

Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

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*In re* )  
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DISTRIBUTION OF CABLE ) NO. 16-CRB-0009-CD (2014-17)  
ROYALTY FUNDS )  
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**JOINT SPORTS CLAIMANTS’ NOTICE OF CONTROVERSY**

The Joint Sports Claimants (“JSC”)<sup>1</sup> submit this Notice of Controversy pursuant to the *Scheduling Order and Notice of Voluntary Negotiation Period* (“VNP Order”) entered by the Copyright Royalty Judges (“Judges”) on April 5, 2021. JSC hereby notifies the Judges of the following controversies, and submits proposals for further proceedings to resolve those controversies.

**1. Allocation Phase Controversies.**

**a. Allocation of Royalties Among the Claimant Categories.** On April 5, 2021, the Judges adopted, for the purposes of the 2014-17 cable and satellite royalty distribution proceedings, “the claimant category definitions employed in the corresponding 2010-13 cable and satellite royalty distribution proceedings.” *Order Lifting Stay and Adopting Claimant Categories*, Nos. 16-CRB-0009 CD (2014-17), 16-CRB-0010 SD (2014-17) (Apr. 5, 2021) at 2. The Judges further concluded that “claims validity” (*i.e.*, the treatment of claims that are not valid or not validly represented) was an issue that “need not be resolved within the definitions of claimant categories.” *Id.* at 7.

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<sup>1</sup> JSC is comprised of the Office of the Commissioner of Baseball, the National Basketball Association, the National Football League, the National Collegiate Athletic Association, the National Hockey League, and the Women’s National Basketball Association.

JSC has engaged in good faith negotiations with all other parties that filed timely notices of intent to participate in this proceeding (“parties”), as required by the VNP Order, to determine whether there is a controversy as to how the 2014, 2015, 2016 and 2017 cable royalties should be allocated among these claimant categories. Regrettably, those negotiations were not successful and thus there is a controversy over the appropriate allocation of cable royalty funds among the claimant categories for 2014-17.

**b. Validity of Claims.** For the reasons detailed in JSC’s comments in response to the Judges’ *Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment of Ineligible Claims*, 84 Fed. Reg. 71,852 (Dec. 30, 2019), issues of claims validity should be addressed in the Distribution Phase, not the Allocation Phase. *See Comments of Joint Sports Claimants*, No. 19-CRB-0014-RM (Mar. 16, 2020) at 31–39. Validity determinations are unnecessary to make accurate relative value determinations among the claimant categories in the Allocation Phase. Moreover, litigating each and every one of all of the claimant categories’ tens of thousands of programs claimed in the Allocation Phase would be unmanageable, with substantially increased costs and delays. The claims validity controversies within the JSC category are discussed below, in the sections of this notice pertaining to the Distribution Phase.

## **2. Distribution Phase Controversies.**

**a. MGC Claims.** The Multigroup Claimants (“MGC”) seek a share of the 2015-17 royalties allocated to the Sports Category. MGC has not previously received any portion of Sports royalties, and in numerous prior proceedings has submitted claims to royalties in the Sports Category that the Judges ultimately found to be invalid. *See Ruling and Order Regarding Objections to Cable and Satellite Claims*, Nos. 14-CRB-0010-CD (2010-13) and 14-CRB-0011-

SD (2010-13) (Oct. 23, 2017) *aff'd Multigroup Claimants v. Copyright Royalty Board*, 788 Fed. App'x 12 (D.C. Cir. 2019) (per curiam); *see also Order on Joint Sports Claimants' Motion for Summary Adjudication Dismissing Claims of Independent Producers Group*, Nos. 2012-6 CRB CD 2004-2009, 2012-7 CRB SD 1999-2009 (Aug. 29, 2014); *Memorandum Opinion and Order Following Preliminary Hearing on Validity of Claims*, No. 2008-2 CRB CD 2000-2003 (Phase II) (Mar. 21, 2013), *aff'd Independent Producers Group v. Librarian of Congress*, 792 F.3d 132, 136-40 (D.C. Cir. 2015); *Order on Motion by Joint Sports Claimants for Section 801(c) Ruling or, in the Alternative, a Paper Proceeding in the Phase I Sports Category*, No. 2008-2 CRB CD 2000-2003 (Phase II) (May 17, 2013) (rejecting IPG's claims for shares of Sports royalties on behalf of U.S. Olympic Committee and United Negro College Fund, concluding that neither claim was properly made against the Sports category), *aff'd Independent Producers Group*, 792 F.3d at 140. With respect to MGC, the issues to be resolved therefore are:

- Does MGC properly represent those claimants that it purports to represent with claims to 2015-17 royalties allocated to the Sports Category?
- Do those claimants have a valid claim (i) to 2015-17 royalties (ii) within the Sports Category?
- To the extent that such valid claims exist, what is the relative value of those claims vis-à-vis the claims of JSC members and any other claimants who have a valid claim (i) to 2015-17 royalties (ii) within the Sports Category?

**b. MLS Claims.** Major League Soccer, LLC (“MLS”) seeks a share of the 2014-17 royalties allocated to the Sports Category. With respect to MLS, the issue to be resolved is:

- What is the relative value of MLS's claims vis-à-vis the claims of JSC members and any other claimants who have a valid claim (i) to 2014-17 royalties (ii) within the Sports Category?

