

COPYRIGHT ROYALTY JUDGES
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<i>In re</i> DISTRIBUTION OF CABLE ROYALTY FUNDS	DOCKET NO. 14-CRB-0010 CD (2010-2013)
<i>In re</i> DISTRIBUTION OF CABLE ROYALTY FUNDS	CONSOLIDATED DOCKET NO. 14-CRB-0010-CD/SD (2010-13)
<i>In re</i> DISTRIBUTION OF SATELLITE ROYALTY FUNDS	

**ORDER CLARIFYING CALCULATION OF FINAL DISTRIBUTION SHARES
AND DIRECTING FINAL DISTRIBUTION OF ROYALTY FUNDS**

On October 14, 2020, the Copyright Royalty Judges (Judges) issued an *Order Directing Parties to Review Calculations of Final Distribution Shares* ([Calculation Review Order](#)) in the captioned proceedings. The *Calculation Review Order* directed the participants to review the calculations performed by the Licensing Division of the Copyright Office (Licensing Division) in response to the Judges’ *Order Directing Calculation of Final Distribution Shares* (Oct. 2, 2020) ([Calculation Order](#)), and to file notices with the Judges “stating whether or not they believe any clarifications to the calculations are necessary and, if so, providing an explanation of all proposed clarifications.” *Calculation Review Order* at 2. The Judges have received notices responding to the *Calculation Review Order* from the Canadian Claimants Group (CCG), Commercial Television Claimants (CTV), Joint Sports Claimants (JSC), MPA-Represented Program Suppliers (MPA), Multigroup Claimants (MGC), Music Claimants, National Public Radio, Inc. (NPR); Public Television Claimants (PTV), and the Settling Devotional Claimants (SDC).¹ With the exception of MPA and the SDC, none of the participants seek clarification or

¹ See Notice of Canadian Claimants Group Regarding Calculations of Final Distribution Shares (Oct. 26, 2020) ([CCG Notice](#)); Notice of Commercial Television Claimants in Response to Judges’ October 14, 2020 Order (Oct. 26, 2020) ([CTV Notice](#)); Joint Sports Claimants’ Notice in Response to Order Directing Parties to Review Calculations of Final Distribution Shares (Oct. 26, 2020) ([JSC Notice](#)); MPA-Represented Program Suppliers’ Notice Opposing the Licensing Division’s Final Distribution Calculations (Oct. 26, 2020) ([MPA Notice](#)); Multigroup Claimants’ Response to Order Directing Parties to Review Calculations of Final Distribution Shares (Oct. 26, 2020) ([MGC Notice](#)); Response of Music Claimants to Order Directing Parties to Review Calculations of Final Distribution Shares (Oct. 26, 2020) ([Music Claimants’ Notice](#)); Response of National Public Radio, Inc. to the

modification of the Licensing Division’s calculations, although CTV asserts that it is reserving the right to “explain in a future matter why the calculation approach the Judges ordered the Licensing Division to follow here with regard to accrued investment earnings in the royalty funds is not proper in an allocation (Phase I) matter”² CTV Notice at 1. MPA opposes the calculations, and the SDC seeks a clarification concerning rounding of percentage shares.³

MPA Opposition to Calculations

MPA contends that “the Licensing Division’s final distribution calculations do not comply with” the Judges’ Determinations in these proceedings.⁴ MPA Notice at 2. Specifically, MPA objects to the Licensing Division’s calculation of adjusted percentage shares to account for advance partial distributions in apportioning investment growth (*i.e.*, interest) on the funds held by the Copyright Office (which MPA refers to as “Rebalancing”). *Id.* at 3.

Instead, MPA argues that the Licensing Division should have computed the final distribution amounts by performing the following steps for each royalty year:

- (1) Determine the gross royalty amount available for distribution from the inception of the royalty fund, net of administration expenses and other costs withdrawn from the fund;
- (2) Reduce the amount derived in [step] (1) by the partial and final distributions received by National Public Radio (“NPR”) and the Music Claimants, respectively;
- (3) Multiply the resulting total amount in (2) by each party’s percentage share awarded by the Judges as set forth in the Calculation Order; and

Judges’ October 14, 2020 Order (Oct. 30, 2020) ([NPR Notice](#)); Public Television Claimants’ Notice Affirming Final Share Calculations 2010-2013 (Oct. 26, 2020) ([PTV Notice](#)); and Settling Devotional Claimants’ Notice in Response to Order Directing Parties to Review Calculation of Final Distribution (Oct. 26, 2020) ([SDC Notice](#)).

