

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

_____))
In the Matter of))
))
Distribution of the) **Docket No.** _____
2016 Cable Royalty Funds))
_____))

**MOTION OF THE ALLOCATION PHASE PARTIES FOR
PARTIAL DISTRIBUTION OF 2016 CABLE ROYALTY FUNDS**

The undersigned representatives of all the Allocation Phase (formerly “Phase I”) claimant categories to which Section 111 cable royalties have been allocated in prior cable royalty allocation proceedings (“Allocation Phase Parties”) hereby move the Copyright Royalty Judges (“Judges”) to order a partial distribution of 50% of the 2016 cable royalty funds (the “2016 Cable Funds”) to the Allocation Phase Parties.¹

According to the Licensing Division of the Copyright Office, as of January 31, 2018, the amount of the 2016 Cable Funds available for distribution totaled approximately \$202,567,314.70.² Based on this amount, a 50% partial distribution of the 2016 Cable Funds would total approximately \$101,283,657.35. The circumstances warrant a partial distribution of 50% of the 2016 Cable Funds as soon as feasible.

¹ The Allocation Phase Parties do not intend for this motion to be a stipulation among themselves as to any procedural or substantive issue concerning the final distribution of the 2016 Cable Funds, including but not limited to whether the calculation of Allocation Phase shares should consider only eligible and claimed works or whether such an approach is unwarranted and inconsistent with prior rulings in Allocation Phase proceedings. *See Order Regarding Discovery*, Docket No. 14-CRB-0010-CD (2010-13) at 4-6 (July 21, 2016).

² *See Growth in the Copyright Royalty Funds (January 31, 2018) (Unaudited)*, which was provided via e-mail from Vincent Murzinski of the Licensing Division to Michael Kientzle, counsel for the Office of the Commissioner of Baseball, on February 12, 2018, and which is attached hereto as Exhibit A.

I. THE JUDGES HAVE AUTHORITY TO ORDER PRECONTROVERSY PARTIAL DISTRIBUTIONS

Section 111 of the Copyright Act favors the early distribution of cable royalties. *See* 17 U.S.C. § 111(d)(4)(C). Chapter 8 of the Copyright Act vests the Judges with ample statutory authority to order the precontroversy distribution of cable royalties. In the Copyright Royalty Judges Program Technical Corrections Act, Congress amended Section 801(b)(3)(C) to clarify that a partial distribution of royalties can be made at any time after the filing of claims. *See* Pub. L. No. 109-303 §§ 3, 5, 109th Cong., 2d Sess. (2006), 120 Stat. 1478. Congress reaffirmed the Judges' authority to order partial distributions of statutory royalties in advance of the declaration of a controversy. Section 801(b)(3)(C) provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111 . . . may, upon motion of one or more of the claimants and after publication in the *Federal Register* of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants –

- (i) agree to the partial distribution;
- (ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);
- (iii) file the agreement with the Copyright Royalty Judges; and
- (iv) agree that such funds are available for distribution.

17 U.S.C. § 801(b)(3)(C).

Here, the statutorily prescribed deadline for filing claims has now passed. Furthermore, the Allocation Phase Parties (1) agree to the partial distribution; (2) agree that the requested

funds are available for distribution; (3) agree to sign the separate agreement contemplated in Section 801(b)(3)(C)(ii) obligating them to return any excess royalty amounts received, in a form to be provided by the Judges or the Copyright Office; and (4) agree to file such an agreement with the Judges or as otherwise directed.

II. DISTRIBUTION OF 50% OF THE 2016 CABLE FUNDS IS REASONABLE AND APPROPRIATE

The Judges have consistently granted the Allocation Phase Parties' motions for partial distributions of the annual cable royalty funds, most recently a 60% partial distribution of the 2015 cable royalty funds. *See Order Granting Motion for Partial Distribution*, Docket No. 16-CRB-0020 CD (2015) (June 6, 2017) (finding request for partial distribution of 60% of the 2015 cable royalty funds to be "reasonable and appropriate"); *Order Granting Motion for Partial Distribution*, Docket No. 16-CRB-0009 CD (2014) (Aug. 15, 2016) ("August 15 Order") (finding request for partial distribution of 60% of the 2014 cable royalty funds to be "reasonable and appropriate"); *Order Granting Motion of Phase I Claimants for Partial Distribution*, Docket No. 14-CRB-0010 CD (2013) (May 28, 2015) (finding requested 60% partial distribution to be "reasonable and appropriate"); *see also Order Granting Motion of Phase I Claimants For Partial Distribution*, Docket No. 14-CRB-0007 CD 2010-12 (Dec. 23, 2014) (finding requested 60% partial distribution of 2012 cable funds to be "reasonable and appropriate"); *Order Granting Phase I Claimants' Motion for Partial Distribution of 2011 Cable Royalty Funds*, Docket No. 2012-9 CRB CD 2011 (Mar. 13, 2013) (granting Phase I Parties' request for a 50% partial distribution of the 2011 cable royalty funds); *Order Granting Phase I Claimants' Motion for Partial Distribution of 2010 Cable Royalty Funds*, Docket No. 2012-4 CRB CD 2010 (Sept. 14, 2012) (granting Phase I Parties' request for a 50% partial distribution of the 2010 cable royalty funds).

