

employment on or after September 14, 2005, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of August 2007.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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## LIBRARY OF CONGRESS

### Copyright Royalty Board

**Docket No. 2005-4 CRB CD 2003]**

#### Distribution of the 2003 Cable Royalty Fund

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Notice announcing partial Phase I settlement and soliciting comments on motion for further distribution.

**SUMMARY:** The Copyright Royalty Judges are announcing a partial Phase I settlement in connection with the 2003 cable royalty fund. The Judges are also soliciting comments on a motion for further distribution in connection with that fund.

**DATES:** Comments are due on or before September 19, 2007.

**ADDRESSES:** Comments may be sent electronically to [crb@loc.gov](mailto:crb@loc.gov). In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand-delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Ave., SE., Washington, DC 20559-6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Ave., SE., Washington, DC 20559-6000.

#### FOR FURTHER INFORMATION CONTACT:

Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707-7658 or e-mail at [crb@loc.gov](mailto:crb@loc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Each year, semiannually, cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). These royalties are then distributed to copyright owners whose works were included in a qualifying retransmission and who timely filed a claim for royalties. Allocation of the royalties collected occurs in one of two ways. In the first instance, these funds will be distributed through a negotiated settlement among the parties. 17 U.S.C. 111(d)(4)(A). If the claimants do not reach an agreement with respect to the royalties, the Copyright Royalty Judges ("Judges") must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B).

##### August 2005 Motion for Partial Distribution

On August 31, 2005, a group of claimants filed a motion with the Copyright Royalty Board ("CRB"), requesting a partial distribution of 50% of the 2003 cable royalty fund ("2003 Fund"). Motion of Phase I Claimants for Partial Distribution. On September 13, 2005, the proposal was published in the **Federal Register**. Docket No. 2005-4 CRB CD 2003, 70 FR 53973. In the notice, the CRB sought comment on whether any controversy exists that would preclude the distribution of 50% of the 2003 cable royalty funds to the Phase I claimants.<sup>1</sup> The CRB also sought

<sup>1</sup>Historically, cable royalty proceedings have occurred in two phases. In Phase I, royalties have been divided among the categories of broadcast programming represented in the proceeding. The categories into which copyright owners have divided themselves in Phase I have remained largely unchanged over time. *See* Distribution of 1998 and 1999 Cable Royalty Funds, Docket No. 2001-8 CARP CD 98-99, 69 FR 3606, 3607 (Jan. 26, 2004) ((1) movies and syndicated television programs (known as "Program Suppliers" and represented by the Motion Picture Association of America, Inc. ("MPAA")); (2) sports programming (referred to as "Joint Sports Claimants" and includes sports programming belonging to the National Football League, National Hockey League, National Basketball Association, and National Collegiate Athletic Association); (3) commercial broadcast programming (consists of copyright owners of commercial radio and television programming and represented by the National Association of Broadcasters, Inc. ("NAB")); (4)

comment on the existence of any controversies to the 2003 cable royalty funds, either at Phase I or Phase II, with respect to the 50% of those funds that would remain if the partial distribution were granted. 70 FR at 53973-53974.

The CRB received eleven comments in response to the notice, one of which was from the Independent Producers Group ("IPG").<sup>2</sup> In its comment, IPG notified the CRB that it maintains claims on behalf of certain unnamed producers and distributors of devotional programming and that a controversy exists with respect to the 2003 cable royalty fund. IPG stated: "The extent of the controversy is not known at this time, however, the reservation of at least 2% of the cable proceedings funds as relates to claims on behalf of devotional programming, together with Phase I Claimants' pledges to return any amounts finally awarded in excess of sums partially released, is deemed sufficient to protect the interests of devotional programming claimants." *Id.*

IPG also stated that it maintains claims on behalf of certain unnamed producers and distributors of syndicated programming (which IPG refers to as "program suppliers") and asserted that a controversy exists with respect to that category of funds. With respect to

religious broadcast programming (referred to as "Devotional Claimants" and consists of various copyright owners of religious programming); (5) public television broadcast programming (referred to as "PBS" and consists of various copyright owners of television programs broadcast by the Public Broadcasting Service); (6) Canadian broadcast programming (referred to as "Canadian Claimants" and consists of various Canadian copyright owners whose programs are retransmitted by cable systems located near the U.S./Canada border); (7) public radio broadcast programming (referred to as "NPR" and consists of various copyright owners of radio programs transmitted by National Public Radio); and (8) music (referred to as "Music Claimants" and consists of copyrighted programming belonging to songwriters and music publishers and represented by the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI") and SESAC, Inc.). *See also* 1989 Cable Royalty Distribution Proceeding, Docket No. CRT 91-2-89CD, 57 FR 15286, 15287 (April 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).

