

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

	)	
<i>In re</i>	)	
	)	
<b>DISTRIBUTION OF CABLE</b>	)	<b>NO. 14-CRB-0010-CD (2010-13)</b>
<b>ROYALTY FUNDS</b>	)	
	)	

**ALLOCATION PHASE PARTIES’  
MOTION TO DISMISS MULTIGROUP CLAIMANTS**

The Joint Sports Claimants (“JSC”),<sup>1</sup> Program Suppliers, Commercial Television Claimants, Public Television Claimants, Canadian Claimants Group, and Settling Devotional Claimants (collectively, “Allocation Phase Parties”) hereby move to dismiss the Multigroup Claimants’ (“MGC”) from the Allocation Phase of the above-captioned proceeding. Despite filing a petition to participate in the Allocation Phase of this proceeding, MGC failed to file a written direct statement by the December 22, 2016 deadline set by the Copyright Royalty Judges (“Judges”). Under settled precedent, MGC’s failure to file a timely written direct statement mandates its “automatic dismissal” from the Allocation Phase.<sup>2</sup> *Order Granting SoundExchange Motion to Dismiss Muzak LLC*, No. 2006-1 CRB DSTRA (January 10, 2007) (“January 2007 Order”) (Ex. A); *see also Order Granting SoundExchange’s Motion to Dismiss Persons and Entities That Did Not File a Written Direct Statement*, No. 2005-1 CRB DTRA (January 20, 2006) (“January 2006 Order”) (same) (Ex. B).

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<sup>1</sup> The term “JSC” refers collectively to the Office of the Commissioner of Baseball, National Football League, National Basketball Association, Women’s National Basketball Association, National Hockey League and the National Collegiate Athletic Association.

<sup>2</sup> This motion does not apply to the Distribution Phase, for which written direct statements (“WDS-D”) are due on June 30, 2017. However, it is clear that a party, such as MGC, who is subject to “automatic dismissal” from the Allocation Phase for failing to file a written direct statement is not entitled to participate in Allocation Phase activities set forth in the Judges’ procedural schedule, such as requesting or receiving Allocation Phase discovery. *See* 37 C.F.R. § 351.6.

The Judges' rules expressly require that "[a]ll parties who have filed a petition to participate in the hearing *must* file a written direct statement" in accordance with the deadline set by the Judges. 37 C.F.R. § 351.4(a) (emphasis added). Here, MGC filed petitions to participate "in any Phase I proceedings in connection with its representation of claimants with devotional programming claims . . . ." *See* Multigroup Claimants' Petition to Participate in Distribution Proceedings, No. 14-CRB-007-CD, at 1 (dated January 20, 2015); Multigroup Claimants' Petition to Participate in Distribution Proceedings, No. 14-CRB-0010-CD, at 1 (dated July 2, 2015). The Judges subsequently ruled that the matters previously referred to as "Phase I" issues would be resolved in the Allocation Phase of this proceeding, and set a deadline of December 22, 2016 for filing written direct statements in the Allocation Phase ("WDS-A"). *See Order Regarding Discovery*, No. 14-CRB-0010-CD, at 1 n.1. (July 21, 2015) ("The Judges now call the 'allocation phase' the period in the distribution process that was once known as 'Phase I.'"); *id.* at Ex. A thereto (setting case deadlines).

Despite the Judges' clear order and express deadline, MGC failed to file any WDS-A at all, but now seek discovery underlying the WDS filed by each of the Allocation Phase Parties. As both the Judges and the Library of Congress repeatedly have ruled, in these circumstances MGC is subject to "automatic dismissal." The Judges explained:

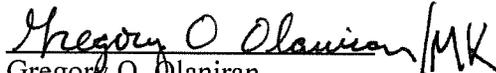
The Copyright Royalty Board's rule at 37 C.F.R. § 351.4(a) provides that "[a]ll parties who have filed a petition to participate in the hearing must file a written direct statement" pursuant to a deadline specified by the Copyright Royalty Judges. . . . In ordering the dismissal of several participants in another proceeding, we held that a participant's failure to file a written direct statement in a proceeding before the Copyright Royalty Judges is grounds for automatic dismissal. *See* Order in Docket No. 2005-1 CRB DTRA (January 20, 2006), citing Orders in Docket NO, 2000-9 CARP DTRA 1&2 (March 16, 2001, and April 23, 2001).