² NPR and the Music Claimants noted that they already received final distribution of their respective shares and will be receiving no further 2010-13 cable royalties. *See* NPR Notice at 1-2; Music Claimants’ Notice at 1-2. MGC claims that (unlike all other participants in these proceedings) it cannot confirm or deny the accuracy of the Licensing Division’s calculations without being provided “all workpapers associated with [the] calculations, electronic or otherwise” MGC Notice at 5. The Judges **DENY** MGC’s request for a supplemental order requiring the Licensing Division to provide those materials. As all other parties were able to comply with the *Calculation Review Order* using the materials already provided, a supplemental order is unnecessary and would merely delay distribution of royalties. Moreover, as the Judges have reminded MGC’s counsel on other occasions, requests for action by the Judges must be presented in a motion, not embedded in a responsive pleading.

³ On November 10, 2020, CCG, CTV, JSC, PTV, and the SDC filed a joint motion seeking further distribution of 2010-2013 cable royalty funds. *See* Motion of Certain Allocation Phase Parties for Further Distribution of 2010-2013 Cable Royalty Funds (Nov. 10, 2020) ([Joint Motion for Further Distribution](#)). MPA responded on November 12, 2020, opposing any further partial distribution and requesting that the Judges continue to prioritize the final distribution of all 2010-13 Cable royalties remaining on reserve over additional partial distributions of those royalties to certain participants.” MPA-Represented Program Suppliers’ Comments on the Motion of Certain Allocation Phase Parties for Further Distribution of 2010-13 Cable Royalty Funds, at 3 (Nov. 12, 2020) ([MPA Comment](#)). The Judges did not consider the Joint Motion for Further Distribution or the MPA Comment in preparing the instant Order, and hereby **DENY** that motion **AS MOOT**.

⁴ Those Determinations are *Final Allocation Determination*, 84 Fed. Reg. 3552 (Feb. 12, 2019), *aff’d sub nom. Program Suppliers v. CRB*, D.C. Cir. No. 19-1063 (Apr. 14, 2020) (per curiam) ([Allocation Determination](#)); *Final Distribution Determination*, 83 Fed. Reg. 38326 (Aug. 6, 2018) ([Devotional Distribution Determination](#)); and *Final Distribution Determination*, 83 Fed. Reg. 61683 (Nov. 30, 2018), *appeal dismissed for lack of jurisdiction sub nom. Multigroup Claimants v. CRB*, D.C. Cir. No. 18-1338 (Dec. 6, 2019) (per curiam) ([Program Suppliers Distribution Determination](#)).

(4) Reduce each party's resulting amount in (3) by the partial distribution amount(s) it received.

MPA Notice at 2-3. No other party advocates this approach. The SDC, anticipating MPA's proposal, expressly opposes it. *See* SDC Notice at 2-6.

The primary difference between the methodology MPA proposes and that used by the Licensing Division (*i.e.*, Rebalancing) is that MPA's methodology would allocate interest to each participant in proportion to the share of royalties the Judges awarded in the Final Determinations, without any consideration of the amount of royalties paid out to that participant in advance through partial distributions. The impact of these different methodologies can be illustrated through a simplified example with two claimants, A and B, to whom the Judges ultimately award equal 50% shares, but only one of whom (claimant A) received a partial distribution of 50% of the royalty fund. Under MPA's methodology, claimant A and claimant B would each be allocated 50% of interest earned on the royalties remaining in the fund after the partial distribution, while under the Rebalancing approach, claimant B would receive 100% of that interest.

The Licensing Division employed Rebalancing at the express instruction of the Judges:

All amounts ... shall account for partial distributions of the 2010-2013 cable royalties previously ordered by the Judges. All other increases or decreases to the royalty funds (*e.g.*, due to administrative expenses incurred or investment earnings accrued while the funds were on deposit with the Copyright Office) shall be apportioned among the parties in accordance with their respective percentage shares as adjusted to rebalance the parties' shares following any partial distributions those parties may have received.

Calculation Order at 2. The Licensing Division carried out those instructions faithfully.

