

Before the
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In the Matter of

DISTRIBUTION OF THE 2002
CABLE ROYALTY FUND

Docket No. 2004-5 CARP
CD 2002

GENERAL COUNSEL
OF COPYRIGHT

**MOTION OF PHASE I CLAIMANTS
FOR PARTIAL DISTRIBUTION**

The undersigned representatives of the Phase I claimant categories to which royalties have been allocated in prior cable distribution proceedings ("Phase I Parties") submit the following motion for partial distribution of 50% of the 2002 Cable Royalty Fund. We believe that circumstances warrant a partial distribution of 50% of the 2002 cable royalties prior to September 24, 2004.¹

I. The Office Has Authority to Order Precontroversy Distributions.

There is ample precedent for partial distribution of cable royalties in advance of the declaration of a controversy; indeed, the Copyright Office has made partial distributions of up to 90% of the Cable Royalty Fund in the past. *See* Order, In the Matter of Distribution of the 1999 Cable Royalty Fund, Docket No. 2001-6 CARP-CD 99 (Oct. 17, 2001); Order, In the Matter of Distribution of the 1998 Cable Royalty Fund, Docket No. 2000-6 CARP-CD 98 (Oct. 12, 2000); Order, In the Matter of Distribution of the 1996 Cable Royalty Fund, Docket No. 98-2 CARP-CD 96 (Oct. 8, 1998); Order, In the Matter of Distribution of the 1995 Cable Royalty Fund, Docket

¹ The Phase I Parties understand that the Copyright Office is planning to undertake certain changes that would impact the ability of the Copyright Office to make distributions from the 2002 Cable Fund between September 24, 2004 and November, 2004.

No. 97-2 CARP-CD 95 (Oct. 20, 1997); Order, In the Matter of Distribution of the 1994 Cable Royalty Fund, Docket No. 96-CARP-CD 94 (Oct. 23, 1996); Order, In the Matter of Distribution of the 1992 Cable Royalty Fund, Docket No. 94 CARP (92-CD); In the Matter of Distribution of the 1993 Cable Royalty Fund, Docket No. 94 CARP (93-CD) (Sept. 12, 1994); *see also* 1990 Cable Royalty Distribution Proceeding, 57 Fed. Reg. 41,478 (Sept. 10, 1992); 1991 Cable Distribution Proceeding, 58 Fed. Reg. 49,038 (calling for comments, Sept. 21, 1993).

Indeed, in its September 12, 1994 Order, the Office noted that:

[T]he subparagraphs of section 111 contemplate a reasonably short period of time from the filing of the cable claims to the initiation of a proceeding and the first partial distribution. While the Copyright Royalty Tribunal for most of its history initiated distribution proceedings within nine months of the receipt of cable claims ... the gap between the filing of the claims and the holding of the proceedings has grown considerably.

Order, In the Matter of Distribution of the 1992 Cable Royalty Fund, Docket No. 94 CARP (92-CD) and In the Matter of Distribution of the 1993 Cable Royalty Fund, Docket No. 94 CARP (93-CD) at 2 (Sept. 12, 1994). Therefore, the Office concluded that the delays between the collection of royalties, the filing of claims and the expected initiation of proceedings justified partial distribution of the 1992 and 1993 Cable Royalty Funds in advance of the declaration of a controversy. *Id.* at 2-3. Since then, the Office has consistently granted the motions of certain Phase I Parties for partial distributions of 1994-2000 Cable Royalty Funds even though no controversy had yet been declared with respect to such royalties.

