

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

In the Matter of

**Distribution of the
2003 Cable Royalty Fund**

Docket No. 2005-4 CRB CD 2003

COMMENTS OF THE MUSIC CLAIMANTS

The American Society of Composers, Authors and Publishers (“ASCAP”), Broadcast Music, Inc. (“BMI”) and SESAC, Inc., collectively known as the Phase I Music Claimants group, submit these comments in response to the solicitation of the Copyright Royalty Board (“CRB”) dated August 14, 2007 in connection with the distribution of the 2003 Cable Royalty Fund. 72 Fed. Reg. 46516 (August 20, 2007) (the “Notice”). At the outset, we wish to note that the Music Claimants are among the group of Phase I parties that submitted the motions for distribution and further distribution. Accordingly, the Music Claimants fully support further distribution, specifically as requested in the motion.

The Copyright Royalty Judges (“CRJs”) request further comment on any potential Phase I or Phase II controversies that may affect the distribution of remaining 2003 cable monies. Regarding Phase I controversies, only the single controversy between the Settling Parties and the Canadian Claimants exists, and such controversy is described in the Settling Parties’ motion. The Music Claimants believe that no other Phase I claimant groups should be recognized in determining open controversies. The current Phase I audiovisual programming groups fairly and adequately represent every type of programming, such that any additional programming

claimants can easily fit within the rubric of established Phase I programming groups, obviating the need for a widening of Phase I programming claimant groups.

Beyond claims made by copyright owners of audiovisual television programming, owners of copyrights in programming elements may move for Phase I recognition. However, we submit that the only owners of copyrighted works that are incorporated within television programming as elements of such programming that require Phase I recognition are the Music Claimants. Indeed, the Copyright Royalty Tribunal made this determination in the very first cable royalty distribution proceeding, when it denied Phase I recognition to the owners of certain pictorial, graphical and sculptural works (collectively known as “Characters”). See 1978 Cable Royalty Distribution proceeding, 45 Fed. Reg. 63026. The Tribunal correctly reasoned that Congress did not intend for program elements other than music to be eligible for Section 111 royalties. The Musical work category, the Tribunal explained, differs from other program elements due to the nature of licensing the use of music in television programming as compared with the licensing structures existing for other program elements (such as screenplays, pictorial works, and so forth). Furthermore, the Tribunal noted clear legislative intent in the Copyright Act that the Music Claimants share in Section 111 royalties. *See id.* at 63033-63034.

With respect to the Music Claimant category of the 2003 Cable fund, a single controversy exists – that of the claim filed by an individual, Mr. James Cannings. No other Phase II controversies exist in the Music Claimant category. With regards to Mr. Cannings’ claim, the Music Claimants hereby request that the CRB withhold no more than \$10,000 for resolution of the controversy. First, Mr. Cannings has filed similar claims in past years, all of which have been settled privately, except for a single proceeding regarding the 1990-1992 cable royalties, in which Mr. Canning was awarded only a de minimus amount (less than .01% of the total funds).

Second, Mr. Cunnings has always been considered a small claimant, and we would expect any controversies to be handled, if not settled, under the small claimant procedure, which is capped at \$10,000. *See* 17 U.S.C. § 803(b)(4), Pub.L. No. 108-419, 108th Cong., 2d Sess. (2004), 118 Stat. 2341; *see also* H.Rep. No. 108-408, 108th Cong. 2d Sess. 30 (2004) (“The committee expects that the creation of this small claims procedure will streamline the resolution of small claims, making the procedure more efficient to all participants involved.”) Accordingly, we believe that \$10,000 is more than enough to reserve for that controversy.

As we have noted, a single controversy exists in Phase I, and a single Phase II controversy exists in the Music Claimants category. The Music Claimants are confident that a settlement in both controversies can be reached; however, additional time is required to reach those settlements. Accordingly, the Music Claimants respectfully request that the CRJs delay commencement of a proceeding for 2003 royalties to permit further settlement negotiations. Furthermore, it is our understanding that certain Phase II controversies may exist in Cable Fund years prior to 2003, and it is the Music Claimants’ position that all prior controversies to Section 111 royalties first be completed, and in chronological order.¹

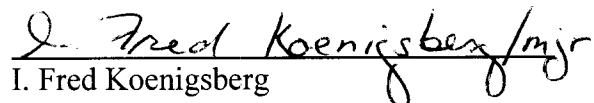
Moreover, the CRJs request comments regarding service rules regarding proceedings that have not commenced. The Music Claimants do not have any specific proposals at this time, but note that the pre-proceeding service rules and practices existing to date have not posed any problems. Accordingly, we do not believe that any specific service requirements are warranted.

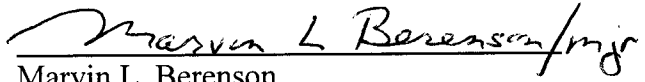
¹ The Notice is limited to the 2003 Cable Royalty Fund and not royalty years before or after 2003. Accordingly, the Music Claimants make no comment with regard to the status of controversies in other Cable Fund years. We would observe, however, that Phase II controversies for the distribution of cable royalties and Phase I satellite distribution proceedings, both dating back to 1999, remain unresolved and await scheduling. Consistent with the historical practice of the Copyright Royalty Tribunal and the Copyright Office of adjudicating distribution proceedings chronologically, Music Claimants believe that after resolving any remaining disputes concerning 1999 royalties, the CRJs should schedule the 2000-2003 cable proceeding, with the 2004-2005 cable proceeding to be scheduled subsequently.

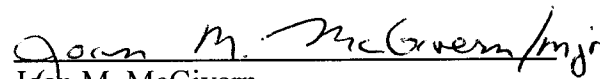
Finally, we do not believe any further conditions, other than those required under the Copyright Act, are required to implement a partial distribution ordered pursuant to section 801(b)(3)(C).

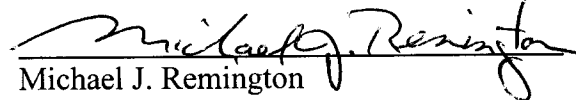
Respectfully submitted,

**AMERICAN SOCIETY OF COMPOSERS, BROADCAST MUSIC, INC.
AUTHORS AND PUBLISHERS**

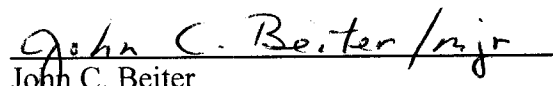

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