The purpose of Rebalancing is to effect an equitable apportionment of interest on deposited funds so that a participant that receives a portion of its ultimate share of royalties through a partial distribution does not obtain a windfall at the expense of a participant that receives a smaller portion of its share (or no portion at all) through a partial distribution. The principle underlying Rebalancing is that each participant should receive interest in proportion to the portion of its share of funds that the Licensing Division holds when the interest is earned. To return to the illustration above, Rebalancing would ensure that claimant B would receive the entirety of the interest earned on the funds held by the Licensing division because, after the partial distribution to claimant A, all of the remaining royalties held by the Licensing Division that earned that interest belong to claimant B. Interest should follow the principal that earned it. The Judges find that principle both fair and economically defensible.⁵

MPA relies on three arguments to support its position: Rebalancing is inconsistent with the repayment agreements that recipients of partial distributions signed; it is inconsistent with prior decisions; and it overcompensates some participants while undercompensating others.

⁵ To underscore the improper windfall described in this example, claimant A, having received the entirety of the principal to which it was entitled, had the ability to earn interest on that distribution (whether it chose to invest the distribution or put it to other use),

Purported Inconsistency with Repayment Agreements

First, MPA argues that Rebalancing is “inconsistent with the partial distribution agreements that the Allocation Phase Parties executed with the Library of Congress” *Id.*

MPA asserts:

The plain language of the agreement clearly does not require, as a condition to receiving funds in partial distribution, an adjustment to both the remaining principal and growth in the 2010-13 Cable royalties retroactive to the date of the initial partial distributions in connection with final distributions. Nor does it contemplate Rebalancing which, by application of the “Adjusted Percentage” shares, effectively retroactively redistributes the principal and growth of the funds as if the parties’ Final Determination shares were in effect at the date of the initial partial distributions, when in fact those awards became final only following issuance of the D.C. Circuit’s mandate in this proceeding on June 8, 2020, for the Allocation Phase, and February 18, 2020, for the Distribution Phase.

Id. at 5 (footnote omitted).

The Judges reject this argument because the repayment agreements do not determine how the Judges apportion interest. Section 801(b)(3)(C) requires recipients of partial distributions of funds in controversy to execute and file with the Judges “an agreement obligating them to return any excess amounts to the extent necessary to comply with” the Judges final determination. The purpose of a repayment agreement is to ensure that recipients of partial distributions are obligated to “return any excess amounts (including interest according to the amount that would have accrued if the principal had remained in the fund) to the extent necessary to comply with the final determination” MPA Notice at Exhibit A (Oct. 18, 2012 repayment agreement at 1). Neither the statutory provision nor the repayment agreements speak to the methodology for apportioning interest in a final distribution. That is neither the purpose nor the effect of a repayment agreement. The language of the repayment agreements quoted above does make clear, however, that their main purpose is to ensure that principal *and imputed interest* can be recovered and “paid to the claimant(s) whose principal earned it, or would have earned it, had that principal remained in the fund.” *Order Directing Accounting of 2000-2003 Cable Royalties Disbursed to the Program Suppliers Category*, Docket No. 2008-2 CRB CD 2000-03 (Phase II), at 3 (Nov. 25, 2015) (*Order Directing Accounting*). The repayment agreements are thus consistent with and supportive of the Judges’ decision to employ Rebalancing.

Purported Inconsistency with Past Decisions⁶

Second, MPA argues that Rebalancing is inconsistent with the Judges’ past practice and the decisions of the administrative bodies that preceded the Copyright Royalty Judges program. MPA identifies two decisions that it argues are on point and contrary to the Rebalancing approach taken in these proceedings: the final distribution of 2010-13 satellite royalties to MPA, CTV, JSC, and the SDC; and a 1985 partial distribution order issued by the Copyright Royalty Tribunal (CRT).

⁶ Although MPA addresses this issue as part of its argument concerning the alleged inconsistency of Rebalancing with the repayment agreements, logically it is a separate argument and the Judges treat it as such.

