

Before the
COPYRIGHT ROYALTY JUDGES
Washington, DC

_____)	
<i>In re</i>)	
)	
DISTRIBUTION OF CABLE)	DOCKET NO. 16-CRB-0009 CD
ROYALTY FUNDS)	(2014-17)
_____)	

COMMERCIAL TELEVISION CLAIMANTS' NOTICE OF CONTROVERSY

The Commercial Television Claimants Group (“CTV”), by its representative the National Association of Broadcasters (“NAB”), submits this Notice of Controversy pursuant to the *Scheduling Order and Notice of Voluntary Negotiation Period* (“VNP Order”) issued by the Copyright Royalty Judges (“Judges”) on April 5, 2021. CTV hereby notifies the Judges of the following controversies and its proposal for further proceedings.

1. Allocation Among the Cable Claimant Categories. Notwithstanding good faith negotiations among the participants during the Voluntary Negotiation Period, no agreement has been reached “regarding ultimate distribution of the royalty funds for the years at issue in this proceeding [2014 to 2017, inclusive], including all issues traditionally addressed in allocation phase and distribution phase proceedings.” *See* VNP Order at 1. As such, a controversy exists as to the share CTV should receive from the available cable royalty funds for 2014-2017, as allocated among the Cable Claimant Categories (collectively “Categories” and each a “Category”) as defined in the *Order Lifting Stay and Adopting Claimant Categories* (“Claimant Categories Order”) issued by the Judges on April 5, 2021.

2. Distribution of Royalties Allocated to the Commercial Television Claimants Category. NAB is unaware of any dispute or controversy as to the distribution of cable royalties

allocated to the Commercial Television Claimants' Category ("CTV Royalties"), and no claimant eligible to receive CTV Royalties has filed notice of such a dispute or controversy.

3. Distribution of Royalties Allocated to Other Categories

The Commercial Television Claimants' Category ("CTV Category") is defined as:

Programs produced by or for a U.S. commercial television station and broadcast only by that station during the calendar year in question, except those listed in subpart (3) of the Program Suppliers category [*i.e.*, programs produced by or for a U.S. commercial television station that are comprised predominantly of syndicated elements, such as videos, cartoons, 'PM Magazine,' and locally-hosted movies.]

Claimant Categories Order at Exhibit A. NAB represents all U.S. commercial television station claimants with respect to the CTV Category. But some of these stations also produce programs that are broadcast on other stations, which as a result are categorized as coming within the Program Suppliers, Public Television Claimants, or Devotional Claimants Categories, respectively, rather than the CTV Category. Beginning with the 1979 Cable Royalty Distribution Proceeding, NAB has represented such stations in making their claims in the other Categories, and does so again in the 2014-2017 Proceedings. Following are statements of the nature of the controversies within each other Category with respect to which NAB represents U.S. commercial television broadcasters as claimants:

a. Program Suppliers. A controversy exists with respect to the distribution of 2014-2017 Program Suppliers Category royalties between claimants represented by NAB and those represented by MPA and others. NAB and the MPA-represented Program Suppliers have engaged in good-faith negotiations aimed at reaching an agreement that would resolve that existing controversy, but have not yet reached agreement. NAB believes that the controversy will likely be resolved without need for involvement by the

Judges. In the unlikely event that a settlement cannot be reached, then there may be a distribution phase controversy within the Program Suppliers Category.

b. Devotional Claimants. A controversy exists with respect to the distribution of 2014-2017 Devotional Claimants Category royalties between claimants represented by NAB and those represented by other Devotional Claimants representatives. NAB and the Settling Devotional Claimants have engaged in good-faith negotiations aimed at reaching an agreement that would resolve that existing controversy, but have not yet reached agreement. NAB believes that the controversy will likely be resolved without need for involvement by the Judges. In the unlikely event that a settlement cannot be reached, then there may be a distribution phase controversy within the Devotional Claimants Category.

c. Public Television Claimants. A controversy exists with respect to the distribution of 2014-2017 Public Television Claimants Category royalties between claimants represented by NAB and those represented by PBS. NAB and PBS have engaged in good-faith negotiations regarding that controversy, but have not yet reached agreement. NAB believes that the controversy will likely be resolved without need for involvement by the Judges. In the unlikely event that a settlement cannot be reached, then there may be a distribution phase controversy within the Public Television Claimants Category.

