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Copyright Royalty Board

37 CFR Chapter III

[Docket No. 19–CRB–0014–RM]

Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment of Ineligible Claims

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Royalty Judges (Judges) publish a notice of inquiry regarding categorization of claims for cable or satellite royalty funds and treatment of royalties associated with invalid claims.

DATES: Comments are due no later than January 29, 2020.

ADDRESSES: You may submit comments and proposals, identified by docket number 19–CRB–0014–RM, by any of the following methods:

CRB's electronic filing application: Submit comments and proposals online in eCRB at *https://app.crb.gov/.*

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE, Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE, Washington, DC 20559–6000.

Instructions: Unless submitting online, commenters must submit an original, two paper copies, and an electronic version on a CD. All submissions must include a reference to the CRB and this docket number. All submissions will be posted without change to eCRB at *https://app.crb.gov/* including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/,* and search for docket number 19–CRB–0014–RM.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Each year cable systems and satellite carriers submit royalties to the Copyright Office under the sections 111 and 119 statutory licenses for the retransmission to their subscribers of over-the-air television broadcast signals. 17 U.S.C. 111 and 119. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a retransmission of an over-the-air television broadcast signal and who timely filed a claim for royalties with the Copyright Royalty Board. Either the copyright owners may negotiate the terms of a settlement as to the division of the royalty funds or the Judges may conduct a proceeding to determine the distribution of the royalties that remain in controversy. *See* 17 U.S.C. Chapter 8. Eligibility to receive copyright royalties paid by cable systems and satellite carriers is contingent upon the submission of a properly filed claim. *See* 17 U.S.C. 111 and 119.

In 1980, the Copyright Royalty Tribunal (CRT), a predecessor of the Judges, ruled that cable distribution proceedings would be conducted in two phases, determining in Phase I the allocation of cable royalties to specific groups (Phase I/Allocation) and determining in Phase II the distribution of those royalties to individual claimants within each group (Phase II/Distribution). *See In re 1978 Cable Royalty Distribution Determination,* 45 FR 63026, 63027 (Sep. 23, 1980) (1978 Determination) (summarizing a February 14, 1980 ruling by the CRT). In the 1978 Cable Royalty Distribution Proceeding, and in all subsequent Phase I/Allocation proceedings, the division of royalties was accomplished through a categorization of claims that was the product of a *stipulation* among the proposed allocation claimants. These categorizations were adopted by the CRT and its successors by their adoption of the participants' stipulations (subject, on occasion, to minor modifications).[1] The Judges have made it clear that their adoption of the claimants' categories has never constituted a finding by the Judges. *See Memorandum Opinion and Order following Preliminary Hearing on Validity of Claims,* Docket No. 2008–2 CRB 2000–2003 (Phase II), at 14 (Mar. 21, 2013); *id.* (Phase I), 6/11/09 Tr. 41–42 (former Chief Judge Sledge noting that the categories were the result of a ''stipulation'' and ''have never been determined'' or the subject of a ''finding.'').

In the 1978 Proceeding, the CRT also considered a separate issue—whether to address the economic impact of unclaimed funds in Phase I or in Phase II. The CRT stated: ''During Phase I there was some random testimony to the effect that not all eligible claimants had submitted claims. The [CRT] determined that this subject was not appropriate to Phase I, but that it would be considered subsequently in the proceeding. The [CRT] therefore determined that the Phase I allocations to categories should be made *as if* all eligible claimants in each category had filed.'' *1978 Proceeding* at 63042 (emphasis added).

