

Before the
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GENERAL COUNSEL
OF COPYRIGHT

Docket No. 2000-6 CARP CD 98

In the Matter of)
)
)
DISTRIBUTION OF THE 1998)
CABLE ROYALTY FUND)
_____)

**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 75% of the 1998 cable royalty fund.

According to the Licensing Division of the Copyright Office (the "Office"), the 1998 cable royalty fund totaled \$112,226,318 as of July 24, 2000, and is currently invested in securities that mature on August 17, 2000. We believe that circumstances warrant a partial distribution of 75% of the 1998 cable royalties shortly after those investments mature, or as soon thereafter as the funds are able to be distributed, but prior to October 31, 2000.

**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. 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 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. On October 23, 1996, the Office granted the motion of certain Phase I Parties for partial distribution of the 1994 cable royalty fund although no controversy had been declared with respect to such royalties. And, on October 20, 1997, the Office granted the motion for partial distribution of the 1995 Cable Royalty Fund made by certain Phase I Parties although no controversy had been declared with respect to those royalties. Likewise, on October 8, 1998, the Office granted the motion for partial distribution of the 1996 Cable Royalty Fund made by Phase I Parties despite that no controversy had been declared with respect to those royalties.

Accordingly, the Phase I Parties believe that the Office should distribute 75% of the 1998 fund.

II. PARTIAL DISTRIBUTION OF 75% OF THE 1998 FUND IS WARRANTED

We request that the Office distribute 75% of the 1998 royalties, when those royalties next become available for distribution, but in no event later than October 31, 2000. The percentage share to be distributed to each Phase I Party should be the same as that Party received for the years 1991 and 1992 in the 1990-1992 Cable Royalty Distribution Proceeding, the last such proceeding conducted, as announced in the Library of Congress' Order of October 22, 1996 and affirmed by the United States Court of Appeals for the D.C. Circuit on June 26, 1998. Nat'l Assoc. of Broadcasters v. Librarian of Congress, 146 F.3d 907 (D.C. Cir. 1998). In the case of two claimant groups, 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.¹

Distribution of less than 75% of the 1998 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 a sufficient amount would remain with the Office to satisfy all claims and proceedings.

Finally, the Phase I Parties agree that the 1998 royalties should be distributed by the Office subject to the condition uniformly imposed in such circumstances that, in the event that the final 1998 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

¹ The fact that the parties to this motion have agreed to 75% partial distribution does not mean that only 25% of the 1998 fund is in controversy. Nor does it reflect agreement among parties that the ultimate 1998 cable royalty distributions should be based on the awards made in the 1990-1992 proceeding or agreement by all the parties with the awards made by the CARP, the Librarian or the D.C. Circuit in the 1990-1992 proceeding. Each Phase I Party reserves 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).

In modifying its initial order of September 12, 1994, on September 26, 1994, the Office ordered distribution of 80% of the 1992 and 1993 cable royalty funds, rather than the 60% it had authorized originally. In doing so, the Office stated that it was persuaded by “the cooperation shown by those parties who filed the motion to reconsider and their willingness to bind themselves to any repayment necessary to ensure that ultimately no one will suffer from a partial distribution of eighty percent (80%).” September 26, 1996 Order at 4. The Phase I Parties similarly agreed with respect to distribution of the 1994, 1995, 1996 and 1997 funds and have agreed to the same conditions with respect to the 1998 fund².

right to seek shares of 1998 royalties for itself and for other parties that differ from those awarded in the 1990-1992 proceeding.

² The 1997 Funds were distributed upon a notice of settlement by the Phase I Parties after the Office declared a controversy.

III. THERE IS NO ADMINISTRATIVE OBSTACLE TO PARTIAL DISTRIBUTION OF THE 1998 FUND

According to the Licensing Division of the Office, the Office has completed its examination of a high percentage of the 1998 cable royalty fund. Therefore, the Office should be prepared administratively to make the partial distribution requested herein.

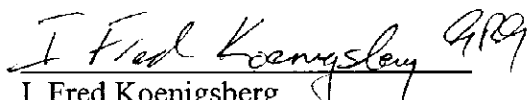
CONCLUSION

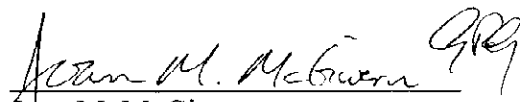
For the reasons set forth above, the Phase I Parties respectively urge that, when the securities in which the 1998 cable royalties are invested mature on August 17, 2000, the Office reinvest the 1998 cable royalty fund for a period of time not to exceed thirty days and that the Office publish for comment in the Federal Register the proposed partial distribution of the 1998 cable royalty fund. Thereafter, the Phase I Parties respectfully request that the Office make a prompt partial distribution of 75% of the 1998 cable royalty fund to the Phase I Parties prior to October 31, 2000.

Dated: August 15, 2000


Respectfully submitted,

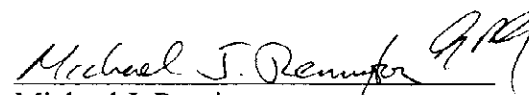
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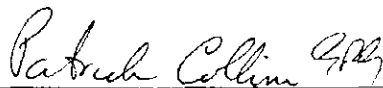

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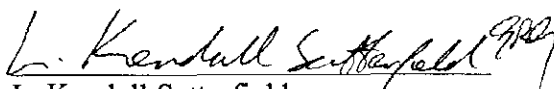


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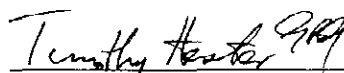
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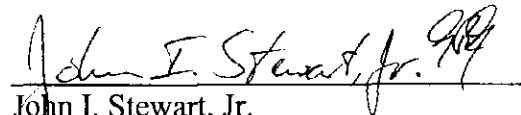
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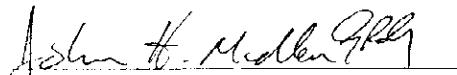
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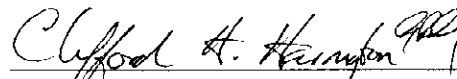


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**CABLE ROYALTY DISTRIBUTION
1991-92 PERCENTAGES**

A partial distribution of 75% of the 1998 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 ¹	52.5250000	56.0131375	95.5000000
MPAA	(52.1700000)	(55.6351375)	(94.8550000)
NAB	(0.3550000)	(0.3780000)	(0.6450000)
Joint Sports Claimants	28.1725000	31.2299325	0
U.S. Commercial Television (NAB) ²	7.1625000	7.1625000	0
Public Television	5.4912500	0	0
Music Claimants	4.5000000	4.5000000	4.5000000
Devotional Claimants	1.1937500	0.9072500	0
Canadian Claimants	0.9550000	0.1871800	0

¹ 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.

² NAB combined Commercial Television and Program Supplier shares are 7.5175% of Basic, 7.5405% of 3.75, and 0.6450% of Syndex