

The 2004-2009 cable settlement shares for the Program Suppliers category that the Phase I Parties reported to the Judges in this proceeding on October 11, 2016,¹ and that MPA reported to the Licensing Division again on November 6, 2020, had been adjusted downward to account for the shares of the 2004-2009 cable royalty funds National Public Radio (“NPR”) received “off the top,” so that the reported adjusted Program Suppliers category shares could be applied directly to the 2004-2009 cable royalty funds without the need for any further adjustments. *See* Joint Response at 2. The Licensing Division used these adjusted Program Suppliers category shares in Exhibit A. However, the 2004-2009 cable royalty shares used in Exhibit A for the Devotional Category do not appear to have been similarly adjusted downward to account for NPR’s 2004-2009 cable shares, and MPA has not been able to identify any other adjustments in Exhibit A that otherwise reflect taking NPR’s share “off the top” for the Devotional category before applying the unadjusted settlement shares. As a result, it appears that Program Suppliers’ 2004-2009 cable shares were adjusted in Exhibit A so that they are “net of NPR,” while the 2004-2009 cable shares for the Devotional category remain unadjusted in Exhibit A, and are consequently not “net of NPR.”²

There are two possible ways that this error in Exhibit A could be clarified. One possible way to address the error would be for the Licensing Division to apply a downward adjustment to the 2004-2009 cable shares for the Devotional Category to take NPR’s share “off the top” before applying those shares to the 2004-2009 cable royalty funds, as was done with the adjusted shares

¹ *See* Joint Response Of The Phase I Parties To Order Granting In Part And Denying In Part IPG’s Motion For Partial Distribution Of Program Suppliers Royalties (October 11, 2016) (RESTRICTED) at 2 (“Joint Response”).

² MPA has not been able to identify calculations in Exhibit A that separately take NPR’s share “off the top” before applying the 2004-2009 cable shares attributable to the Program Suppliers and Devotional categories. However, if the Licensing Division did take NPR’s share “off the top” in Exhibit A and then also applied the adjusted 2004-2009 cable settlement shares that MPA reported for the Program Suppliers category, it would incorrectly reduce Program Suppliers’ final distribution shares by taking NPR “of the top” twice.

MPA reported for the Program Suppliers category on November 6, 2020, and then apply the adjusted shares for both categories to the total royalty funds available for distribution. Another possible way to address the error would be for the Licensing Division to utilize unadjusted 2004-2009 cable shares for both the Program Suppliers category and the Devotional category, and then revise its calculations to take NPR's share "off the top" for each of the 2004-2009 cable royalty funds before applying both the Program Suppliers and Devotional category's unadjusted settlement shares to the funds available for distribution. MPA defers to the Judges regarding which of these approaches would be the most appropriate and administratively efficient in this proceeding, and requests that the Judges provide direction to the parties and the Licensing Division regarding which approach should be applied in Exhibit A, and then order the Licensing Division to revise Exhibit A accordingly.³

Separately, MPA notes that Exhibits A and B both suggest that pursuant to the partial distribution agreements that they executed with the Copyright Office, other Allocation Phase Parties who are not participants in this Phase II Proceeding collectively received more royalties in their partial or final distributions than they were entitled to receive for some of the royalty years at issue in this proceeding, and thus have a collective obligation to repay those overpaid royalties to the Licensing Division.⁴ MPA urges the Judges not to delay distribution of the portion of the 2004-2009 cable and 1999-2009 satellite royalty funds that are on reserve to the Phase II participants in this proceeding pending the recovery of royalties overpaid to the other

³ In an effort to ensure that the Licensing Division has all the information needed from MPA to apply either of these potential approaches, concurrent with this filing, MPA is supplying the Licensing Division with unadjusted 2004-2009 cable settlement shares for the Program Suppliers category, which should be applied to the 2004-2009 cable funds after NPR's share is taken "off the top," if that calculation is preformed separately.

⁴ See December 4 Order, Exhibit A, Cable 2004-2009 Summary Tab (showing negative values for the "Other" category for 2008 and 2009 cable); December 4 Order, Exhibit B, Satellite 1999-2009 Summary Tab (showing negative values for the "Other" category for 2000-2003 and 2005-2007 satellite).

Allocation Parties. There are no controversies as to the remaining royalties which have been on deposit with the Copyright Office for more than a decade (and for some royalty years, *decades*). MPA, Settling Devotional Claimants (“SDC”), and Independent Producers Group (“IPG”), the Phase II participants in this proceeding, should not be required to wait any longer to receive their respective shares of the 2004-2009 cable and 1999-2009 satellite royalties that remain on deposit, even as they wait for additional funds to be repaid by parties who are not Phase II participants. Accordingly, MPA urges the Judges to direct the Licensing Division to distribute the portion of the 2004-2009 cable and 1999-2009 satellite royalties that remain on reserve to the Phase II participants expeditiously, and, if possible, before the end of the calendar year.

Respectfully submitted,

MPA-REPRESENTED PROGRAM SUPPLIERS

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CERTIFICATE OF SERVICE

I certify that on December 18, 2020, I caused a copy of the foregoing to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

/s/ Lucy Holmes Plovnick

Lucy Holmes Plovnick

Proof of Delivery

I hereby certify that on Friday, December 18, 2020, I provided a true and correct copy of the MPA-Represented Program Suppliers' Notice Responding To Order Directing Parties To Review Calculations Of Final Distribution Shares to the following:

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

Independent Producers Group (IPG), represented by Brian D Boydston, served via ESERVICE at brianb@ix.netcom.com

Signed: /s/ Lucy H Plovnick