

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

In the Matter of)
)
)

Distribution of the 2009)
Satellite Royalty Funds)
_____)

Docket No. _____

**MOTION OF PHASE I CLAIMANTS
FOR PARTIAL DISTRIBUTION**

The undersigned representatives of the Phase I claimant categories to which royalties have been allocated in prior satellite distribution proceedings (“Phase I Parties”)¹ submit the following motion to the Copyright Royalty Judges (“Judges”) for partial distribution of 50% of the 2009 satellite royalty funds (the “2009 Funds”).

The Phase I Parties respectfully request that the Judges distribute those funds as expeditiously as possible and, in any event, complete the distribution prior to October 31, 2011, or at least issue an order by that date indicating that a distribution will take place.

According to the Licensing Division of the Copyright Office (the “Office”), as of June 30, 2011, the amount of the 2009 Funds available for distribution totals approximately \$92,332,772.17. Based on this amount, a 50% partial distribution would approximate \$46,166,386.09. The circumstances warrant a partial distribution of 50% of the 2009 Funds as soon as the funds are able to be distributed.

¹ Public Television Claimants, the Canadian Claimants, and National Public Radio, which receive Phase I shares of cable royalties, do not claim Phase I shares of the satellite royalty funds.

I. The Copyright Royalty Judges Have Authority to Order Precontroversy Partial Distributions.

Section 119 of the Copyright Act favors the early distribution of satellite royalties. *See* 17 U.S.C. § 119(b)(4)(C). Chapter 8 of the Copyright Act vests the Judges with statutory authority to order the precontroversy distribution of satellite royalties. In the Copyright Royalty Judges Program Technical Corrections Act, Congress amended Section 801(b)(3)(C) to clarify that a partial distribution of royalties could be made at any time after the filing of claims. Pub. L. No. 109-303 §§ 3, 5, 109th Cong., 2nd Sess. (2006), 120 Stat. 1478. Congress reaffirmed the Judges' authority to partially distribute statutory royalties in advance of the declaration of a controversy. Section 801(b)(3)(C) provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section...119...may, upon motion of one or more of the claimants and after publication in the *Federal Register* of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants –

- (i) agree to the partial distribution;
- (ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);
- (iii) file the agreement with the Copyright Royalty Judges; and
- (iv) agree that such funds are available for distribution.

17 U.S.C. § 801(b)(3)(C). The statutorily prescribed deadlines for filing claims for the 2009 Funds have passed. Furthermore, the Phase I Parties (1) agree to the partial distribution; (2) agree that the requested funds are available for distribution; (3) agree to sign the separate

agreement contemplated in Section 801(b)(3)(C)(ii) obligating them to return any excess royalty amounts received, in a form to be provided by the Office or the Copyright Royalty Judges, in advance of the requested distribution; and (4) agree to file such an agreement with the Copyright Royalty Judges or as otherwise directed.

II. Partial Distribution of 50% of the 2009 Funds is Warranted.

A partial distribution of 50% of the 2009 Funds would ensure that Phase I Parties are not deprived of a substantial amount of royalties that belong to them during a period that may be several years long. There is ample precedent for partial distribution of statutory royalties in advance of the declaration of a controversy. Order, *In the Matter of Distribution of the 2001, 2002 and 2003 Satellite Royalty Funds*, Docket No. 2005-2 CRB SD 2001-2003 (Sept. 13, 2005) (making a precontroversy partial distribution of satellite royalties “without prejudice concerning the final distribution percentages that shall be determined at a future time”); Order, *In the Matter of Distribution of the 1999 Satellite Royalty Funds*, Docket No. 2001-5 CARP SD 99 (Oct. 17, 2001) (noting that “partial distributions have been made routinely in response to motions from copyright owners with an equitable claim to the funds prior to the initiation of a distribution proceeding, where there has been an unusual delay in declaring a controversy”). Moreover, the Copyright Office recognized that the earliest possible receipt of the maximum available royalties by copyright owners is an important objective of the Copyright Act. *See, e.g.*, Order in Docket Nos. 94 CARP (92-CD & 93-CD) at 2 & 5 (September 26, 1994) (Office distributed 80% of the 1992 and 1993 cable royalties, noting that “the intent of the law favored early distribution”); *see also* Order in Docket No. 94 CARP (92-CD & 93-CD) at 2 (September 12, 1994); Order in Docket No. 2010-7 CRB SD 2008 at 2 (January 11, 2011).