Indeed, the Copyright Office has previously determined that partial distributions well in excess of 60% were reasonable and appropriate under the circumstances. *See, e.g., Order*, Docket No. 94 CARP (92-CD & 93-CD) at 2, 5 (Sept. 26, 1994) (granting motion for partial distribution of 80% of 1992 and 1993 cable royalty funds) (“September 26, 1994 Order”); *Order*, Docket No. 2000-6 CARP CD 98 (Oct. 12, 2000) (granting Phase I Parties’ motion for partial distribution of 75% of the available cable royalties on deposit for the 1998 cable royalty fund and acknowledging that retention of 25% of the available royalties would suffice to resolve any outstanding controversies related to those funds); *Distribution Order*, Docket No. 2000-7 CARP SD 96-98 (Oct. 12, 2000) (granting Phase I Parties’ request for partial distribution of 75% of the available satellite royalties on deposit for the 1996, 1997, and 1998 satellite royalty funds). Thus, the Allocation Phase Parties do not concede through this motion that a 50% distribution is the maximum partial distribution of royalties that should be made from the 2016 Cable Funds. The Allocation Phase Parties reserve the right to move for additional partial distributions from the 2016 Cable Funds as may be appropriate after the nature and extent of any *bona fide* disputes come into better focus.

A partial distribution of 50% of the 2016 Cable Funds would ensure that the Allocation Phase Parties are not deprived of a substantial amount of the royalties that belong to them during a period that may be several years long. In the past, the Copyright Office has recognized that the earliest possible receipt of the maximum available royalties by copyright owners is an important objective of the Copyright Act. *See, e.g.,* September 26, 1994 Order at 2, 5 (Office distributed 80% of the 1992 and 1993 cable royalties, noting that “the intent of the law favored early distribution”); *see also Order*, Docket No. 94 CARP (92-CD & 93-CD) at 2 (Sept. 12, 1994) (“September 12 , 1994 Order”) (referring to the “overall intent of the subparagraphs in [Section

111(d)(4)] in favor of early distributions”). Accordingly, pre-proceeding distributions of cable royalties under Section 111(d)(4)(C) may be made in circumstances where there may be a significant delay between the filing of claims and the initiation of proceedings. *See, e.g.*, September 12, 1994 Order at 2; September 26, 1994 Order at 2; *see also Order*, Docket No. 2007-3 CRB CD 2004-2005 at 3-4 (Apr. 10, 2008).

A distribution of at least 50% of the 2016 Cable Funds to the Allocation Phase Parties would ensure that they are not further deprived of a substantial amount of the royalties paid for the use of their copyrighted works. The Allocation Phase Parties have agreed to the amount of the proposed partial distribution. Furthermore, the Allocation Phase Parties submit that the undistributed amount, which totals \$101,283,657.35, along with each party’s commitment to repay any excess funds will be more than sufficient to satisfy any remaining controversies involving these funds.

Finally, because the amounts allocated to each Allocation Phase Party will remain confidential, the Allocation Phase Parties further move to have the distribution made in bulk to a common agent for all Parties. In this regard, the Allocation Phase Parties have entered into a confidential distribution agreement with the Office of the Commissioner of Baseball (“Baseball”), agreeing that Baseball will serve as the common agent for the distribution of royalties among the individual Allocation Phase Parties.

CONCLUSION

For the reasons set forth above, the Allocation Phase Parties respectfully request that the Judges, pursuant to 17 U.S.C. § 801(b)(3)(C), publish for comment in the Federal Register the proposed partial distribution of 50% of the royalties contained in the 2016 Cable Funds, and

thereafter grant this Motion and order a 50% partial distribution of the 2016 Cable Funds to the Allocation Phase Parties as soon as feasible.

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