

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

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IN RE)	CONSOLIDATED
)	Docket No. 19-CRB-0010-CD (2018-21)
DISTRIBUTION OF CABLE)	
ROYALTY FUNDS)	
_____)	

_____)	
IN RE)	CONSOLIDATED
)	Docket No. 19-CRB-0011-SD (2018-21)
DISTRIBUTION OF SATELLITE)	
ROYALTY FUNDS)	
_____)	

MPA NOTICE OF CONTROVERSIES

Pursuant to the Copyright Royalty Judges’ (“Judges”) *Order Of Consolidation, Notice Of Participants, And Order Setting Case Schedule*, dated October 30, 2024 (“October 30 Order”), which announced the Voluntary Negotiation Period (“VNP”) and set the initial case schedule in the captioned proceedings, the Motion Picture Association, Inc. (“MPA”), on behalf of its member companies and other producers and distributors of syndicated series, movies, specials, and non-team sports broadcast by television stations and retransmitted by cable operators who have agreed to representation by MPA (“MPA-represented Program Suppliers”), hereby submits its Notice of Controversies (“Notice”) regarding distribution of the 2018, 2019, 2020, and 2021 cable royalty funds (“2018-21 Cable Funds”) and the 2018, 2019, 2020, and 2021 satellite royalty funds (“2018-21 Satellite Funds”).

I. Statement Of The Nature Of Controversies

The October 30 Order directed participants to “participate in good faith settlement negotiations aimed at resolving controversies regarding the ultimate distribution of the royalty funds for the years at issue in this proceeding” during the VNP established by the Judges. *See* October 30 Order at 2. As explained below, controversies remain outstanding as to the 2018-21 Cable Funds and 2018-21 Satellite Funds in both the Allocation and Distribution Phases of the proceedings, and it appears that a hearing before the Judges will be necessary to resolve these controversies. MPA intends to participate fully in both the Allocation and Distribution Phases of these proceedings.

A. Allocation Phase Controversies

As explained in MPA’s Petitions to Participate filed in these proceedings, MPA has historically served as the representative of the Program Suppliers category in Allocation Phase proceedings, and MPA will serve as the representative for the Program Suppliers cable and satellite claimant groups in the Allocation Phase of these proceedings. *See Joint Petitions To Participate Of The MPA-Represented Program Suppliers* (September 12, 2024). Prior to, and during the VNP, MPA participated in settlement discussions on behalf of the Program Suppliers category with representatives of several of the other cable and satellite Allocation Phase claimant groups, including the Joint Sports Claimants (“JSC”), the Commercial Television Claimants (“CTV”), the Canadian Claimants Group (“CCG”), Settling Devotional Claimants (“SDC”), and the Public Television Claimants (“PTV”). Despite all parties’ good faith efforts, they were unable to reach a settlement, and Allocation Phase controversies remain outstanding among the cable and satellite claimant groups in this proceeding.¹

¹ David Powell, a *pro se* litigant, appears to have also alleged controversies in both the Allocation and Distribution Phases of these proceedings in his Petitions to Participate, however Powell does not appear to have a significant

B. Distribution Phase Controversies Within The Program Suppliers Category

Distribution Phase controversies remain outstanding in the Program Suppliers category between MPA, the National Association of Broadcasters (“NAB”), and Multigroup Claimants (“MGC”) as to the 2018-21 Cable Funds, and between MPA and MGC as to the 2018-21 Satellite Funds. During the VNP, MPA had a settlement meeting with MGC, and despite the parties’ good faith efforts they were unable to reach a settlement. MPA has also not reached a settlement regarding its Distribution Phase controversies in the Program Suppliers category with NAB. Accordingly, Distribution Phase controversies remain unresolved within the Program Suppliers category. As explained below, it appears that further proceedings before the Judges will be required to resolve these controversies.

II. Legal And Factual Issues To Be Presented To The Judges

In the Allocation Phase, a controversy exists regarding the relative share that should be allocated to each of the Allocation Phase cable claimant groups, including the Program Suppliers category, for the 2018-21 Cable and Satellite Funds. MPA’s proposed schedule for the resolution of Allocation Phase proceedings related to the 2018-21 Cable Funds is set forth in Section III. MPA also proposes that the Judges follow prior practice and defer proceedings to resolve Allocation Phase controversies related to the 2018-21 Satellite Funds until after the resolution of Allocation Phase controversies related to the 2018-21 Cable Funds.

