

UNITED STATES COPYRIGHT ROYALTY JUDGES
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<i>In re</i> DISTRIBUTION OF 2004, 2005, 2006, 2007, 2008, and 2009 Cable Royalty Funds	DOCKET NO. 2012-6 CRB CD 2004-09 (Phase II)
<i>In re</i> DISTRIBUTION OF 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009 Satellite Royalty Funds	DOCKET NO. 2012-7 CRB SD 1999-2009 (Phase II)

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

On December 4, 2020, the Copyright Royalty Judges (Judges) issued an *Order Directing Parties to Review Calculations of Final Distribution Shares* ([Calculation Review Order](#)) in the captioned consolidated 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 MPA-Represented Program Suppliers (MPA), the Settling Devotional Claimants (SDC), and Worldwide Subsidy Group d/b/a Independent Producers Group (IPG).¹

Proposed Clarifications

Both the SDC and MPA² agree that the Devotional category’s shares of 2004-2009 cable royalties in the *Calculation Review Order* are overstated because the amount of distributions previously made to National Public Radio (NPR) were not deducted from the base amount against which the percentage share for the Devotional category should be applied. See MPA Notice at 2; SDC Notice at 2. The Judges agree that the Devotional category shares of 2004-

¹ See MPA-Represented Program Suppliers’ Notice Responding to Order Directing Parties to Review Calculations of Final Distribution Shares (Dec. 18, 2020) ([MPA Notice](#)); Settling Devotional Claimants’ Notice in Response to Order Directing Parties to Review Calculations of Final Distribution Shares (Dec. 18, 2020) ([SDC Notice](#)), and Independent Producers Group’s Response to Judges’ Order Directing Parties to Review Calculations of Final Distribution Shares (Dec. 18, 2020) ([IPG Notice](#)).

² IPG did not propose any clarifications to the calculations.

2009 cable royalties should be recalculated by applying the settlement percentage shares supplied by the SDC against the total amount of each fund *after* deducting all distributions to NPR.

The SDC suggest two additional clarifications:

Program Suppliers Shares of 2004-2009 Cable Funds

The SDC note that the Program Suppliers' shares of 2004-2009 cable royalties were calculated by applying an adjusted settlement percentage share that was supplied by MPA to the entire amount of each year's fund. *See* SDC Notice at 2. The SDC contend that a more accurate calculation of the Program Suppliers' shares would be obtained by applying the settlement percentage shares (without any adjustment) to the amount of each year's fund after deducting distributions to NPR. *See id.*

The Judges find no basis for concluding that the methodology that the Licensing Division employed is necessarily less accurate than the methodology proposed by the SDC. Nevertheless, the Judges consider it a better practice for the Licensing Division to base its computations on the actual percentage shares agreed to by the parties to the settlement agreement, rather than on adjusted percentage shares computed by a single party. The Judges, therefore, accept the SDC's proposed clarification. To implement this methodology, the Licensing Division will need to deduct from each fund the amounts of all distributions to NPR. This will require disclosure to the Licensing Division of all amounts distributed to NPR by the common agent.

Devotional Shares of 1999-2003 Satellite Funds

The SDC state that the confidential settlement agreement concerning 1999-2003 satellite royalty funds allocates lump sum amounts to the Devotional category as of June 30, 2008, and provides that the lump sum amounts should be adjusted by the proportion of subsequent net increases or decreases in the fund that are attributable to the Devotional share. *See id.* at 2-3. The SDC also state that the Licensing Division requested that the SDC provide percentage shares for the Devotional category, and that they "did their best to comply with this request." *Id.* at 3. The SDC opine that the use of calculated percentages instead of the lump sum amounts "likely results in an imprecise estimation, and may result in an overstatement of allocations to the Devotional category." *Id.* They also note that they are unclear how this may have affected the calculation of shares for the other categories, since they are not privy to the details of the settlement agreement between the Program Suppliers category and the other categories. *See id.* at 3-4.

The SDC propose that the Devotional category should be allocated a fixed dollar amount as of June 30, 2008, that is adjusted by the portion of any net increase in the value of the funds accruing after that date that is attributable to the Devotional share remaining after all partial distributions. *See id.* at 4 (citing [*Order Granting JSC and CTV Motion for Final Distribution of 2010-13 Satellite Royalty Funds*](#), Docket No. 14-CRB-0011 SD (2010-13) (Feb. 24, 2020)).

