



In the Matter of

**Distribution of the 2000 Cable
Royalty Fund**

Docket No. 2002-8 CARP CD 2000

ORDER

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On October 15, 2002, representatives of the Phase I claimant categories to which royalties have been allocated in prior cable distribution proceedings ("Phase I Parties") filed a motion for reconsideration of the Copyright Office's Order of October 10, 2002. That order granted a partial distribution of 50% of the 2000 Cable Royalty Fund to the Phase I Parties instead of the 75% share requested in their July 30, 2002, motion.

The Phase I Parties argue that the three reasons cited in the order for reducing the requested amount do not require the Office to retain a reserve of more than 25% of the 2000 cable royalty fund. Specifically, they address the Office's concerns regarding the existence of unique and controversial issues concerning the creation of new Phase I categories; the unprecedented number of existing controversies; and the lack of substantial information to gauge the extent of the existing controversies.

Of the three reasons, the most important one is the last—the lack of substantial information to gauge the extent of existing controversies, especially between the Phase I claimant categories. Movants maintain that reservation of a 25% reserve is sufficient to cover all outstanding controversies based upon their good-faith estimates of the extent of these controversies. Moreover, they argue that the Office should accept at face value the Phase I Parties' evaluation of how much money should be reserved without disclosure of actual information regarding the extent of the controversies between the claimant categories. We disagree.

Section 111(d)(4)(C) authorizes partial distributions of royalty fees during the pendency of a proceeding provided that the amounts distributed are not in controversy. See, e.g., Order, Docket No. 2000-6 CARP CD 98 (October 12, 2000) and Order, Docket No. 2001-6 CARP CD 99 (October 17, 2001). Such a determination cannot be made unless parties supply sufficient information to the Office or the distribution is based on prior distribution percentages that are not being challenged. Certainly, in past years, the Office has granted the Phase I Parties' request for a partial distribution of 75% of the funds. Yet, it has done so on the basis of the parties' decision to make distributions in accordance with the 1991 and 1992 percentages and with the knowledge that no Phase I Party was seeking to revisit the allocation of Phase I shares at the time of the distribution.

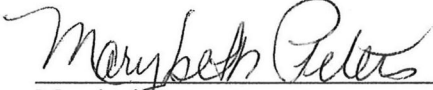
However, this is not the current situation. Phase I Parties have been unable to reach a settlement with regard to the 1998 and 1999 cable distribution royalty fees and are scheduled to proceed to the hearing phase of the distribution process with the filing of their direct cases on December 2, 2002. Since Phase I Parties use the most recently litigated distribution percentages for distribution of funds collected in subsequent years, the resolution of the 1998 and 1999 cable distribution proceeding has a direct bearing on the ultimate resolution of the distribution of the 2000 cable fees. For this reason, the Office was unwilling to grant the request for a 75% partial distribution without more specific information from the Phase I Parties regarding the extent of the current controversies over the distribution of the 1998 and 1999 royalty fees.

Moreover, at the time the Office was considering the motion for partial distribution, it was also considering another matter regarding the timely filing of two 2000 cable royalty claims, the resolution of which would likely have a direct effect upon the ultimate distribution of the 2000 cable royalty fees. That issue has now been resolved. On December 2, 2002, the Copyright Office rejected the 2000 cable royalty claims filed by Universal Studios and Metro-Goldwyn-Mayer Studios Inc. because the claims were not filed in a timely manner.

Thus, before making any further distribution of the 2000 cable royalty funds, parties must provide detailed information to the Office, regarding specific controversies over the distribution of the 2000 royalty fees in light of the asserted controversies in the 1998 and 1999 cable distribution proceeding, and addressing the impact of the dismissal of the Universal Studios and Metro-Goldwyn-Mayer Studios Inc. claims to royalty fees collected during calendar year 2000.

Wherefore, **IT IS ORDERED** that the motion of Phase I Claimants for reconsideration of the October 10 order for partial distribution of the 2000 cable royalty funds is **DENIED**, without prejudice. The Copyright Office will consider future motions for partial distributions provided that the movants provide specific information regarding the extent of the outstanding Phase I and Phase II controversies regarding the distribution of the 2000 cable royalty fees in light of the ongoing 1998 and 1999 cable distribution proceeding and the rejection of the two 2000 cable royalty claims submitted by Universal Studios and Metro-Goldwyn-Mayer Studios Inc. Furthermore, claimants within a category are advised to state whether separate proceedings will be necessary to resolve each of the controversies.

SO ORDERED.



Marybeth Peters
Register of Copyrights

DATED: December 4, 2002