Here, the Phase I Parties are seeking distribution of satellite royalties that were deposited more than two years ago. A distribution of at least 50% of the 2009 Funds would ensure that the Phase I Parties are not further deprived of a substantial amount of the royalties paid for the use of their copyrighted works. The Phase I Parties have agreed to the amount of the proposed partial distribution. Furthermore, the Phase I Parties believe that the size of the remaining undistributed amount, along with the parties' commitment to repay any excess distributions, would be more than sufficient to satisfy any Phase II claims and the costs of any distribution proceedings involving these funds.

The Phase I Parties request that the Board authorize distribution of 50% of the 2009 Funds as soon as those royalties become available for distribution. The Phase I Parties agree that the requested partial distribution of 2009 Funds should be ordered by the Judges subject to the condition uniformly imposed in such circumstances that, in the event that the final percentage shares to Phase I Parties differ from the distributions made pursuant to this motion, "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." Order, *In the Matter of Distribution of the 1999 Satellite Royalty Funds*, Docket No. 2001-5 CARP SD 99 (Oct. 17, 2001); Order, *In the Matter of Distribution of the 1992-1995 Satellite Royalty Fund*, Docket No. 97-1 CARP-SD 92-95 (March 17, 1997); *see also* Order, *In the Matter of Distribution of the 1996 Cable Royalty Fund*, Docket No. 98-2 CARP-CD 96 (Oct. 9, 1998); Order, *In the Matter of Distribution of the 1995 Cable Royalty Fund*, Docket No. 97-2, CARP-CD 95 (Oct. 20, 1997); Order, *In the Matter of Distribution of the 1994 Cable Royalty Fund*, Docket No. 96 CARP-CD 94 (Oct. 23, 1996); Orders, *In the Matter of Distribution of the 1992 Cable Royalty Fund*, Docket No. 94 CARP (92-CD) and *In the Matter of Distribution of*

the 1993 Cable Royalty Fund, Docket No. 94 CARP (93-CD) (Sept. 12, 1994 and Sept. 24, 1994).

Finally, because the amounts to be distributed to each Phase I Party will remain confidential, the Phase I Parties further move to have the distribution made in bulk to a common agent for all the Parties. In this regard, the Phase I Parties have signed a confidential distribution agreement with the Office of the Commissioner of Baseball (“Baseball”), agreeing that Baseball will serve as the common agent for the distribution of royalties among the individual Phase I Parties.²

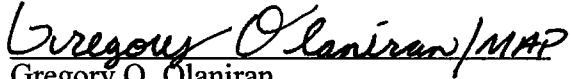
CONCLUSION

For the reasons set forth above, the Phase I Parties respectfully request that the Judges, pursuant to 17 U.S.C. § 801(b)(3)(C), publish for comment in the *Federal Register* the proposed partial distribution of 50% of the satellite royalties held in the 2009 Funds, and thereafter, proceed expeditiously to order a partial distribution of the 2009 Funds to a common agent prior to October 31, 2011.

² Although this request seeks partial distribution of only 50% of the available royalties, the Phase I Parties do not concede that 50% is the maximum partial distribution of available cable or satellite royalties that may properly be made for any given year.

Respectfully submitted,

PROGRAM SUPPLIERS



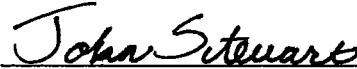
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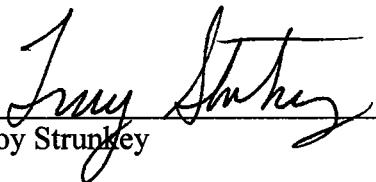
Dated: August 4, 2011.

CERTIFICATE OF SERVICE

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