Again the Judges find it a better practice for the Licensing Division to use as the input for its calculations the values agreed to by the parties in their settlement agreement—in this case the lump sum amounts allocated to the Devotional category—rather than values computed by a single party. The Judges, therefore, accept the SDC's proposed clarification, as described below.

Shortfall Amounts for Certain Royalty Years

Both MPA and the SDC note that the calculations prepared by the Licensing Division show that the balances in several of the cable and satellite royalty funds are less than the amounts allocated to the Program Suppliers and Devotional categories in aggregate. The SDC states that the Licensing Division should recover those shortfalls from the claimants who were overpaid by prior distributions pursuant to the repayment agreements that they executed before receiving any partial distributions. SDC Notice at 5. MPA also notes that “other Allocation Phase Parties who are not participants in this Phase II Proceeding ... have a collective obligation to repay those overpaid royalties to the Licensing Division,” but “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 ... pending the recovery of royalties paid to the other Allocation Parties.” MPA Notice at 3-4.

The Judges agree to both points: The Licensing Division must recover the overpayments to the other Allocation Phase parties by invoking the repayment agreements; and the need to recover shortfalls should not delay the disbursement of the money that remains on deposit. Once the Licensing Division has revised its calculations in accordance with this Order, the Judges will address in a separate order the disposition of any shortfalls (and surpluses) in the 2004-2009 cable royalty funds and 1999-2009 satellite royalty funds that are attributable to other Allocation Phase parties.

Order

The Judges hereby **ORDER** as follows:

MPA shall provide to the Licensing Division under seal the settlement percentage shares allocated to the Program Suppliers’ category, without adjustment for NPR’s share, **no later than January 19, 2021**.

No later than January 19, 2021, NPR shall provide to the Licensing Division under seal the amounts of any payments to NPR from partial distributions made to a common agent, the dates of those partial distributions, and the royalty funds from which they were made.

No later than March 16, 2021, the Licensing Division shall recalculate the final distribution shares in accordance with the methodology outlined in the *Calculation Order* as modified by the following clarifications:

- The Licensing Division shall deduct the amounts distributed to NPR from the amounts deposited in the 2004-2009 cable royalty funds before applying the settlement percentage shares supplied by the SDC for the Devotional category;
- The Licensing Division shall calculate the Program Suppliers’ share of the 2004-2009 cable royalty funds by applying the unadjusted settlement percentage shares supplied by MPA to the amounts deposited in those funds, net of the amounts distributed to NPR; and
- The Licensing Division shall compute the Devotional category share of the 1999-2003 satellite funds by allocating to the Devotional category a fixed dollar amount as of June 30, 2008, and adjusting that amount by the portion of any net increase in the value of the funds accruing after that date that is attributable to the Devotional category remaining after all partial distributions. In performing its

calculations, the Licensing Division shall determine the amount in each fund that was available for distribution as of June 30, 2008, by

- (a) determining the amount available for distribution after the most recent distribution;
- (b) adding and subtracting any additions to or subtractions from that amount that were made after that distribution; and
- (c) adding an estimate of the interest accrued as of June 30, 2008.

The Licensing Division shall estimate the interest accrued as of June 30, 2008, by multiplying the interest earned during the period from the most recent distribution prior to June 30, 2008 (first distribution) and the next distribution following that date (second distribution) by the quotient of the number of days between the first distribution and June 30, 2008, divided by the number of days between the first distribution and the second distribution.

After recalculating the final distribution shares, the Licensing Division shall disburse the funds on deposit in the 2004-2009 cable royalty funds and 1999-2009 satellite royalty funds to MPA, the SDC, and IPG in accordance with their recalculated final distribution shares, if those royalty funds have sufficient amounts on deposit to pay out those shares in full. To the extent any fund does not have a sufficient amount on deposit to pay those shares in full, the Licensing Division shall disburse to each participant its proportionate share of the amount on deposit.

MPA, the SDC, and IPG must provide all pertinent information to effect the transfer of funds to the Licensing Division **no later than March 18, 2021**. The distributions shall take place **on or after March 25, 2021**.

SO ORDERED.

Jesse M. Feder
Chief Copyright Royalty Judge

DATED: January 11, 2021.