

COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**DISTRIBUTION OF CABLE ROYALTY
FUNDS**

**DOCKET NO. 16-CRB-0020 CD
(2015)**

**ORDER GRANTING MOTION FOR
FOR PARTIAL DISTRIBUTION**

On February 17, 2017, representatives of certain groups of claimants (Moving Parties)¹ filed with the Copyright Royalty Judges (Judges) a Motion for Partial Distribution of 2015 cable royalties deposited with the United States Copyright Office (Motion). Specifically, the Moving Parties seek a distribution of 60% of the royalties deposited by cable system operators for the compulsory license described in section 111, title 17, United States Code (Copyright Act).

The Judges published notice in the Federal Register in accordance with section 801(b)(3)(C) of the Copyright Act seeking comment on the requested partial distribution.² The Judges received one comment, from David Powell, a *pro se* claimant, opposing the Motion.

Statutory Authorization for Partial Distributions of Funds in Controversy

Section 801(b)(3)(C) of the Copyright Act (Act) grants the Judges authority to authorize partial distributions of royalties on the motion of an interested claimant at any time after claims are filed. That subparagraph provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111, 119, or 1007, 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;

¹ The moving parties, which refer to themselves as the Allocation Phase Parties are: Program Suppliers; Joint Sports Claimants; Public Television Claimants; National Association of Broadcasters; American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; SESAC, Inc.; Canadian Claimants Group; Devotional Claimants, and National Public Radio.

² 82 Fed. Reg. 19091 (Apr. 25, 2017).

- (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).

The deadline for filing claims for 2015 cable royalties has passed. The Moving Parties represent that they are willing to sign a disgorgement agreement and file it with the Judges. Motion at 2-3. The Moving Parties also represent that the Judges have made prior partial distributions of 60% of deposited royalty funds and that the remaining funds on deposit have been sufficient to make appropriate final distributions after resolution of any controversies. *See* Motion at 3-5.

As discussed, the Judges received an opposing comment from David Powell. In his opposition, Mr. Powell alleges that BMI refused to negotiate with him regarding his claim regarding an entity called Circle God Network Inc. He also makes a cryptic reference to a boycott regarding the music and sports industries, but it is unclear from his comment on what ground he is objecting to the Motion. The closest Mr. Powell comes to tying his objection to the Motion comes in the following sentence: “Based on grounds legal prejudice immediate breach. Conclusive presumption zone of interest prima facie case malicious injury in fact [sic] willful infringement. As a nonsettling party 15%.”

Section 801 (b)(3)(C) of the Copyright Act authorizes the Judges to order a partial distribution, notwithstanding existing controversies with respect to royalty funds if the Judges find, among other things, that “no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution.” The Judges find that Mr. Powell’s objection, which is virtually incomprehensible, fails to rise to the level of being a reasonable objection to the partial distribution. Moreover, the 40% of funds held in the 2015 cable fund should be sufficient to resolve any dispute that Mr. Powell may have with either the music or joint sports claimant groups.

In light of the Moving Parties’ representation to comply with all stipulations regarding a partial distribution ordered pursuant to Section 801(b)(3)(C), the Judges determine that distribution of 60% of the 2015 cable royalty funds to the Moving Parties is reasonable and appropriate. Therefore, the Judges **GRANT** the Motion.

Order

The Judges **ORDER** that 60% of the royalties held in the 2015 cable royalty fund be distributed in the manner set forth in Attachment A to the Motion, which is appended to this Order.

The Copyright Office shall make such a distribution **PROVIDED THAT** each of the parties receiving a share of these funds provides to the Copyright Office, with a copy to the Judges, a signed agreement in the form required by the Copyright Office stating that the recipient

shall repay to the Copyright Office any overpayment that results from the distribution of these funds, together with interest according to the amount that would have accrued if the principal had remained in the fund. All pertinent information to effect the transfer of funds must be provided to the Licensing Division of the Copyright Office no later than July 6, 2017. The distribution shall take place on or after July 13, 2017.

SO ORDERED.

Suzanne M. Barnett
Chief Copyright Royalty Judge

Dated: June 6, 2017.

ATTACHMENT A

The following are the percentage shares agreed to by the Allocation Phase Parties for purposes of allocating any partial distribution of the 2015 cable funds ordered by the Judges pursuant to this Motion: NPR should first receive 0.18% of the entire amount to be distributed after which the remaining amount should be distributed as follows:

<u>CLAIMANT GROUP</u>	<u>ROYALTY FUND</u>		
	<u>BASIC</u>	<u>3.75</u>	<u>SYNDEX</u>
Program Suppliers	33.7%	36.8%	96.2%
Joint Sports Claimants	33.8%	36.9%	0.0%
U.S. Commercial Television (NAB)	16.1%	17.5%	0.0%
Public Television	7.3%	0.0%	0.0%
Music Claimants	3.8%	3.8%	3.8%
Devotional Claimants	3.4%	3.7%	0.0%
Canadian Claimants	1.9%	1.3%	0.0%