

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)
)
) **Docket No. 16-CRB-0010-SD (2014-2017)**
Distribution of)
Satellite Royalty Funds)

**MOTION OF THE ALLOCATION PHASE PARTIES FOR
PARTIAL DISTRIBUTION OF THE 2016 AND 2017 SATELLITE ROYALTY FUNDS**

The undersigned representatives of all the Allocation Phase (formerly “Phase I”) claimant categories to which Section 119 satellite royalties have been allocated in prior satellite distribution proceedings (“Allocation Phase Parties”)¹ submit the following motion to the Copyright Royalty Judges (“Judges”) for partial distribution of 40% of the 2016 and 2017 satellite royalty funds (the “2016 and 2017 Satellite Funds”).²

According to the Licensing Division of the Copyright Office, as of October 31, 2018, the amount of the 2016 and 2017 Satellite Funds available for distribution totaled approximately \$13,364,632.21 for 2016 and \$12,423,112.91 million for 2017. Based on this amount, a 40% partial distribution of the 2016 Satellite Funds would total approximately \$5,345,852.88, and a 40% partial distribution of the 2017 Satellite Funds would total approximately \$4,969,245.12. The circumstances warrant a partial distribution of 40% of the 2016 and 2017 Satellite Funds as soon as feasible.

¹ Public Television Claimants, the Canadian Claimants, and National Public Radio, which receive Allocation Phase shares of cable royalties, do not claim Allocation Phase shares of the satellite royalty funds.

² The Allocation Phase Parties do not intend for this motion to be a stipulation among themselves as to any procedural or substantive issue concerning the final distribution of the 2016 and 2017 Satellite Funds.

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

Section 119 of the Copyright Act favors the early distribution of satellite royalties. *See* 17 U.S.C. § 119(b)(5)(C). Chapter 8 of the Copyright Act vests the Judges with ample statutory authority to order the pre-controversy distribution of satellite 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... 119 . . . 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 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).

Here, the statutorily prescribed deadline for filing claims has now passed. Further,

the Allocation Phase Parties (1) agree to the partial distribution; (2) agree that the requested funds 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 2016 AND 2017 SATELLITE FUNDS IS REASONABLE AND APPROPRIATE

The Judges have consistently granted the Allocation Phase Parties' motions for partial distributions of the annual satellite royalty funds, most recently a 60% partial distribution of the 2015 satellite royalty funds. *See Order Granting Allocation Phase Parties' Motion for Partial Distribution of 2015 Satellite Royalties*, Docket No. 17-CRB-011-SD (2015) (Nov. 7, 2018) (finding requested 60% distribution of 2015 satellite funds reasonable); *Order Granting Motion for Partial Distribution*, Docket No. 16-CRB-0010 SD (2014) (Aug. 24, 2016) (finding requested 60% partial distribution of 2014 satellite funds reasonable and appropriate); *Order Granting Motion of Phase I Claimants for Partial Distribution of 2013 Satellite Royalty Funds*, Docket No. 14-CRB-0011 SD (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 of 2012 Satellite Royalty Funds*, Docket No. 14-CRB-0008 SD (2010-2012) (finding requested 60% distribution to be "reasonable and appropriate"); *Order Granting Phase I Claimants' Motion for Partial Distribution of 2011 Satellite Royalty Funds*, Docket No. 2012-10 CRB SD 2011 (Mar. 13, 2013) (granting request for a 50% partial distribution of the 2011 satellite funds); *Order Granting Phase I Claimants' Motion for Partial Distribution of 2010 Satellite Royalty Funds*, Docket No. 2012-5 CRB 2010 SD (Sept. 18, 2012) (granting request for a 50% partial distribution of the 2010 satellite royalty funds).

Indeed, the above decisions show that the Copyright Office has previously determined that partial distributions in excess of 40% were reasonable and appropriate under the circumstances, and has also previously authorized simultaneous distribution of more than one year of satellite royalty funds. *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”); *Distribution Order*, Docket No. 2000-7 CARP SD 96-98 (Oct. 12, 2000) (granting request for partial distribution of 75% of the available satellite royalties on deposit for the 1996, 1997, and 1998 satellite royalty funds). 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 2016 and 2017 Satellite Funds, and reserve the right to move for additional partial distributions from the 2016 and 2017 Satellite 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 2016 and 2017 Satellite Funds to the Allocation Phase Parties would ensure that they 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 “the 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”). Pre-proceeding distributions of satellite royalties under Section 119(b)(5)(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). Such a delay is likely here, as the 2014-17 Satellite Royalty Distribution Proceeding is still in its early stages. See *Notice of Participants and Order for Preliminary Action to Address Categories of Claims*, Docket No. 16-CRB-0010 SD (2014-17) (March 20, 2019).

A distribution of at least 40% of the 2016 and 2017 Satellite Funds would ensure that the Allocation Phase Parties 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. Further, the Allocation Phase Parties submit that the undistributed amount, which totals approximately \$8,018,779 of 2016 Satellite Funds and \$7,453,867 of 2017 Satellite Funds, 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 to be distributed 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.

III. 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), publish for comment in the Federal Register the proposed partial distribution of 40% of the royalties contained in the 2016 and 2017 Satellite

Funds, and thereafter grant this Motion and order a 40% partial distribution of the 2016 and 2017 Satellite Funds to the Allocation Phase Parties as soon as feasible.

