

I. THE JUDGES HAVE AUTHORITY TO ORDER PRECONTROVERSY PARTIAL DISTRIBUTIONS.

Section 111 of the Copyright Act favors the early distribution of cable royalties. *See* 17 U.S.C. § 111(d)(4)(C). Chapter 8 of the Copyright Act vests the Judges with ample statutory authority to order the precontroversy distribution of cable royalties. In the Copyright Royalty Judges Program Technical Corrections Act, Congress amended Section 801(b)(3)(C) to clarify that a partial distribution of royalties can be made at any time after the filing of claims. *See* Pub. L. No. 109-303 §§ 3, 5, 109th Cong., 2d Sess. (2006), 120 Stat. 1478. Congress reaffirmed the Judges' authority to order partial distributions of statutory royalties in advance of the declaration of a controversy. Section 801(b)(3)(C) provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111 . . . 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
- (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 that agreement with the Copyright Royalty Judges; and
- (iv) agree that such funds are available for distribution.

17 U.S.C. § 801(b)(3)(C).

Here, the statutorily prescribed deadline for filing claims has now passed. Furthermore, the Allocation Phase Parties (1) agree to the partial distribution; (2) agree that the requested amounts

are available for distribution; (3) agree to sign the separate agreement contemplated in Section 801(b)(3)(C)(ii) obligating them to return any excess royalty amounts received, in a form to be provided by the Judges or the Copyright Office; and (4) agree to file such an agreement with the Judges or as otherwise directed.

II. DISTRIBUTION OF 40% OF THE 2021 CABLE FUNDS IS REASONABLE AND APPROPRIATE.

The Judges have consistently granted the Allocation Phase Parties' motions for partial distributions of the annual cable royalty funds, most recently a 40% partial distribution of the 2020 cable royalty funds. *See Order 02 Granting Moving Parties' Motion For Partial Distribution Of 2020 Cable Royalties*, Docket No. 21-CRB-0008 CD (2020) (Dec. 7, 2023) (determining that distribution of 40% of the 2020 cable royalty funds is "reasonable and appropriate"); *see also Order Granting Moving Parties' Motion for Partial Distribution of 2019 Cable Royalties*, Docket No. 20-CRB-0010 CD (2019) (Aug. 9, 2021) (determining that distribution of 40% of cable royalty funds is "reasonable and appropriate"); *Order Granting Moving Parties' Motion for Partial Distribution of 2018 Cable Royalties*, Docket No. 19-CRB-0010 CD (2018) (Aug. 20, 2021) (same); *Order Granting Motion for Partial Distribution*, Docket No. 16-CRB-0009-CD (2014-17) (May 22, 2019) (finding request for 40% distribution of the 2017 cable royalty funds to be "reasonable and appropriate"); *Order Granting Motion for Partial Distribution*, Docket No. 17-CRB-0017-CD (2016) (July 30, 2018) (finding request for partial distribution of 50% of the 2016 cable royalties to be "reasonable and appropriate"); *Order Granting Motion for Partial Distribution*, Docket No. 16-CRB-0020 CD (2015) (June 6, 2017) (finding request for partial distribution of 60% of the 2015 cable royalty funds to be "reasonable and appropriate"); *Order Granting Motion for Partial Distribution*, Docket No. 16-CRB-0009 CD (2014) (Aug. 15, 2016) (finding request for partial distribution of 60% of the 2014 cable royalty funds to be "reasonable

and appropriate”); *Order Granting Motion of Phase I Claimants for Partial Distribution*, Docket No. 14-CRB-0010 CD (2013) (May 28, 2015) (finding requested 60% partial distribution to be “reasonable and appropriate”); *see also Order Granting Motion of Phase I Claimants For Partial Distribution*, Docket No. 14-CRB-0007 CD 2010-12 (Dec. 23, 2014) (finding requested 60% partial distribution of 2012 cable funds to be “reasonable and appropriate”); *Order Granting Phase I Claimants’ Motion for Partial Distribution of 2011 Cable Royalty Funds*, Docket No. 2012-9 CRB CD 2011 (Mar. 13, 2013) (granting Phase I Parties’ request for a 50% partial distribution of the 2011 cable royalty funds); *Order Granting Phase I Claimants’ Motion for Partial Distribution of 2010 Cable Royalty Funds*, Docket No. 2012-4 CRB CD 2010 (Sept. 14, 2012) (granting Phase I Parties’ request for a 50% partial distribution of the 2010 cable royalty funds).

