

**U.S. COPYRIGHT ROYALTY JUDGES**

**In the Matter of** }  
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**Distribution of the 2003** }  
**Cable Royalty Fund** }  
\_\_\_\_\_ }

**Docket No. 2005-4 CRB CD 2003**

**Order Granting Partial Distribution  
of 2003 Cable Royalty Fund**

On August 20, 2007, the Copyright Royalty Judges published in the Federal Register a notice announcing a partial Phase I settlement in connection with the 2003 cable royalty fund and solicited comments on a motion for further distribution in connection with that fund (“Notice”).<sup>1</sup> The Judges received ten comments in response to its solicitation.<sup>2</sup> All but one of the commenters supported the motion for further distribution. Moreover, even the one commenter that opposed certain aspects of the motion conceded that a significant portion of the funds remaining in the 2003 cable royalty fund was not the subject of a Phase I controversy.

Motion for Further Distribution

As discussed in the Notice, on June 8, 2007, a group of Phase I claimants (“settling claimants”), pursuant to section 801(b)(3)(C) of the Copyright Act, 17 U.S.C. § 801(b)(3)(C), filed a Notice of Partial Phase I Settlement and Motion for Further Distribution. In the filing, the claimants represented that they have reached a settlement of all outstanding Phase I controversies regarding distribution of the 2003 cable royalty fund among the claimants to which Phase I royalties have been allocated in the past, with the exception of the Canadian Claimants. The settling claimants stated that the Copyright Office is holding in reserve approximately 50% of the 2003 cable royalty fund (estimated to be \$70,417,221 as of March 31, 2007). The settling claimants requested that the Judges: (1) authorize a distribution of 0.18% of the 2003 Fund to NPR; (2) maintain for the Devotional Claimants (a subgroup of the settling claimants) 0.5% of the 2003 Fund;<sup>3</sup> (3) reserve 5.5% of the 2003 Fund to satisfy ongoing disputes between the Canadian Claimants and the settling claimants; (4) request comment from interested claimants on the extent to which any Phase II controversies exist and the amount that should be withheld to account for such controversies; and (5) authorize a lump sum distribution of all the remaining 2003 Fund to the settling claimants, except NPR and the Devotional

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<sup>1</sup> Notice Announcing Partial Phase I Settlement and Soliciting Comments on Motion for Further Distribution, Docket No. 2005-4 CRB CD 2003, 72 FR 46516 (Aug. 20, 2007).

<sup>2</sup> The Judges received comments from the following parties: Canadian Claimants, Devotional Claimants, Home Shopping Network, Independent Producers Group, Joint Sports Claimants, Motion Picture Association, Music Claimants, National Association of Broadcasters, National Public Radio, and Public Broadcasting Service.

<sup>3</sup> The motion states that the Devotional Claimants do not seek a further partial distribution at this time and ask that the Judges hold their share pending resolution of their Phase II controversies.

Claimants. The settling claimants agree to identify a common agent to receive the lump sum distribution.

### Solicitation of Comments

In the notice the Judges solicited comment on the motion for distribution as a whole and on each aspect proposed. In particular, the Judges sought comment on what percentage lump sum distribution, if any, would commenters find not to be objectionable. The Judges also sought comment on whether any outstanding Phase I or Phase II controversies exist, and, if so, whether a proceeding should be commenced at this time or delayed to permit further negotiation among the claimants. The Judges also sought comment on whether the categories into which the claimants have traditionally divided themselves in Phase I proceedings are adequate to represent fairly the interests of all claimants or whether additional categories of claimants should be recognized. Finally, the Judges sought comment on what action, if any, the Judges should take to address concerns by certain parties that they were not always informed in a timely manner regarding matters of interest to them that occur prior to the commencement of a proceeding and therefore prior to application of the Copyright Royalty Board's service of process rules. See 37 C.F.R. § 350.4.

### Disposition

The commenters agree that Phase I and Phase II controversies exist but that a partial distribution of royalties from the 2003 cable royalty fund would be appropriate. There was general consensus that \$15 million would be sufficient to satisfy all outstanding Phase I and Phase II claims. Therefore, consistent with the settling claimants' June 8, 2007 Notice of Partial Phase I Settlement and Motion for Further Distribution, the Judges order a distribution of 0.18% of the 2003 cable royalty fund (approximately \$126,750 based on the March 31, 2007 fund total discussed above) to NPR. Of the remaining funds, 0.5% (approximately \$352,086) shall be reserved for the Devotional Claimants pending resolution of any Phase II controversies within that claimant group.

