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GENERAL COUNSEL
OF COPYRIGHT

In the Matter of)	
)	
Adjustment of Royalty Fee for Cable)	Docket No. <u>2005-2 CARP CRA</u>
Compulsory License)	
)	

PETITION OF JOINT SPORTS CLAIMANTS AND PROGRAM SUPPLIERS FOR COMMENCEMENT OF CABLE RATE ADJUSTMENT PROCEEDING

The Joint Sports Claimants, composed of the Office of the Commissioner of Baseball, the National Football League, the National Basketball Association, the Women's National Basketball Association, the National Hockey League and the National Collegiate Athletic Association (collectively the "JSC") and the Motion Picture Association of America, Inc., its member companies and other producers and/or distributors of syndicated movies, series and specials broadcast by television stations (collectively the "Program Suppliers") hereby petition the Copyright Office ("Office") pursuant to 17 U.S.C. §§ 801(b)(2)(A) and (C), 803(a)(2) and 803(b) and 37 C.F.R. §§ 251.61(a)(1), 251.61(b) and 251.62 to commence a proceeding to adjust the cable compulsory license royalty rates set forth in 37 C.F.R. § 256.2.

JSC and the Program Suppliers request that the Office act promptly to issue a Federal Register notice (1) announcing the initiation of the 30-day voluntary negotiation period provided by 37 C.F.R. § 251.63(a), and (2) requiring all parties to file a notice of their intent to participate in those negotiations and, if necessary, a CARP proceeding. *See*

37 C.F.R. § 251.45(a) and (b)(2). JSC and Program Suppliers further request that the Office, at the conclusion of the voluntary negotiation period, promptly take the next step toward the conclusion of this proceeding – whether that be through the publication of a voluntary agreement for notice-and-comment (37 C.F.R. § 251.63(b)) or by initiating a CARP proceeding with direct cases to be filed no later than June 1, 2005.

JSC and Program Suppliers have a “significant interest” in the cable compulsory license royalty rates within the meaning of 17 U.S.C. § 803(a)(1) and 37 C.F.R. § 251.62(a). JSC represents copyright owners of live team sports broadcasts shown on television stations that are and will be secondarily transmitted by cable systems pursuant to the Section 111 compulsory license. Program Suppliers represent copyright owners of movies and syndicated programs shown on television stations that are and will be secondarily transmitted by cable systems pursuant to the Section 111 compulsory license. JSC and Program Suppliers have participated in every cable royalty distribution proceeding and every cable rate adjustment proceeding since the enactment of the cable compulsory license in 1976 and, collectively, have received the majority of the cable royalty fund for each year since that enactment.

Given the importance of establishing adjusted cable royalty rates at the earliest possible time, JSC and the Program Suppliers request that this petition and any resulting proceeding be handled pursuant to existing CARP procedures, rather than under the new provisions established by the Copyright Royalty and Distribution Reform Act of 2004 (“CRDRA”). This request is consistent with the CRDRA, which provides in Section 6(a) that it will not become effective until May 30, 2005. While the transition provisions in the CRDRA’s Section 6(b) allow the Librarian of Congress to terminate any proceeding

that was commenced before November 30, 2004, when the CRDRA was enacted, and to initiate a new proceeding under the CRDRA procedures, they do not contain a similar provision allowing the termination of proceedings to address petitions filed between November 30, 2004 and May 30, 2005. JSC and the Program Suppliers recognize that by filing a petition during the period between the enactment and effective dates of the CRDRA, they will end up bearing a part of the cost of arbitrator fees should it prove necessary to commence a CARP proceeding. However, the benefit of an earlier final decision as required under a CARP process outweighs the possibility of waiting for another five months to initiate CRDRA procedures that could exceed two years before a final decision on the adjustment of cable royalty rates.

The version of Title 17 in effect prior to the enactment of the CRDRA should govern the progress of this proceeding because, among other things, it offers the most expeditious path to possible adjustment of the cable royalty rates. JSC and the Program Suppliers understand that Section 112 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”) contains a technical amendment to Section 803(b)(1)(A)(i)(V) of the CRDRA prohibiting the Copyright Royalty Judges from publishing, on their own initiative, a notice in 2005 calling for petitions to participate in a Section 111 proceeding. However, the amended Section 803(b)(1)(A)(i)(V) of the CRDRA will not become effective until May 30, 2005, and in any event does not restrict the ability of the Office to act on petitions filed by interested parties. The CRDRA provides in another subsection that the Office may publish a notice if a petitioner with a significant interest files a petition requesting a rate adjustment pursuant to Section 804(a) of the CRDRA. *See* Section 803(b)(1)(A)(i)(I). However, this mechanism to initiate a

proceeding is not available to interested parties until the CRDRA becomes effective, and would lead to a proceeding under CRDRA procedures that could exceed two years before a final decision.

Respectfully submitted,

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