The CRT requested and received further briefing on the legal issues regarding unclaimed funds, and, in Phase II, the CRT ''accorded each claimant the opportunity to present any relevant evidence on this subject . . . [but] [n]o claimant presented any such evidence.'' *Id.* After reviewing the legal briefing, the CRT—without referencing any of the legal points briefed—

[1] The categories into which copyright owners have divided themselves in Phase I cable proceedings have remained largely consistent over time: (1) ''Program Suppliers''—copyright owners of movies and syndicated television programs represented by the Motion Picture Association, Inc. (''MPA'') (formerly the Motion Picture Association of America, Inc. (''MPAA'')); (2) ''Joint Sports Claimants''—copyright owners of live broadcasts of professional and college team sporting events (largely consisting of member teams of the National Football League, National Hockey League, National Basketball Association, Women's National Basketball Association, Office of the Commissioner of Baseball, and National Collegiate Athletic Association); (3) ''Commercial Broadcasters''—copyright owners of broadcast television and radio programming produced by local commercial broadcasters and represented by the National Association of Broadcasters, Inc. (''NAB''); (4) ''Devotional Claimants''—copyright owners of religious broadcast programming produced; (5) ''Public Television'' or ''PBS''—copyright owners of television programs broadcast on public television stations represented by the Public Broadcasting Service; (6) ''Canadian Claimants''—various Canadian copyright owners whose programs are broadcast on Canadian television stations and retransmitted by cable systems located near the U.S./Canada border; (7) ''NPR''—copyright owners of radio programming transmitted by National Public Radio and public radio stations; and (8) ''Music Claimants''—songwriters and music publishers represented by the American Society of Composers, Authors and Publishers (''ASCAP''), Broadcast Music, Inc. (''BMI'') and SESAC, Inc.. *See, e.g., Distribution of 1998 and 1999 Cable Royalty Funds,* Docket No. 2001–8 CARP CD 98–99, 69 FR 3606, 3607 (Jan. 26, 2004); *see also 1989 Cable Royalty Distribution Proceeding,* Docket No. CRT 91–2–89 CD, 57 FR 15286, 15287 (Apr. 27, 1992) ((1) Program Suppliers; (2) Sports; (3) U.S. Noncommercial Television (PBS); (4) U.S. Commercial Television (NAB); (5) Music; (6) Devotional Claimants; (7) Canadian Claimants; (8) Non-Commercial Radio (NPR); and (9) Commercial Radio)).

concluded that it would not consider unclaimed funds in determining Phase I allocations. Specifically, the CRT stated that royalties would be ''allocated to categories of claimants *as if* all eligible claimants in each category had filed valid claims.'' *Id.* (emphasis added). The CRT found that the record before it ''*provid[ed] no objective basis* for redistribution of royalty fees among categories of claimants to[] reflect unclaimed royalties in particular categories,'' and concluded that its disposition of unclaimed royalties constituted an ''*equitable allocation.*'' *Id.* (emphasis added). The CRT further noted that its ruling ''may not necessarily control any subsequent distribution proceeding.'' *Id.*

In a recent proceeding for the Distribution of Cable Royalty Funds (Docket No. 16–CRB–0009 CD (2014–17)), and in the parallel proceeding for the Distribution of Satellite Royalty Funds (Docket No. 16–CRB–0010–SD (2014–17)), the Judges sought input from the participants [2] on the claimant categories to be used in each proceeding. *See Notice of Participants and Order for Preliminary Action to Address Categories of Claims,* Docket No. Docket No. 16–CRB–0009 CD (2014–17), at 2 (Mar. 20, 2019); *Notice of Participants and Order for Preliminary Action to Address Categories of Claims,* Docket No. Docket No. 16–CRB–0010 SD (2014–17), at 2 (Mar. 20, 2019).[3] Instead of stipulating to the definitions of the Allocation Phase categories as they had in past proceedings, the participants filed briefs advocating different category definitions.