January 2007 Order, at 1. *See also* January 2006 Order, at 1 (“In previously ordering certain parties dismissed from a similar proceeding, the Librarian of Congress indicated that ‘failure to file a written direct case in this proceeding is grounds for automatic dismissal.’”); *Order*, Docket No. 2000-9 CARP DTRA 1&2 (April 23, 2001) (“As the Library has made abundantly clear, failure to file a written direct case in this proceeding is grounds for automatic dismissal.”) (Ex. C).

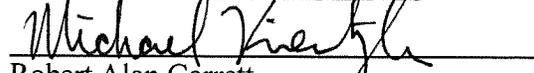
In accordance with this established precedent, the Judges should dismiss MGC from the Allocation Phase of this proceeding. *See* 17 U.S.C. § 803(a) (“The Copyright Royalty Judges shall act in accordance with . . . prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, copyright arbitration royalty panels . . . and the Copyright Royalty Judges . . .”).

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of January, 2017, a copy of the foregoing filing was provided electronically and sent by Federal Express overnight to the parties listed below:

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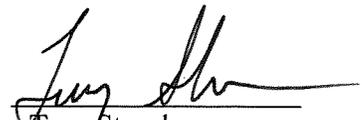
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# **EXHIBIT A**

ORIGINAL

COPYRIGHT ROYALTY BOARD

In the Matter of

Adjustment of Rates and Terms for  
Preexisting Subscription and Satellite  
Digital Audio Radio Services

Docket No. 2006-1 CRB DSTRA

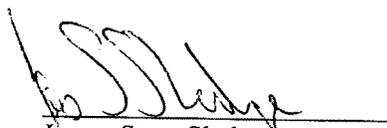
ORDER GRANTING SOUNDEXCHANGE  
MOTION TO DISMISS MUZAK LLC

On November 27, 2006, SoundExchange, Inc. ("SoundExchange") filed a motion to dismiss Muzak LLC, which filed a petition to participate in the above-captioned proceeding but failed to file a written direct statement by October 30, 2006, and has not noticed a withdrawal from the proceeding. Muzak LLC has not filed a response to this motion.

The Copyright Royalty Board's rule at 37 C.F.R. § 351.4(a) provides that "[a]ll parties who have filed a petition to participate in the hearing must file a written direct statement" pursuant to a deadline specified by the Copyright Royalty Judges. The Copyright Royalty Judges established a deadline of October 30, 2006, for such statements pursuant to their Order of August 18, 2006, in Docket No. 2006-1 CRB DSTRA. In ordering the dismissal of several participants in another proceeding, we held that a participant's failure to file a written direct statement in a proceeding before the Copyright Royalty Judges is grounds for automatic dismissal. See Order in Docket No. 2005-1 CRB DTRA (January 20, 2006), citing Orders in Docket No. 2000-9 CARP DTRA 1&2 (March 16, 2001, and April 23, 2001).

Wherefore, SoundExchange's Motion To Dismiss Muzak LLC **IS GRANTED** and Muzak LLC is hereby **DISMISSED** from this proceeding.

**SO ORDERED.**

  
James Scott Sledge,  
Chief Copyright Royalty Judge.

Dated: January 10, 2007

# **EXHIBIT B**

**COPYRIGHT ROYALTY BOARD**

In the Matter of )

DIGITAL PERFORMANCE RIGHT )  
IN SOUND RECORDINGS AND )  
EPHEMERAL RECORDINGS )

Docket No. 2005-1 CRB DTRA

**ORDER GRANTING SOUNDEXCHANGE'S MOTION TO DISMISS PERSONS  
AND ENTITIES THAT DID NOT FILE A WRITTEN DIRECT STATEMENT**

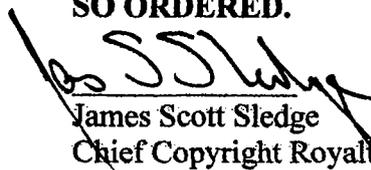
The Copyright Royalty Board ("Board") has received a motion from Sound Exchange, Inc. ("SoundExchange") to dismiss certain persons and entities that filed a petition to participate in the above-captioned proceeding but failed to file a written direct statement by October 31, 2005 and have not noticed a withdrawal.