Accordingly, the Phase I Parties believe that the Office should distribute 50% of the 2002 Fund.²

² The Phase I Parties do not concede through this Motion that a 50% distribution is the maximum partial distribution that is warranted from the Cable or Satellite Royalty Funds in any year. The Phase I Parties believe that, consistent with prior Copyright Office practice, as much as a 90% partial distribution may be warranted in a particular year. However, given the exigencies associated with the Copyright Office's change in practices, the Phase I Parties are requesting only

II. Partial Distribution Of 50% Of The 2002 Fund is Warranted.

We request that the Office distribute 50% of the 2002 royalties when those royalties next become available for distribution. The percentage share to be distributed to each Phase I Party should be the same as that Party received for the year 1999 in the 1998-1999 Cable Royalty Distribution Proceeding, the last such proceeding conducted to its conclusion, as announced in the Library of Congress' Order of January 26, 2004. In the case of two claimant groups (NPR and the Devotionals), the percentage share to be paid is the same as then received pursuant to settlement among all Phase I Parties in that proceeding. The percentage shares are set forth in Attachment A.³

Distribution of less than 50% of the 2002 Fund would deprive the Phase I Parties of a substantial amount of royalties that belong to them, collectively, during a period that may be several years long. Moreover, all Phase I Parties have agreed as to the percentage of the partial distribution.

Furthermore, we believe that, given the conditions of the requested partial distribution, a sufficient amount would remain with the Office to satisfy concerns about future changes. This good faith estimate of the reserve necessary was the result of a cooperative effort among the eight

a 50% partial distribution this year. In the future years, the Phase I Parties may agree to request partial distributions of more than 50% of the Cable Royalty Fund.

³ The fact that the parties to this motion have agreed to 50% partial distribution does not mean that only 50% of the 2002 Fund is in controversy. Each Phase I Party reserves the right to seek shares of 2002 royalties for itself and for other parties that differ from those awarded in the 1998-99 proceeding. Nor does this Motion reflect agreement among parties that the ultimate 2002 cable royalty distributions should be based on the awards made in the 1998-99 proceeding or agreement by all the parties with the awards made by the CARP or the Librarian in the 1998-1999 proceeding. Moreover, the Phase I Parties submit this Motion without prejudice to claims that the Phase I Parties may make as proper parties to the appeal of the Librarian's Order currently pending before the D.C. Circuit Court of Appeals.

established Phase I claimant groups to determine a reasonable reserve in order to allow copyright owners to receive a prompt distribution of royalties.

In particular, the Phase I Parties agree that the 2002 royalties should be distributed by the Office subject to the condition uniformly imposed in such circumstances that, in the event that the final 2002 percentage shares to the Phase I Parties differ from the distributions made pursuant to this motion, “any party who has received more than its share [must] return the overpayment plus interest [that] the payments would have earned had they remained in the Fund to the proper party.” Distribution Order in Docket No. 91-2-89 CD (May 13, 1992); *see also* Orders, In the Matter of Distribution of the 1992 Cable Royalty Fund, Docket No. 94 CARP (92-CD) and In the Matter of Distribution of the 1993 Cable Royalty Fund, Docket No. 94 CARP (93-CD) (Sept. 12, 1994 and Sept. 24, 1994); Order, In the Matter of Distribution of the 1994 Cable Royalty Fund, Docket No. 96 CARP-CD 94 (Oct. 23, 1996); Order, In the Matter of Distribution of the 1995 Cable Royalty Fund, Docket No. 97-2 CARP-CD 95 (Oct. 20, 1997); Order, In the Matter of Distribution of the 1996 Cable Royalty Fund, Docket No. 98-2 CARP-CD 96 (Oct. 9, 1998); Order, In the Matter of Distribution of the 1998 Cable Royalty Fund, Docket No. 2000-6 CARP-CD 98 (Oct. 12, 2000).

CONCLUSION

For the reasons set forth above, the Phase I Parties respectfully urge that the Office publish for comment in the Federal Register the proposed partial distribution of the 2002 Cable Royalty Fund. Thereafter, the Phase I Parties respectfully request that, when the securities in which the 2002 cable royalties are invested mature, the Office make a prompt partial distribution of 50% of the 2002 Cable Royalty Fund to the Phase I Parties.

Dated July 15, 2004

Respectfully submitted,

**AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS**

Fred Koenigsberg /aw

I. Fred Koenigsberg
White & Case
1155 Avenue of the Americas
New York, NY 10036-2787

Sam Mosenkis /a

Joan M. McGivern
Samuel Mosenkis
ASCAP
One Lincoln Plaza
New York, NY 10023

SESAC, INC.

