

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

In the Matter of)	
)	
)	
Distribution of the)	Docket No. _____
2012 Cable Royalty Funds)	
)	

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

The undersigned representatives of all the Phase I claimant categories to which Section 111 cable royalties have been allocated in prior cable distribution proceedings (“Phase I Parties”) submit the following motion to the Copyright Royalty Judges (“Judges”) for partial distribution of 60% of the 2012 cable royalty funds (the “2012 Funds”).

The Phase I Parties respectfully request that the Judges distribute the 2012 Funds by no later than September 30, 2014. According to the Licensing Division of the Copyright Office (the “Office”), as of December 31, 2013, the amount of the 2012 Funds available for distribution totals approximately \$218,384,561.84. Based on this amount, a 60% partial distribution would total \$131,030,737.10. The circumstances warrant a partial distribution of 60% of the 2012 Funds as soon as possible.

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

Section 111 of the Copyright Act favors the early distribution of cable royalties. *See* 17 U.S.C. § 111(d)(4)(C). Chapter 8 of the Copyright Act vests the Judges with ample statutory authority to order the precontroversy distribution of cable 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 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 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 deadline for filing claims has now 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. Distribution of 60% of the 2012 Funds is Warranted.

The Judges have consistently granted the Phase I Parties' requests for partial distributions of the annual cable and satellite royalty funds, including a recent partial distribution of the 2011 cable and satellite royalty funds. *See, e.g., Order Granting Phase I Claimants' Motion for Partial Distribution of 2011 Cable Royalty Funds*, Docket No. 2012-9 CRB CD 2011 (Mar. 13, 2013) (granting Phase I Parties' request for a 50% partial distribution of the 2011 cable royalty funds); *Order Granting Phase I Claimants' Motion for Partial Distribution of 2011 Satellite Royalty Funds*, Docket No. 2012-10 CRB SD 2011 (Mar. 13, 2013) (granting Phase I Parties' request for a 50% partial distribution of the 2011 satellite funds); *see also Order Granting Phase I Claimants' Motion for Partial Distribution of 2010 Cable Royalty Funds*, Docket No. 2012-4 CRB CD 2010 (Sept. 14, 2012) (granting Phase I Parties' request for a 50% partial distribution of the 2010 cable royalty funds); *Order Granting Phase I Claimants' Motion for Partial Distribution of 2010 Satellite Royalty Funds*, Docket No. 2012-5 CRB 2010 SD (Sept. 18, 2012) (granting Phase I Parties' request for a 50% partial distribution of the 2010 satellite royalty funds).

The current request for a partial distribution differs slightly from recent partial distribution requests in that the Phase I Parties seek a slightly higher partial distribution (60% rather than 50%). But the current request is certainly well within the historical norm, as the Copyright Office has in the past agreed to partial distributions well in excess of 60%. *See Order*, Docket No. 94 CARP (92-CD & 93-CD) at 2, 5 (Sept. 26, 1994) (granting request for partial distribution of 80% of 1992 and 1993 cable royalty funds); *Order*, Docket No. 2000-6 CARP CD 98 (granting Phase I Parties' request for partial distribution of 75% of the available cable royalties on deposit for the 1998 cable royalty fund and acknowledging that retention of 25% of

the available royalties would suffice to resolve any outstanding controversies related to those funds); *Distribution Order*, Docket No. 2000-7 CARP SD 96-98 (granting Phase I Parties' request for partial distribution of 75% of the available satellite royalties on deposit for the 1996, 1997, and 1998 satellite royalty fund).

A partial distribution of 60% of the 2012 Funds would ensure that Phase I Parties are not deprived of a substantial amount of the royalties that belong to them during a period that may be several years long. In the past, the Copyright Office has 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*, Docket No. 94 CARP (92-CD & 93-CD) at 2, 5 (Sept. 26, 1994) ("September 26, 1994 Order") (Office distributed 80% of the 1992 and 1993 cable royalties, noting that "the intent of the law favored early distribution"); *see also Order*, Docket No. 94 CARP (92-CD & 93-CD) at 2 (Sept. 12, 1994) ("September 12, 1994 Order") (referring to the "overall intent of the subparagraphs in [Section 111(d)(4)] in favor of early distributions"). Accordingly, pre-proceeding distributions of cable royalties under Section 111(d)(4)(C) may be made in circumstances where there may be a significant delay between the filing of claims and the initiation of proceedings. *See, e.g., September 12, 1994 Order* at 2; *September 26, 1994 Order* at 2; *see also Order*, Docket No. 2007-3 CRB CD 2004-2005 at 3-4 (Apr. 10, 2008).

