The Judges also reject the argument—if, in fact, MGC intends to make the argument—that the Motion for Clarification constitutes a fresh request for distribution to which MGC was entitled to object. At most, the Judges view Movants’ discussion of the Motion in the Motion for Clarification to be an artful reminder to the Judges that the Motion remains pending rather than a fresh plea for relief.

Even if the Judges were to reject Movants’ objection to the timeliness of MGC’s opposition, the Judges would reject MGC’s arguments on their merits. MGC’s arguments concerning distribution of royalties to JSC are identical to MGC’s arguments against lifting the Judges’ stay of their *Order Granting MPA’s Motion for Final Distribution of 2010-13 Satellite Royalty Funds (Final Distribution Order)* (Jan. 13, 2020). The Judges rejected those arguments in their *Order Granting MPA Motion to Lift Stay of Final Distribution Order (Order to Lift Stay)* (Feb. 24, 2020).

Specifically, the Judges rejected MGC’s argument that the Judges should refrain from a distribution in anticipation of possible litigation, stating

MGC’s deliberation as to whether to pursue its objections in an unspecified venue at some indefinite point in the future is an insufficient basis to ... further delay distribution of royalties to MPA. MGC cites no statutory or regulatory authority for the proposition that the Judges must withhold distribution of funds while MGC considers its options for pursuing its objections outside the process set forth in section 803(d) of the Copyright Act. The Judges are not aware of any such authority.

² Movants also argue that “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.” Reply at 3. That argument is not relevant to the questions whether MGC’s objections are timely or meritorious.

³ Even if the Judges accepted MGC’s standing argument it would be unavailing. As Movants point out correctly, if MGC lacked standing to respond to the Motion it would also lack standing to respond to the Motion for Clarification. See Reply at 2 n.1.

Order to Lift Stay at 2. The Judges’ reject MGC’s identical argument in the context of the instant Motion for the same reasons.⁴

The Judges also rejected MGC’s argument that any distribution should be conditioned on a promise of repayment, stating that “MPA has already entered into repayment agreements pertaining to each of the funds in this proceeding. Those agreements, which obligate MPA to return any overpayment of royalties with interest, remain in force. *See Order Granting Final Distribution of 2008 Satellite Royalty Royalties for the Devotional Category*, Docket Nos. 2012-6 CRB CD 2004-09 (Phase II) & 2012-7 CRB SD 1999-2009 (Phase II), at 2 n.3.” *Id.* at 2-3. Like MPA, JSC has entered into repayment agreements pertaining to each of the funds in this proceeding, and those agreements remain in force. The Judges reject MGC’s identical argument in the context of the instant Motion.

Conclusion

All controversies regarding distribution of 2010-13 satellite funds in the Joint Sports and Commercial Television categories have been finally resolved and the funds are subject to distribution in accordance with 17 U.S.C. § 801(b)(3)(A). The Motion, therefore, is hereby **GRANTED**. The Judges hereby **ORDER** the final distribution of 2010-13 satellite royalties to JSC and CTV collectively in a lump sum distribution of \$101,391,574.98, which includes interest through November 30, 2019 (the Distribution Amount), to be distributed from the satellite royalty funds by year as follows:

2010	\$ 28,574,444.74
2011	\$ 28,884,040.67
2012	\$ 22,302,645.73
2013	\$ 21,630,443.83
Total	\$ 101,391,574.98

The Distribution Amount shall be adjusted by the following proportion of any net increase or decrease (except for any decrease(s) caused by an intervening distribution of royalties to another party) in the respective amounts of the 2010-13 satellite royalty funds between November 30, 2019 and the date of the final distribution to JSC and CTV:

Satellite Royalty Fund	Amount
2010	58.21%
2011	58.17%
2012	59.06%

⁴ The Judges express no view on Movants’ argument that MGC is seeking to make a collateral challenge to the Judges’ claims ruling that is barred by the Copyright Act. *See Reply* at 3.

2013	59.09%
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The Licensing Division of the U.S. Copyright Office shall distribute the funds to the Office of the Commissioner of Baseball as common agent for JSC and CTV. All pertinent information to effect the transfer of funds must be provided to the Licensing Division no later than February 27, 2020. The distribution shall take place on or after March 5, 2020.

SO ORDERED.

Jesse M. Feder
Chief Copyright Royalty Judge

DATED: February 24, 2020.