Most participants advocated use of the claimant-centric categories that had been used in prior distribution proceedings, arguing that doing so would provide ''efficiency and certainty both in the preparation of evidence . . . and in the ultimate distribution of royalties to all eligible claimants.'' Joint Comments of 2014–17 Cable Participants on Allocation Phase Claimant Category Definitions, Docket No. 16–CRB–0009–CD (2014–17), at 2 (Apr. 19, 2019); *see also* Joint Comments of 2014–12 Satellite Participants on Allocation Phase Claimant Category Definitions, Docket No. 16–CRB–0010–SD (2014–17), at 2 (same); *see also generally* Program Suppliers' Brief Regarding Proposed Claimant Group Definitions, Docket No. 16–CRB–0009–CD (2014–17), (Apr. 19, 2019) (proposing that current claimant-centric categories be retained with some modifications); Program Suppliers' Brief Regarding Proposed Claimant Group Definitions, Docket No. 16–CRB–0010–SD (2014–17) (same). These participants describe the effect of their proposed structure as establishing ''a manageably finite number of industry groups, each with the scope and incentive to pursue the interests of a broad group of constituents, undertake the complex job of gathering the necessary data and resources, identifying all claimants, establishing their respective Allocation Phase shares, and distributing all of the category's royalties.'' Joint Responsive Brief of Certain 2014–12 Cable Participants on Allocation Phase Claimant Category Definitions, Docket No. 16–CRB–0009–CD (2014–17), at 2–3 (May 3, 2019) (footnote omitted).

One participant in the proceeding, however, asserted that the historically-stipulated categories and relevant definitions are arbitrary, produce counterintuitive results, and are contrary to common understanding. *See* Multigroup Claimants' Comments on Claimant Category Definitions and Proposed Modification, Docket Nos. 16–CRB–0009–CD (2014–17) & 16–CRB–0010–SD (2014–17), at 6 (Apr. 19, 2019). This participant asserted that the claimant-centric categories used in past proceedings was not aligned with the way in which system operators decide to retransmit broadcast television signals. *See id.* at 13. The participant proposed a new program-centric category definition, but only for the sports programming category. *See id.* at 7–12.

The Judges have recently allocated cable royalty percentages in the Allocation Phase based on: (i) Evidence from surveys of cable system operators regarding their ranking of types of programming; and (ii) evidence from regressions identifying the actual mix of programming on stations that cable system operators chose to retransmit, in both cases based on the categories stipulated by the participants.[4] The Judges understand there may be reasonable concerns that if the effect of the stipulated categories is to aggregate programs within categories in a manner inconsistent with the cable system operators' usual decision making process, the valuation process may be affected adversely. In this regard, the dollar amount of royalties that a copyright owner of a program receives could vary significantly, and without relationship to relative values, depending upon whether the program was placed within one category versus another. Such concerns regarding the historically-stipulated categories appear pertinent with regard to both cable and satellite royalty distribution proceedings.

The failure of all participants to stipulate to claimant categories as well as the stated concerns with the historically-stipulated category definitions underscore the need for a procedure by which copyright owners and their representatives are afforded the opportunity to propose specific category definitions and provide legal and economic arguments and factual evidence to support their respective positions, enabling the Judges to act on the basis of an adequate administrative record. Pursuant to the authority set forth in 17 U.S.C. 803(b)(6) to establish regulations governing the Judges' proceedings, the Judges seek comment to inform and guide their intent to publish a formal notice of proposed rulemaking to establish specific category definitions applicable to both cable and satellite distribution proceedings.

II. Subjects of Inquiry

A. The Identification of the Allocation Phase Categories

In light of the need to establish Allocation categories, for use in both cable and satellite distribution proceedings, the Judges now seek input on how the Allocation Phase categories should be defined. Because the evidence of relative value across categories in the Allocation Phase reflects the value assigned to program categories by the cable system operators/satellite carriers (as demonstrated most recently by survey and/or regression evidence), the Judges inquire as to the merit of aggregating the Allocation Phase categories by program type rather than by claimant groups, and whether doing so may result in a distribution of royalties that more accurately reflects the relative value of different programming.

