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Copyright Royalty Board

[Dockets No. 2012-7 CRB SD 2000-2009; 2008-5 CRB SD 1999-2000]

Distribution of 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009 Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of Phase II distribution proceeding and request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges (Judges) announce the commencement of a proceeding to determine the Phase II distribution of royalties deposited by satellite carriers for a statutory license to retransmit over-the-air television broadcast stations. A party wishing to participate in this distribution proceeding must file its Petition to Participate and the accompanying \$150 filing fee, if applicable, by the deadline announced in this notice.

DATES: Petitions to Participate are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Participants must submit a Petition to Participate in a hard-copy original, with five paper copies and an electronic copy in Portable Document Format (PDF) on a Compact Disc, along with the \$150 filing fee, to the Copyright Royalty Board by either mail or hand delivery. Participants **MAY NOT** submit Petitions to Participate and the \$150 filing fee by an overnight delivery service other than the U.S. Postal Service Express Mail. If participants choose to use U.S. Postal Service (including overnight delivery), they must address their submissions to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977. If participants choose hand delivery by a private party, they must deliver the submissions to the Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue,

S.E., Washington, DC 20559-6000. If participants choose delivery by a commercial courier, they must deliver the submissions to the Congressional Courier Acceptance Site, located at 2nd and D Street, N.E., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, S.E., Washington, DC 20559-6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, CRB Program Specialist, by telephone at (202) 707-7658 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

Twice each calendar year, satellite carriers must deposit royalty payments with the Copyright Office for the statutory license granting the privilege of retransmitting over-the-air television broadcast stations. *See* 17 U.S.C. 119(b)(1)(B). These royalties are then distributed to copyright owners whose works were retransmitted and who timely filed a claim for royalties.

The royalties for each calendar year at issue are distributed in two phases. At Phase I, the royalties are divided among representatives of categories of copyrightable content (*e.g.*, movies, music, and sports programming). At Phase II, the royalties are divided among the various copyright owners within each category. If all participants agree to a proposed distribution of royalties deposited in any given royalty year, the Judges may approve the settlement and authorize disbursement. If, however, the participants identify a controversy as to the proper distribution, either at Phase I or Phase II, the Judges are required to conduct a proceeding under chapter 8 of the Copyright Act. *See* 17 U.S.C. 119(b)(4)(B).

For each of the royalty years at issue in this proceeding, the Judges have published in the **Federal Register** a notice requesting comments as to the existence of controversies regarding

distribution of the funds.¹ In each instance, the Judges received and considered comments and ordered partial distribution of satellite royalties. Participants with a contested claim to each prior year's distribution now seek initiation of a consolidated Phase II proceeding to resolve all remaining controversies regarding the royalty funds that the Copyright Office retains.

On August 29, 2012, representatives of certain Phase I categories of claimants filed a Joint Motion to Initiate Phase II Proceedings for the Distribution of the 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009 Satellite Royalty Funds (Joint Motion). The parties making the request are: Joint Sports Claimants (JSC), Program Suppliers, Devotional Claimants, Broadcasters Claimants Group (BCG), and the "Music Claimants" consisting of Broadcast Music, Inc. (BMI), American Society of Composers, Authors & Publishers (ASCAP), and SESAC, Inc. (collectively, Phase I Parties). Independent Producers Group (IPG) opposed the Joint Motion on the grounds that: (i) a proceeding for 2000-2009 funds should not be commenced before resolution of all controversies relating to 1997 to 1999 Satellite funds, and (ii) combining ten years' issues would present an overwhelmingly difficult task for counsel and the Judges. The Phase I Parties replied that IPG had not presented a compelling reason to either delay the proceeding or to bifurcate the proposed royalty year aggregation.

With respect to the 1999 funds, after the conclusion of a protracted California state lawsuit initiated by IPG, the Judges resolved all remaining issues, *except* allocation of devotional programming funds.² To the extent IPG's chronology argument had any weight, that weight is now lifted by the inclusion of the 1999 satellite controversy asserted by IPG in this proceeding.

¹ See Notice Requesting Comments, 70 FR 46193 (Aug. 9, 2005), Docket 2005-2 CRB SD 2001-2003; Notice Requesting Comments, 73 FR 5597 (Jan. 30, 2008), Docket 2008-5 CRB SD 1999-2000; Notice Requesting Comments, 75 FR 4423 (Jan. 27, 2010) Docket 2010-2 CRB SD 2004-2007; Notice Requesting Comments, 75 FR 66799 (Oct. 29, 2010), Docket 2010-7 CRB SD 2008; Notice Requesting Comments, 76 FR 55123 (Sept. 6, 2011), Docket 2011-8 CRB SD 2009.

² See Order dated June 19, 2013 in 2008-5 CRB SD 1999-2000.

Similarly, with respect to the issue of consolidating a decade's distributions, the Judges are confident that, after three- to 14- years of discussion, negotiation, and professional courtesies, what remains for judicial consideration is a manageable array of questions, both for counsel representing the parties and for the Judges. Further, the statutory calendar for distribution proceedings provides ample time for discovery, continuing negotiation, and possible settlement of remaining controversies.

No party questioned the existence of controversies relating to the satellite funds at issue. IPG's objections to commencement of the proceeding and to the aggregation of the royalty years for determination are not persuasive. The Judges, therefore, hereby announce the commencement of a Phase II distribution proceeding for satellite royalties deposited between 1999 and 2009, inclusive, pursuant to 17 U.S.C. 803(b)(1) and request Petitions to Participate (PTP) from interested parties.

The assigned Docket Number for this consolidated proceeding shall be 2012-7 CRB SD 1999-2009 (Phase II). To participate in this Phase II proceeding, a party, other than an individual, must be represented by an attorney.

Petitions to Participate

Parties in interest must file PTPs in accordance with 37 CFR 351.1(b). Interested parties asserting claims in excess of \$1,000 must include with the PTP a filing fee of \$150 in the form of check or money order payable to "Copyright Royalty Board". If a participant's claim does not exceed \$1,000 and if the PTP includes a statement that the participant will not seek a distribution in excess of \$1,000, the participant need not submit the filing fee.³

³ See 17 U.S.C. 803(b)(2)(D)(ii).

The Judges will address scheduling and further procedural matters after receiving Petitions to Participate.

Dated: August 13, 2013

Suzanne M. Barnett,
Chief Copyright Royalty Judge.

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