

COPYRIGHT ROYALTY JUDGES
The Library of Congress

<i>In re</i>	
DISTRIBUTION OF CABLE ROYALTY FUNDS	DOCKET NO. 16-CRB-0009 CD (2014-17)
DISTRIBUTION OF SATELLITE ROYALTY FUNDS	DOCKET NO. 16-CRB-0010 SD (2014-17)

**ORDER FOR FURTHER PROCEEDINGS
AND SCHEDULING CASE EVENTS**

After the conclusion of the Voluntary Negotiation Periods in the captioned proceedings, all participants—Canadian Claimants Group, Commercial Television Claimants, Global Music Rights, LLC, Joint Sports Claimants, Major League Soccer, the Motion Picture Association, Inc., Multigroup Claimants, Music Claimants, National Public Radio¹, Public Television Claimants, and Settling Devotional Claimants— notified the Copyright Royalty Judges (Judges) of controversies relating to distribution of royalty funds on deposit for transmission years 2014 to 2017, inclusive.² The participants reported attempts at resolution of the controversies and continuing negotiations.³

Several participants proposed schedules for proceedings that included an allocation phase followed by a distribution phase to include separate presentations of evidence. The participants that identified controversies regarding claims proposed that the Judges resolve the claims issues during a preliminary process. Participants also proposed that the Judges 1) consolidate claims issues in the captioned cable and satellite cases, 2) set a discovery period regarding claims issues after the conclusion of an allocation phase and resolve claims issues during a distribution phase, 3) consolidate the distribution issues in the two captioned cases.

¹ NPR filed its Notice of Controversy late with a related motion for leave to file after the deadline, which the Judges granted by order dated December 29, 2021.

² Only Global Music Rights, LLC; Joint Sports Claimants; Major League Soccer; the Motion Picture Association, Inc.; Multigroup Claimants; Music Claimants; and Settling Devotional Claimants asserted controversies relating to satellite royalty deposits.

³ None of the participants filed the required notice of partial settlement. Scheduling Order and Notice of Voluntary Negotiation Period (Apr. 5, 2021) at 1. Several indicated in the notices of controversy that settlement of some of the issues among the participants is likely.

These proceedings commenced in February 2019. *See* Notice of Commencement, 84 *Fed.Reg.* 2930, 2931 (Feb. 8, 2019). In the course of these proceedings, participants raised the following issues: 1) the propriety of stipulated categorization of claims to facilitate allocation of royalties among claimant groups; 2) the application of the “unclaimed funds rule” with regard to allocated royalties; and 3) the appropriate timing for resolution of claims validity issues, including validity of claims and authority of claimants’ claimed representatives in these proceedings. The Judges stayed these companion proceedings pending potential rulemaking⁴ to address the first two issues. *See* Notice of Inquiry, 84 *Fed. Reg.* 71852 (Dec. 30, 2019) (NOI).⁵

After reviewing submissions of participants in these proceedings and comments in response to the NOI, the Judges concluded preliminarily that these companion proceedings should not be delayed further pending resolution of the rulemaking. Consequently, the Judges issued an order in which they approved and adopted, for purposes of the captioned consolidated cases, the respective claims categories for cable and satellite royalty allocation. *See* Order Lifting Stay ... (Apr. 5, 2021). The Judges concurrently issued a scheduling order in each proceeding.⁶

Chapter 8 of the Copyright Act prescribes procedural steps and timelines the Judges must follow in every distribution proceeding. *See* 17 U.S.C. §§ 101-1511 (Act).⁷ Section 803(b)(3)(A)(ii) provides the Judges discretion in scheduling the statutory Voluntary Negotiation Period (VNP); section 801(c) grants the Judges authority to issue any necessary procedural orders to conduct royalty proceedings. In these companion proceedings, the Judges commenced a VNP for April to July, 2021. Given the delay occasioned by the stay in the current proceeding, the Judges exercise their discretion and schedule a second VNP to maximize opportunity for negotiated settlement of issues before continuing litigation. The abbreviated VNP is noted on the attached schedule of further proceedings.

Allocation Proceedings

As in prior cable and satellite royalty distribution proceedings covering the same royalty years, the Judges will adjudicate allocation of cable royalties separately from allocation of satellite royalties.⁸ Participants in the allocation phase of the cable royalty proceeding shall follow the case schedule on “Exhibit A.”

⁴ *See* Docket No. 19-CRB-0014-RM.

⁵ The Judges extended the deadline for comments responding to the NOI by notice. *See* 85 *Fed. Reg.* 5182.

⁶ Participants in cable and satellite royalty distribution proceedings overlap to a large degree. At the request of parties to satellite proceedings, the Judges generally conduct consolidated allocation and claims validity hearings, but defer scheduling an allocation hearing for satellite claimants. Historically, satellite claimants have adopted the allocation scheme determined for cable claimants for the same royalty years.

⁷ In the captioned proceedings, the Judges entered a stay order. *See* *Order Staying Proceeding Pending Rulemaking*, (Dec. 20, 2019). Based upon comments in the rulemaking proceeding and on filings of the participants in these case proceedings, the Judges determined to lift the stay and disengage these proceedings from the pending rulemaking proceeding. *See* *Order Lifting Stay and Adopting Claimant Categories* (Apr. 5, 2021). The stay of these proceedings resulted in alterations to the timeline of events.

