

Before the  
COPYRIGHT OFFICE LICENSING DIVISION  
Washington, D.C.

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In the Matter of )  
Distribution of the 2004-2009 )  
Cable Royalty Funds )  
Docket No. 2012-6 CRB CD 2004-2009  
(Phase II)

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In the Matter of )  
Distribution of the 1999-2009 )  
Satellite Royalty Funds )  
Docket No. 2012-7 CRB SD 1999-2009  
(Phase II)

**SETTLING DEVOTIONAL CLAIMANTS' NOTICE IN RESPONSE  
TO ORDER DIRECTING PARTIES TO REVIEW  
CALCULATIONS OF FINAL DISTRIBUTION SHARES**

The Settling Devotional Claimants (“SDC”) hereby respond to the Judges’ *Order Directing Parties to Review Calculations of Final Distribution Shares* (Dec. 4, 2020). The Licensing Division’s calculations are clear and the SDC have no basis to question the accuracy of the data underlying the calculations, insofar as the data pertain to claimants in the Devotional category. Because the SDC generally are not privy to the settlement shares or partial distribution amounts in other claimant categories for the years and funds at issue in this consolidated proceeding, the SDC are unable to confirm the accuracy of the shares used by the Licensing Division in the Program Suppliers category or in the catch-all “Other” category in the Licensing Division’s spreadsheets.

Based on a review of the calculations in the Licensing Division spreadsheets, the SDC have the following comments:

1. *2004-2009 Cable Funds -- Distributions Net after Payout to National Public Radio.* As the SDC noted in their Response Regarding Devotional Category Percentages and SDC Partial Distributions, filed under seal with the Licensing Division on November 6, 2020, the Devotional category shares in the 2004-2009 cable funds should be applied to the funds net of any distributions to National Public Radio (“NPR”). In other words, the Devotional category shares apply to the funds remaining after partial and final distributions to NPR. However, the Licensing Division’s calculations appear to calculate the Devotional category shares based on the entirety of the funds, without first deducting distribution amounts paid to NPR. As a result, the allocations to the Devotional Category are overstated.

Further, the SDC understand that, unlike the SDC, MPA performed a mathematical adjustment to the Program Suppliers shares, attempting to convert them into shares of the entire fund, not net of amounts distributed to NPR. Because the funds change over time and because there were several distributions to NPR for each cable fund year, the Program Supplier shares that MPA provided to the Licensing Division are necessarily imprecise and in error. Therefore, the SDC suggest that this imprecision be corrected by using the Program Suppliers shares as agreed in the Phase I settlement agreements, and applying those shares to the fund after deduction of the amounts distributed to NPR.

2. *1999-2003 Satellite Funds - Devotional Category Lump Sum Settlement Amount.* As the SDC noted in their Response Regarding Devotional Category Percentages and SDC Partial Distributions, filed under seal with the Licensing Division on November 6, 2020, the confidential Phase I settlement agreement signed by the SDC (which sets forth only the Devotional category allocations, and not the shares of other claimant categories) sets the Devotional category allocations as lump sum amounts as of June 30, 2008, rather than as

percentage shares, and provides that the lump sum amounts shall be adjusted by the portion of any net increase or net deductions in the value of the royalty funds accruing after June 30, 2008, that is attributable to the Devotional share of the royalties remaining after all partial distributions. By email on November 19, 2020, the Licensing Division requested the SDC to provide percentage shares for the Devotional category, instead of lump sum amounts. The SDC did their best to comply with this request by providing percentage shares calculated by dividing the Devotional lump sum amounts into the “total fund amounts” the settling parties agreed were available as of June 30, 2008, as set forth in the confidential agreement. By the settlement agreement, SDC understand the “total fund amounts” were the funds remaining in the Licensing Division 1999-2003 satellite accounts as of June 30, 2008, plus the amounts of all prior distributions. However, it appears that the Licensing Division’s calculations use these June 30, 2008, calculated percentage shares as if they had been determined *ab initio*.