In prior proceedings, JSC and MLS have negotiated agreements among themselves but have not yet been able to do so in this proceeding. JSC and MLS continue to negotiate in good faith in order to reach a settlement without the need for Distribution Phase proceedings.<sup>2</sup>

**3. Proposal for Further Proceedings.** JSC proposes the following further proceedings to resolve the existing controversies:

**a. Allocation Phase.** JSC proposes the schedule set forth below for further proceedings on the issues of allocation of the 2014, 2015, 2016, and 2017 cable royalty funds among the claimant categories (“Allocation Issues”). The times between deadlines, and the overall time proposed, are generally consistent with the schedule proposed by the parties in the 2010-13 cable royalty distribution proceedings. *See Joint Notice of Controversy*, No. 14-CRB-0010-CD (2010-13) (Mar. 7, 2016).

12/10/2021	Written Direct Statements on Allocation Issues (“WDS-A”) due
12/10/2021	Discovery on WDS-A commences
2/8/2022	Discovery on WDS-A closes <sup>3</sup>
2/8/2022	Settlement Conference period on Allocation Issues commences
3/1/2022	Settlement Conference period on Allocation Issues closes
4/1/2022	Written Rebuttal Statements on Allocation Issues (“WRS-A”) due
4/1/2022	Discovery on WRS-A commences
5/2/2022	Discovery on WRS-A closes
6/6/2022	Hearings on Allocation Issues commence

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<sup>2</sup> There is no controversy among the JSC members on how to allocate the 2014-17 royalties allocated to the Sports Category. Nor is JSC aware of any controversies over those royalties other than the controversies described above.

<sup>3</sup> In the event any party files an amended WDS, any such amended statement would be due within 15 days after the close of discovery pursuant to 37 C.F.R. § 351.4(c).

7/8/2022	Hearings on Allocation Issues conclude <sup>4</sup>
8/8/2022	Proposed Findings of Fact and Conclusions of Law on Allocation Issues due
8/22/2022	Reply to Proposed Findings of Fact and Conclusions of Law on Allocation Issues due

**b. Distribution Phase.** Whether and, if so, to what extent MGC properly represents claimants with valid claims to 2015-17 Sports royalties are threshold issues that must be resolved before the parties can address the relative value of any such claims. JSC respectfully requests that the Judges bifurcate these issues from the issue of the relative value of any such claims. In view of MGC's previous inability to establish any valid claim to Sports royalties, JSC also requests that the Judges require MGC promptly to (i) identify any and all claimants that MGC claims to represent with claims for 2015-17 Sports royalties; and (ii) produce all documents that relate or refer to MGC's position that it is entitled to seek Sports royalties on behalf of those claimants (including both all documents that support MGC's position and all documents that are contrary to or fail to support MGC's position). Unless and until such discovery is provided, JSC cannot determine what further proceedings may be necessary concerning MGC's claims for 2015-17 Sports royalties, as the scope of any further proceedings will depend on the discovery provided by MGC in support of its representation of claimants to Sports royalties and the issues raised by that discovery.

**4. Controversies Identified by Other Parties.** JSC reserves the right to participate in proceedings regarding any other controversies identified by any other parties that might affect JSC's rights.

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<sup>4</sup> JSC anticipates that the parties will have a better understanding of the time needed for the hearing once the parties have filed written direct and rebuttal testimony.

Respectfully submitted,

**JOINT SPORTS CLAIMANTS**

/s/ Michael Kientzle

Daniel A. Cantor (DC Bar No. 457115)  
Michael Kientzle (DC Bar No. 1008361)  
ARNOLD & PORTER KAYE SCHOLER LLP  
601 Massachusetts Avenue, N.W.  
Washington, DC 20001  
Phone: (202) 942-5000  
Fax: (202) 942-5999  
Daniel.Cantor@arnoldporter.com  
Michael.Kientzle@arnoldporter.com

Dated: July 19, 2021

# Proof of Delivery

I hereby certify that on Monday, July 19, 2021, I provided a true and correct copy of the Joint Sports Claimants' Notice of Controversy to the following:

Multigroup Claimants, represented by Brian D Boydston, served via ESERVICE at brianb@ix.netcom.com

Broadcast Music, Inc. (BMI), represented by Jennifer T. Criss, served via ESERVICE at jennifer.criss@dbr.com

ASCAP, represented by Sam Mosenkis, served via ESERVICE at smosenkis@ascap.com

Public Television Claimants, represented by Ronald G. Dove Jr., served via ESERVICE at rdove@cov.com

Program Suppliers, represented by Lucy H Plovnick, served via ESERVICE at lhp@msk.com

Canadian Claimants, represented by Lawrence K Satterfield, served via ESERVICE at lksatterfield@satterfield-pllc.com

Commercial Television Claimants / National Association of Broadcasters, represented by John Stewart, served via ESERVICE at jstewart@crowell.com

SESAC Performing Rights, LLC, represented by John C. Beiter, served via ESERVICE at john@beiterlaw.com

National Public Radio, represented by Gregory A Lewis, served via ESERVICE at glewis@npr.org

Major League Soccer, L.L.C., represented by Edward S. Hammerman, served via ESERVICE at ted@copyrightroyalties.com

Devotional Claimants, represented by Matthew J MacLean, served via ESERVICE at matthew.maclean@pillsburylaw.com

Global Music Rights, LLC, represented by Scott A Zebrak, served via ESERVICE at

scott@oandzlaw.com

Signed: /s/ Michael E Kientzle