In Phase II, royalties are divided among claimants within a particular category. *See* Distribution Order in Docket No. 94-3 CARP CD-90-92, 61 FR 55653, 55655 (Oct. 28, 1996).

<sup>2</sup>IPG Comment, dated October 25, 2005. On October 25, 2005, IPG filed a motion with the CRB requesting that the CRB accept its late-filed comment. *See* Independent Producers Group's Motion to Accept Late-Filed Comments on the Existence of Controversies and Notice of Intent to Participate in Phase I and Phase II Hearings.

The CRB also received a comment from claimants representing program suppliers. This comment is discussed below.

program suppliers, IPG stated: "The extent of the controversy is not known at this time, however, the reservation of at least 50% of the cable proceedings funds as relates to claims on behalf of syndicated programming, together with Phase I Claimants' pledges to return any amounts finally awarded in excess of sums partially released, is deemed sufficient to protect the interests of syndicated programming claimants." *Id.*

IPG also stated that it maintains claims on behalf of certain unnamed producers and distributors of Spanish-language programming. IPG stated:

[a]t an appropriate later date, IPG intends to submit a formal motion with the Copyright Office to create the new category of "Spanish-Language Programming." Spanish-Language Programming constitutes a significant percentage of retransmitted programming and, for the reasons to be articulated in the motion, constitute[s] a unique category of broadcast programming that is retransmitted by cable system operators. In connection herewith, IPG asserts that a controversy exists with respect to the 2003 cable royalty fund, subject to certification of [S]panish-language programming as a category. The extent of the controversy is not known at this time, however, the reservation of at least 2% of the cable proceedings funds as relates to claims on behalf of [S]panish-language programming, together with Phase I Claimants' pledges to return any amounts finally awarded in excess of sums partially released, is deemed sufficient to protect the interests of [S]panish-language programming claimants.

*Id.*

IPG also asserted that a conflict exists with respect to the 2003 cable royalty fund in Phase II of the syndicated programming, sports programming, devotional programming and Spanish-language programming categories. With respect to Phase II, IPG stated:

The extent of the controversy is not known at this time, however, the reservation of at least (i) 20% of the program supplier category funds, (ii) 2% of the sports programming category funds, (iii) 50% of the devotional programming category funds, and (iv) 80% of the [S]panish-language programming category funds, together with Phase I Claimants' pledges to return any amounts finally awarded in excess of sums partially released, is deemed sufficient to protect IPG's interests.

*Id.* IPG also stated that it intended to participate in any Phase I proceedings involving devotional programming, syndicated programming, and Spanish-language programming.

On October 26, 2005, the CRB denied the August 31, 2005 Motion of Phase I Claimants for Partial Distribution. In its order denying the motion, the CRB discussed the comments it received in response to the September 13, 2005

**Federal Register** notice, stating: "[w]hile many identified the existence of a controversy at both Phase I and Phase II, none objected to the 50% partial distribution" proposed in the Phase I claimants' motion. Nevertheless, the CRB denied the motion based largely on the claimants' statement in their motion and a subsequent comment from an individual claimant suggesting that more than 50% of the royalties in the 2003 fund was still in controversy. Based on this information, the CRB concluded that 100% of the funds remained in controversy and therefore the CRB was not authorized to distribute any funds at that time.

In particular, the CRB stated:

Program Suppliers argue that a distribution can be made under [17 U.S.C.] 801(b)(3)(A) provided no party objects to the distribution, though 100% of the funds remain in controversy. The Board does not share this interpretation of the provision. Section 801(b)(3)(A) was crafted to enable the Board to make a distribution of royalties without conducting a proceeding, either in full or in part, *provided* that the parties agreed that the requested amount was not in controversy. This provision is in contrast to 801(b)(3)(C), where a partial distribution may be made of royalties, with the agreement of the parties, regardless of whether those royalties are in controversy.\* \* \* [A]s the Board observed in the September 13, 2005, satellite Order [Docket No. 2005-2 CRB SD 2001-2003] it cannot [authorize a partial distribution of royalty funds under 17 U.S.C. 801(b)(3)(C)] without announcing the negotiation period and initiating the proceeding [required by that section of the Copyright Act]. Consequently, for the Board to distribute any royalties prior to this period, it must determine that their distribution is not in controversy.