Because the Devotional shares as set forth in the settlement agreement were lump sum amounts as of June 30, 2008 (subject to adjustment for subsequent changes in the fund amounts) and not percentage shares from the inception of the funds, the Licensing Division’s use of the calculated percentage shares instead of the lump sum amounts likely results in an imprecise estimation, and may result in an overstatement of allocations to the Devotional category.

Relatedly, it is not clear to the SDC how the shares for the Program Suppliers category and the “Other” claimant categories in the 2000-2003 satellite royalty years were determined in the presence of the lump sum settlement amounts for the Devotional category, because the SDC were not parties to the agreement between the Program Suppliers and the Other claimant categories. Without carefully accounting for the Devotional category’s lump sum shares, the calculation of percentage shares for MPA and the Other categories (if they are not net of the

Devotional category's lump sum amounts) are likely imprecise. Therefore, the SDC ask that the Judges treat the 1999-2003 Satellite Settlement among the parties just like they treated the 2010-2013 satellite settlement, which also involved a combination of percentage shares and lump sum amounts; namely, allocating the Devotional category a fixed dollar amount as of June 30, 2008, and adjusting by the portion of any net increase in the value of the royalty funds accruing after June 30, 2008, that is attributable to the Devotional share of the royalties remaining after all partial distributions.. *See Order Granting JSC and CTV Motion for Final Distribution of 2010-13 Satellite Royalty Funds*, Consolidated Docket No. 14-CRB-0011SD (2010-13) (Feb. 24, 2020).

Moreover, because MPA was a party to the settlement agreement setting the Devotional category's lump sum shares, but the SDC were not parties to the settlement agreement setting the Program Suppliers and the Other category's percentage shares, any shortfalls resulting from any imprecision in the calculations of the 2000-2003 satellite distribution amounts should not fall on the Devotional category but should be borne entirely by MPA and the "Other" parties collectively.

3. *Satellite and Cable Funds -- Shortfalls and Surpluses.* The most concerning aspect of the Licensing Division's calculations is that they show significant net shortfalls in the amount of funds available to pay the remaining parties for the satellite and cable years as of October 31, 2020. For satellite funds, the net shortfall is \$957,524.02 and for cable funds the net shortfall is \$231,095.29, or a total shortfall of \$1,188,619.31. Of course, some portion of these shortfalls and surpluses might be affected by correction of imprecisions addressed above regarding calculations involving distributions to NPR out of the cable funds and the lump sum amounts due to the Devotional category out of the 1999-2003 satellite funds. Nevertheless, to the extent that there are net shortfalls remaining, as there probably will be, action by the

Licensing Division and the Judges will be necessary to restore the funds to permit a full and final distribution for all affected years.

To the extent there are shortfalls in some years, the SDC request that the Licensing Division recover these sums from the “Other” claimants who were overpaid by prior distributions. Such a recovery would be consistent with the agreements all claimant category representatives executed with the Copyright Office prior to receipt of partial distributions for every fund year, which require the repayment of any excess payouts plus interest. Doing so will allow the Licensing Division to meet all of its statutory payment obligations under the Copyright Act.

Date: December 18, 2020

Respectfully submitted,

/s/ Matthew J. MacLean

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**Certificate of Service**

I certify that on December 18, 2020, I caused the foregoing to be served on all parties by filing through the eCRB system.

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*/s/ Matthew J. MacLean*  
Matthew J. MacLean

# Proof of Delivery

I hereby certify that on Friday, December 18, 2020, I provided a true and correct copy of the Settling Devotional Claimants' Notice in Response to Order Directing Parties to Review Calculations of Final Distribution Shares to the following:

MPA-Represented Program Suppliers, represented by Gregory O Olaniran, served via ESERVICE at goo@msk.com

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

Signed: /s/ Matthew J MacLean