Indeed, the Copyright Office has previously determined that partial distributions well in excess of 40% were reasonable and appropriate under the circumstances. *See, e.g., Order*, Docket No. 94 CARP (92-CD & 93-CD) at 2, 5 (Sept. 26, 1994) (granting motion for partial distribution of 80% of 1992 and 1993 cable royalty funds) (“September 26, 1994 Order”); *Order*, Docket No. 2000-6 CARP CD 98 (Oct. 12, 2000) (granting Phase I Parties’ motion for partial distribution of 75% of the available cable royalties on deposit for the 1998 cable royalty fund and acknowledging that retention of 25% of the available royalties would suffice to resolve any outstanding controversies related to those funds); *Distribution Order*, Docket No. 2000-7 CARP SD 96-98 (Oct. 12, 2000) (granting Phase I Parties’ request for partial distribution of 75% of the available satellite royalties on deposit for the 1996, 1997, and 1998 satellite royalty funds). Thus, the Allocation Phase Parties do not concede through this motion that a 40% distribution is the maximum partial distribution of royalties that should be made from the 2021 Cable Funds. The Allocation Phase Parties reserve the right to move for additional partial distributions from the 2021

Cable Funds as may be appropriate after the nature and extent of any *bona fide* disputes come into better focus.

A partial distribution of 40% of the 2021 Cable Funds would ensure that the Allocation Phase Parties are not deprived of a substantial amount of the royalties that belong to them during a period that may be several years long. In the past, the Copyright Office has recognized that the earliest possible receipt of the maximum available royalties by copyright owners is an important objective of the Copyright Act. *See, e.g.*, September 26, 1994 Order at 2, 5 (Office distributed 80% of the 1992 and 1993 cable royalties, noting that “intent of the law favored early distribution”) *see also Order*, Docket No. 94 CARP (92-CD & 93-CD) at 2 (Sept. 12, 1994) (“September 12, 1994 Order”) (referring to the “overall intent of the subparagraphs in [Section 111(d)(4)] in favor of early distributions”). Accordingly, pre-proceeding distributions of cable royalties under Section 111(d)(4)(C) may be made in circumstances where there may be a significant delay between the filing of claims and the initiation of proceedings. *See, e.g.*, September 12, 1994 Order at 2; September 26, 1994 Order at 2; *see also Order*, Docket No. 2007-3 CRB CD 2004-2005 at 3-4 (Apr. 10, 2008).

A distribution of at least 40% of the 2021 Cable Funds to the Allocation Phase Parties would ensure that they are not further deprived of a substantial amount of the royalties paid for the use of their copyrighted works. The Allocation Phase Parties have agreed to the amount of the proposed partial distribution. Furthermore, the Allocation Phase Parties submit that the undistributed amount, which totals \$128,451,909.88, along with each party’s commitment to repay any excess funds will be more than sufficient to satisfy any remaining controversies involving these funds.

Finally, because the amounts allocated to each Allocation Phase Party will remain confidential, the Allocation Phase Parties further move to have the distribution made in bulk to a common agent for all Parties. In this regard, the Allocation Phase Parties have entered into a confidential distribution agreement with the Office of the Commissioner of Baseball (“Baseball”), agreeing that Baseball will serve as the common agent for the distribution of royalties among the individual Allocation Phase Parties.

CONCLUSION

For the reasons set forth above, the Allocation Phase Parties respectfully request that the Judges, pursuant to 17 U.S.C. § 801(b)(3)(C), promptly publish for comment in the Federal Register the proposed partial distribution of 40% of the royalties contained in the 2021 Cable Funds, and thereafter grant this Motion and order a 40% partial distribution of the 2021 Cable Funds to the Allocation Phase Parties expeditiously.³

³ After the Judges issued their order granting the Allocation Phase Parties’ motion for partial distribution of 2020 cable royalty funds on December 7, 2023, it took approximately eight additional weeks, until January 31, 2024, for the Allocation Phase Parties’ Common Agent to receive the partial distribution. Therefore, the Allocation Phase Parties respectfully request that the Judges expedite consideration of this motion so that a partial distribution of 2021 cable royalties can be completed by the Licensing Section of the Copyright Office during the 2024 calendar year.

March 12, 2024

Respectfully Submitted,

PROGRAM SUPPLIERS

/s/ Gregory O. Olaniran

Gregory O. Olaniran

D.C. Bar No. 455784

Lucy Holmes Plovnick

D.C. Bar No. 488752

MITCHELL SILBERBERG & KNUPP
LLP

1818 N Street N.W., 8th Floor

Washington, D.C. 20036

Telephone: (202) 355-7817

Fax: (202) 355-7887

goo@msk.com

lhp@msk.com

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, D.C. 20001

202.942.5000 (voice)

202.942.5999 (facsimile)

Daniel.Cantor@arnoldporter.com

Michael.Kientzle@arnoldporter.com

PUBLIC TELEVISION CLAIMANTS

/s/ Ronald G. Dove, Jr.

