

**BEFORE
THE COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS**

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In the Matter of)	
)	
Distribution of the 2003)	Docket No. 2005-4
Cable Royalty Fund)	CRB CD 2003
)	
)	

**COMMENTS OF
NATIONAL PUBLIC RADIO**

Introduction

National Public Radio, Inc. ("NPR") hereby submits its Comments in response to the request of the Copyright Royalty Judges (the "CRJs") of the Copyright Royalty Board (the "Board") for comments regarding the motion for further distribution of the 2003 cable royalty fund (the "Fund"). Distribution of the 2003 Cable Royalty Fund, Notice and Solicitation of Comments, 72 Fed. Reg. 46516 (Aug. 20, 2007) ("Notice").

NPR is a non-profit membership organization dedicated to the development of diverse noncommercial educational radio programming services. Best known for producing such noncommercial news and information programs as *All Things Considered*®, *Morning Edition*®, *Day to Day*, and *Wait, Wait . . . Don't Tell Me!*®, NPR also represents more than 800 full-service public radio stations, which are themselves significant producers of local, regional, and national news, informational, and cultural programming. On behalf of itself and its Member stations retransmitted by distant cable systems, NPR filed a joint claim to the Fund and has otherwise fully participated in the above-captioned proceeding.

I. The CRJs Should Proceed With The Proposed Further Distribution of the 2003 Cable Royalty Fund

NPR is a longstanding cable royalties claimant, having first established its claim and that of NPR stations to a share of cable royalties in the early cable royalty proceedings. See 1979 Cable Royalty Distribution Determination, Docket No. CRT 80-4, 47 Fed. Reg. 9879 (1982). The NPR claim consists of public radio programming by NPR and its member station licensees, including news and information, arts, music commentary, and performance programs. As a longstanding Phase I claimant, NPR participated in both the August 2006 joint Motion for Distribution of Royalties requesting the distribution of 50% of the Fund and the June 2007 joint Notice of Partial Phase I Settlement and Motion for Further Distribution ("June 2007 Settlement Notice and Motion"). In response to the request for comment on the distribution proposed in the June 2007 Settlement Notice and Motion, NPR urges the CRJs to effectuate the proposed distribution in its entirety and with respect to its individual components.

The proposed distribution represents a careful, appropriate, and nearly complete resolution of claims to the Fund based on previously established claims to cable royalty funds. The cable royalty distribution process has long encouraged settlements to expedite the distribution of cable royalties. See 17 U.S.C. § 803(b)(3) (mandating a 3 month negotiation period after the filing of petitions to participate in an announced proceeding). Indeed, as the Court of Appeals for the District of Columbia Circuit long ago concluded:

[T]he Copyright Act anticipates that parties may settle their claims, and that they can receive any part of the fund not in controversy. We would effectively eliminate the likelihood for settlements if we accepted the [] contention that [in the event of a less-than-universal settlement] all awards would thereby be in controversy and a full hearing on all claims would be required. Past history suggests that at least one claimant will in any given proceeding feel sufficiently aggrieved to upset the settlement apple cart.

NAB v. CRT, 772 F.2d 922, 939 (D.C. Cir. 1985), cert denied, 475 U.S. 1035 (1986).

In this case, all established Phase I claimants have agreed to the proposed distribution, and any objection by the Independent Producers Group ("IPG") concerns a small, inchoate claim that can be addressed without "upset[ting] the settlement apple cart."

The elements of the proposed distribution are well justified. The contemplated final distribution of 0.18% of the remaining portion of the 2003 Cable Royalty Fund to NPR reflects NPR's longstanding share of cable royalties. As set forth in Section II, below, NPR is unaware of any Phase I or II controversy regarding NPR's share of the 2003 Fund. In addition, the combined 6% of the 2003 Fund is sufficient to cover the Devotional Claimants' undistributed share and the Phase I controversy between the Canadian Claimants and the remaining Phase I Claimants. Any award IPG reasonably may claim can be accommodated by withholding a small amount of additional reserves to cover any valid Phase II claims.

Accordingly, the CRJs may and should proceed with (1) the final distribution of NPR's share and, except for the 6% amount withheld, (2) a lump sum distribution of the remaining Fund to the settling parties other than NPR and the Devotional Claimants. With respect to the lump sum distribution, there is no reason to distribute a smaller percentage because Section 801(b)(3)(C) of the Copyright Act assures the availability of sufficient funds to resolve any final allocation of claims to those funds. See 17 U.S.C. § 801(b)(3)(C); Notice, 72 Fed. Reg. at 46519. Likewise, there is no reason to impose additional conditions beyond those set forth in Section 801(b)(3)(C) in making the lump sum distribution. See Notice, 72 Fed. Reg. at 46519. The statutory conditions reflect Congress's definitive determination of the conditions under which a partial distribution may be effected when the amount in question is subject to controversy.