MPA asserts that “in calculating the 2010-13 Satellite final distributions that the Licensing Division recently made to MPA, CTV, JSC, and SDC only a few months ago, the Licensing Division did not apply a Rebalancing approach, and instead followed the four-step approach outlined above. There is no discernible reason why the satellite and the cable funds for these same years should be treated differently.” MPA Notice at 5-6 (footnotes omitted). MPA claims that “MPA has reviewed the Restricted worksheet that the Licensing Division provided to MPA in connection with its 2010-13 Satellite final distribution, and the only difference in the Licensing Division’s 2010-13 Satellite final distribution calculations from the approach outlined by MPA ... was that no royalties needed to be deducted for a final distribution to NPR, as NPR does not participate in satellite royalty distributions.”⁷ *Id.* at 6 n.4.

MPA also claims that “Copyright Royalty Tribunal ... precedent establishes exactly the opposite of the Licensing Division’s Rebalancing approach.” MPA cites to a decision of the Librarian of Congress⁸ that, in turn, cites to a partial distribution order by the CRT⁹ for the proposition that “[u]nder Tribunal precedent, copyright owners were not entitled to a distribution of royalties, or any interest that had accrued on those royalties, until the Tribunal affirmatively determined their entitlement.” MPA Notice at 6 (quoting *1991 Cable Determination*, 63 Fed. Reg. at 20433). According to MPA, the CRT had determined that it was not “responsible for time value lost on an allocation which had not yet been determined.” Notice at 6 (quoting *1985 Partial Distribution Order*, 50 Fed. Reg. at 6028). MPA argues that under 17 U.S.C. § 803(a)(1), the Judges “are required to act ‘on the basis’ of” these prior decisions. MPA Notice at 6.

The Judges addressed the issue of apportioning interest on very similar facts five years ago in connection with the final distribution of 2000-2003 cable royalty funds to IPG (MGC’s predecessor) in the Program Suppliers category. *See generally Order Directing Accounting*. As in the present case, MPAA, as MPA was then known, supported a methodology for allocating interest that did not account for partial distributions. MPAA argued that IPG was not entitled to what it characterized as “retroactive, prejudgment interest on its awards.” *Id.* at 2. Rather than seeking consistency with past decisions as it claims, MPA is, in effect, asking the Judges to ignore or overturn the *Order Directing Accounting* and the decisions that follow it.

In support of its position, MPAA then, as now, relied on the *1991 Cable Determination* and the *1985 Partial Distribution Order*. *See Order Directing Accounting*, at 2-3. The Judges rejected MPAA’s arguments and its reliance on those prior decisions. The Judges found MPAA’s interpretation of the *1991 Cable Determination* unpersuasive. “The absence of requirement in the Copyright Act that interest on an award be awarded does not mean that interest may not be awarded if there is a reasoned means for doing so.” *Order Directing Accounting*, at 2. As to the *1985 Partial Distribution Order*, the Judges found that the CRT’s decision lacked legal support and resulted in “what may have amounted to a windfall to the

⁷ The Licensing Division has not disclosed its calculations of final 2010-13 satellite royalty distributions to the Judges. This procedure was adopted at the allocation parties’ request because the calculations were based in part on allocation shares from a confidential settlement. The Judges, therefore, can neither confirm nor deny MPA’s factual assertions concerning the Licensing Division’s calculations. The Judges decline to accept MPA’s characterization of the calculations sight unseen.

⁸ *Determination of the Distribution of the 1991 Cable Royalties in the Music Category*, 63 Fed. Reg. 20428, 20432 (Apr. 24, 1998) (*1991 Cable Determination*).

⁹ *Order Granting Further Partial Distributions 1979, 1980, 1981, and 1982 Cable Royalty Distribution*, 50 Fed. Reg. 6027 (Feb. 13, 1985) (*1985 Partial Distribution Order*).

claimants that had received their awards earlier.” *Id.* at 3. In addition, the Judges noted that the *1985 Partial Distribution Order* was highly fact-specific, and therefore distinguishable. *See id.*

