

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

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**Copyright Royalty Board  
Regulations Regarding Filing of  
Claims to Royalty Fees Collected  
Under Compulsory License**

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**Docket No. 17-CRB-0012-RM**

**COMMENTS OF MPAA-REPRESENTED PROGRAM SUPPLIERS**

The Motion Picture Association of America, Inc. (“MPAA”), on behalf of its member companies and other producers and/or distributors of syndicated series, movies, specials, and non-team sports broadcast by television stations (“MPAA-Represented Program Suppliers”), submits the following comments in response to the March 17, 2017 Federal Register Notice published by the Copyright Royalty Judges (“Judges”), which seeks comments regarding the Judges’ proposal to amend their procedural regulations governing the filing of claims to royalty fees under the cable and satellite statutory licenses and to reflect the implementation of a new electronic filing system. *See* 82 Fed. Reg. 14167 (March 17, 2017) (“Notice”).

MPAA has participated in proceedings conducted by the Copyright Royalty Tribunal (“CRT”), the Copyright Arbitration Royalty Panels (“CARPs”), the Copyright Office (“Office”), and the Judges in connection with Sections 111 and 119 of the Copyright Act. As a longstanding participant in royalty proceedings, MPAA supports the Judges’ initiative to adopt an electronic filing and case management system for the Copyright Royalty Board (“eCRB”), which will modernize and bring greater efficiency to the administration of all compulsory license schemes.

MPAA welcomes the opportunity to provide the Judges with specific comments to several of the proposed regulatory amendments. Also, MPAA is a signatory to, and joins in, the joint Comments Of The Allocation Phase Parties (“Allocation Parties’ Comments”), which are also being filed separately in this rulemaking proceeding.

**I. The Judges Should Not Increase The Burden On Filers Of Joint Cable Or Satellite Claims By Imposing More Restrictive Filing Requirements.**

MPAA is concerned that proposed Sections 360.4(b)(2)(ii) and (iii) would alter the regulatory requirements governing the filing of a joint cable or satellite claim in a manner that would impose a substantial burden on the person or entity filing the joint claim. The proposed regulations differ from the pertinent current regulations in that the current regulations clearly limit the burden on the person or entity filing a joint claim. As proposed, Section 360.4(b)(2)(ii) is unclear, and both Section 360.4(b)(2)(ii) and Section 360.4(b)(2)(iii) appear to substantially increase the burden on joint claim filers. MPAA-Represented Program Suppliers include joint claim filers, some of whom file claims on behalf of hundreds of different copyright owners. These filers and their copyright owners will be adversely affected by the proposed regulations.

**A. Proposed Section 360.4(b)(2)(ii)**

Proposed Section 360.4(b)(2)(ii) would require a joint cable or satellite claim to include “[a] concise statement of the authorization by *each* named claimant for the person or entity to file the joint claim.” (Emphasis added). The proposed language is ambiguous because it could be read as requiring a joint claim to include a *separate* concise statement from *each* copyright owner identified on the joint claim confirming the filing proxy. Such a requirement would not only increase the length of joint claims, it would dramatically increase the burden on MPAA-represented claimants who prepare joint claims on behalf of multiple claimants, and would be inconsistent with precedent

in royalty distribution proceedings, which is clear that authorization from a copyright owner to an agent to file a claim need not be in writing.<sup>1</sup>

It is sound policy to require each person or entity filing a joint claim to have authorization from each copyright owner identified on the joint claim *before* submitting the claim on the copyright owners' behalf. However, that objective is already accomplished by the current regulation which requires only one "concise statement of the authorization for the person or entity filing the joint claim." 37 C.F.R. §§ 360.3(b)(2)(ii) (cable claims); 360.12(b)(2)(ii) (satellite claims). Additional statements from each copyright owner identified on a joint claim would simply overburden both the filing entity and the underlying copyright owners who would have to coordinate the presentation of hundreds of statements on joint claims. Such a requirement would undoubtedly chill the filing of claims by claimants entitled to U.S. retransmission royalties. Accordingly, MPAA suggests that the Judges modify the text of proposed Section 360.4(b)(2)(ii) to make it clear that a single concise statement by the joint claim filer of its authority to file the joint claim on behalf of *all* copyright owners identified on the claim will be sufficient to comply with the Judges' regulations.<sup>2</sup>

**B. Proposed Section 360.4(b)(2)(iii)**

Proposed Section 360.4(b)(2)(iii) would require a joint cable or satellite claim to include "identification of 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 the basis for the joint claim." (Emphasis added). This new language would impose a new filing

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<sup>1</sup> See *Memorandum Opinion And Order Following Preliminary Hearing On Validity of Claims*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) at 4 (March 21, 2013); *Memorandum Opinion And Ruling On Validity And Categorization Of Claims*, Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II) at 31-33 (March 13, 2015).