Distribution Order at 2, Docket No. 2005-4 CRB CD 2003 (Oct. 26, 2005).

The CRB reiterated its position in its March 21, 2006 Order Denying Petition for Reconsideration. In that order the CRB stated:

Copyright Act Section 801(b)(3) allows the Board to make partial distributions, prior to the commencement of the distribution proceedings, only "to the extent that the [Judges] have found that the distribution of such fees is not subject to controversy." \* \* \* The Phase I parties' August 31 Motion did not even aver that only 50% of the 2003 cable royalty fund remains in controversy. To the contrary, the Board was affirmatively advised (Motion at 4 n.2) that the Phase I parties reserved the right to seek shares of the fund, in subsequent contested distribution proceedings, without limitation. And, in a separate submission, designed to drive this point home, the Program Suppliers, who traditionally form one of the largest Phase I claimants' groups, stated \* \* \* that "the entire 2003 Cable Fund remains in controversy." In this case, the record plainly cannot support a finding that 50% of the 2003 cable fund is not in controversy.

Order Denying Petition for Reconsideration at 3 n.6, Docket No. 2005-4 CRB CD 2003 (March 21, 2006).

#### August 2006 Motion for Partial Distribution

On August 1, 2006, a group of Phase I claimants, pursuant to sections 801(b)(3)(A) and 111(d)(4)(C) of the Copyright Act (17 U.S.C. 801(b)(3)(A) and 111(d)(4)(C)) filed a second motion requesting partial distribution of 50% of the 2003 cable royalty funds. Motion of Phase I Claimants for Distribution of Royalties, Docket No. 2005-4 CRB CD 2003. In that motion, the moving claimants stated:

In August 2005 the Phase I Parties requested that the Board distribute to each Party a specified share of 50% of the 2003 Funds. The Board denied that request because it concluded, on the record before it, that a controversy existed over all of the 2003 Funds. Here, however, the Phase I Parties are requesting that the Board distribute 50% of the 2003 Funds to the Phase I Parties collectively. The Phase I Parties have agreed that, as a group, they are entitled to at least 50% of the 2003 Funds and that no controversy exists over the distribution of that 50% to the group.

*Id.*, citations omitted.

The motion continued: "The Phase I Parties have just recently learned that [IPG] filed two pleadings [sic] in this docket on October 28, 2005, one of which asserted an interest in the 2003 Funds." <sup>3</sup> The motion continued: "[w]hile IPG is not a party to the motion, the Phase I Parties cannot contemplate any reasonable basis on which IPG could assert a claim to 50% or more of the 2003 Funds." *Id.* at n.1.

On August 11, 2006, IPG filed a response to the Phase I claimants' partial distribution request. Comments of Independent Producers Group to Motion of Phase I Claimants for Distribution of Royalties, Docket No. 2005-4 CRB CD 2003. In its response IPG stated, after noting that the CRB had not addressed its previous filings in the matter:

[I]f IPG's motion and filings are granted, IPG will be a participant in both Phase I and Phase II proceedings relating to the 2003

<sup>3</sup> Given that no proceeding in this matter has been commenced, no official service list has been compiled. Compare 37 CFR 350.4(g) ("The [Judges] will compile and distribute, to those parties who have filed a petition to participate that has been accepted by the [Judges], the official service list of the proceeding. In all filings, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself."). As noted in note 2 above and accompanying text, instead of two pleadings, IPG actually filed a comment in response to the CRB's request for comments in the September 13, 2005, **Federal Register** notice and a motion to accept the comment late.

cable royalty pool. The Phase I Claimants' Motion thereby affects IPG's rights by seeking distribution of fifty percent (50%) of the available funds within the 2003 cable royalty pool. Such agreement amongst the signatory Phase I Claimants has occurred in the absence of IPG's consent or participation, as IPG is not yet formally established as a Phase I participant. According to such agreement, fifty percent of the available funds will be distributed to a Common Agent, who will thereafter distribute funds to the respective Phase I Claimants.

