

funds as expeditiously as possible and, in any event, enter an order authorizing a 50% distribution of 2008 satellite royalties no later than December 15, 2010.

1. As the Notice recognizes, the Motion requests a distribution pursuant to Section 801(b)(3)(C) of the Copyright Act, 17 U.S.C. § 801(b)(3)(C), which provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111, 119, or 1007, 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); *see* Notice at 66799.

In the Motion, the Phase I Parties stated that they (1) agree to the partial distribution; (2) would sign a separate agreement as contemplated by subparagraph (ii) of Section 801(b)(3)(C); (3) would file the agreement with the Judges; and (4) agree that the requested funds are available for distribution. Motion at 3. Consequently, under Section 801(b)(3)(C), the Judges may distribute the royalty fees sought by the Motion if, “based upon” responses timely received in response to the Notice, the Judges conclude that “no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution.” 17 U.S.C. § 801(b)(3)(C).

2. The Phase I Parties strongly support distributing the requested funds in accordance with the Motion. As the Motion indicates, there is ample precedent for partial distribution of

statutory royalties in advance of the declaration of a controversy. *See, e.g.,* Order Granting Phase I Claimants’ Motion for Partial Distribution of 2004-2007 Satellite Royalties, *In the Matter of Distribution of the 2004-2007 Satellite Royalties*, Docket No. 2010-2 CRB SD 2004-2007 (April 13, 2010) (granting a 50% partial distribution under 801(b)(3)(C) in the 2004-2007 satellite royalty distribution proceeding).

The Notice requested comments on the “existence and extent of any controversies to the 2008 satellite royalty funds at Phase I or Phase II with respect to those funds that would remain if the partial distribution is granted.” Notice at 66799. The Phase I Parties maintain that 100% of the 2008 satellite royalty funds remain in controversy, but the existence of such a controversy does not preclude the Judges from ordering a partial distribution even where the controversy exists over the funds subject to the partial distribution. As the Judges recognized in a prior proceeding, there is a clear distinction between motions requesting partial distribution under Section 801(b)(3)(A) of the Copyright Act, 17 U.S.C. § 801(b)(3)(A), and those (such as the underlying Motion) requesting distribution under Section 801(b)(3)(C). While Section 801(b)(3)(A) authorizes the Judges to distribute royalties collected under Sections 111, 119 and 1005 “to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not in controversy,” Section 801(b)(3)(C) authorizes the Judges to distribute such royalties without regard to whether the fees are in controversy. In ruling upon a request to distribute the 2003 cable royalties, the Judges aptly explained:

Section 801(b)(3)(A) was crafted to enable the Board to make a distribution of royalties without conducting a proceeding, either in full or in part, *provided* that the parties agreed that the requested amount was not in controversy. This provision is in contrast to 801(b)(3)(C), where a partial distribution may be made of royalties, with the agreement of the parties, regardless of whether these royalties are in controversy.

Distribution of the 2003 Cable Royalty Fund, 72 Fed. Reg. 46516, 46517 (August 20, 2007) (quoting Distribution Order, Docket No. 2005-4 CRB CD 2003, at 2 (October 26, 2005)) (emphasis in original). Thus, the Judges can order a partial distribution even though a controversy remains with respect to the funds to be distributed.¹

3. Because there are no Phase I settlements concerning any portion of the 2008 satellite royalties, Phase I controversies exist among all of the different Phase I categories as to the distribution of the 2008 funds. The individual Phase I Parties will separately file comments apprising the Judges about the status of any Phase II controversies existing in and among those Parties. As the Motion states, the Phase I Parties have agreed to the amount of the proposed 50% partial distribution, and believe that the size of the remaining undistributed amount, along with the Phase I Parties' commitment to repay any excess distributions, would be more than sufficient to satisfy any Phase I or II claims and the costs of any distribution proceedings involving these funds. As explained above, settlement is not a prerequisite to receiving a partial distribution under Section 801(b)(3)(C). Because the amounts to be distributed to each Phase I Party under a partial distribution will remain confidential, the Phase I Parties have requested that the partial distribution be made in bulk to a common agent for all the Parties. In this regard, the Phase I Parties have signed a confidential distribution agreement with the Office of the Commissioner of Baseball ("Baseball"), agreeing that Baseball will serve as the common agent for the distribution of royalties among the individual Phase I Parties.²

¹ In 2006, Section 801(b)(3)(C) was amended in the Copyright Royalty Judges Technical Corrections Act, Pub. L. No. 109-303 §§ 3, 5 109th Cong., 2nd Sess. (2006), 120 Stat. 1478. The amendment made it clear that the Judges could make partial distributions of royalties from funds in controversy at any time, including before the initiation of a formal royalty distribution proceeding.

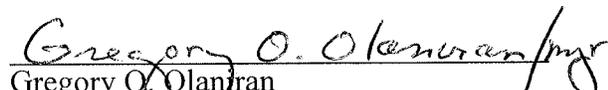
² Although the request seeks a partial distribution of only 50% of the available satellite royalties, the Phase I Parties do not concede that 50% is the maximum partial distribution of available cable or satellite royalties that may properly be made for any given year.

CONCLUSION

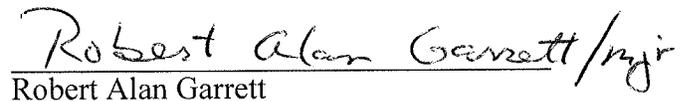
Accordingly, the Phase I Parties request that the Judges, after consideration of comments filed by other interested claimants, proceed expeditiously to order a partial distribution of 50% of the satellite royalties held in the 2008 funds to the Office of the Commissioner of Baseball as common agent for the Phase I Parties on or before December 15, 2010.

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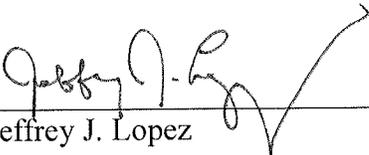
Dated: November 24, 2010

CERTIFICATE OF SERVICE

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