A distribution of at least 60% of the 2012 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 undistributed amount, which totals over \$87 million, along with the parties' commitment to repay any excess funds would be sufficient to satisfy any remaining controversies involving these funds.

Finally, the Phase I Parties request that the percentage share of the 2012 Funds distributed to each Phase I Party be in the same relative proportions of the average awards that the respective Phase I Parties received in the 2004-2005 Cable Royalty Distribution Proceeding, as announced in the Judges' Final Distribution Order of July 21, 2010, *In re Distribution of 2004 and 2005 Cable Royalty Funds*, 75 Fed. Reg. 57063 (Sept. 17, 2010). The relative percentage shares of all the Phase I Parties are set forth in Attachment A.¹

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 60% of the cable royalties contained in the 2012 Funds, and, thereafter, grant the Motion and order a 60% partial distribution of the 2012 Funds by no later than September 30, 2014.

¹ This motion does not reflect agreement among the Phase I Parties that the final 2012 cable royalty distributions should be based on the awards made in the 2004-2005 proceeding or agreement by all the Parties with the awards made by the Copyright Royalty Judges in the 2004-2005 proceeding. Each Phase I Party reserves the right to seek shares of the 2012 Funds for itself and for other parties that differ from those awarded in the 2004-2005 proceeding. In addition, the Phase I Parties do not concede through this motion that a 60% distribution is the maximum partial distribution of cable or satellite royalties that should be made for any given year.

Respectfully submitted,

PROGRAM SUPPLIERS

Gregory Olaniran by SKM
Gregory O. Olaniran
DC Bar No. 455784
Lucy Holmes Plovnick
DC Bar No. 488752
MITCHELL SILBERBERG & KNUPP LLP
1818 N Street NW, 8th Floor
Washington, DC 20036
Telephone: (202) 355-7917
Facsimile: (202) 355-7887
goo@msk.com
lhp@msk.com

JOINT SPORTS CLAIMANTS

Robert Alan Garrett
Robert Alan Garrett
DC Bar No. 239681
Stephen K. Marsh
DC Bar No. 470765
James R. Wood
DC Bar No. 1007610
ARNOLD & PORTER LLP
555 Twelfth Street, NW
Washington, DC 20004-1206
Telephone: (202) 942-5000
Fax: (202) 942-5999
robert.garrett@aporter.com
stephen.marsh@aporter.com

PUBLIC TELEVISION CLAIMANTS

Ronald Dove by SKM
Ronald G. Dove, Jr.
DC Bar No. 430533
Lindsey Tonsager
DC Bar No. 983925
COVINGTON & BURLING LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004-2401
Telephone: (202) 662-5685
Fax: (202) 662-6291
rdove@cov.com

COMMERCIAL TELEVISION CLAIMANTS

**NATIONAL ASSOCIATION OF
BROADCASTERS**

John I. Stewart by SKM
John I. Stewart, Jr.
DC Bar No. 913905
Jennifer H. Burdman
DC Bar No. 495555
Ann Mace
DC Bar No. 980845
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595
Telephone: (202) 624-2685
Fax: (202) 628-5116
jstewart@crowell.com

MUSIC CLAIMANTS

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

Samuel Mosenkis by SKM
Samuel Mosenkis
N.Y.# 2628915
ASCAP
One Lincoln Plaza
New York, NY 10023
Telephone: (212) 621-6450
Fax: (212) 787-1381
smosenkis@ascap.com

Joseph DiMona by SKM
Joseph J. DiMona
7 World Trade Center
250 Greenwich Street
New York, NY 10007-0030
Telephone: (212) 220-3149
Fax: (212) 220-4447
jdimona@bmi.com

Jeffrey Lopez by SKM
Michael J. Remington
DC Bar No. 344127
Jeffrey J. Lopez
DC Bar No. 453052
DRINKER BIDDLE & REATH LLP
1500 K Street, NW – Suite 1100
Washington, DC 20005
Telephone: (202) 842-8800
Fax: (202) 842-8465
michael.remington@dbr.com

SESAC, INC.