The Judges concluded that interest should be allocated in proportion to the amount of each party’s royalty share held by the Licensing Division when the interest was earned: “the Copyright Office will allocate accrued interest to MPAA and IPG, respectively, as if the distribution allocation the Judges ordered had been applied to each year’s fund from the date funds were deposited until the date any portion of those funds was disbursed (or from which Copyright Office expenses were deducted). Interest ceases to accrue on funds when they are disbursed.” *Id.* at 4. The Judges have taken the same approach, using nearly identical language, in several subsequent distributions, including the final distributions of 2010-13 satellite royalties to MPA and the SDC. *See Order Granting MPA’s Motion for Final Distribution of 2010-13 Satellite Royalty Funds*, Docket No. 14-CRB-0011-SD (2010-2013), at 2 (Jan. 13, 2020) (*MPA Satellite Order*); *Order Granting Settling Devotional Claimants’ Motion for Final Distribution of 2010-13 Satellite Royalty Funds*, Docket No. 14-CRB-0011-SD (2010-2013), at 2 (Jan. 13, 2020) (*SDC Satellite Order*). Those orders directed the Licensing Division to allocate interest and expenses “within the Program Suppliers category as if the agreed distribution allocations ... had been applied to each year’s fund from the date funds were deposited until the date any portion of those funds was disbursed to [MPA or the SDC] (or from which Copyright Office expenses were deducted), with interest ceasing to accrue on funds when they were disbursed.” Although this language differs slightly from the Judges’ language in the *Calculation Order*, it conveys the same concept of Rebalancing: participants are entitled to interest only on that portion of their share that the Licensing Division holds and invests.

MPA acknowledges the *Order Directing Accounting*, but seeks to distinguish it. “Here, all of the Allocation Phase Parties jointly sought and received specific shares of the 2010-13 Cable royalties in partial distribution pursuant to agreement.” MPA Notice at 6. MPA draws a dubious distinction with the 2000-2003 cable distribution. There, as here, the allocation phase parties received substantial partial distributions according to shares that they agreed to among themselves. *See, e.g., Distribution Order*, Docket No. 2005-4 CRB CD 2003 (Aug. 23, 2006) (distribution of 50% of 2003 cable royalty funds to allocation phase parties through a common agent). There, as here, IPG and its successor MGC received no partial distributions. The facts are more similar than dissimilar. Moreover, no agreement among the allocation phase parties as to partial distribution shares can bind the Judges when they determine final distribution shares (including interest). To do so the parties would need to reach a final settlement. They did not do so here. MPA’s effort to distinguish the *Order Directing Accounting* is unavailing.

The Judges are also unpersuaded by MPA’s argument that the Rebalancing approach is inconsistent with other past decisions. As discussed above, the MPA Satellite Order and the SDC Satellite Order both embody the Rebalancing approach, using language nearly identical to the *Order Directing Accounting*. The Judges’ *Order Granting JSC and CTV Motion for Final Distribution of 2010-13 Satellite Royalty Funds*, Docket No. 14-CRB-0011-SD (2010-2013) (Feb. 24, 2020) (*JSC-CTV Satellite Order*) differs from the other two final distribution orders in that case because the allocation phase parties’ confidential settlement called for those two participants to receive a lump sum payment. The Judges had (and have) no visibility into the methodology for apportioning interest under the settlement agreement, and are thus neither required nor able to apply that methodology. The satellite royalty distributions referenced in the *JSC-CTV Satellite Order* therefore do not support MPA’s position.

The Judges continue to abide by their decision in the *Order Directing Accounting* not to follow the CRT's *1985 Partial Distribution Order* on the issue of apportioning interest. In that decision the CRT ordered partial distributions to all participants in that proceeding, including one claimant group—the Devotional claimants—that originally had been awarded no royalties and received no prior partial distributions.¹⁰ See *1985 Partial Distribution Order* 50 Fed Reg. at 6028. After the Devotionals successfully appealed the determination that they were entitled to no royalties, the CRT granted the Devotionals what it described as “retroactive distributions” to bring the Devotionals’ share of advance royalties up to its “proportionate share” as the CRT determined on remand. *Id.* The CRT determined that the Devotionals’ retroactive distributions would be made before the other claimants’ additional partial distributions so that “the Devotionals shall be assured of the pro rata share of the earned interest in the respective funds that they would have gotten had their distributions been made at the time of the other distributions.” However, the CRT recognized “an additional concern” because the Devotionals’ “full share remained longer in the fund, and therefore it earned more interest proportionately.” *Id.* The CRT stated

The Tribunal feels that it is not responsible for the lost time value of the Devotional’s [sic] share for that period of time between the first distributions in May 1982 and the May 11, 1984 remand, as we can not be responsible for time value lost on an allocation which had not yet been determined. However, the Devotionals have lost time value from the May 11, 1984 remand to date. For example, in the 1979 fund, 91% of the fund had been distributed to all other claimants earlier, while the Devotional’s [sic] full share which was not distributed, continued to earn interest for the total 1979 fund. We feel responsible for those additional earnings due to the 91[%] of their award, remaining in the fund from the May 11, 1984 remand to date, while the other claimants received 91% of their shares.... The percentage of additional interest shall be calculated on the respective total fund and deducted before this 1985 partial distribution is made.