Ronald G. Dove, Jr.
DC Bar No. 430533
Dustin Cho
DC Bar No. 1017751
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, N.W.
Washington, D.C. 20268
Telephone: (202) 662-5685
Fax: (202) 662-6291
rdove@cov.com

COMMERCIAL TELEVISION CLAIMANTS

/s/ David Ervin

David Ervin
DC Bar No. 445013
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595
Telephone: (202) 624-2685
Fax: (202) 628-5116
dervint@crowell.com

CANADIAN CLAIMANTS GROUP

/s/ L. Kendall Satterfield

L. Kendall Satterfield
DC Bar No. 393953
Satterfield PLLC
1629 K Street, Suite 300
Washington, DC 20006
Tel: (202) 355-6432
lksatterfield@satterfield-pllc.com

DEVOTIONAL CLAIMANTS

/s/ Arnold P. Lutzker

Arnold P. Lutzker
DC Bar No. 101816
Benjamin Sternberg
DC Bar No. 1016576
Jeannette M. Carmadella
DC Bar No. 500586
LUTZKER & LUTZKER LLP
1233 20th Street, NW, Suite 703
Washington, DC 20036
Telephone: (202) 408-7600
Fax: (202) 408-7677
arnie@lutzker.com

/s/ Matthew J. MacLean

Matthew J. MacLean
DC Bar No. 479257
Michael A. Warley
DC Bar No. 1028686
Jessica T. Nyman
D.C. Bar No. 1030613
PILLSBURY WINTHROP SHAW
PITTMAN LLP
1200 Seventeenth Street, NW
Washington DC 20036
Tel: (202) 663-8183
Fax: (202) 663-8007
Matthew.MacLean@pillsburylaw.com

NATIONAL PUBLIC RADIO

/s/ Keonna Carter Austin

Keonna Carter Austin
DC Bar No. 988719
NATIONAL PUBLIC RADIO, INC.
1111 North Capitol Street, NE
Washington, DC 20002
Telephone: (202) 513-2808
Fax: (202) 513-3329
kaustin@npr.org

**AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND
PUBLISHERS**

/s/ Samuel Mosenkis

Samuel Mosenkis
NY Bar No. 2628915
ASCAP
250 West 57th Street, 14th Floor New
York, NY 10107
Telephone: (212) 621-6450
Fax: (212) 787-1381
smosenkis@ascap.com

BROADCAST MUSIC, INC.

/s/ Hope M. Lloyd

Hope M. Lloyd
NY Bar No. 3903754
BROADCAST MUSIC, INC.
7 World Trade Center
250 Greenwich Street
New York, NY 10007-0030
Telephone: (212) 220-3148
Fax: (212) 220-4490
hlloyd@bmi.com

/s/ Brian A. Coleman

Brian A. Coleman
DC Bar No. 459201
FAEGRE DRINKER BIDDLE & REATH
LLP
1500 K Street, NW – Suite 1100
Washington, DC 20005
Telephone: (202) 842-8800
Fax: (202) 842-8465
brian.coleman@faegredrinker.com

SESAC PERFORMING RIGHTS, LLC

/s/ Tim Warnock

Tim Warnock
TN Bar No. 012844
Keane Barger
TN Bar No. 033196
LOEB & LOEB LLP
35 Music Square East, Suite 310
Nashville, TN 37203
Telephone: (615) 676-5189
twarnock@loeb.com

/s/ Reid Alan Waltz

Reid Alan Waltz
TN Bar No. 029547
SESAC PERFORMING RIGHTS, LLC
35 Music Square East
Nashville, TN 37203
Telephone: (615) 963-3536
rwaltz@sesac.com

Proof of Delivery

I hereby certify that on Tuesday, March 12, 2024, I provided a true and correct copy of the Motion of Allocation Phase Parties for Partial Distribution of 2021 Cable Royalty Funds to the following:

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

National Public Radio, represented by Keonna Carter, served via E-Service at kaustin@npr.org

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

SESAC Performing Rights LLC, represented by Reid A Waltz, served via E-Service at rwaltz@sesac.com

BMI, represented by Hope Lloyd, served via E-Service at hlloyd@bmi.com

Public Television Claimants, represented by Dustin Cho, served via E-Service at sryu@cov.com

ASCAP, represented by Sam Mosenkis, served via E-Service at smosenkis@ascap.com

Commercial Television Claimants, represented by David J Ervin, served via E-Service at dervin@crowell.com

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

Signed: /s/ Lucy H Plovnick