John Beiter by SKM
John C. Beiter
TN Bar No. 12564
Shackelford, Zumwalt & Hayes
1014 16th Avenue South
Nashville, TN 37212
Phone: 615.256.7200
Fax: 615.256.7106
jbeiter@shackelfordlaw.net

CANADIAN CLAIMANTS GROUP

L. Kendall Satterfield by SKM

L. Kendall Satterfield
DC Bar No. 393953
FINKELSTEIN THOMPSON LLP
1077 30th Street, NW
Washington, DC 20007
Telephone: (202) 337-8000
Fax: (202) 337-8090
ksatterfield@finkelsteinthompson.com

NATIONAL PUBLIC RADIO

Gregory A. Lewis by SKM

Gregory A. Lewis
DC Bar No. 420907
NATIONAL PUBLIC RADIO
635 Massachusetts Avenue, NW
Washington, DC 20001-3753
Telephone: (202) 513-2050
Fax: (202) 513-3021
glewis@npr.org

DEVOTIONAL CLAIMANTS

Clifford Harrington by SKM

Clifford M. Harrington
DC Bar No. 218107
PILLSBURY WINTHROP SHAW
PITTMAN LLP
2300 N Street, NW
Washington, DC 20037
Telephone: (202) 663-8525
Fax: (202) 663-8007
clifford.harrington@pillsburylaw.com

Arnold Lutzker by SKM

Arnold P. Lutzker
DC Bar No. 101816
LUTZKER & LUTZKER LLP
1233 20th Street, NW, Suite 703
Washington, DC 20036
Telephone: (202) 408-7600
Fax: (202) 408-7677
arnie@lutzker.com

Edward S. Hammerman by SKM w. Thad Adams by SKM

Edward S. Hammerman
DC Bar No. 460506
HAMMERMAN, PLLC
5335 Wisconsin Avenue, NW
Suite 440
Washington, DC 20015-2052
Telephone: (202) 686-2887
Fax: (202) 318-5633
ted@copyrightroyalties.com

W. Thad Adams III
N.C. Bar No. 000020
ADAMS EVANS PA
Suite 2350 Charlotte Plaza
201 South College Street
Charlotte, NC 28244
Telephone: (704) 375-9249
Fax: (704) 375-0729
wta@adamspat.com

Wendell R. Bird by SKM

Wendell R. Bird, P.C.
Ga. Bar No. 057875
Jonathan T. McCants
Ga. Bar No. 480485
BIRD, LOECHL, BRITAIN & McCANTS,
LLC
1150 Monarch Plaza
3414 Peachtree Road, N.E.
Atlanta, GA 30326
Telephone: (404) 264-9400
Fax: (404) 365-9731
jmccants@birdlawfirm.com

George R. Grange by SKM

George R. Grange, Esq.
(VA Bar No. 34120)
Kenneth E. Liu, Esq.
(VA Bar No. 42327)
GAMMON & GRANGE, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102

Gregory Guillot by SKM

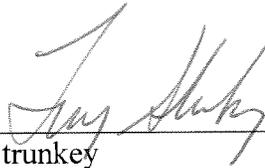
Gregory Guillot
13455 Noel Road
Suite 1000
Dallas, TX 75240 USA

Dated: July 25, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, a copy of the foregoing Motion of Phase I Claimants for Partial Distribution of the 2012 Cable Royalty Funds was sent via overnight Federal Express to the individuals listed below:

Brian D. Boydston
Pick & Boydston LLP
10786 Le Conte Avenue
Los Angeles, CA 90024



Troy Strunkey

ATTACHMENT A

CABLE ROYALTY DISTRIBUTION 2004-2005 BLENDED PERCENTAGES¹

A partial distribution of 60% of the 2012 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 adjusted consistent with the Copyright Royalty Judges' Order for the final distribution of 2004-2005 cable royalties. See *In re 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).