IPG has no objection to the Motion, subject to the qualifications of distribution set forth therein. Notwithstanding, IPG asks that the Board additionally clarify that following the distribution from the Common Agent to the respective Phase I Claimants, that further distribution to claimants (or representatives thereof) within the particular categories be prohibited absent an agreement amongst Phase II parties within such categories, or application to the Board. In prior proceedings, certain Phase I parties that also are Phase II participants have received advance royalty distributions, then unilaterally distributed such funds exclusively to themselves and their represented claimants without the knowledge or consent of the other Phase II parties or the CARP. Such process has therefore transformed an unobjectionable distribution to Phase I parties into a very objectionable backdoor means of Phase II distribution, and without any notice to multiple Phase II parties or any opportunity to object.

Of the Phase I categories participating in the Motion, IPG has Phase II claims within the Program Supplier, Sports Programming and Devotional categories. IPG's claims are substantial, and in the lattermost category IPG's claims appear to be larger than all other Phase II parties combined, by whatever criteria of distribution can be employed.

*Id.* at 1–2.

In a response filed with the CRB on August 16, 2006, the Phase I claimants disputed IPG's assertions and allegations and stated "the 50% of the 2003 Funds that remain in controversy after the requested distribution will indisputably be more than adequate to satisfy any IPG royalty claims that might be substantiated in these proceedings." Reply in Support of Motion of Phase I Claimants for Distribution of Royalties at 3 (footnote omitted), Docket No. 2005–4 CRB CD 2003.

In an August 23, 2006 order, the Judges granted the Phase I claimants' motion for partial distribution. Distribution Order, Docket No. 2005–4 CRB CD 2003 ("2006 Distribution Order"). In that order, the Judges stated: "Representatives of the Phase I Parties seek full distribution of 50% of the 2003 cable royalty funds. Unlike their previous request for a partial distribution under 17 U.S.C. 801(b)(3)(C) prior to the commencement of a proceeding, the Phase I Parties now represent that there is no controversy as

to a distribution of 50% of royalties under 17 U.S.C. 801(b)(3)(A)." *Id.*, citations and note omitted.

The Judges continued:

[IPG] submitted what it styled as a "comment," stating that it did not object to the Phase I Parties' motion but that it did object to any subsequent distribution of royalties within each category. In other words, IPG would agree to a dissemination of royalties to the common agent designated by the Phase I Parties, but the agent could not make a further distribution to any copyright owners until all Phase II controversies have been resolved.

The Board is granting the Phase I Parties' motion under 17 U.S.C. 801(b)(3)(A). That provision permits the Board to distribute royalties "to the extent that the [Judges] have found that the distribution of such fees is not subject to controversy." *Id.* The Phase I Parties assert that 50% of the 2003 cable royalties are not subject to a controversy and IPG has not challenged that assertion. The Board is also rejecting IPG's request to prohibit the common agent receiving the royalties from distributing them to parties within the Phase I categories. Not only would IPG's request frustrate the purpose of making a Phase I distribution, it is contrary to well-established precedent.

*Id.*, citing *National Assoc. of Broadcasters v. Copyright Royalty Tribunal*, 772 F.2d 922, 939 (D.C. Cir. 1985) (claimant with no claim to settled royalties not permitted to "upset the settlement apple cart.").

The Judges stated further, "[b]ecause the distribution is being made under 17 U.S.C. 801(b)(3)(A), no publication of the distribution in the **Federal Register** is necessary. Likewise, no obligation to return funds is necessary." 2006 Distribution Order at 2.

#### June 2007 Motion for Further Distribution

On June 8, 2007, a group of Phase I claimants ("settling claimants"), pursuant to section 801(b)(3)(C) of the Copyright Act, 17 U.S.C. 801(b)(3)(C), filed a Notice of Partial Phase I Settlement and Motion for Further Distribution. In the filing, the claimants represented that they have reached a settlement of all outstanding Phase I controversies regarding distribution of the 2003 Fund among the claimants to which Phase I royalties have been allocated in the past, with the exception of the Canadian Claimants. The settling claimants state that the Copyright Office is holding in reserve approximately 50% of the 2003 Fund (estimated to be \$70,417,221 as of March 31, 2007). The settling claimants request that the Judges: (1) Authorize a distribution of 0.18% of the 2003 Fund to NPR; (2) maintain for the Devotional Claimants (a subgroup of the settling claimants) 0.5%

of the 2003 Fund;<sup>4</sup> (3) reserve 5.5% of the 2003 Fund to satisfy ongoing disputes between the Canadian Claimants and the settling claimants; (4) request comment from interested claimants on the extent to which any Phase II controversies exist and the amount that should be withheld to account for such controversies; and (5) authorize a lump sum distribution of all the remaining 2003 Fund to the settling claimants, except NPR and the Devotional Claimants. The settling claimants agree to identify a common agent to receive the lump sum distribution.

