

**Before the
COPYRIGHT ROYALTY JUDGES
Washington, DC**

_____)
In the Matter of)
)
Distribution of the) **Docket No.** _____
2007 Cable Royalty Funds)
_____)

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

The undersigned representatives of all the Phase I claimant categories to which Section 111 cable royalties have been allocated in prior cable distribution proceedings (“Phase I Parties”) submit the following motion to the Copyright Royalty Judges (“Judges”) for partial distribution of 50% of the 2007 cable royalty funds (the “2007 Funds”).

The Phase I Parties recognize that the partial distribution process takes over a month and that the Judges have many pending matters. Nevertheless, obtaining a distribution prior to October 31, 2009 is important to the Phase I Parties, some of whose fiscal years conclude in October. The Phase I Parties therefore respectfully request that the Judges distribute these funds as expeditiously as possible and, in any event, complete the distribution prior to October 31, 2009, or at least issue an order by that date indicating that a distribution will take place.

According to the Licensing Division of the Copyright Office (the “Office”), as of August 10, 2009, the amount of the 2007 Funds available for distribution totals approximately \$146,228,483 and those funds are currently invested in securities that mature prior to August 13, 2009. Based on the August total of \$146,228,483, a 50% partial distribution would approximate \$73,114,241. The circumstances warrant a partial distribution of 50% of the 2007 Funds shortly after those investments mature, or as soon as the funds are able to be distributed.

I. The Copyright Royalty Judges Have Authority to Order Precontroversy Partial Distributions.

Section 111 of the Copyright Act favors the early distribution of cable royalties. *See* 17 U.S.C. § 111(d)(4)(B), (C). Chapter 8 of the Copyright Act vests the Judges with ample statutory authority to order the precontroversy distribution of cable royalties. In the Copyright Royalty Judges Program Technical Corrections Act, Congress amended Section 801(b)(3)(C) to clarify that a partial distribution of royalties could be made at any time after the filing of claims. Pub. L. No. 109-303 §§ 3, 5, 109th Cong., 2nd Sess. (2006), 120 Stat. 1478. Congress reaffirmed the Judges' authority to partially distribute statutory royalties in advance of the declaration of a controversy. Section 801(b)(3)(C) provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111 . . . 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). The statutorily prescribed deadline for filing claims for the 2007 Funds has passed. Furthermore, the Phase I Parties (1) agree to the partial distribution; (2) agree that the requested funds are available for distribution; (3) agree to sign the separate agreement

contemplated in Section 801(b)(3)(C)(ii) obligating them to return any excess royalty amounts received, in a form to be provided by the Office or the Copyright Royalty Judges, in advance of the requested distribution; and (4) agree to file such an agreement with the Copyright Royalty Judges or as otherwise directed.

II. Distribution of 50% of the 2007 Funds is Warranted.

A partial distribution of 50% of the 2007 Funds would ensure that Phase I Parties are not deprived of a substantial amount of the royalties that belong to them during a period that may be several years long. In the past, the Copyright Office recognized that the earliest possible receipt of the maximum available royalties by copyright owners is an important objective of the Copyright Act. *See, e.g.*, Order in Docket Nos. 94 CARP (92-CD & 93-CD) at 2 & 5 (September 26, 1994) (“September 26, 1994 Order”) (Office distributed 80% of the 1992 and 1993 cable royalties, noting that “the intent of the law favored early distribution”); *see also* Order in Docket No. 94 CARP (92-CD & 93-CD) at 2 (September 12, 1994) (“September 12, 1994 Order”) (referring to the “overall intent of the subparagraphs in [Section 111(d)(4)] in favor of early distributions”). Accordingly, pre-proceeding distributions of cable royalties under Section 111(d)(4)(C) may be made in circumstances where there may be a significant delay between the filing of claims and the initiation of proceedings. *See, e.g.*, September 12, 1994 Order at 2; September 26, 1994 Order at 2; *see also* Order in Docket No. 2007-3 CRB CD 2004-2005 (Apr. 10, 2008) at 3-4; Order in Docket No. 2008-4 CRB CD 2006 (Dec. 2, 2008) at 1-2.

