

**Before the
COPYRIGHT ROYALTY JUDGES
Washington, DC**

In the Matter of)
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)
Distribution of the 2004, 2005, 2006,) Docket No. 2012-6 CRB CD 2004-2009
2007, 2008, and 2009 Cable Royalty Funds) (Phase II)
)
)

In the Matter of)
)
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Distribution of the 1999, 2000, 2001, 2002,) Docket No. 2012-7 CRB SD 1999-2009
2003, 2004, 2005, 2006, 2007, 2008, and) (Phase II)
2009 Satellite Royalty Funds)
)

**COMMENTS OF MUSIC CLAIMANTS ON
INDEPENDENT PRODUCERS GROUP MOTION FOR PARTIAL DISTRIBUTION**

The Copyright Royalty Judges (“Judges”) have requested comments pursuant to their notice of December 10, 2015 (the “Notice”) on the motion filed by Worldwide Subsidy Group d/b/a Independent Producers Group on September 18, 2015, for partial distribution of 2004-2009 Cable royalty funds and 2000-2009 Satellite royalty funds (the “Motion”). *See* 80 Fed. Reg. 78252 (December 16, 2015). In response to the Notice, Broadcast Music, Inc. (“BMI”), the American Society of Composers, Authors and Publishers (“ASCAP”), and SESAC, Inc. (“SESAC”) (collectively, “Music Claimants”) hereby submit the following comments.

Music Claimants have received final distribution of all 2004-2009 Cable and 1999-2009 Satellite royalty funds in the Music category. Nonetheless, because the Judges ask a series of questions that implicate how partial distributions work in Phase I and Phase II proceedings, and

because Music Claimants are an interested claimant, Music Claimants offer the following comments in response to the Notice.

The Judges previously made it clear that Phase I confidential settlement agreements are not subject to discovery in Phase II proceedings.¹ Any request for confidential Phase I settlement shares² would be premature in the above-captioned proceedings.

The Copyright Act, Title 17 U.S.C., sets forth two procedures by which the Judges grant partial distributions of royalties in distribution proceedings. Under Section 801(b)(3)(A), the Judges may authorize a partial distribution of cable or satellite royalty fees “to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy.” There is no additional agreement or repayment obligation for the parties receiving the partial distribution.

In the absence of reaching an agreement with other parties, any legitimate claimant (*i.e.*, a claimant whose claim withstands dismissal for lack of standing) has the right to request a partial distribution within the discretionary powers of the Judges. *See* 17 U.S.C. § 801(b)(3)(C). Under this section, the Judges may grant a partial distribution of royalties if (1) “no claimant entitled to receive such funds has stated a reasonable objection to the requested partial distribution” and (2)

¹ *See, e.g.*, Order Granting in Part and Denying in Part Independent Producers Group’s Motion to Compel Confidential Disclosure of the Phase I Terms of Settlement for Those Categories of Programming in which IPG Has Phase II Claims to the Proposed 2000-2003 Cable Royalty Pools, Docket No. 2008-2 CRB CD 2000-2003 (Phase II), at 2 (July 20, 2012). In this Order, the Judges required disclosure of the dollar amounts of royalties received by settlement in the categories for which Phase II controversies remained, subject to the terms of a protective order. *Id.* at 3.

² Since the enactment of the Section 119 statutory license, there has never been a litigated proceeding to determine the distribution of Phase I satellite royalties; all partial and final distribution awards granted by the Judges and their predecessors to Phase I parties have been based on confidential settlement agreements.

“the claimants requesting the distribution agree . . . that they will sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution” of those funds.³ A claimant moving for partial distribution of cable or satellite funds under Section 801(b)(3)(C) must meet the statutory requirements for each fund year and in each Phase I or Phase II category in which the claimant seeks a partial distribution. In deciding whether to grant such motion for partial distribution, the Judges would weigh the strength of the asserted claim to royalty funds based on the facts alleged in affidavits or other documentation submitted to the Judges.

In its Motion, IPG requested a partial distribution of Phase II cable and satellite royalties in the Program Suppliers category pursuant to Section 801(b)(3)(C). IPG is therefore subject to the terms of the statute and is bound by the statutory obligations of subsections of Section 801(b)(3)(C), as specified *supra*. IPG also bears the burden of proving that the amount requested in the partial distribution is not reasonably contested. It is Music Claimants’ understanding that the funds IPG requested in its Motion remain in controversy and that the only other Phase II parties have objected to IPG’s motion.

Finally, the idea of an “established claimant” may serve as a guideline for the Judges to determine the amount or percentage of partial distribution that the Judges decide to grant to a claimant once its burden is met.

³ See Order Granting Claimants’ Request for Partial Distribution of 2009 through 2011 DART Musical Works Funds Royalties, Docket No. 2013-6 CRB DD 2009-2011 (MW), at 1 (February 4, 2014). See also Order Granting Motion of Phase I Claimants for Partial Distribution, Docket No. 14-CRB-0007-CD (2010-12), at 2-4 (December 23, 2014) (discussing what constitutes a “reasonable objection”); 17 U.S.C. § 801(b)(3)(C).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 2016, a copy of the foregoing Comments of Music Claimants on Independent Producers Group Motion for Partial Distribution was sent by FedEx overnight delivery to the following:

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