

In the Matter of	}	
	}	
Distribution of 1993, 1994, 1995, 1996, and 1997 Cable Royalty Funds	}	Docket No. 2000-2 CARP CD 93-97
	}	
<hr/>		

ORDER

By Order dated June 22, 2000, the Library invited Program Suppliers to submit late-filed Notices of Intent to Participate for these two claimants, as well as any other claimants which might not have been represented by Program Suppliers at the time the original Notices were due. Order in Docket No. 2000-2 CARP CD 93-97 (June 22, 2000). On June 30, 2000, the Library received from Program Suppliers a motion to accept a late-filed Notice of Intent to Participate. The motion is filed on behalf of all the individual claimants who are represented by Program Suppliers to “avoid[] the inefficiency of a host of separate, but repetitive, notices and motions for each individual party,” and to “negate any need for further factual inquiries into which of the individual entities were or were not represented by Program Suppliers at the time the original notices of intent were due.” Program Suppliers’ Motion at 1-2.

Independent Producers Group (“IPG”) opposes the motion. First, IPG asserts that it is improper for Program Suppliers to file a blanket motion on behalf of the claimants it represents and that each of the claimants should be required to demonstrate individually that it meets the standard for acceptance of a late-filed Notice of Intent to Participate. Second, IPG recommends that the “good cause” showing of each claimant—whether each had good cause to believe that it was being represented by Program Suppliers at the time Notices of Intent to Participate were due—be decided by the CARP because it is necessary to factually determine the circumstances of each claimant in making a good cause determination. Third, IPG asserts that acceptance of late-filed Notices at this stage of the proceeding will cause severe disruption.

DISCUSSION

As the Library announced in the June 22 Order, and in other proceedings as well, a motion to accept a late-filed Notice of Intent to Participate is evaluated under a two-part test: 1) the disruption to the proceeding caused by allowing the moving party to participate; and 2) good cause for accepting the late-filed Notice. Order at 8. The two parts of this test are directly proportional, meaning that a demonstrable amount of disruption to the proceeding requires a strong showing of good cause, and vice versa.

Before turning to the merits, we must first consider whether Program Suppliers’ submission of a single Notice adequately covers all of the 113 claimants it represents in

this proceeding.¹ In form, it makes little sense to require separate filings from each claimant, particularly where the reasons offered for the late Notices are the same. IPG asserts that in substance this is necessary because each one of these claimants must demonstrate that it had good reason to believe that it was unnecessary to file its own Notice because it was represented by Program Suppliers' timely filing of a Notice. IPG further asserts that a factual inquiry such as this is best left to a CARP "to determine which claimants, if any, authorized the MPAA on a timely basis to file the Notice and whether the claims of those parties that did not comply with the rules should be dismissed." IPG Opposition at 2 (citation omitted).

We view IPG's argument as an invitation to reconsider the issue of what happens if one or more of Program Suppliers' claimants had not signed a representation agreement with Program Suppliers on or before September 28, 1999, the deadline for filing Notices of Intent to Participate. As the June 22 Order makes clear, the resolution of that situation is unclear given the lack of clarity of the rule governing the content and filing of Notices of Intent to Participate, and not necessary because the status of these claimants can be resolved under the standard for accepting late-filed Notices. Whether representation agreements were signed by the deadline for Notices of Intent to Participate is not a determinative factor for accepting a late-filed Notice. Consequently, for purposes of this motion, the factual circumstances surrounding the timing of the representation agreements need not be explored for each of Program Suppliers' claimants.

We conclude that it was acceptable for Program Suppliers to file a single motion to accept a late-filed Notice of Intent to Participate on behalf of the 112 claimants identified in its written direct case. We now turn to the question of whether the motion should be granted.

As noted above, the two factors for determining whether to grant a motion to accept a late-filed Notice are proportional. The greater the disruption to the proceeding, the more sufficient the cause must be. Despite IPG's protestations to the contrary, there would be little, if any, disruption to this proceeding caused by accepting the late-filed Notice. Program Suppliers filed a timely Notice in this proceeding under the assumption that it covered all the claimants listed in its direct case, and accepting the late-filed Notice will not result in additional claimants to this proceeding (in fact, one claimant is being removed from the written direct case). Since there are no claimants being added, the fact that the motion to accept a late-filed Notice comes after the filing of the written direct case is not as significant. Each of the moving parties was included in Program Suppliers' written direct case.

¹ The number is now actually 112, as Program Suppliers have determined that they do not represent Gaumont SA.

IPG has failed to demonstrate that it will suffer significant prejudice if the Program Suppliers' motion is granted. There are no assertions that IPG was unaware of the claimants belonging to Program Suppliers, or that settlement negotiations would be compromised by granting the motion. The only dispute surrounding representation in this proceeding involves Lacey Entertainment, but that issue does not pose significant harm to this proceeding, nor damaging prejudice to IPG. Consequently, the Library determines that the quotient of harm and disruption to this proceeding caused by acceptance of Program Suppliers' motion is low.

Because the harm/disruption factor is low, the showing of cause required to accept the motion is also low. Program Suppliers have satisfied this requirement given the uncertainty as to whether representational agreements must be signed by the filing date for Notices of Intent to Participate, and the fact that Program Suppliers did file a Notice on their own behalf by the September 28, 1999, deadline. Consequently, Program Suppliers have satisfied the relatively low modicum of cause required in this circumstance to warrant granting the motion to accept a late-filed Notice.

Wherefore, **IT IS ORDERED** that Program Suppliers' motion to accept a late-filed Notice of Intent to Participate on behalf of all its represented claimants as identified in Exhibit 1 of its written direct case **IS GRANTED**.

SO ORDERED.

Marybeth Peters
Register of Copyrights

BY: _____
William J. Roberts, Jr.
Senior Attorney

DATED: August 1, 2000