Here, the Phase I Parties are seeking distribution of cable royalties that were deposited two or more years ago. A distribution of at least 50% of the 2007 Funds would ensure that the Phase I Parties are not further deprived of a substantial amount of the royalties that has been paid for the use of their copyrighted works. The Phase I Parties have agreed to the amount of the

proposed partial distribution. Furthermore, the Phase I Parties believe that the undistributed amount and the parties' commitment to repay any excess funds would be sufficient to satisfy all claims and proceedings.

Finally, the Phase I Parties request that the percentage share distributed to each Phase I Party be the same as that Party received for the year 1999 in the 1998-1999 Cable Royalty Distribution Proceeding, the last such proceeding conducted, as announced in the Library of Congress' Order of January 26, 2004, *In re* Distribution of 1998 and 1999 Cable Royalty Funds, 69 Fed. Reg. 3606, 3620 (January 26, 2004), and affirmed by the United States Court of Appeals for the D.C. Circuit on May 31, 2005. *Program Suppliers v. Librarian of Congress*, 409 F.3d 395 (D.C. Cir. 2005). In the case of two claimant groups (NPR and the Devotionals), the percentage shares to be paid to them are the same shares as they received pursuant to the settlement among all Phase I Parties to the 1998-99 proceeding. The percentage shares of all the Phase I Parties are set forth in Attachment A.¹

CONCLUSION

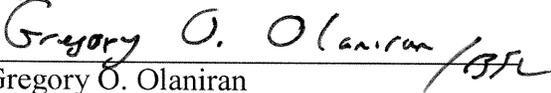
For the reasons set forth above, the Phase I Parties respectfully request that the Judges, pursuant to 17 U.S.C. § 801(b)(3)(C), publish for comment in the *Federal Register* the proposed partial distribution of 50% of the cable royalties contained in the 2007 Funds. Thereafter, the Phase I Parties respectfully request that the Judges proceed to distribute these funds as

¹ This motion does not reflect agreement among the Phase I Parties that the final 2007 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 Copyright Arbitration Royalty Panel or the Librarian of Congress in the 1998-99 proceeding. Each Phase I Party reserves the right to seek shares of the 2007 royalties for itself and for other parties that differ from those awarded in the 1998-99 proceeding. In addition, the Phase I Parties do not concede through this motion that a 50% distribution is the maximum partial distribution of cable royalties that should be made for any given year.

expeditiously as possible and, in any event, complete the distribution prior to October 31, 2009, or at least issue an order by that date indicating that a distribution will take place.

Respectfully submitted,

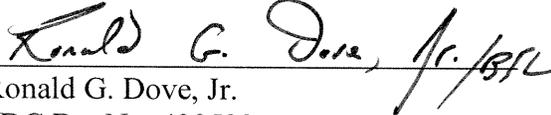
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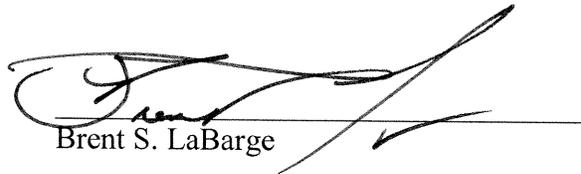
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Dated: August /2, 2009

CERTIFICATE OF SERVICE

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Brent S. LaBarge

ATTACHMENT A

**CABLE ROYALTY DISTRIBUTION
1999 PERCENTAGES¹**

A partial distribution of 50% of the 2007 Funds 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	36.00036%	39.13976%	96.00000%
Joint Sports Claimants	37.62757%	40.47417%	0.00000%
U.S. Commercial Television (NAB)	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%

¹ These percentages have been adjusted consistent with the Copyright Royalty Judges' Order granting partial distribution of the 2006 Cable Royalty Fund to ensure that they equal 100%. See Order, *In the Matter of Distribution of the 2006 Cable Royalty Funds*, 2008-4 CRB CD 2006 at 2 (December 2, 2008).