



In the Matter of

Distribution of the 2000
Cable Royalty Fund

Docket No. 2002-8 CARP CD 2000

LIBRARY
OF
CONGRESS

ORDER

Background

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OFFICE

On July 31, 2002, the Copyright Office received a motion from representatives of the Phase I claimant categories to which royalties have been allocated in prior distribution proceedings ("Phase I Parties"), requesting a partial distribution of 75% of the 2000 cable royalty fund. The specific claimant categories comprising the Phase I Parties are the Music Claimants, Canadian Claimants, Joint Sports Claimants, National Public Radio, Public Television Claimants, the National Association of Broadcasters (NAB), Program Suppliers, and the Devotional Claimants.

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The moving Phase I Parties request a partial distribution in accordance with the royalty percentages established for the 1991 and 1992 royalty funds, as announced in the Library of Congress' Order of October 22, 1996, and affirmed by the United States Court of Appeals for the D.C. Circuit on June 26, 1998. NAB v. Librarian of Congress, 146 F.3d 907 (D.C. Cir. 1998); see also, 61 FR 55653 (October 28, 1996). The percentage shares, having been agreed to by all Phase I Parties, are set forth in Attachment A of the Motion. Attachment A also indicates that NAB shall receive "their provisional shares of Program Suppliers' award directly without the distribution passing through MPAA" and that "MPAA has no objection to such an arrangement for this distribution." Attachment A, n.3.

Discussion

Section 111(d)(4)(C) of the Copyright Act provides for partial distributions of cable royalties during the pendency of a distribution proceeding. 17 U.S.C. § 111(d)(4)(C). Pursuant to this authority, the Register of Copyrights has granted similar requests in advance of the declaration of a controversy, after ascertaining the identities of the parties to the proceeding, evaluating the scope of the request, and ensuring that sufficient funds would remain to satisfy all claims which remain in controversy. See Order, Docket Nos. 94 CARP (92-CD) and (93-CD) (September 26, 1994); Order, Docket No. 96 CARP CD 94 (October 23, 1996); Order, Docket No. 97-2 CARP CD 95 (October 20, 1997); Orders, Docket No. 97-1 CARP SD 92-95 (March 17, 1997; May 14, 1997); Order, Docket No. 98-2 CARP-CD 96 (October 9, 1998); and Order, Docket No. 2000-6 CARP CD 98 (October 12, 2000); Order, Docket No. 2001-6 CARP CD 99 (October 17, 2001). In each case, a partial distribution was made in response to motions from copyright owners with an equitable claim to the funds prior to the initiation of a distribution proceeding, where there had been a delay in declaring a controversy.

On August 30, 2002, the Copyright Office published a notice requesting comments on the existence and the extent of controversy, at Phase I and Phase II, as to the distribution of the

2000 cable royalty fees, and on the motion for a partial distribution. 67 FR 55885 (August 30, 2002). The notice also directed each party interested in participating in a proceeding to determine the distribution of the 2000 cable royalty fees to file a Notice of Intent to Participate with the Copyright Office. The Office received thirty-three notices of intent to participate and no oppositions to the motion for a partial distribution of the 2000 cable royalty funds.

Because the Copyright Office has not announced a schedule for the determination of the distribution of the 2000 cable royalty fees, and consequently, anticipates a delay in initiating a proceeding to determine the distribution of these royalty fees, and because the Copyright Office has ascertained the identities of the parties to a Phase I distribution proceeding for the 2000 cable funds prior to an actual distribution, and all Phase I Parties join in the motion, the Copyright Office supports a distribution of the 2000 cable royalty funds at this time to those parties with a claim, according to the schedule in Attachment A of the motion, although not at the requested 75% level.

The thirty-three notices of intent to participate demonstrate that a Phase I controversy exists for all pre-existing categories and that there are more than 25 potential Phase II controversies. Moreover, two parties have indicated their intention to request the addition of two new Phase I categories. The Goodman Group, LLC states that it will be seeking a new category for "Direct Response Television Programming" and World Wide Subsidy Group states that it will request the creation of a new Phase I category for "Spanish-Language Programming." In light of the unprecedented number of existing controversies, the existence of unique and controversial issues concerning the creation of new Phase I categories, and the lack of substantial information to gauge the extent of the existing controversies, the motion for a 75% partial distribution of the funds can only be granted in part.

In making the decision concerning the amount to be withheld, the Office evaluates the estimates supplied by the parties to determine how much of the requested funds to hold in reserve. Because it cannot totally evaluate the extent of controversy between the categories nor the value of the disputed Phase II controversies based upon the information supplied by the parties, the Office has no choice but to take a conservative approach and retain sufficient funds to cover all potential Phase I and Phase II claims, in addition to setting aside sufficient funds to cover the costs of any necessary CARPs. Moreover, the Office is wary of making a 75% distribution of the funds predicated upon the percentages for distribution of the 1991 and 1992 cable royalty fees when the parties are scheduled to relitigate these values in the upcoming months. The need for a CARP to reconsider the distribution percentages among the Phase I claimants suggests that these values may change dramatically based upon the outcome of the distribution proceeding regarding the 1998 and 1999 cable royalty fees.

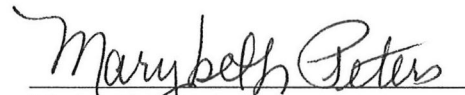
For these reasons, the Register is granting the motion for a partial distribution, but not for the amount requested. Instead of the requested 75% of the cable royalty fees, the Register is granting the motion for a distribution of 50% of the 2000 cable royalty fees. While the Office is confident that retention of 50% of the royalty fees will be sufficient to settle all claims and cover the costs of any and all distribution proceedings, see Order, Docket No. 98-2 CARP CD 96 (October 9, 1998) and Order, Docket No. 2001-6 CARP CD 99 (October 17, 2001), the Office makes the distribution with the understanding that the parties agree to return any payment in excess of what a party should have received in addition to the interest the payments would have earned had they not been distributed.

Therefore, each party who is to receive a partial distribution of the 2000 cable royalty fees prior to the determination of the final percentages must sign an agreement stating that any overpayment that results from the partial distribution shall be repaid to the Copyright Office with interest according to the amount that would have accrued if the principal had remained in the fund prior to the scheduled distribution. The Licensing Division of the Copyright Office will fax a copy of the agreement, under separate cover, to a representative of each Phase I Party.

Determination

Wherefore, **IT IS ORDERED** that the Motion of Phase I Claimants for Partial Distribution of the 2000 cable royalty fund **IS GRANTED** in part, according to the conditions prescribed herein. The Copyright Office shall make a distribution of 50% of the 2000 cable royalties in accordance with the royalty percentage shares set forth in Attachment A of the motion on or after October 24, 2002, **PROVIDED THAT** each of the parties receiving a share of these funds provides a signed agreement prepared by the Copyright Office no later than October 17, 2002, stating that any overpayment that results from the distribution of these funds shall be repaid to the Copyright Office with interest according to the amount that would have accrued if the principal had remained in the fund. In addition, all pertinent information to effect the transfer of the funds must be provided to the Licensing Division of the Copyright Office no later than October 17, 2002. The partial distributions made pursuant to this order shall be without prejudice concerning the final distribution percentages that shall be determined at a future time

SO ORDERED.



Marybeth Peters,
Register of Copyrights.

DATED: October 10, 2002