, In order to receive a royalty distribution, each participant in the referenced proceedings must establish that its claims are valid, eligible to be allocated royalties, and that each claimed program is properly categorized within one of the Allocation Phase claimant categories

interest in either phase of these proceedings. The Judges have dismissed Powell from past royalty distribution proceedings after concluding that he failed to establish a significant interest in the proceeding, and should do so again here. *See, e.g., Order Dismissing David Powell As A Participant*, Docket Nos. 16-CRB-0009-CD (2014-17) and 16-CRB-0010-SD (2014-17) at 3 (June 25, 2020).

(“Eligibility Issues”). Eligibility Issues are threshold issues before the Judges can resolve royalty allocation or distribution issues. As the Judges have made clear, before any royalty distribution can be made, the Judges “must first determine whether the copyright owner is eligible to receive royalties.” *Distribution of the 2000, 2001, 2002, and 2003 Cable Royalty Funds*, 78 Fed. Reg. 64984, 64987 (Oct. 30, 2013) (citing *Universal City Studios LLLP v. Peters*, 402 F.3d at 1235, 1244 (D.C. Cir. 2005); *Order Denying Motions To Strike Claims*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) at 2 (Sept. 14, 2012)). This is because Section 111 authorizes royalty distributions only to copyright owners or their authorized representatives who have filed valid claims for such royalties, demonstrated that they are copyright owners of works entitled to receive such royalties, and presented evidence establishing their share of the royalties in a proceeding before the Judges. *See* 17 U.S.C. §§ 111(d)(3) and (4)(A); § 803.

As the Judges know, MGC is another name for Worldwide Subsidy Group, LLC d/b/a Independent Producers Group (“IPG”). MGC and IPG have been denied a presumption of validity as to their cable and satellite royalty claims, repeatedly, in past Distribution Phase proceedings before the Judges.² MGC has asserted Distribution Phase controversies in these proceedings in the Program Suppliers, Devotional, and Sports claimant categories, and also appears on the Joint Petition To Participate in the 2018-21 cable proceeding filed by PTV.³

² As the Judges are aware, MC was denied any presumption of validity as to its cable or satellite royalty claims for the 2010-13 cable and satellite royalty years, and a large number of its claims were dismissed as unauthorized. *See Ruling And Order Regarding Objections To Cable And Satellite Claims* at 5-10 and Appendices A-B (October 23, 2017). Similarly, IPG was also denied any presumption of validity as to its cable or satellite royalty claims filed for the 2004-2009 cable and 1999-2009 satellite royalty years, and the Judges dismissed a very large number of entities that IPG claimed to represent as unauthorized. *See Memorandum Opinion And Ruling On Validity And Categorization Of Claims*, Docket No. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II) at 9-10; Exhibits A-1 and A-2 (March 13, 2015). The Judges also dismissed a significant number of IPG entities as unauthorized as to the 2000-2003 cable royalty years. *See Memorandum Opinion And Order Following Preliminary Hearing On Validity Of Claims*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) at 3-14; Exhibit B (March 21, 2013).

³ *See Joint Petition To Participate of Public Broadcasting Service* at Attachments A-D (September 12, 2024) (identifying Multigroup Claimants as a claimant to be represented by PTV in the 2018-21 cable proceeding).

In light of these issues, MPA believes that preliminary discovery and a ruling from the Judges addressing Eligibility Issues will be necessary to resolve the unresolved controversies in this proceeding, and that a ruling on Eligibility Issues should precede and inform the Judges' consideration of methodology issues related to the Distribution Phase. MPA expects Distribution Phase Eligibility Issues to be substantially similar, if not identical, in cable and satellite. Therefore, consolidation of cable and satellite proceedings in the Distribution Phase would promote judicial economy and substantially decrease the cost of litigation for the parties. In the interest of efficiency, and to avoid having motions related to Distribution Phase Eligibility Issues pending before the Judges for a prolonged period,⁴ MPA asks that the Judges defer consideration of cable and satellite Distribution Phase issues until after all 2018-21 Cable and Satellite Allocation Phase proceedings have been resolved.

