

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of

Distribution of the 2008
Cable Royalty Funds

Docket No. 2010-6 CRB CD 2008

ORDER GRANTING PHASE I CLAIMANTS' MOTION
FOR PARTIAL DISTRIBUTION OF 2008 CABLE ROYALTY FUNDS

On October 29, 2010, the Copyright Royalty Judges (“Judges”) published in the **Federal Register** a Notice¹ soliciting comments on a Motion of Phase I Claimants for Partial Distribution of the 2008 cable royalty funds (“Motion”) under section 801(b)(3)(C) of the Copyright Act, dated September 22, 2010, seeking a partial distribution of 50 percent of those funds.² In particular, the notice solicited comments on whether there are reasonable objections to the requested distribution. The notice also solicited comments on whether there are any Phase I or Phase II controversies with respect to the remaining funds if the motion were granted.

¹ 75 FR 66798. The Phase I Claimants are the Program Suppliers, Joint Sports Claimants, Public Television Claimants, Commercial Television Claimants, Music Claimants, Canadian Claimants, National Public Radio, and the Devotional Claimants.

² In support of their Motion, the Phase I Claimants assert that all of the preconditions of section 801(b)(3)(C) of the Copyright Act have been or will be satisfied prior to distribution.

That section provides that:

[T]he [J]udges, at any time after the filing of claims under section 111...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 [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.

In response to the notice the Judges received a joint comment from the Phase I Claimants, and individual comments from the Canadian Claimants Group, Commercial Television Claimants, Devotional Claimants, Joint Sports Claimants, Music Claimants, National Public Radio, Program Suppliers, Public Television Claimants, and Independent Producers Group (“IPG”), which was not included in the group of Phase I Claimants, to which the Phase I Claimants filed a reply. No commenter stated a reasonable objection to the proposed distribution, although some noted various outstanding controversies with respect to the 2008 cable royalty funds. Although it did not object to the requested partial distribution, IPG did “challenge the subsequent distribution of such funds to parties within such Phase I categories, i.e., Phase II claimants, until there is either an agreement in place for such distribution between the Phase II claimants, or unless only such funds as are determined to be not in controversy are distributed.” As the Phase I Claimants note in their reply to IPG’s comment, IPG made a similar challenge in the past and the Judges rejected it on the ground that such a restriction on distribution of Phase I funds is contrary to the policy of the Copyright Act to promote settlements because, as a practical matter, it would prevent the distribution of any funds to claimants.³ We see no reason to revisit our earlier decision in this matter.

Therefore, the Motion is **GRANTED**.

Wherefore, **IT IS ORDERED** that 50% of the cable royalties held in the 2008 funds shall be distributed in the manner set forth in Attachment A to the Motion, which is appended to this Order.

The Copyright Office shall make such a distribution **PROVIDED THAT** each of the parties receiving a share of these funds provides to the Copyright Office a signed agreement prepared by the Copyright Royalty Board stating that any overpayment that results from the distribution of these funds 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. In addition, all

³ See *Phase I Parties’ Reply to Comments From IPG Regarding Motion for Partial Distribution of 2008 Cable Royalty Funds* (Dec. 8, 2010) citing *Order Granting Phase I Claimants’ Motion for Partial Distribution of 2004 and 2005 Cable Royalty Funds*, Docket No. 2007-3 CRB CD 2004-2005 (Apr. 10, 2008).

pertinent information to effect the transfer of funds must be provided to the Licensing Division of the Copyright Office no later than February 3, 2011. The distribution shall take place on or after February 10, 2011.

SO ORDERED.



James Scott Sledge
Chief U.S. Copyright Royalty Judge

DATED: January 11, 2011

ATTACHMENT A

CABLE ROYALTY DISTRIBUTION
2004-2005 BLENDED PERCENTAGES¹

A partial distribution of 50% of the 2008 Funds should be distributed in the following percentages: NPR should first receive 0.18% of the entire amount to be distributed after which the remaining amount should be distributed as follows:

<u>CLAIMANT GROUP</u>	<u>ROYALTY FUND</u>		
	<u>BASIC</u>	<u>3.75</u>	<u>SYNDEX</u>
Program Suppliers	33.7%	36.8%	96.2%
Joint Sports Claimants	33.8%	36.9%	0.0%
U.S. Commercial Television (NAB)	16.1%	17.5%	0.0%
Public Television	7.3%	0.0%	0.0%
Music Claimants	3.8%	3.8%	3.8%
Devotional Claimants	3.4%	3.7%	0.0%
Canadian Claimants	1.9%	1.3%	0.0%

¹ These percentages have been calculated consistent with the Copyright Royalty Judges' Order for the final distribution of 2004-2005 cable royalties. See Order, *In the Matter of Distribution of the 2004 and 2005 Cable Royalty Funds*, Dkt. No. 2007-3 CRB CD 2004-2005 (July 21, 2010), 75 Fed. Reg. 57063 (Sept. 17, 2010).