#### IPG's Opposition

IPG opposes the Phase I claimants' motion for further distribution. Independent Producers Group's Opposition to "Phase I Claimants' Notice of Partial Phase I Settlement and Motion for Further Distribution," Docket No. 2005–4 CRB CD 2003 (June 15, 2007). In that filing, IPG details its previous filings with the CRB in this matter, stating that IPG "represents the interests of no less than 200 film and television producers, and [intends] to participate in Phase I proceedings relating to interests existent in the Program Suppliers, Devotional and Spanish-language Programming category," the latter of which, as IPG notes, has yet to be designated as a Phase I category. IPG states its belief that its October 25, 2005 filings (see note 2 above) are still pending with the CRB. IPG also alleges that it has been frozen out of Phase I settlement negotiations. IPG contends that it should be provided an opportunity to make a prima facie showing of the value of its members' programming and should be advanced "some portion of the funds withheld by the CRB." *Id.*, emphasis in original. Finally, IPG contends that it was not served with the Phase I claimants' motion in a timely manner.

In its reply, the Phase I claimants contend that IPG is ineligible "to receive a portion of the partial distribution of the 2003 Fund because it has not established its entitlement to any royalties in a prior proceeding." Phase I Claimants' Reply to Independent Producers Group's Opposition to "Phase I Claimants' Notice of Partial Phase I Settlement and Motion for Further Distribution" at 1, Docket No. 2005–4 CRB CD 2003 (June 21, 2007).<sup>5</sup> The

<sup>4</sup> The motion states that the Devotional Claimants do not seek a further partial distribution at this time and ask that the Judges hold their share pending resolution of their Phase II controversies.

<sup>5</sup> IPG's share of cable royalty revenues was litigated previously under the Copyright Arbitration

Phase I claimants also assert that “[g]ranted the Motion simply will not prejudice IPG in any way, because the process sufficiently protects whatever claims IPG successfully proves as part of the final determination of the allocation of the 2003 Fund.” *Id.*

#### Clarification Regarding the Status of IPG’s October 25, 2005 Filings

As discussed above, on October 25, 2005, in response to a **Federal Register** notice in which the CRB solicited comments on Phase I Claimants’ August 31, 2005 motion for partial distribution, IPG submitted a comment and a motion to accept it late. IPG’s comment, like others the CRB received in response to the notice, stated that there was a controversy that should preclude the CRB from granting the Phase I claimants’ motion. The CRB agreed and denied the Phase I claimants’ motion. *See* Distribution Order, Docket No. 2005–4 CRB CD 2003 (Oct. 26, 2005); *see also* Order Denying Petition for Reconsideration (March 21, 2006). To the extent that IPG’s October 2005 motion was not already addressed in the denial of the Phase I claimants’ motion for partial distribution, it is moot because the motion to which IPG’s motion related has already been resolved.

#### Resolution of Phase I Claimants’ 2007 Motion for Further Distribution

Phase I claimants file their current motion pursuant to section 801(b)(3)(C) of the Copyright Act, 17 U.S.C. 801(b)(3)(C). That section states in relevant part:

Notwithstanding section 804(b)(8), the [Judges], 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) [of section 801(b)(3) of the Copyright Act]; (iii) file the agreement with the [Judges]; and (iv) agree that such funds are available for distribution.

Section 804(b)(8) of the Copyright Act states: “With respect to proceedings under section 801(b)(3) concerning the distribution of royalty fees in certain circumstances under section 111 \* \* \*, the [Judges] shall, upon a determination that a controversy exists concerning such distribution, cause to be published in the **Federal Register** notice of commencement of proceedings under this chapter.” 17 U.S.C. 804(b)(8). *See also* Copyright Act section 111(d)(4)(B) (“After the first day of August of each year, the [Judges] shall determine whether there exists a controversy concerning the distribution of royalty fees \* \* \*. If the [Judges] find the existence of a controversy, [they] shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.”).