III. Proposal For Further Proceedings

MPA proposes the following schedule for the resolution of Allocation Phase controversies related to the 2018-21 Cable Funds, which is consistent with the Copyright Act, the Judges' regulations, and the Judges' scheduling order for the resolution of Allocation Phase controversies in the 2014-17 Cable Allocation Phase Proceeding.⁵

⁴ In the 2014-17 Cable and Satellite Proceedings, the Judges issued a scheduling order directing the participants to engage in preliminary discovery related to Eligibility Issues and file motions seeking the allowance or disallowance of claims on May 4, 2022, and to be fully briefed shortly thereafter. *See Order For Further Proceedings And Scheduling Case Events*, Docket Nos. 16-CRB-0009-CD (2014-17) and 16-CRB-0010-SD (2014-17) at Exhibit B (January 10, 2022). Although several participants conducted preliminary discovery and filed claims motions in the spring of 2022 as directed, the claims motions are still unresolved and have now been pending before the Judges for more than two and a half years.

⁵ *See* 17 U.S.C. §§ 803(b)(6)(C); 803(c); 37 C.F.R. §§ 351.4, 351.6, 351.7, 352.2; *see also Order For Further Proceedings And Scheduling Case Events*, Docket Nos. 16-CRB-0009-CD (2014-17) and 16-CRB-0010-SD (2014-17) at Exhibit A (January 10, 2022).

CASE EVENT	DATE
Deadline for Written Direct Statements on Allocation Issues (WDS-A)	July 31, 2025
End of discovery on WDS-A	September 15, 2025
Deadline to file amended WDS-A	September 30, 2025
Settlement conference period	October 6, 2025 – October 20, 2025
Deadline to file joint settlement conference report	October 27, 2025
Deadline to file Written Rebuttal Statements on Allocation Issues (WRS-A)	December 5, 2025
End of discovery on WRS-A	January 5, 2026
Hearing commences	March 2026
Determination	September 2026

Following the resolution of Allocation Phase issues for the 2018-21 Cable Funds, the Judges should follow prior practice from past proceedings and establish a separate procedural schedule for the resolution of Allocation Phase controversies related to the 2018-21 Satellite Funds.⁶

Once all cable and satellite Allocation Phase issues are resolved, MPA proposes that the Judges consolidate proceedings related to the 2018-21 Cable and Satellite Funds for purposes of resolving Distribution Phase controversies, which are smaller in scope, in order to promote

⁶ See *Order Consolidating Proceedings And Reinstating Case Schedule*, Docket Nos. 14-CRB-0010-CD (2010-13) and 14-CRB-0011-SD (2010-13) at 2 (December 22, 2017) (“The Judges expressly do not issue a case schedule relating to allocation of satellite royalties among claimant categories; rather, the Judges ORDER that within ten days after the Judges issue the allocation determination relating to cable royalty claims for the year 2010-13, participants in the present captioned satellite proceeding file with the Judges a Joint Notice of all issues in controversy regarding satellite royalty allocation among claimant categories (using the new caption).”)

efficiency and judicial economy.⁷ As discussed in Section II, MPA requests that Distribution Phase Eligibility Issues be addressed and resolved by the Judges prior to the resolution of methodology issues.

CONCLUSION

MPA will continue its good faith efforts to reach a settlement with all participants regarding the 2018-21 Cable and Satellite Funds. However, given the participation of parties that are clearly not entitled to a presumption of validity, MPA remains skeptical that a global settlement can be achieved in this proceeding until all Eligibility Issues are fully resolved by the Judges. MPA urges the Judges to adopt a procedural schedule that allows for a comprehensive resolution of all outstanding controversies related to the 2018-21 Cable and Satellite Funds in as expedient a manner as possible under the statute and regulations.

Respectfully submitted,

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⁷ Consolidation of outstanding cable and satellite Distribution Phase issues in the interest of judicial economy is also consistent with precedent. *See id.* at 1-2.

CERTIFICATE OF SERVICE

I certify that on February 7, 2025, 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, February 07, 2025, I provided a true and correct copy of the MPA Notice Of Controversies to the following:

American Society of Composers, Authors and Publishers, represented by Sam Mosenkis, served via E-Service at smosenkis@ascap.com

Broadcast Music, Inc., represented by Brian A Coleman, served via E-Service at Brian.Coleman@faegredrinker.com

Broadcast Music, Inc., ASCAP, SESAC (joint participants), represented by Jennifer T. Criss, served via E-Service at jennifer.criss@faegredrinker.com

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

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

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

Global Music Rights, LLC, represented by Scott A Zebrak, served via E-Service at carly@oandzlaw.com

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

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

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

Powell, David, represented by David Powell, served via E-Service at davidpowell008@yahoo.com

Public Television Claimants, represented by Ronald G. Dove, Jr., served via E-Service at
rdove@cov.com

SESAC Performing Rights, LLC, represented by Christos P Badavas, served via E-Service
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Signed: /s/ Lucy H Plovnick