

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In re

**Distribution of the 2010, 2011, and
2012 Cable Royalty Funds**

Docket No. 14-CRB-0007-CD (2010–12)

**OPPOSITION OF THE CABLE-ONLY CLAIMANTS TO
MPAA MOTION TO CONSOLIDATE PROCEEDINGS**

Public Broadcasting Service (“PBS”), the Canadian Claimants Group (“CCG”), and National Public Radio, Inc. (“NPR”) (collectively, the “Cable-Only Claimants”)¹ hereby oppose the Motion to Consolidate Proceedings filed by the Motion Picture Association of America, Inc. (“MPAA”). While the Cable-Only Claimants fully support the goals of efficient case management and timely distribution of royalties, consolidation of the Phase I cable and satellite royalty distribution proceedings would have the opposite effect on the Cable-Only Claimants. In particular, MPAA’s proposal for consolidation would needlessly pull the Cable-Only Claimants into an expensive and time-consuming satellite proceeding despite the fact that they have no satellite royalty claims.

PBS, CCG, and NPR have significant interests in the cable royalty funds at issue in Docket No. 14-CRB-0007-CD. These parties have *no* interests in the satellite royalty funds at issue in Docket No. 14-CRB-0008-SD. PBS, CCG, and NPR have not filed claims for satellite royalty funds in the 2010, 2011, or 2012 claim years, and have not petitioned to participate in the distribution of those funds. In its motion, the MPAA makes much of the Copyright Royalty

¹ PBS represents copyright owners of programs broadcast on U.S. noncommercial educational television stations. CCG represents copyright owners of programs broadcast on Canadian television stations (except live telecasts of Major League Baseball, National Hockey League, and U.S. college team sports, and other programs owned by U.S. copyright owners). NPR represents itself and NPR Member licensees.

Judges’ Order of August 29, 2014, going so far as to claim that “[a]ll of the factors that the Judges considered” in that Order are “also present” in these Phase I proceedings.² In fact, however, the Judges’ August 29 Order reasonably decided to consolidate those particular Phase II proceedings only after noting that “[t]he participants in the proceedings are the same.”³ By contrast, the participants in these Phase I cable and satellite royalty distribution proceedings are *not* the same. The MPAA concedes, as it must, that three of the eight historical Phase I parties to cable distribution proceedings — PBS, CCG, and NPR — do not participate in satellite royalties.⁴

Consolidating the Phase I cable and satellite proceedings would dramatically increase the litigation costs of the Cable-Only Claimants by forcing them to participate in a proceeding in which they have no claims. In a consolidated proceeding, PBS, CCG, and NPR would have no choice but to wade or sit through additional arguments, pleadings, discovery, and testimony that often would be of little or no relevance to their interests. Moreover, if the cable and satellite proceedings were consolidated, the Cable-Only Claimants would be compelled to consider whether to address various satellite-related arguments and evidence that could conceivably bear on issues raised in the cable proceeding, thereby potentially multiplying the number of arguments made and papers filed by drawing in additional parties on these issues. Such a result would be inefficient and unfair to the Cable-Only Claimants. *Cf. In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 374 (2d Cir. 1993) (reversing, as an abuse of discretion, a district court’s grant of consolidation, holding that “[a] party may not use aggregation as a

² MPAA Motion to Consolidate Proceedings, at 4, Docket Nos. 14-CRB-0007-CD (2010–12) & 14-CRB-0008-SD (2010–12) (Feb. 19, 2015) (hereinafter “MPAA Motion”).

³ Order of Consolidation and Amended Case Schedule, at 1, Docket Nos. 2012-6 CRB CD 2004–2009 (Phase II) & 2012-7 CRB SD 1999–2009 (Phase II) (Aug. 29, 2014).

⁴ MPAA Motion, *supra* note 2, at 4 n.2.

method of increasing the costs of its adversaries . . . by forcing them to participate in discovery or other proceedings that are irrelevant to their case”).

These critical flaws are intrinsic to MPAA’s motion and could not be remedied without creating other inefficiencies and inequities. Requiring the parties to separate or distinguish satellite arguments, pleadings, discovery, and testimony from cable arguments, pleadings, discovery, and testimony in these proceedings to reduce the burden on the Cable-Only Claimants would increase the burden on other claimants and undermine the hoped for efficiency gains of consolidation. And if the cable and satellite proceedings were conducted separately but simultaneously (or if the satellite proceeding preceded the cable proceeding), that would unfairly prejudice the Cable-Only Claimants by creating a parallel forum in which the satellite claimants could present arguments that bear on the cable proceeding and with regard to which the Cable-Only Claimants would be forced to monitor or intervene to protect their interests. Such an outcome would be the most burdensome and inefficient of all.

For the foregoing reasons, the Judges should deny MPAA’s motion and conduct the cable proceeding prior to and separate from the satellite proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Dustin Cho, hereby certify that on this 26th day of February, 2015, I caused copies of the foregoing “Opposition of the Cable-Only Claimants to MPAA Motion to Consolidate Proceedings” to be served by Federal Express overnight delivery on the following parties:

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