The Board's rule at 37 CFR 351.4(a) provides that "(a)ll parties who have filed a petition to participate in the hearing must file a written direct statement" pursuant to a deadline specified by the Board. The Board established a deadline of October 31, 2005 for such statements pursuant to the Board Order of March 24, 2005 in Docket No. 2005-1 CRB DTRA. In previously ordering certain parties dismissed from a similar proceeding, the Librarian of Congress indicated that "failure to file a written direct case in this proceeding is grounds for automatic dismissal." See Orders in Docket No. 2000-9 CARP DTRA 1&2 (March 16, 2001 and April 23, 2001).

Wherefore, SoundExchange's Motion To Dismiss Persons And Entities That Did Not File A Written Direct Statement from this proceeding **IS GRANTED** and the following parties are **DISMISSED** from this proceeding: Allen Nelson; Broadcast Electronics, Inc./Soni-Xtream; Emmis Operating Company; GotRadio, LLC; MTV Networks, a division of Viacom International, Inc.; RealNetworks, Inc.; and Webcaster Alliance Inc. and Hot Spots Hawaii, Inc.

Because the following persons and entities have noticed a withdrawal from the above-captioned proceeding, SoundExchange's Motion To Dismiss Persons And Entities That Did Not File A Written Direct Statement from this proceeding is moot with respect to these parties: Beasley Broadcast Group, Inc.; Citadel Broadcasting Corporation; Entercom Communications Corp.; and Greater Media, Inc.

**SO ORDERED.**

  
James Scott Sledge  
Chief Copyright Royalty Judge

DATED: January 20, 2006

# **EXHIBIT C**



In the Matter of

Digital Performance Right in Sound  
Recordings and Ephemeral Recordings

Docket No. 2000-9 CARP DTRA 1&2

LIBRARY  
OF  
CONGRESS

ORDER

COPYRIGHT  
OFFICE

Section 251.43(a) of the CARP rules, 37 C.F.R., provides that "[a]ll parties who have filed a notice of intent to participate in the hearing shall file written direct cases with the Copyright Office, and with other parties in the manner in which the Librarian of Congress shall direct...." As the Library has made abundantly clear, failure to file a written direct case in this proceeding is grounds for automatic dismissal. See Order in Docket No. 2000-9 CARP DTRA 1&2 (March 16, 2001). Forty-two parties in this proceeding have failed to file written direct cases. Consequently, the Library is dismissing those parties.

Copyright  
Arbitration  
Royalty  
Panels

Wherefore, IT IS ORDERED that the following parties are DISMISSED from this proceeding: HARDRADIO.COM; Global Media Network; AMFM, Inc.; ABC, Inc.; America Online, Inc.; American Broadband Productions LLC; CDNow Online, Inc.; Digital Bitcasting Corporation; The Eclectic Radio Company, LLC; Rolling Stone Radio/Real Networks; Tunes.com, Inc.; The Walt Disney Company; TuneTo.com; SOUNDSBIG.COM, Inc.; Broadtime.com, LLC; Moodlogic, Inc.; EGBS; Loudeye Technologies, Inc.; Country.com; VocaLoca, Inc.; iVillage Inc.; iCAST Corporation; Cromwell Group, Inc. and Cromwell Radio Group; VergeRadio.com; Muzak LLC; Nordic Entertainment; Virgin E-Commerce (US), Inc.; Virgin Audio Holdings LLC (Radio Free Virgin); BroadcastAmerica.com, Inc.; Future of Music Coalition; WREF-AM; WLAD-AM; WDAQ-FM; Dead-Air Broadcasting Co., Inc.; KOSP-FM; KKLH-FM; KOM6-FM; WCVO Radio; KNKT-FM; WVKC Galesburg; Midcontinent Broadcasting Company; and WARX Radio.

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SO RECOMMENDED.

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Marybeth Peters  
Register of Copyrights

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(202)252-3423

SO ORDERED.

James H. Billington  
The Librarian of Congress

DATED: April 23, 2001