#### Solicitation of Comments

In light of the Phase I Claimants’ Motion for Further Distribution and the Judges’ obligations under Copyright Act sections 801(b)(3)(C) and 111(d)(4)(B), the Judges hereby request comment from interested persons regarding whether any claimant entitled to receive royalty fees from the 2003 Cable Fund has a reasonable objection to the proposed partial distribution. As discussed above, with respect to the proposed distribution, the settling Phase I claimants request that the Judges: (1) Authorize a distribution of 0.18% of the 2003 Fund to NPR; (2) maintain for the Devotional Claimants 0.5% of the 2003 Fund; (3) reserve 5.5% of the 2003 Fund to satisfy ongoing disputes between the Canadian Claimants and the settling claimants; and (4) authorize a lump sum distribution of all the remaining 2003 Fund to the settling claimants, except NPR and the Devotional Claimants. The Judges seek comment on the proposed distribution as a whole and on each of the four specific aspects of the proposal. In addition, the Judges seek comment on the specific percentage allocations that the Phase I claimants have proposed. In particular, with respect to element (4) of the proposal, the Judges seek comment on what percentage lump sum partial distribution would not be objectionable (e.g., would a 75 percent partial lump sum distribution be objectionable? if

not, would a 50 percent distribution be objectionable?). If the Judges find that a partial distribution is warranted, what conditions, if any, other than those required by section 801(b)(3)(C) of the Copyright Act, should the Judges impose on the claimants to whom the royalties are distributed?

Moreover, the Judges seek comment on any potential Phase I or Phase II controversies.<sup>6</sup> If commenters believe that a controversy exists, please specify the categories of claimants to which the controversy applies and estimate the percentage of funds subject to controversy. In addition, please specify whether the categories into which the claimants have traditionally divided themselves in Phase I proceedings<sup>7</sup> are adequate to fairly represent the interests of all claimants or should additional categories of claimants be recognized. For commenters that favor recognition of additional claimant categories, please specify what those categories should be and why they are not currently adequately represented by the traditional claimant categories.

If the Judges find that there is a controversy with respect to the distribution of royalty payments, section 804(b)(8) of the Copyright Act requires that the Judges “cause to be published in the **Federal Register** notice of commencement of proceedings.” For commenters that contend that a controversy exists, the Judges seek comment on whether a proceeding should be commenced at this time or whether such commencement should be delayed to permit negotiation among the claimants. If commenters believe that more time for negotiation is warranted, how much time should the Judges permit for negotiation before a proceeding is commenced?

Certain claimants have expressed concerns regarding timely service of process in matters dealing with the distribution of royalty payments from the 2003 Fund. Current CRB regulations require that, once a proceeding has commenced, all parties on the official service list prepared by the CRB for that proceeding receive timely service of process. 37 CFR 350.4(g). CRB service rules do not, however, address the period prior to the commencement of a proceeding. As a result, it is not always possible for interested persons to become aware in a timely manner of motions and other filings that might

<sup>6</sup> Effective August 10, 2007, the Copyright Office terminated all pending distribution proceedings under Sections 111, 119 and 115 of the Copyright Act of 1976. Those proceedings are null and void and new proceedings will have to be commenced before the Copyright Royalty Judges. 72 FR 45071.

<sup>7</sup> *See* note 1 above.

Royalty Panel (“CARP”) system. *See* Distribution of 1993, 1994, 1995, 1996 and 1997 Cable Royalty Funds, Docket No. 2000–2 CARP CD 93–97, 69 FR 23821 (Apr. 30, 2004). In that matter, the Librarian of Congress convened a CARP to resolve a dispute within the syndicated programming category between the MPAA and IPG over the division of royalties collected in 1997 for the retransmission of movies and syndicated television series by cable systems. The Librarian rejected the CARP’s initial and revised reports and remanded the matter for a new proceeding before a new CARP. The MPAA and IPG ultimately settled the dispute and the Librarian vacated as moot the order remanding the matter. The Librarian also vacated the CARP’s initial and final determinations “to make clear that those determinations have no precedential value.” 69 FR at 23822.

impact their interests. The Judges seek comment on what action, if any, the Judges should take to remedy this issue. For example, would posting all incoming filings or a notice that a filing has been made in a matter on the CRB Web site be sufficient notice to potential claimants and other interested persons in those instances prior to commencement of a proceeding? In the alternative, the Judges could adopt a rule requiring service of process prior to the commencement of a proceeding. If the Judges adopted such a rule, what sort of service should be required and to whom?

For full consideration, comments should be received by September 19, 2007.

Dated: August 14, 2007.

