

L. No. 109-303 §§ 3, 5, 109th Cong., 2nd Sess. (2006), 120 Stat. 1478. Congress reaffirmed the Judges' authority to order partial distributions of 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).

Each of these conditions is established here. 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 Judges or the Copyright Office; and (4) agree to file such an agreement with the Judges or as otherwise directed.

II. Distribution of 60% of the 2013 Cable Funds is Reasonable and Appropriate.

The Judges have consistently granted the Phase I Parties' motions for partial distributions of the annual cable royalty funds, most recently a 60% partial distribution of the 2012 cable royalty funds. *See Order Granting Motion of Phase I Claimants For Partial Distribution*, Docket No. 14-CRB-0007 CD 2010-12, at 2 (Dec. 23, 2014) (finding requested 60% partial distribution to be "reasonable and appropriate"); *see also 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 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).

Indeed, the Copyright Office has previously determined that partial distributions well in excess of 60% were reasonable and appropriate under the circumstances. *See, e.g., Order*, Docket No. 94 CARP (92-CD & 93-CD) at 2, 5 (Sept. 26, 1994) (granting motion for partial distribution of 80% of 1992 and 1993 cable royalty funds) ("September 26, 1994 Order"); *Order*, Docket No. 2000-6 CARP CD 98 (Oct. 12, 2000) (granting Phase I Parties' motion 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 (Oct. 12, 2000) (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). Thus, the Phase I Parties do not concede through this motion that a 60% distribution is the maximum partial distribution of royalties that should be made from the 2013 Cable Funds. The Phase I

Parties reserve the right to move for additional partial distributions from the 2013 Cable Funds as may be appropriate after the nature and extent of any *bona fide* disputes come into better focus.

A partial distribution of 60% of the 2013 Cable Funds would ensure that the 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.*, September 26, 1994 Order at 2, 5 (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 2013 Cable 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 \$92,281,543.36, along with the Parties’ commitment to repay any excess funds will be more than sufficient to satisfy any remaining controversies involving these funds.

Finally, the Phase I Parties request that the Judges allocate to each Party a percentage share of the 60% partial distribution equal to that Party’s percentage share set forth in

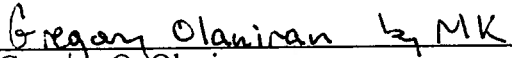
Attachment A to the *Order Granting Motion of Phase I Claimants for Partial Distribution*, Docket No. 14-CRB-0007 CD 2010-12, at 5 (Dec. 23, 2014). For the Judges' convenience, those percentage shares are set forth in Attachment A to this Motion.¹

CONCLUSION

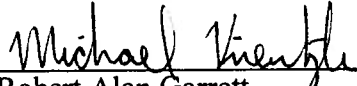
For the reasons set forth above, the Phase I Parties respectfully request that the Judges, pursuant to 17 U.S.C. § 801(b)(3)(C), publish for comment in the *Federal Register* the proposed partial distribution of 60% of the royalties contained in the 2013 Cable Funds, and thereafter grant this Motion and order a 60% partial distribution of the 2013 Cable Funds as soon as feasible.

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¹ This motion does not reflect agreement among the Phase I Parties that the final 2013 cable royalty distributions should be based on the allocation percentages set forth in Attachment A to the Dec. 23, 2014 partial distribution order or agreement by all the Parties with the awards made by the Copyright Royalty Judges in the 2004-2005 proceedings, which provide the basis for the allocation percentages in Attachment A of the Judges' Dec. 23, 2014 order. Each Phase I Party reserves the right to seek shares of the 2013 Cable Funds for itself and for other parties that differ from those awarded in the 2004-2005 proceedings or reflected in Attachment A to the recent 2012 partial distribution order.

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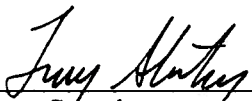
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ATTACHMENT A

The following are the percentage shares set forth in Attachment A to the *Order Granting Motion of Phase I Claimants for Partial Distribution*, Docket No. 14-CRB-0007 CD 2010-12, at 5 (Dec. 23, 2014). Consistent with the Judges' 2012 partial distribution order, a partial distribution of 60% of the 2013 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%