4. Proposal for Further Proceedings. CTV proposes that the Judges conduct further proceedings in a manner similar to, and based on a schedule consistent with the proceedings in the 2010-13 cable and satellite royalty proceedings, Docket Nos. 14-CRB-0010-CD, 14-CRB-0011-SD, and 14-CRB-0010-CD/SD. CTV further proposes that the Judges give significant

weight to considerations of efficiency and economy in their further procedural rulings. For example, as reported above, there is no controversy with respect to the distribution of CTV Royalties. If further procedural orders were to treat the resolution of intra-category distribution phase controversies as consolidated with or integral to the resolution of the primary inter-category allocation phase controversies (for example, by allowing or requiring evidence to be presented as to every program within each Category as part of the allocation phase determination), CTV and other parties in similar circumstances would be required to expend substantial time and resources on proceedings and evidentiary showings that would be irrelevant and unnecessary for them. In general, treating the allocation phase and distribution phase controversies separately will allow the proceedings to be more focused, more efficient and avoid imposing unwarranted cost and delay on parties involved only in limited discrete controversies.

NAB will continue its efforts to resolve its intra-category distribution phase controversies with respect to the 2014-2017 Program Suppliers, Public Television Claimants, and Devotional Claimants royalties. If the parties are unable to resolve them, any disputes as to the value of NAB-represented claimants' claims vis-à-vis the claims of the MPA-represented, PBS-represented, and Settling Devotional Claimants-represented claimants in the respective Categories can be addressed on a schedule to be determined by the Judges. NAB believes that such a schedule should follow the determination of Category royalty shares from the allocation phase. The allocation determination may, for example, encompass resolutions of disputed issues that could have a material impact on the distribution issues still to be determined within any Category. Sequencing the resolution of the allocation and distribution adjudications within this single overall proceeding would result in more focused and efficient distribution adjudications.

5. Preliminary Discovery and Claims Validity Issues. The Judges have indicated they “may order preliminary discovery to encourage greater efficiency in the presentation of evidence in the required Written Direct Statements.” VNP Order at 3, footnote 3. Like all participants, CTV are receptive to the Judges’ efforts to establish greater efficiency in this proceeding. However, CTV respectfully submits that requiring discovery on issues related to the validity of claims of the participants *before* the filing of Written Direct Statements or the conclusion of the allocation phase would not likely accomplish this goal. Instead, CTV believes such an approach would unnecessarily increase costs and significantly increase inefficiencies in this proceeding. For the reasons addressed in CTV’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 of this proceeding. *See Comments of the National Association of Broadcasters*, No. 19-CRB-0014-RM (Mar. 16, 2020) at 15-23.

Respectfully submitted,

COMMERCIAL TELEVISION CLAIMANTS
NATIONAL ASSOCIATION OF BROADCASTERS

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Its Counsel

Dated: July 19, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2021, a copy of the foregoing Notice of Controversy was filed electronically using eCRB, which will automatically provide electronic service copies to all counsel of record who are registered to use eCRB. See 37 C.F.R. § 303.6(h)(1).

/David J. Ervin/

David J. Ervin

Proof of Delivery

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

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

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

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

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

Joint Sports Claimants, represented by Michael E Kientzle, served via ESERVICE at michael.kientzle@arnoldporter.com

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

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

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

Global Music Rights, LLC, represented by Scott A Zebrak, served via ESERVICE at scott@oandzlaw.com

SESAC Performing Rights, LLC, represented by John C. Beiter, served via ESERVICE at

john@beiterlaw.com

Signed: /s/ David J Ervin