Respectfully submitted,

JOINT SPORTS CLAIMANTS

/s/ Michael Kientzle

Daniel A. Cantor
DC Bar No. 457115
Michael Kientzle
DC Bar No. 1008361
Bryan Adkins
DC Bar No. 988408
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
Bryan.Adkins@arnoldporter.com

BROADCASTER CLAIMANTS GROUP

/s/ John Stewart

John I. Stewart, Jr.
DC Bar 913905
David Erwin
DC Bar No. 445013
Ann Mace
DC Bar No. 980845
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595
202.624.2685 (voice)
202.628.5116 (facsimile)
jstewart@crowell.com

PROGRAM SUPPLIERS

/s/ Gregory Olaniran

Gregory O. Olaniran
D.C. Bar No. 455784
Lucy Holmes Plovnick
D.C. Bar No. 488752
Alesha M. Dominique
D.C. Bar No. 990311
MITCHELL SILBERBERG & KNUPP
LLP
1818 N Street N.W., 8th Floor
Washington, D.C. 20036
202.355.7817 (voice)
202.355.7887 (facsimile)
goo@msk.com
lhp@msk.com
amd@msk.com

DEVOTIONAL CLAIMANTS

/s/ Arnold Lutzker

Arnold P. Lutzker
DC Bar No. 101816
Benjamin Sternberg
DC Bar No. 1016576
LUTZKER & LUTZKER LLP
1233 20th Street, NW, Suite 703
Washington, DC 20036
202.408.7600 (voice)
202.408.7677 (facsimile)
arnie@lutzker.com
ben@lutzker.com

/s/ Matthew Maclean

Matthew J. Maclean
DC Bar No. 479257
Michael A. Warley
DC Bar No. 1028686
Jessica T. Nyman
DC Bar No. 1030613
PILLSBURY, WITHROP, SHAW,
PITTMAN LLP
1200 Seventeenth St. NW
Washington, DC 20036
202.663.8000 (voice)
202.663.8007 (facsimile)
matthew.maclean@pillsburylaw.com
Michael.warley@pillsburylaw.com
Jessica.nyman@pillsburylaw.com

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

/s/ Samuel Mosenkis

Samuel Mosenkis
NY Bar No. 2628915
ASCAP
250 W. 57th St., 14th Floor
New York, NY 10107
212.621.6450 (voice)
smosenkis@ascap.com

SESAC PERFORMING RIGHTS, LLC

/s/ John Beiter

John C. Beiter
TN Bar No. 12564
BEITER LAW FIRM, PLLC
P.O. Box 120433
Nashville, TN 37212
615.488.0088 (voice)
John@Beiterlaw.com

/s/ Christos Badavas

Christos P. Badavas
NY Bar No. 2673838
SESAC
152 W. 57th St., 57th Floor
New York, NY 10019
212.586.3450 (voice)
cbadavas@sesac.com

BROADCAST MUSIC, INC.

/s/ *Brian Coleman*

Brian A. Coleman

DC Bar No. 459201

Jennifer T. Criss

DC Bar No. 981982

DRINKER BIDDLE & REATH LLP

1500 K Street, NW, Suite 1100

Washington, DC 20005

202.842.8800 (voice)

202.842.8465 (facsimile)

Janet.fries@dbr.com

Jennifer.criss@dbr.com

/s/ *Joseph J. Dimona*

Joseph J. Dimona

DC Bar No. 413159

BROADCAST MUSIC, INC.

250 Greenwich Street

New York, NY 10007-0030

212.220.3149 (voice)

212.220.4447 (facsimile)

Jdimona@bmi.com

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June, 2019, a copy of the foregoing Joint Motion of Allocation Phase Claimants for Partial Distribution of the 2016 and 2017 Satellite Royalty

Funds was sent by Federal Express to the following:

Brian D. Boydston
PICK & BOYDSTON LLP
10786 Le Conte Avenue
Los Angeles, CA 90024

DAVID POWELL, *pro se*
David Powell
P.O. Box 010950
Miami, FL 33101

Edward S. Hammerman
HAMMERMAN, PLLC
5335 Wisconsin Avenue, NW
Washington, DC 20015

Scott Zembrak
Steven Surachman
OPPENHEIM + ZEBRAK, LLP
4530 Wisconsin Avenue NW, 5th Floor
Washington, DC 20016

 /s/ Troy Strunkey
Troy Strunkey

Proof of Delivery

I hereby certify that on Friday, June 28, 2019 I provided a true and correct copy of the Motion of the Allocation Phase Parties for Partial Distribution of the 2016 and 2017 Satellite Royalty Funds to the following:

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

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

Devotional Claimants, represented by Arnold P Lutzker served via Electronic Service at arnie@lutzker.com

Broadcast Music, Inc., represented by Jennifer T. Criss served via Electronic Service at jennifer.criss@dbr.com

Program Suppliers, represented by Gregory O Olaniran served via Electronic Service at goo@msk.com

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis served via Electronic Service at smosenkis@ascap.com

Broadcaster Claimants Group, represented by John Stewart served via Electronic Service at jstewart@crowell.com

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

SESAC Performing Rights, LLC, represented by John C. Beiter served via Electronic Service at john@beiterlaw.com

circle god network inc d/b/a david powell, represented by david powell served via Electronic Service at davidpowell008@yahoo.com

Signed: /s/ Michael E Kientzle