

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

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

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

**JOINT MOTION FOR ORDER ADDRESSING OVERPAYMENT
AND SURPLUS ISSUES**

MPA-represented Program Suppliers (“MPA”) and the Settling Devotional Claimants (“SDC”) respectfully request that the Copyright Royalty Judges (“Judges”) issue an order addressing the overpayment and surplus issues recognized in their January 11, 2021 *Order Clarifying Calculation Of Final Distribution Shares And Directing Final Distribution Of Royalty Funds* (“January 11 Order”), and direct the Licensing Division to recoup the funds that were overpaid from the other Allocation Phase Parties so that a final distribution can be made to the Phase II Participants in this proceeding.

On November 2, 2020, the Judges issued separate orders in this consolidated proceeding granting motions for final distribution filed by MPA, SDC, and Independent Producers Group (“IPG”).¹ Thereafter, the Judges issued an order directing the Licensing Division to calculate the

¹ See *Order Granting MPA-Represented Program Suppliers’ Motion For Final Distribution Of 2004-2009 Cable Royalty Funds And 1999-2009 Satellite Royalties* (November 2, 2020); *Order Granting SDC’s Motion For Final Distribution Of 2004-2009 Cable Royalty Funds And 1999-2009 Satellite Royalties* (November 2, 2020); *Order*

final distribution amounts due to MPA, SDC, and IPG in this proceeding and sought comments from the parties on those calculations.² In the January 11 Order, the Judges recognized that there were shortfalls appearing in the Licensing Division's final distribution calculations for the Phase II Participants in this proceeding, such that insufficient funds were remaining on deposit with the Copyright Office to fully satisfy the final distribution amounts owed to MPA, SDC, and IPG, and funds would need to be recovered from the other Allocation Phase Parties in order to satisfy their final distributions. *See* January 11 Order at 3. While the Judges directed the Licensing Division to distribute the funds that remained on deposit with the Copyright Office to the Phase II Participants, the Judges indicated that they would address the issue of overpayments and surpluses in the 2004-2009 cable and 1999-2009 satellite funds in a future order:

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.

January 11 Order at 3.

As required by the January 11 Order, in April 2021 the Licensing Division revised its calculations and proceeded to distribute the portion of the 2004-2009 cable and 1999-2009 satellite royalties due to MPA, SDC, and IPG that remained on deposit with the Copyright Office. However, according to the Licensing Division worksheets that the parties received in

Granting IPG's Motion For Final Distribution Of 2004-2009 Cable And 1999-2009 Satellite Royalties (November 2, 2020).

² *See Order Directing Calculation Of Final Distribution Shares* (November 3, 2020); *Order Directing Parties To Review Calculations Of Final Distribution Shares* (December 4, 2020).

April 2021, there were insufficient funds available on deposit at the Copyright Office to fully compensate the Phase II Participants as to the 2008 and 2009 cable royalty years and the 1999-2003 and 2005-2007 satellite royalty years, and surplus funds were on deposit with the Copyright Office for the remaining cable and satellite royalty years at issue in this proceeding. *See Exhibits A and B (Licensing Division worksheets).*³ According to these worksheets, if all the cable and satellite royalty funds are considered together, a total of more than \$1 million dollars in royalties was overpaid to the other Allocation Phase Parties and needs to be recouped in order to allow MPA, SDC, and IPG to receive their final royalty distributions in this proceeding.

Accordingly, MPA and SDC respectfully request that the Judges issue the further order addressing overpayment and surplus issues that was originally contemplated in their January 11 Order so that all the Phase II participants can receive the final distributions to which they were awarded in this proceeding. This matter is urgent, as the royalty funds at issue were originally deposited *decades* ago – between 12-17 years for cable and 12-22 years for satellite. Moreover, the Judges’ Final Determination in this proceeding issued more than two years ago, and was affirmed on appeal by the D.C. Circuit more than a year ago.⁴ The claimants entitled to receive these funds should not be required to wait any longer to receive their full, final royalty distributions, especially given the ongoing negative economic impact of the COVID 19 pandemic on all rightsholders. MPA and SDC also request that the Judges direct the Licensing

³ Because Exhibits A and B contain restricted information, they will be filed separately in eCRB in conjunction with this Joint Motion, subject to the Protective Order the Judges issued in this proceeding.

⁴ *See* 84 Fed. Reg. 16038 (April 17, 2019); *Independent Producers Group v. Copyright Royalty Board*, 966 F.3d 799 (D.C. Cir. 2020).

Division to take the immediate steps necessary to recoup any royalties that were overpaid to other Allocation Phase Parties in order to facilitate the final distribution

Respectfully submitted,

MPA-REPRESENTED PROGRAM SUPPLIERS

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Dated: September 10, 2021

CERTIFICATE OF SERVICE

I certify that on September 10, 2021, I caused a copy of the foregoing to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

/s/ Lucy Holmes Plovnick

Lucy Holmes Plovnick

Proof of Delivery

I hereby certify that on Friday, September 10, 2021, I provided a true and correct copy of the Joint Motion For Order Addressing Overpayment And Surplus Issues to the following:

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

Signed: /s/ Lucy H Plovnick