Of the remaining funds, 5.5% (approximately \$3,872,947) shall be reserved to settle outstanding Phase I disputes between the Canadian Claimants and the other claimants. An additional amount, (approximately \$11,127,953) equal to \$15 million minus the 5.5% reserved for the Canadian Claimants shall be reserved for settling additional Phase I and Phase II disputes. The remaining funds (approximately \$54,938,385) shall be distributed to the common agent identified by the settling claimants. Such partial distribution is subject to the conditions set forth in section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. § 801(b)(3)(C).<sup>4</sup>

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<sup>4</sup> In its comment, IPG recommends that the Judges impose a requirement that any recipient of advance funds address the value of the claims of its adversaries and assert the minimum value of such claims under its elected methodology to identify the aggregate of funds not in controversy. IPG Comment at 3. The Judges believe that such an assessment was made in this context as part of the negotiation process as was indicated by the proposal to reserve 5.5% of the 2003 Fund to settle ongoing disputes with the Canadian

There was no consensus among the commenters about whether a Phase I proceeding should be commenced and, if so, when. There was general consensus, however, that if such a proceeding is commenced it should be delayed for a certain period of time to allow further settlement negotiations. Some commenters favored consolidating any Phase I proceeding with respect to royalties in the 2003 cable fund with proceedings for prior or subsequent years. The Judges will take these recommendations under advisement and rule accordingly.

As discussed above, the Judges solicited comment on whether the current categories of Phase I claimants fairly represent the interests of all claimants or whether additional categories of claimants should be recognized. The overwhelming majority of claimants opposed creation of additional categories of claimants, arguing, among other things, that additional categories could upset the parties' settled expectations, create new controversies regarding program categorization, and prolong pending proceedings before the Judges. IPG, the only commenter that supported creation of an additional Phase I category--that for Spanish language programming--fails to make a persuasive argument why such programming is not fairly represented by the current claimant categories. Indeed, several of the commenters, which represent current claimant categories, indicated that they have long represented the interests of Spanish language programming. The Judges are aware of no Spanish language programmer that is dissatisfied with its representation by the current categories of claimants. Therefore, in the interests of promoting certainty and future settlements, we refrain from recognizing additional Phase I claimant categories at this time.

Finally, several commenters addressed the issue of what action, if any, the Judges should take to address concerns by certain parties that they were not always informed in a timely manner regarding matters of interest to them that occur prior to the commencement of a proceeding. The general consensus of the commenters was that notice in the Federal Register should be provided prior to commencement of a proceeding and that web site or other notification, although useful, would not necessarily be sufficient to inform all interested parties about issues that could impact their rights or responsibilities. The Judges will take these recommendations under advisement and determine what action, if any, is necessary to respond to the comments.

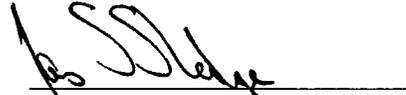
Wherefore, **IT IS ORDERED** that the settling claimants' Motion for Further Distribution of the 2003 cable royalty fund is **GRANTED**, according to the conditions prescribed herein. Accordingly, the Copyright Office shall make a distribution as set forth above **PROVIDED THAT** each of the parties receiving a share of these funds provides a signed agreement prepared by the Copyright Office no later than February 7, 2008, stating that any overpayment that results from the distribution of these funds shall

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Claimants. Moreover, the Judges believe that the settling claimants have sought in good faith to estimate a reserve amount that would be adequate to settle any outstanding controversies. Therefore, and in light of the conditions on partial distributions set forth in section 801(b)(3)(C) of the Copyright Act, the Judges believe that imposing additional conditions on distribution is unnecessary and inconsistent with the policy in section 803(b)(3) of the Copyright Act to promote settlements.

be repaid to the Copyright Office with interest according to the amount that would have accrued if the principal had remained in the fund. In addition, all pertinent information to effect the transfer of funds must be provided to the Licensing Division of the Copyright Office no later than February 7, 2008. The distribution shall take place on or before February 14, 2008.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read "James Scott Sledge", written over a horizontal line.

James Scott Sledge  
Chief Copyright Royalty Judge

Dated: January 23, 2008