

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

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COPYRIGHT ROYALTY JUDGES

In the Matter of)

Distribution of the 2004 and 2005)
Cable Royalty Funds)

Docket No. 2007-3 CRB CD 2004-2005

In the Matter of)

Distribution of the 2006)
Cable Royalty Funds)

Docket No. 2008-4 CRB CD 2006

In the Matter of)

Distribution of the 2007)
Cable Royalty Funds)

Docket No. 2009-6 CRB CD 2007

In the Matter of)

Distribution of the 2008)
Cable Royalty Funds)

Docket No. 2010-6 CRB CD 2008

In the Matter of)

Distribution of the 2009)
Cable Royalty Funds)

Docket No. 2011-7 CRB CD 2009

**PHASE I PARTIES’
NOTICE OF PHASE I SETTLEMENT
AND MOTION FOR FURTHER DISTRIBUTION**

The undersigned representatives of all of the Phase I categories to which royalties have been allocated in prior cable royalty distribution proceedings (“Phase I Parties”) submit the following Notice of Phase I Settlement and, pursuant to Section 801(b)(3)(A) of the Copyright Act, 17 U.S.C. § 801(b)(3)(A), Motion for Further Distribution (“Motion”), in connection with the 2004, 2005, 2006, 2007, 2008, and 2009 cable royalty funds (“2004-2009 Cable Royalties”).

I. NOTICE OF PHASE I SETTLEMENT

The Phase I Parties are pleased to notify the Copyright Royalty Judges (“Judges”) that they have reached a settlement of all outstanding Phase I controversies regarding distribution of the 2004-2009 Cable Royalties. The Phase I Parties have agreed among themselves, on a confidential and non-precedential basis, on the Phase I allocation of the 2004-2009 Cable Royalties in their entirety.

II. MOTION FOR FURTHER DISTRIBUTION

As discussed below, the Phase I Parties request that the Judges take the following actions: (1) reserve \$20,000,000 of 2004-2009 Cable Royalties to satisfy the resolution of the limited Phase II controversies identified in comments previously filed with the Judges and (2) authorize a lump-sum distribution of all remaining 2004-2009 Cable Royalties to the Phase I Parties, through a common agent.

Obtaining distribution of the maximum possible amount of 2004-2009 Cable Royalties prior to the end of this year is important to the Phase I Parties and the claimants they represent.

The Phase I Parties respectfully urge the Judges to authorize the requested distribution of these funds as expeditiously as possible and, in any event, complete the distribution no later than December 2, 2011, in keeping with prior precedent. *See, e.g., Distribution Order* in Docket Nos. 2008-5 CRB SD 1999-2000 and 2005-2 CRB SD 2001-2003 (December 8, 2008) (ordering that distribution of funds in response to a notice of Phase I settlement take place on December 18, 2008 in connection with a motion for distribution filed on November 14, 2008).

A. Section 801(b)(3)(A) Permits The Judges To Authorize The Requested Distribution.

Section 801(b)(3)(A) of the Copyright Act vests the Judges with authority:

To authorize the distribution, under sections 111, 119, and 1007, of those royalty fees collected under sections 111, 119, and 1005, as the case may be, to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy.

17 U.S.C. § 801(b)(3)(A). As discussed below, because a global Phase I settlement has been reached as to the 2004-2009 Cable Royalties, and because the Phase I Parties are not seeking the distribution of any cable royalties that are in controversy, the requested distribution is appropriate under the foregoing statutory provision.

The Judges previously authorized a 50% partial distribution of each of the 2004-2009 Cable Royalties, and a subsequent final distribution as to the 2004 and 2005 cable royalties to National Public Radio (“NPR”). *See Distribution Orders*, Docket No. 2007-3 CRB CD 2004-2005 (April 10, 2008 and April 16, 2009); *Distribution Order*, Docket No. 2008-4 CRB CD 2006 (December 2, 2008); *Distribution Order*, Docket No. 2009-6 CRB CD 2007 (October 22, 2009); *Distribution Order*, Docket No. 2010-6 CRB CD 2008 (January 11, 2011); *Distribution Order*, 2011-7 CRB CD 2009 (October 13, 2011). Thus, the Copyright Office currently is holding in reserve approximately 50% of the 2004-2009 Cable Royalties. As of October 27,

2011, that reserve amounts to approximately \$462 million. An important factor motivating a settlement among the Phase I Parties was the desire to receive the maximum possible share of the amount being held by the Office before the end of the current year.