II. No Phase I Or Phase II Controversy Exists With Respect To NPR's Share Of The 2003 Cable Royalty Fund

With respect to Phase I claims to the Fund, NPR's claim is no longer in controversy because of the settlement among the established Phase I parties and the absence of any pending Phase I claim that would preclude the distribution of NPR's share. The Canadian Claimants were the only party to have submitted a Phase II claim against NPR's royalty claim, and NPR and the Canadian Claimants have resolved the Phase II claim through a voluntary settlement. As a result, no percentage of funds should be withheld from the proposed distribution to NPR. See Notice, 72 Fed. Reg. at 46519.

Because NPR's share of the distribution is not subject to controversy, NPR requests that the CRJs authorize the distribution of NPR's share without imposing the conditions set forth in Section 801(b)(3)(C), specifically including the requirement that NPR agree to return any "excess amounts." See 17 U.S.C. § 801(b)(3)(C)(ii). Simply put, there can be no "excess amounts" with respect to NPR's share. Moreover, this is the approach the Copyright Office adopted in making a final distribution of NPR's share to the 2000-2002 cable royalties. See April 10, 2007, Order of the Register of Copyrights, Docket Nos. 2002-8 CARP CD 2000, 2003-2 CARP CD 2001, and 2004-5 CARP CD 2002.

III. The Existing Phase I Categories Are Sufficient To Accommodate Cable Royalty Claims

The Notice inquires whether the categories into which the claimants have traditionally divided themselves in Phase I proceedings are sufficient to represent the interests of all claimants or whether the CRJs should recognize additional categories of claimants. Notice, 72 Fed. Reg. at 46519. This request apparently stems from IPG's statement that at "[a]n appropriate later date, IPG intends to submit a formal motion with the Copyright Office to create the new category of

"Spanish-Language Programming." 72 Fed. Reg. at 46517 (quoting IPG Comment, dated October 25, 2005). It is unclear whether IPG has formally requested the creation of a new Phase I category for Spanish-Language Programming, but we do not believe the CRJs should create such a category.

The current Phase I categories have been established through several decades of highly contested cable royalty distribution proceedings. Spanish-language programming is hardly a new programming innovation, having served the cable television needs of a significant Hispanic population at least since the earliest days of the cable compulsory license. See 1979 Cable Royalty Distribution Determination, Docket No. CRT 80-4, 47 Fed. Reg. 9879 (1982). With respect to public radio programming, many NPR Member stations, including stations that participate in the joint NPR claim, produce and broadcast significant amounts of news, public affairs, and entertainment programming directed to Hispanic listeners. Any claim for royalties based on the cable retransmission of Spanish-language public radio programming is therefore already represented by NPR's claim. For this reason and because other Spanish-language broadcast programming is already represented by the other established Phase I claim categories, there is no need to establish a new category for such programming.

IV. The CRJs Should Utilize The Federal Register To Assure Adequate Public Notice Of Significant Filings Prior To The Commencement Of A Royalty Distribution Proceeding

As the Notice points out, prior to the commencement of a proceeding, there is no official service list prepared by the Board for the proceeding. Notice, 72 Fed. Reg. at 46519. As a result, there is no formal mechanism for notifying potentially interested parties of significant filings concerning a particular year's Fund. NPR agrees that claimants should receive notice of filings that may affect the claimant's interest in the proceeding.

To assure adequate notice of filings, NPR suggests that the Board publish a Federal Register Notice of filings submitted before the commencement of a proceeding and, if responsive pleadings are warranted, a schedule for such filings. The Federal Register is the official publication for rules, proposed rules, and notices of Federal agencies and organizations. The CRB Web site would be a useful means of providing access to documents and other information relevant to a particular cable royalty fund, but only a Federal Register notice is recognized as providing official public notice.

To the extent a Federal Register notification may result in a modest delay in the processing of filings, the number and type of pre-commencement filings are limited, typically to settlement proposals. Rather than presuming that every claimant is interested in every pre-commencement filing, moreover, Federal Register notification would enable claimants interested in a particular filing to respond. Combined with the posting of filings at the CRB Web site to facilitate their availability, NPR submits that these measures would assure adequate notice and access to relevant information.

Conclusion

For the foregoing reasons, NPR requests that the CRJs proceed with the distribution proposed in the June 2007 Settlement Notice and Motion and take other action as set forth above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregory A. Lewis". The signature is written in a cursive style with a large initial "G".

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