Patrick Collins /aw

Patrick Collins
SESAC, Inc.
55 Music Square East
Nashville, TN 37023

John C. Beiter /aw

John C. Beiter
Loeb & Loeb
1906 Acklen Avenue
Nashville, TN 37212-3700

BROADCAST MUSIC, INC.

Marvin Berenson /aw

Marvin L. Berenson
Joseph J. DiMona
Broadcast Music, Inc.
320 West 57th Street
New York, NY 10019

Jeffrey Lopez /aw

Michael J. Remington
Jeffrey Lopez
Drinker Biddle & Reath LLP
1500 K Street, NW - Suite 1100
Washington, D.C. 20005

CANADIAN CLAIMANTS

Kendall Satterfield /aw

L. Kendall Satterfield
Finkelstein, Thompson &
Loughram
1050 30th Street N.W.
Washington, D.C. 20007

NATIONAL PUBLIC RADIO

Greg Lewis /aw

Neal A. Jackson
Gregory A. Lewis
National Public Radio
635 Massachusetts Avenue, N.W.
Washington, DC 20001-3753

PUBLIC TELEVISION CLAIMANTS

Ron Dove /aw

Timothy C. Hester
Ronald G. Dove, Jr.
Covington & Burling
1201 Pennsylvania Ave., NW
Washington, D.C. 20004-2401

Paul Greco
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314

**NATIONAL ASSOCIATION OF
BROADCASTERS**

John I. Stewart, Jr.

John I. Stewart, Jr.
Michael Lazarus
Parul Desai
Crowell & Moring LLP
1001 Pennsylvania Ave., NW
Washington, D.C. 20004-2595

JOINT SPORTS CLAIMANTS

Chris Winters

Robert Alan Garrett
Christopher Winters
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, D.C. 20004-1202

PROGRAM SUPPLIERS

Greg Olaniran

Gregory O Olaniran
Stinson Morrison Hecker LLP
1150 18th Street, N.W., Suite 800
Washington, D.C. 20036

DEVOTIONAL CLAIMANTS

John Midlen /aw

John H. Midlen
Midlen Law Center
7618 Lynn
Chevy Chase, MD 20815-6043

Arnold Lutzker /aw

Arnold P. Lutzker
Lutzker & Lutzker
1000 Vermont Avenue, N.W.
Washington, D.C. 20005

Barry Gottfried /aw

Clifford H. Harrington
Barry H. Gottfried
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037

Frank Koszorus /aw

Frank Koszorus, Jr.
Collier Shannon Scott, PLLC
3050 K Street, NW - Suite 400
Washington, D.C. 20007

Kenneth Liu /aw

George R. Grange, II
Kenneth E. Liu
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102

ATTACHMENT A

**CABLE ROYALTY DISTRIBUTION
1999 PERCENTAGES**

A partial distribution of 50% of the 2002 Fund 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 ⁴ | 36.00037% | 39.13977% | 96.00000% |
| MPAA | (35.75557%) | (38.87362%) | (95.3472%) |
| NAB | (0.244803%) | (0.26615%) | (0.6528%) |
| Joint Sports Claimants | 37.62758% | 40.47418% | 0.00000% |
| U.S. Commercial Television (NAB) ⁵ | 13.77736% | 15.12731% | 0.00000% |
| Public Television | 5.49125% | 0.00000% | 0.00000% |
| Music Claimants | 4.00000% | 4.00000% | 4.00000% |
| Devotional Claimants | 1.19375% | 0.90725% | 0.00000% |
| Canadian Claimants | 1.90971% | 0.35151% | 0.00000% |

⁴ In prior partial distributions NAB has received their provisional shares of Program Suppliers' award directly without the distribution passing through MPAA. MPAA has no objection to such an arrangement for distribution.

⁵ NAB's combined Commercial Television and Program Supplier shares are 14.022163% of Basic, 15.39346% of 3.75, and 0.6528% of Syndex.