

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

)	
In the Matter of)	
)	Docket No. 17–CRB–0012–RM
Notice of Proposed Rulemaking)	
)	

COMMENTS OF THE JOINT SPORTS CLAIMANTS

The Joint Sports Claimants (“JSC”)¹ submit these comments in response to the Notice of Proposed Rulemaking (“Notice”) published by the Copyright Royalty Judges (“Judges”) at 82 Fed. Reg. 14,167 (March 17, 2017). JSC join and support the Comments that the Allocation Phase Parties² are filing in this proceeding (“Joint Comments”). JSC provide these additional comments to address the Judges’ proposal that joint claimants must identify in their July claims filings “at least one secondary transmission of one work by each identified copyright owner that has been secondarily transmitted by a cable system or satellite carrier establishing a basis for the joint claim.” Notice at 14,169.

JSC agree with the Joint Comments that such a requirement would be unnecessarily burdensome at the claims-filing stage and that the Judges should retain the longstanding rule requiring a joint claim to identify at least one qualifying transmission of one of the copyright owners’ works. *See* 37 C.F.R. §§ 360.3(b)(2)(iii) & 360.12(b)(2)(iii). However, the Judges should make clear that they may require a copyright owner to identify such a transmission in appropriate circumstances during the Distribution Phase of a proceeding.

¹ JSC are 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.

² The Allocation Phase Parties are Public Broadcasting Service, JSC, Program Suppliers, National Association of Broadcasters, American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., Settling Devotional Claimants, Canadian Claimants Group, and National Public Radio.

The Judges may authorize distribution of cable and satellite royalties only to copyright owners whose works were in fact retransmitted by a cable system or satellite carrier on a distant basis during the relevant time period. *See* 17 U.S.C. §§ 111(d)(3) & 119(b)(4). If a party in the Distribution Phase comes forward with a good faith factual basis for disputing that a particular copyright owner satisfies the statutory retransmission requirement, the Judges should require that copyright owner to identify a qualifying retransmission. For example, in the pending 2010-13 Cable Royalties proceedings, JSC proffered publicly-available information indicating there were no distant retransmissions of Canadian Football League broadcasts in 2012 or 2013 – and also pointed to the failure of the proponent of those claims, Multigroup Claimants (“MGC”), to identify *any* such retransmission in discovery after JSC raised this deficiency. *See* Reply of the Joint Sports Claimants in Support of Their Motion to Disallow the Multigroup Claimants’ Claims in the Sports Category, Nos. CRB-0010-CD (2010-13), CRB-0011-SD (2010-13), at 9-10 (filed Nov. 15, 2016).

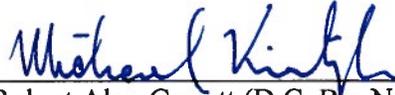
In such circumstances, requiring a putative claimant to document an underlying retransmission is warranted, and doing so is well within the Judges’ authority to assess claims and act to promote the efficient distribution of copyright royalty funds. *See* 17 U.S.C. §§ 801(c) (empowering the Judges to “make any necessary procedural or evidentiary rulings in any proceeding under this chapter”); 801(d)(4) (empowering the Judges to reject royalty claims for “failure to establish the basis for a claim.”). Moreover, the Judges should resolve any such disputes as early as possible in the Distribution Phase. No party should be required to incur the burden and expense of Distribution Phase litigation against a claimant who cannot meet the fundamental statutory requirement of secondary transmission – and certainly JSC should not be

burdened with submitting a direct case on the relative value of CFL programming that cannot qualify for statutory royalties.

Dated: April 17, 2017

Respectfully submitted,

JOINT SPORTS CLAIMANTS



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