⁸ The satellite claimant groups have notified the Judges that they have settled allocation issues for all royalty years. *See* Joint Notice of Final Allocation Phase Settlement ... 2014 Satellite Royalties (Sep. 15, 2021); Joint Notice of Final Allocation Phase Settlement ... 2015-17 Satellite Royalties (Sep. 15, 2021).

Claims Validity Issues and Distribution

The Judges have held separate hearings on claims disputes in recent proceedings and find them to be vital to efficient resolution of distribution issues. While the Judges believe that claims validity issues must be resolved expeditiously, they do not believe that resolution of claims validity issues is a condition precedent to resolution of allocation issues and vice versa. Therefore, the Judges intend first to resolve outstanding allocation issues and then resolve any claims validity issues. Resolution of claims validity issues can be advanced simultaneously with negotiations and litigation of allocation issues. The Judges believe that resolving claims validity issues after the allocation phase could promote settlements and thereby result in more efficient proceedings.⁹

After determination of allocation issues, the Judges will consolidate formally the cable and satellite proceedings for any years' royalty funds remaining in controversy. The Judges will adjudicate the remaining issues (claims validity and distribution phase issues) jointly for cable and satellite royalties.

Further Proceedings

The Judges therefore **ORDER** all participants in the cable distribution proceeding to follow the allocation phase schedule on attached "Exhibit A."

The Judges **FURTHER ORDER** early disclosure and discovery to aid the participants in resolving both satellite and cable claims issues.

The Judges **FURTHER ORDER** all participants in both captioned proceedings involved in controversies relating to 1) the validity or categorization of a claim or 2) issues with respect to claims representation to participate fully in the preliminary claims issues process. Failure to participate fully in the claims or representation validity process may constitute a waiver or foreclose subsequent challenges. The case schedule in "Exhibit B" sets forth the expedited schedule for discovery and motions regarding claims.

The Judges **FURTHER ORDER** participants involved in controversies involving the validity or categorization of claims to disclose to all other participants, whether or not they believe the other participants have a specific interest in the claims controversies 1) their authority to represent each claimant, 2) program information for each claimant (*e.g.*, correct title for each claimed program and other identifying information in cases in which titles may be confused), and 3) a clear statement, by royalty year, of each claim against the royalty fund and the claimant categories in which the asserted claim belongs. Disclosures must not include duplicate claims or claims for a single program in more than one category. The Judges intend to rule promptly on any motions relating to disclosure and discovery, taking a dim view of any party's reluctance to make the disclosures.

⁹ See Comments of the National Association of Broadcasters at 15-23, In re Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment of Ineligible Claims, Docket No. 19-CRB-0014-RM (Mar. 16, 202?) (*citing* Notice of Final Determination, 45 Fed. Reg. 63026, 63042 (Sept. 23, 1980) (1978 Cable Royalty Distribution Determination, Docket No. CRT 79-1)).

The Judges **FURTHER ORDER** participants in both of the captioned proceedings to notify the Judges as soon as practicable, and at any time up to and including during the course of any hearing, if the participants reach any accommodation that obviates the need for further participation in the proceeding.

After resolution of the allocation phase issues in the cable proceeding, the Judges will rule promptly on both cable and satellite claims issues and will issue a more detailed schedule for the remainder of the joint proceedings.

SO ORDERED.

Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: January 10, 2022

Exhibit A
Case Schedule for Cable Allocation Phase

Case Event	Date
Allocation Phase	
End of Abbreviated VNP	February 4, 2022
IF PARTIES SETTLE ALL ALLOCATION ISSUES	
Order approving allocation of royalties	promptly
IF PARTIES DO NOT SETTLE ALL ALLOCATION ISSUES	
Deadline for Written Direct Statements on Allocation Issues (WDS-A)	July 1, 2022
End of discovery on WDS-A	August 12, 2022
Deadline to file amended WDS-A	September 2, 2022
Settlement conference period	September 7, 2022 – September 28, 2022
Deadline to file joint settlement conference report	October 5, 2022
Deadline to file Written Rebuttal Statements on Allocation Issues (WRS-A)	November 2, 2022
End of discovery on WRS-A	December 2, 2022
Hearing commences	February 2023
Determination	Summer 2023
Distribution Phase	
Schedule TBD	

EXHIBIT B
Case Schedule for Consolidated Claims Disputes
Early Discovery Process

Case Event	Date
Order for Further Proceedings	January 10, 2022
Claims Issues¹⁰	
Begin Disclosure and Discovery regarding claims disputes	January 12 , 2022
End Disclosure and Discovery regarding claims disputes	March 16, 2022
Party Conferences	March 16 - April 6, 2022
Motions for Allowance or Disallowance of Claims (Claims Motions)	May 4, 2022
Responses to Claims Motions	June 3, 2022
Replies, if any, to Claims Motions	June 17, 2022
Hearing on Claims Issues, if required	TBD
Ruling on Claims Issues	TBD

¹⁰ The schedule for this preliminary claims adjudication process is mandatory only for participants that have identified controversies regarding the validity or categorization of claims, *viz.*, Joint Sports Claimants, Motion Picture Association, Multigroup Claimants, and Settling Devotional Claimants.