Id.

It is far from clear to the Judges that the CRT's *1985 Partial Distribution Order* established a precedent that applies to this proceeding. To be sure, the CRT did decline to reapportion pre-May 1984 interest to adjust for the fact that the Devotionals, unlike all other claimants, did not receive partial distributions during that period. However, the CRT apparently did make such an adjustment to reflect the Devotionals’ greater share held in the 1979-82 cable funds during the period from May 1984 until February 1985. The CRT’s refusal to reapportion interest thus appears to have applied only to the narrow circumstance of partial distributions that were based on a final determination that was later overturned, and only for the period prior to the remand. The *1985 Partial Distribution Order* is thus readily distinguishable from the current

¹⁰ The CRT ordered the partial distributions that took place prior to the *1985 Partial Distribution Order* after it had rendered its final determination of percentage shares and while that determination was on appeal. See, e.g., *Order Directing Partial Distribution of 1979 Cable Royalty Fees*, 47 Fed. Reg. 24175 (Jun. 3, 1982) (*1982 Partial Distribution Order*) (distributing 50% of funds subject to March 8, 1982 Final Determination). The partial distributions were in proportion to the shares that the CRT determined for each participant. Because the CRT had denied any share of royalties to the Devotional claimants in its final determination, it did not order a partial distribution to the Devotionals. See *1979 Cable Royalty Distribution Determination*, 47 Fed. Reg. 9879, 9896-97 (Mar. 8, 1982).

practice, where partial distributions are made before the Judges determine final allocation and distribution shares. The decision was “a fact-based decision based upon the record (as well as the underlying statutory requirements then applicable) before the Tribunal at that time.” *Order Directing Accounting*, at 3. The Judges again “decline to follow as binding legal precedent the CRT order to the extent that it is interpreted as implying that a [distribution phase] claimant representative is not entitled to interest on its claimants' aggregate award that accrued from the time funds were deposited.” *Id.*

Moreover, even assuming that the facts underlying the *1985 Partial Distribution Order* are sufficiently similar to the present facts to warrant applying that decision in the present case, the Judges expressly decline to do so. The CRT’s stated reason for not reapportioning pre-remand interest was that it was not “responsible for time value lost on an allocation which had not yet been determined.” *1985 Partial Distribution Order*, 50 Fed. Reg. at 6028. By contrast, the CRT did “feel responsible” for the Devotionals’ “lost time value” on its share that was held in the funds after the date of the remand. *Id.* The Judges are unable to determine from such a laconic description what underlying principle or rationale the CRT applied, particularly three and a half decades removed from the decision. As the Judges have stated previously, “[t]he CRT cited no legal support for denying the Devotionals interest from the date funds were deposited or for giving what may have amounted to a windfall to the claimants that had received their awards earlier.” *Order Directing Accounting*, at 2. The CRT did not discuss or, apparently, consider the fairness or economic rationality of its methodology for apportioning interest. As the Judges have discussed, Rebalancing achieves both objectives. The Judges will not follow the approach adopted by the CRT and acquiesced to by the Librarian, and will instead follow the approach adopted by the Judges in the *Order Directing Accounting*. *Cf. Program Suppliers v. Copyright Royalty Board*, No. 19-1063, slip op. at 3 (Apr. 14, 2020) (per curiam) (CRB may depart from prior methodology if it acknowledges the change and provides good reasons therefor) (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

Purported Overcompensation of Some Participants and Undercompensation of Other Participants

Third, MPA argues that “the Licensing Division’s approach improperly overcompensates certain parties while undercompensating others.” MPA Notice at 7. MPA presents a comparison of the amounts due to each party under the MPA’s proposed methodology with the amounts due under the Judges’ methodology as carried out by the Licensing Division. That comparison reveals substantial discrepancies between the amounts that result from the different approaches to apportioning interest. *See* MPA Notice at 8-9.