<sup>2</sup> MPAA supports the modified language for proposed Section 360.4(b)(2)(ii) included in the Allocation Parties' Comments. See Allocation Parties' Comments at 7.

requirement on parties filing joint claims: it would require them to identify and provide an example of a secondarily transmitted work for *each* copyright owner listed on the joint claim, as opposed to identifying a single example of a secondarily transmitted work attributable to one copyright owner listed on the joint claim, as is currently the case. *See* 37 C.F.R. §§ 360.3(b)(2)(iii) (cable claims); 360.12(b)(2)(iii) (satellite claims). Because broadcast information for distant signals is not readily available and is substantially expensive to acquire, and because many MPAA-represented claimants file joint claims on behalf of large numbers of represented claimants, the proposal will increase the burden and expense associated with filing cable and satellite claims exponentially, and unduly prejudice MPAA-Represented Program Suppliers, chilling the filing of claims by entitled right holders, who would likely be daunted by the difficulty of obtaining such technical and hard to obtain information. MPAA also notes that the Office previously considered a regulatory change very similar to the one proposed here in the mid-1990s and rejected it, recognizing the substantial burden that would be imposed on filers of joint claims if the regulatory change were adopted. *See* 59 Fed. Reg. 63025, 63026-29 (December 7, 1994). MPAA is not aware of any change in the attendant circumstances that would warrant reversal of the Office's determination on this issue. Therefore, MPAA urges the Judges to modify the text of proposed Section 360.4(b)(2)(iii) to make it clear that filers of joint claims need only include one example of a secondary transmission by one of the copyright owners identified on the claim as a part of their filing.

**II. The Judges Should Expand The Regulatory Exceptions Afforded Performing Rights Organizations To Other Similarly Situated International Collective Management Organizations.**

Several of the Judges' proposed regulations governing joint cable and satellite claims include language that would exempt Performing Rights Organizations ("PROs") from having to provide specific information regarding their members or affiliates on joint claims. *See, e.g.,*

Proposed Section 360.4(b)(2)(i) (“A performing rights organization is not required to list the name of each of its members or affiliates in the joint claim.”); Proposed Section 360.4(b)(2)(ii) (“[A] performing rights organization shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership affiliation agreements.”).<sup>3</sup> The Judges recognized recently that providing such regulatory exemptions for PROs “recognizes the unique aspect of the PROs in the context of cable and satellite royalty proceedings—including the fact that they collectively represent more than one million claimants.”<sup>4</sup>

MCAA urges the Judges to extend the same regulatory exemptions afforded the PROs to international Collective Management Organizations (“CMOs”) which file joint cable and satellite claims with the Judges on behalf of their members. CMOs are distinct from other non-PRO claimants in that they are government-authorized, non-profit entities typically regulated by their native national legislation, and are specifically created to administer audiovisual rights and/or collect royalties on behalf of thousands of rights owners based in their respective countries or regions. The European Union recently adopted a Collective Rights Management (“CRM”) Directive that defines a CMO as follows:

“collective management organization” means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils one or both of the following criteria:

- (i) it is owned or controlled by its members;

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<sup>3</sup> Although proposed Section 360.4(b)(2)(iii) does not expressly state that PROs are also afforded an exemption from the proposed new regulatory requirement that the filers of joint claims identify “at least one secondary transmission of one work by each identified copyright owner,” it appears that PROs are also exempt from this requirement by virtue of the exemption permitting them to avoid listing the names of all their members or affiliates in the joint claim. *See* Proposed 37 C.F.R. § 360.4(b)(2)(i).

<sup>4</sup> *See Order Exempting Performing Rights Organizations From Requirement To Identify Individual Claimants*, Docket Nos. 14-CRB-0007 CD (2010-12) and 14-CRB-0008 SD (2010-12) at 2 (January 16, 2015).

(ii) it is organised on a not-for-profit basis.<sup>5</sup>

Within the context of retransmission royalties, CMOs therefore are similarly situated as PROs. MPAA-represented CMOs that would fall within the CRM Directive definition set forth above include claimants such as The Audio-Visual Copyright Society trading as Screenrights (“Screenrights”), Entidad De Gestion de Derechos De Los Productores Audiovisuales (“EGEDA”), the Association For The International Collective Management Of Audiovisual Works (“AGICOA”), and others. Collectively, these entities represent hundreds of copyright owners. Moreover, these CMOs, who already are obligated to comply both with their native regulations and the Judges’ current regulations, would be further burdened by the proposed regulations that would require them to provide substantially more information regarding each of their members or affiliates at their own expense in order to submit joint claims. *See* Proposed 37 C.F.R. § 360.4(b)(2)(i)-(iii). Indeed, for many CMOs, the burden and expense associated with complying with the Judges’ proposed joint claims regulations would be significant enough to discourage them from filing joint claims on behalf of their members or affiliates.

