RECEIVED
Public Information Office
NOV 04 2011
COPYRIGHT OFFICE

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

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 The Phase I Parties have agreed among themselves, on a confidential and non-precedential basis, on the Phase I allocation of the 2004-2009 Cable Royalties in their entirety.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

Phase I Program Category	**Requested Reserve Amount**
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.

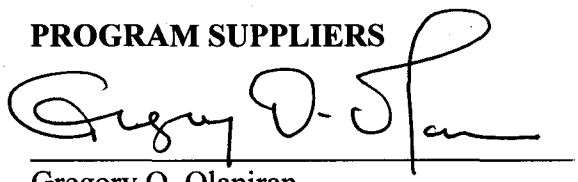
In light of the global settlement of all Phase I controversies among the Phase I Parties regarding the 2004-2009 Cable Royalties, the largest possible distribution is warranted at the earliest possible time. Moreover, prior precedent exists supporting further distribution of all royalties that the Judges 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.

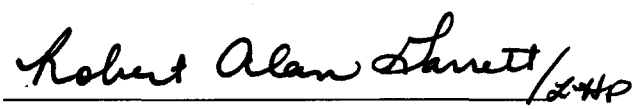
Respectfully submitted,

PROGRAM SUPPLIERS



Gregory O. Olaniran
D.C. Bar No. 455784
Lucy Holmes Plovnick
D.C. Bar No. 488752
MITCHELL SILBERBERG & KNUPP LLP
1818 N Street, N.W., 8th Floor
Washington, D.C. 20036
Telephone: (202) 355-7917
Fax: (202) 355-7887
goo@msk.com
lhp@msk.com

JOINT SPORTS CLAIMANTS



Robert Alan Garrett
D.C. Bar No. 239681
Stephen K. Marsh
D.C. Bar No. 470765
Marco A. Palmieri
D.C. Bar No. 981788
ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206
Telephone: (202) 942-5000
Fax: (202) 942-5999
robert.garrett@aporter.com
stephen.marsh@aporter.com

PUBLIC TELEVISION CLAIMANTS

PUBLIC BROADCASTING SERVICE

Ronald L. Dove, Jr./LHP

Ronald G. Dove, Jr.
D.C. Bar No. 430533
Lindsey L. Tonsager
D.C. Bar No. 983925
COVINGTON & BURLING LLP
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2401
Telephone: (202) 662-5685
Fax: (202) 778-5685
rdove@cov.com

COMMERCIAL TELEVISION CLAIMANTS
NATIONAL ASSOCIATION OF BROADCASTERS

John I. Stewart, Jr./LHP

John I. Stewart, Jr.
D.C. Bar No. 913905
Jennifer H. Burdman
D.C. Bar No. 495555
Ann Mace
D.C. Bar No. 980845
CROWELL & MORING LLP
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2595
Telephone: (202) 624-2685
Fax: (202) 628-5116
jstewart@crowell.com

CANADIAN CLAIMANTS GROUP

L. Kendall Satterfield/LHP

L. Kendall Satterfield
D.C. Bar No. 393953
FINKELSTEIN THOMPSON LLP
James Place
1077 30th Street, NW
Washington, D.C. 20007
Telephone: (202) 337-8000
Fax: (202) 337-8090
ksatterfield@finkelsteinthompson.com

MUSIC CLAIMANTS

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

Joan M. McGivern
Samuel Mosenkis
N.Y.# 2628915
ASCAP
One Lincoln Plaza
New York, NY 10023
Telephone: (212) 621-6450
Fax: (212) 787-1381
smosenkis@ascap.com

BROADCAST MUSIC, INC.

Joseph J. DiMona
D.C. Bar No. 412159
BROADCAST MUSIC, INC.
7 World Trade Center
250 Greenwich Street
New York, NY 10007-0030
Telephone: (212) 220-3149
Fax: (212) 220-4447
jdimona@bmi.com

Michael J. Remington
D.C. Bar No. 344127
Jeffrey J. Lopez
D.C. Bar No. 453052
DRINKER BIDDLE & REATH LLP
1500 K Street, NW – Suite 1100
Washington, D.C. 20005
Telephone: (202) 842-8800
Fax: (202) 842-8465
michael.remington@dbr.com
jeffrey.lopez@dbr.com

SESAC, INC.

John C. Beiter
TN Bar No. 12564
SHACKELFORD, ZUMWALT & HAYES
1014 16th Avenue South
Nashville, TN 37212
Telephone: (615) 256-7200
Fax: (615) 256-7106
jbeiter@zahlaw.com

DEVOTIONAL CLAIMANTS

Arnold P. Lutzker
D.C. Bar No. 101816
LUTZKER & LUTZKER LLP
1233 20th Street, NW, Suite 703
Washington, D.C. 20036
Telephone: (202) 408-7600
Fax: (202) 408-7677
arnie@lutzker.com

NATIONAL PUBLIC RADIO

Joyce Slocum
Texas Bar No. 18508300
Gregory A. Lewis
D.C. Bar No. 420907
NATIONAL PUBLIC RADIO
635 Massachusetts Avenue, NW
Washington, DC 20001-3753
Telephone: (202) 513-2050
Fax: (202) 513-3021
glewis@npr.org

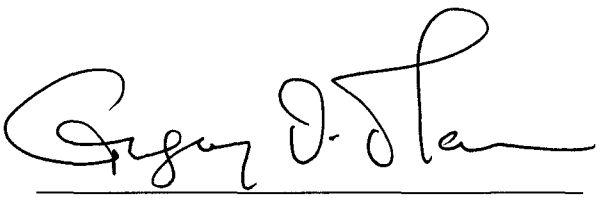
Date: November 4, 2011

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:

INDEPENDENT PRODUCERS GROUP

Brian D. Boydston
PICK & BOYDSTON LLP
617 S. Olive Street, Suite 400
Los Angeles, CA 90014



Gregory O. Olaniran