Those discrepancies are to be expected, and are entirely consistent with the Judges’ decision to employ Rebalancing to assure an equitable allocation of interest. Those parties that received proportionally more of their adjudicated share of royalties in advance will now receive a lower share of interest on the money remaining on deposit with the Licensing Division, and vice versa.

MPA’s third “argument” is no more than an observation of the expected (and intended) results of the Judges’ methodology for apportioning interest. It does not persuade the Judges that any clarification or modification of the Licensing Division’s calculations is necessary.

In conclusion, the Judges reject MPA’s proposed approach to apportioning interest.

SDC Proposed Clarification

The SDC contend that the Licensing Division's calculation of shares for distribution phase participants "result in a shortfall to the SDC and MPA-Represented Program Suppliers and a windfall to MGC in the amount of \$47,308.05 by rounding the distribution shares within the Devotional and Program Suppliers categories to two decimal places." SDC Notice at 8-9. The SDC propose that "using the computations for shares as awarded by the Judges without rounding, the inequity would be eliminated." *Id.* at 10.

In the *Calculation Order* the Judges directed the Licensing Division to "compute the amounts to be distributed to each party from each fund in accordance with the percentage shares set forth in Appendix 3 as of September 30, 2020" *Calculation Order* at 2. The Judges prepared Appendix 3 and, for ease of presentation, rounded the calculations to two decimal places. The Judges thus erroneously directed the Licensing Division to use the rounded results. The Judges agree with the SDC that a clarification is appropriate.

Prior Overpayment to MPA

The Licensing Division's calculations show a negative royalty share for MPA for the 2013 royalty year, reflecting advance partial distributions to MPA that exceed the share of 2013 cable royalties the Judges awarded to MPA. Under the terms of the repayment agreement that MPA executed on June 11, 2015, MPA is obligated to return the overpayment "including interest according to the amount that would have accrued if the principal had remained in the fund" MPA Notice at Exhibit A (June 11, 2015 repayment agreement at 1).

MPA proposes that "this partial distribution overpayment be recouped via an offset against the funds due to MPA in final distribution for the 2010-12 cable royalty years" MPA Notice at 8 n.7. The Judges find that employing an offset would be an administratively efficient way to recoup the prior overpayment to MPA.

Order

For the foregoing reasons the Judges direct the Licensing Division to modify its prior calculations by computing the amounts to be distributed to MPA, the SDC, and MGC in accordance with the product of their distribution shares shown in Appendix 2 to the *Calculation Order* multiplied by the allocation shares for the Program Suppliers and Devotional categories shown in Appendix 1 to the *Calculation Order*. In addition, the Judges direct the Licensing Division to update the calculations to reflect interest earned up until the date the funds are distributed.

The Judges **ORDER** the Licensing Division to make final distributions to CCG, CTV, JSC, MPA, PTV, and the SDC in accordance with the Judges' orders granting those participants' motions for final distribution¹¹ and the Licensing Division's calculations of final distribution shares as modified by the previous paragraph. In computing the total distribution to MPA, the Licensing Division shall deduct MPA's negative balance for the 2013 royalty year from the

¹¹ Those orders are *Order Granting Canadian Claimant Group's Motion for Final Distribution of 2010-2013 Cable Royalty Funds* (Oct. 2, 2020); *Order Granting CTV's Motion for Final Distribution of 2010-2013 Cable Royalty Funds* (Oct. 2, 2020); *Order Granting JSC's Motion for Final Distribution of 2010-2013 Cable Royalty Funds* (Oct. 2, 2020); *Order Granting MPA's Motion for Final Distribution of 2010-2013 Cable Royalty Funds* (Oct. 2, 2020); *Order Granting Public Television Claimants' Motion for Final Distribution of 2010-2013 Cable Royalty Funds* (Oct. 2, 2020); and *Order Granting SDC's Motion for Final Distribution of 2010-2013 Cable Royalty Funds* (Oct. 2, 2020).

aggregate amount of MPA's distributions of 2010-12 cable royalty funds. All pertinent information to effect the transfer of funds must be provided to the Licensing Division **no later than December 21, 2020**. The distributions shall take place on or after December 28, 2020.

SO ORDERED.

Jesse M. Feder
Chief Copyright Royalty Judge

DATED: November 17, 2020.