The Judges also inquire as to the likely impact any particular set of Allocation Phase categories may have

[2] The Phase I/Allocation participants in satellite distribution proceedings have used the same or very similar categories as participants in cable proceedings. *See, e.g.,* Notice requesting comments, Distribution of Satellite Royalty Funds, Docket 16–CRB–0010–SD (2014–17), 84 FR 33979, 33980 n.1 (Jul 16, 2019) (''Program Suppliers, Joint Sports Claimants, Broadcaster Claimants Group, Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), and Devotional Claimants.'').

[3] Members of the public may access all submissions in those proceedings through eCRB by searching for Docket Nos. 16–CRB–0009–CD (2014–17) and 16–CRB–0010–SD (2014–17). Registration is not required.

[4] The Judges have never conducted a satellite allocation phase proceeding that resulted in a final determination; rather the allocation phase parties have always settled.

on (a) the cost and efficiency of distribution proceedings and (b) the likelihood of achieving settlements to resolve both Allocation Phase and Distribution Phase controversies.

In addition, the Judges inquire as to the need for mechanisms and standards to resolve any disputes as to the identity of participants seeking to represent a particular Allocation Phase category in an Allocation Phase proceeding.

B. The Identification of Invalid Claims

The Judges are in agreement with the CRT observation that its 1980 ruling with respect to ineligible claims ''may not necessarily control any subsequent distribution proceeding.'' *1978 Proceeding* at 63042 (emphasis added). Therefore, the Judges also revisit the identification and treatment of funds that are unclaimed because a filed claim is invalid or not validly represented in a distribution proceeding (invalid claims). The Judges request that commenters provide an adequate factual record to support their positions as to the necessity and feasibility of proposed approaches to the identification and treatment of invalid claims, and the consonance of their proposed approaches with the establishment of relative value. Commenters should address how the treatment of invalid claims may interrelate with the establishment of Allocation Phase categories. For instance, one rationale for intra-category re-apportionment of royalties attributable to invalid claims (the status quo) is that the invalidly-claimed programs have more in common in terms of value creation with the validly-claimed programs in the same category than with the validly-claimed programs in the other categories (which also implicates the above-stated inquiry regarding whether the categories should be claimant-centric or program-centric). If the former, the argument for maintaining intra-category re-allocations of invalid claims may be weaker, because claimant-centric categorization is based on common representation, not common relative program value.

The Judges also inquire as to the likely impact any proposed rule for the identification and treatment of ineligible claims may have on (a) the cost and efficiency of distribution proceedings and (b) the likelihood of achieving settlements to resolve both Allocation Phase and Distribution Phase controversies.

III. Submissions

With respect to both of the subjects of inquiry, commenters should provide narrative responses and proposed regulatory language amending 37 CFR part 351. Commenters should include relevant facts, legal and economic analyses, and citation to authority for each proposed regulatory provision. After considering the proposals, the Judges intend to publish a formal notice of proposed rulemaking in accordance with the provisions of the Administrative Procedures Act.

Dated: December 20, 2019.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2019–27970 Filed 12–27–19; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0156; FRL–10003–69–Region 4]

Air Plan Approval; AL, FL, GA, NC, SC, TN; Interstate Transport (Prongs 1 and 2) for the 2015 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. The Environmental Protection Agency (EPA or Agency) is proposing to approve State Implementation Plan (SIP) revisions from Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee (collectively, Southeast States) addressing the Clean Air Act (CAA or Act) good neighbor interstate transport infrastructure SIP requirements for the 2015 8-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is proposing to approve the submission as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

DATES: Written comments must be received on or before January 29, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0156 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Evan Adams of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can be reached by telephone at (404) 562–9009, or via electronic mail at *adams.evan@epa.gov.*

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I. Background

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).[1] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIPs meeting the applicable requirements of section 110(a)(2).[2] One of these applicable requirements is found in section 110(a)(2)(D)(i)(I), otherwise known as the good neighbor provision, which generally requires SIPs

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under 110(a)(2) are referred to as infrastructure requirements.