

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of

**Distribution of 1999 through 2000
Satellite Royalty Funds**

Docket No. 2008-5 CRB SD 1999-2000

In the Matter of

**Distribution of 2001, 2002 and
2003 Satellite Royalty Funds**

Docket No. 2005-2 CRB SD 2001-2003

**ORDER GRANTING IN PART PHASE I CLAIMANTS' MOTION FOR PARTIAL
DISTRIBUTION OF 1999 THROUGH 2003 SATELLITE ROYALTY FUNDS**

On November 14, 2008, a group of Phase I Claimants filed with the Copyright Royalty Judges (“Judges”) a Notice of Phase I Settlement and Motion for Further Distribution (“Motion”).¹ In the Motion, the Claimants state that they have reached a settlement of all outstanding Phase I controversies regarding distribution of the 1999-2003 satellite royalties. The Motion further states that the Phase I Claimants have agreed among themselves on a “confidential and non-precedential basis” on a Phase I allocation of the 1999-2003 satellite royalties in their entirety. The Phase I Claimants request that the Judges take the following actions: (1) reserve \$15,140,000 of the 1999-2003 satellite royalties² for the resolution of Phase II controversies identified in comments previously filed with the Judges,³ and (2) authorize a lump-sum distribution of all remaining 1999-2003 satellite royalties to the Phase I Claimants

¹ The Motion was submitted by representatives from the following groups: Program Suppliers, Joint Sports Claimants, Public Television Claimants, Broadcaster Claimants Group, Music Claimants (comprised of the American Society of Composers, Authors and Publishers, Broadcast Music, Inc. and SESAC, Inc.), and Devotional Claimants. As discussed below, a commenter has challenged the authority of the representative from the Devotional Claimants.

² The Phase I Claimants request that the proposed reserves of \$15,140,000 be allocated among Program Suppliers (\$9,500,000), Joint Sports (\$3,500,000), and Devotional Claimants (\$2,140,000).

³ On January 30, 2008, the Judges published in the Federal Register a request for comments regarding the distribution of 1999-2005 satellite royalty funds. 73 FR 5597. In its request, the Judges, to determine whether further proceedings are necessary for the distribution of the 1999-2005 satellite royalty funds, asked interested copyright claimants to identify the existence of Phase I and Phase II controversies. The Judges also sought comment as to the advisability of consolidating multiple royalty years into a single distribution proceeding and what, if any, royalty years should be consolidated. The Judges received comments from Broadcaster Claimants, Independent Producers Group (“IPG”), Joint Sports Claimants, Major League Soccer, LLC, Music Claimants, MPAA-Represented Program Suppliers, and Public Television Claimants. The Judges also received a joint comment from the claimant groups stated above, other than IPG. The commenters agreed that there were controversies in Phase I and Phase II. They also generally supported consolidating multiple years in a single proceeding. Although the commenters did not agree on which years should be consolidated, multiple commenters supported consolidating 1999-2001, based on the fact that the Public Broadcasting System filed claims in 1999-2001 but did not file claims in 2002-2005. *See, e.g.*, Comments of MPAA-Represented Program Suppliers.

through a common agent. The Phase I Claimants state: “because the Phase I Parties are not seeking the distribution of any satellite royalties that are in controversy, the requested distribution is appropriate under [Section 801(b)(3)(A) of the Copyright Act],” which authorizes the Judges to order distributions of royalties that are not subject to controversy.⁴ In the alternative, the Phase I Claimants state that “[i]f the Judges...believe it is necessary or advisable to seek further information before specifying reserves for the amounts that are in controversy in the identified Phase II disputes, they may wish to proceed under Section 801(b)(3)(C) of the Copyright Act,” which authorizes the Judges to order partial distributions of royalties, under certain conditions.⁵

On November 21, 2008, IPG filed an opposition to the Phase I Claimants’ Motion, arguing, among other things, that no Phase I settlement has occurred, at least with regard to the Devotional Claimants category. IPG contends that the party who executed the proposed settlement on behalf of Devotional Claimants was not authorized to do so. Although it opposes the Motion, IPG states that the reservation of at least 2% of the satellite royalties, together with Phase I Claimants’ pledges to return any amounts finally awarded in excess of sums partially released, is sufficient to protect the interests of Devotional Claimants.⁶