**James Scott Sledge,**

*Chief Copyright Royalty Judge.*

[FR Doc. E7-16267 Filed 8-17-07; 8:45 am]

**BILLING CODE 1410-72-P**

## **NATIONAL SCIENCE FOUNDATION**

**RIN Z-RIN 3145-ZA02**

### **Proposed Addition of a Routine Use to NSF Systems of Records**

**Authority:** 44 U.S.C. 3101 and 42 U.S.C. 1870; OMB Memorandum M-07-16, "Safeguarding Against and Responding to the Breach of Personally Identifiable Information."

**ACTION:** Notice of alteration to existing Privacy Act systems of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, the National Science Foundation is altering its existing systems of records in accordance with OMB Memorandum M-07-16, "Safeguarding Against and Responding to the Breach of Personally Identifiable Information." M-07-16 calls on agencies to publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.

A Federal agency's ability to respond quickly and effectively in the event of a breach of Federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response may necessitate disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

The information to be disclosed to such persons and entities may be subject to the Privacy Act, 5 U.S.C. 552a. The Privacy Act prohibits the disclosure of any record in a system of records absent the written consent of the subject individual, unless the disclosure falls within one of the twelve statutory exceptions, including a routine use, 5 U.S.C. 552a(b)(3).

As described in the President's Identity Theft Task Force's Strategic Plan, all agencies should publish a routine use for their systems of records allowing for the disclosure of information in the course of responding to a breach of Federal data. See Appendix B of the Identity Theft Task Force report (<http://www.identitytheft.gov/reports/StrategicPlan.pdf>). Such a routine use will serve to protect the interests of the individuals whose information is at issue by allowing agencies to take appropriate steps to facilitate a timely and effective response, thereby improving their ability to prevent, minimize, or remedy any harm resulting from a compromise of data maintained in their systems of records.

Accordingly, NSF proposes to add the following routine use to each of its Systems of Records Notices listed below:

To appropriate agencies, entities, and persons when (1) the NSF suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the NSF has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the NSF or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the NSF's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

**DATES:** Submit comments on or before August 30, 2007. The proposed altered systems will become effective on September 30, 2007.

**ADDRESSES:** Send comments to Leslie Jensen, National Science Foundation, Office of the General Counsel, Room 1265, 4201 Wilson Boulevard, Arlington, Virginia 22230 or by electronic mail (e-mail) to: [ljensen@nsf.gov](mailto:ljensen@nsf.gov).

**SUPPLEMENTARY INFORMATION:** This publication is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when

there is a revision, change, or addition. NSF's Office of the General Counsel (OGC) has reviewed its Systems of Records notice and has determined that its records systems notices must be revised to incorporate the change described herein. As required by 5 U.S.C. 552a(R) and Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated November 30, 2000, a report of an altered system of records has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

Submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Identify all comments sent in electronic E-mail with Subject Line: Comments on proposed changes to Privacy Act SORNs.

#### **FOR FURTHER INFORMATION CONTACT:**

Leslie Jensen (703) 292-5065.

Dated: August 14, 2007.

**Lawrence Rudolph,**

*General Counsel.*

System Names:

NSF-3 Application and Account for Advance of Funds  
 NSF-6 Doctorate Records File  
 NSF-8 Employee Grievance Files  
 NSF-10 Employee's Payroll Jacket  
 NSF-12 Fellowships and Other Awards  
 NSF-13 Fellowship Payroll  
 NSF-16 Individual Retirement Record (SF-2806)  
 NSF-18 Integrated Personnel System (IPERS)  
 NSF-19 Medical Examination Records for Service in the Polar Regions  
 NSF-22 NSF Payroll System  
 NSF-23 NSF Staff Biography  
 NSF-24 Official Passports  
 NSF-26 Personnel Security  
 NSF-34 Integrated Time and Attendance System (ITAS)  
 NSF-36 Personnel Tracking System (Antarctic)  
 NSF-38 Visa Applications and Alien Application for Consideration of Waiver of Two-Year Foreign Residence Requirements—NSF  
 NSF-43 Doctorate Work History File  
 NSF-48 Telephone Call Detail Program Records  
 NSF-49 Frequent Traveler Profile  
 NSF-50 Principal Investigator/Proposal File & Associated Records  
 NSF-51 Reviewer/Proposal File & Associated Records  
 NSF-52 Office of Inspector General Investigative Files  
 NSF-53 Public Transportation Subsidy Program