Based upon the comments previously filed with the Judges,¹ Phase II disputes over the 2004-2009 Cable Royalties exist in only three categories -- Program Suppliers, Devotional Claimants and Joint Sports. The Phase I Parties believe, based on their analysis of the comments and their experience with prior Phase II controversies, that (1) a reserve of \$20,000,000 -- divided equally among each of the six years -- is sufficient to satisfy these controversies; and (2) the reserve amount should be allocated as follows among the Phase I categories with Phase II controversies:

Reserve For Phase II Controversies

<u>Phase I Program Category</u>	<u>Requested Reserve Amount</u>
Program Suppliers	\$3,000,000.00
Joint Sports	\$1,000,000.00
Devotional Claimants	\$16,000,000.00
TOTAL	\$20,000,000.00

The Phase I Parties respectfully request that the Judges specify the above-identified separate reserve amount for each of the affected Phase I program categories rather than a lump-sum reserve. Such separate reserves will enable the Phase I Parties to properly allocate the funds distributed pursuant to this Motion and their settlement agreements. The Phase I Parties have

¹ See comments previously filed in Docket Nos. 2007-3 CRB CD 2004-2005; 2008-4 CRB CD 2006; 2009-6 CRB CD 2007; 2010-6 CRB CD 2008; and 2011-7 CRB CD 2009.

been informed by the Licensing Division that no additional administrative costs will be deducted from the 2004-2009 Cable Royalties in the event of a Phase II proceeding. Therefore, the Judges may accept the above-specified amounts as a sufficient reserve to satisfy the resolution of the existing Phase II controversies and may authorize a lump-sum distribution of all remaining 2004-2009 Cable Royalties to the Phase I Parties through a common agent.

The Phase I Parties request that the Judges authorize a lump-sum distribution of all of the remaining 2004-2009 Cable Royalties to the Phase I Parties, net of any reserve amounts for Phase II controversies. The Phase I Parties agree to identify a common agent to receive the lump-sum distribution.

B. The Requested Distribution Is Warranted.

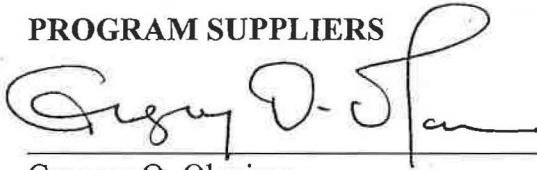
In light of the global settlement of all Phase I controversies among the Phase I Parties regarding the 2004-2009 Cable Royalties, the largest possible distribution is warranted at the earliest possible time. Moreover, prior precedent exists supporting further distribution of all royalties that the Judges determine are no longer in controversy following settlement. *See Distribution Order* in Docket Nos. 2008-5 CRB SD 1999-2000 and 2005-2 CRB SD 2001-2003 (December 8, 2008) (ordering distribution of 90% of the 1999-2003 satellite funds pursuant to Section 801(b)(3)(A) of the Copyright Act following the Phase I Parties' settlement). The Phase I Parties seek distribution of cable royalties that were deposited as long as six years ago. It is unnecessary to continue to hold funds which the parties agree are not in controversy.

Accordingly, and pursuant to Section 801(b)(3)(A) of the Copyright Act, 17 U.S.C. § 801(b)(3)(A), the Phase I Parties agree and respectfully request that the Judges:

1. Reserve \$20,000,000 to satisfy resolution of all Phase II controversies as to the 2004-2009 Cable Royalties and allocate the amount among those Phase I categories provided above; and
2. Authorize, pursuant to Section 801(b)(3)(A), an immediate lump-sum further distribution of all of the remaining 2004-2009 Cable Royalties to the Phase I Parties through a common agent identified by the Phase I Parties.

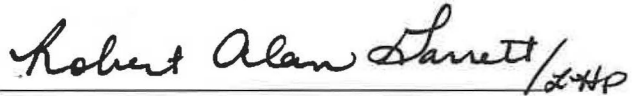
Respectfully submitted,

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Date: November 4, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2011, a copy of the foregoing Phase I Parties Notice of Phase I Settlement and Motion for Further Distribution by Federal Express overnight mail, Saturday delivery, to the individual listed below:

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A handwritten signature in black ink, appearing to read "Gregory O. Olaniran", written over a horizontal line.

Gregory O. Olaniran