The Judges have broad authority to grant exemptions to their regulations, and can easily extend the same regulatory exemptions afforded PROs to CMOs as well. The regulatory exemptions for PROs predate formal statutory recognition of PROs in the Copyright Act,<sup>6</sup> and date back to the early days of the Copyright Royalty Tribunal (“CRT”) and the CRT’s regulations governing the filing of claims for phonorecord player (jukebox) royalties. *See* 43 Fed. Reg. 32826 (July 28, 1978). The current regulatory exemptions for PROs were extended to cable claims by the CRT in 1989 at the request of Broadcast Music, Inc. (“BMI”) in an effort “to make the regulations

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<sup>5</sup> *See* Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014, *available at* <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0026>.

<sup>6</sup> The Fairness in Music Licensing Act of 1998 amended Section 101 of the Copyright Act by adding the definition of “performing rights society.” *See* Pub. L. No. 105-298, 112 Stat. 2827, 2833.

for the filing of claims in both jukebox and cable consistent,” *see* 54 Fed. Reg. 12614 (March 28, 1989), and were later included in the satellite claims regulations. *See, e.g.*, 59 Fed. Reg. at 63043. In light of the Judges’ broad discretion to exempt PROs from regulatory requirements, they need not rely on a statutory definition in the Copyright Act to afford CMOs exemptions comparable to PROs. Therefore, MPAA urges the Judges to extend the regulatory exemptions afforded PROs in their proposed regulations to CMOs, and exempt CMOs from the additional filing requirements imposed on filers of joint claims as set forth in the Judges’ proposed regulations, including in the proposed Sections 360.4(b)(2)(i)-(iii).

### **III. The Judges Should Not Require Motions For Non-Substantive Claims Amendments.**

Proposed Section 360.30 of the Judges regulations would permit filers of cable and satellite royalty claims to amend their claims “as of right” only during the statutory period for filing claims, and, thereafter, would require parties seeking to amend their claims for any reason to file a motion with the Judges.<sup>7</sup> MPAA is concerned that proposed Section 360.30 would needlessly burden the Judges, as it would dramatically increase the number of motions submitted to the Judges. For example, the proposed Section 360.30 would require a claimant to file a motion with the Judges to make a minor, non-substantive, administrative amendment, such as a typographical error, in a royalty claim if that error was discovered outside the statutory filing period. Requiring a motion in such instances would tend to discourage parties from amending their claims, as they would be burdened with the additional expense of engaging counsel to file a motion to amend with the Judges. Further, because the Judges typically do not establish docket numbers or official service lists for cable or satellite royalty distribution proceedings until months (or even years) after royalty

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<sup>7</sup> The proposed Section 360.4(c) carves out an exception to the motion requirement for a party seeking to amend a claim to change “the legal name and/or address of the copyright owner entitled to royalties or the person or entity filing the claim.”

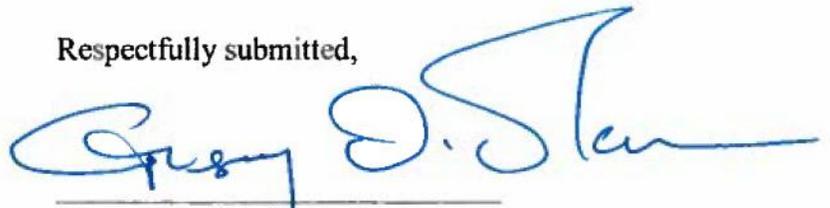
claims are filed, it is uncertain what docket a party seeking to amend the claim would file their motion in, or who should receive service of such a motion to amend a claim.

Accordingly, MPAA respectfully requests that the Judges revise proposed Section 360.30 to adopt the language proposed in the Allocation Parties' Comments, which, if adopted by the Judges, would permit claimants to make non-substantive amendments to royalty claims after the statutory deadline by filing a Notice of Amendment, rather than by motion. *See Allocation Parties' Comments at 6.*

### CONCLUSION

MPAA hopes these comments are helpful to the Judges, and would be pleased to either meet with the Judges to discuss these issues or to supplement these comments as the Judges deem necessary or appropriate.

Respectfully submitted,



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