On November 28, 2008, the Phase I Claimants filed a reply to IPG’s opposition. Although they did not directly address IPG’s contention regarding the authority of the representative for the Devotional Claimants, the Phase I Claimants stated, among other things, that they informed IPG of the settlement and shared IPG’s comments with “all parties” and therefore, under the circumstances, the Phase I Claimants contend that they “acted responsibly in the negotiation process, in notifying the Judges of a global Phase I settlement covering the 1999-2003 satellite royalty funds, and in seeking distribution of all 1999-2003 satellite royalties (other than the specified reserves to cover Phase II controversies).”⁷

⁴ See 17 U.S.C. 801(b)(3)(A).

⁵ See 17 U.S.C. 801(b)(3)(C). That section provides that:

[T]he [J]udges, 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 [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 [Judges]; and
- (iv) agree that such funds are available for distribution.

⁶ See IPG’s Opposition to “Phase I Parties’ Notice of Phase I Settlement and Motion for Further Distribution.”

⁷ See Phase I Parties’ Reply to Independent Producers Group Opposition to Phase I Parties’ Notice of Phase I Settlement and Motion for Further Distribution at 2-3.

On the record before us, we cannot determine whether IPG's contention regarding the authority of the representative of the Devotional Claimants has merit. Therefore, we cannot grant the Phase I Claimants' Motion based on the proposed global settlement because there continues to be a controversy at least with respect to a certain portion of the 1999-2003 satellite royalties. That being said, no claimant contends that all of the funds are subject to controversy with respect to a Phase I distribution. In fact, the proposed settlement indicates that all claimants, with the exception of IPG, believe that none of the funds are in controversy with respect to a Phase I distribution and that a reserve of \$15,140,000 would be sufficient to settle ongoing Phase II disputes.⁸ Even IPG, which opposes the settlement, concedes that at least 2% of the satellite royalties would be sufficient to protect the interests of Devotional Claimants.⁹ Therefore, based on the representations of the Phase I Claimants and IPG, we conclude that at least 90% of the remaining satellite royalties are not in dispute. As a result, we are granting the Phase I Claimants' Motion, but only for 90% of the remaining 1999-2003 satellite royalties under Section 801(b)(3)(A) of the Copyright Act.¹⁰

Wherefore, **IT IS ORDERED** that the Motion of Phase I Claimants for Further Distribution of the 1999-2003 satellite royalty funds **IS GRANTED** in accordance with the above-described percentage. All pertinent information to effect the transfer of funds must be provided to the Licensing Division of the Copyright Office no later than December 11, 2008. The distribution shall be made to a common agent designated by the Phase I Claimants and shall take place on or after December 18, 2008.

SO ORDERED.



James Scott Sledge
Chief U.S. Copyright Royalty Judge

DATED: December 8, 2008

⁸ Although the Phase I Claimants do not disclose the percentages of royalties that would be distributed to individual claimant categories, the fact that their proposal would reserve Phase II funds for disputes only with respect to Program Suppliers, Joint Sports and Devotional Claimants, suggests that Phase II disputes with respect to other claimant categories have been resolved.

⁹ In their motion, Phase I Claimants state that as of September 30, 2008, the satellite royalty reserve was \$219 million. Two percent of \$219 million is \$4.38 million. The Phase I Claimants propose to reserve \$2,140,000 to resolve Phase II disputes regarding Devotional Claimants, which is \$2,240,000 less than IPG has stated would be sufficient to resolve such disputes.

¹⁰ Given that the remaining reserves will exceed the amount that the Phase I Claimants had requested and that Phase I Claimants chose not to disclose the proposed allocation of their agreed-upon distribution, we cannot grant the Phase I Claimants' request for a specific allocation of the remaining undistributed royalties. Such allocation must await future settlements or a distribution proceeding, which the Judges intend to commence in the near future.