

Before the  
Copyright Royalty Judges  
Washington, D.C.

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In the Matter of )  
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Distribution of ) Docket No. 2008-2 CRB CD  
2000-2003 ) 2000-2003 (Phase II) (REMAND)  
Cable Royalty Funds )  
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**INDEPENDENT PRODUCERS GROUP’S MOTION FOR  
RECONSIDERATION OF ORDER DISMISSING 2001 CLAIMS OF JACK  
VAN IMPE MINISTRIES AND SALEM BAPTIST CHURCH**

Worldwide Subsidy Group LLC (a Texas limited liability company) dba  
Independent Producers Group ("IPG") hereby submits its *Motion for  
Reconsideration of Order Dismissing 2001 Claims of Jack Van Impe Ministries  
and Salem Baptist Church.*

**INTRODUCTION**

The Phase II proceedings for 2000-2003 were commenced on February 10,  
2011. *See* CRB 9,<sup>1</sup> 76 Fed. Reg. 7590 (Feb. 10, 2011). IPG made its appearance  
in the Phase II proceedings and, consistent with its multiple prior responses to

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<sup>1</sup> References to “CRB #” are to the docket sheet for this proceeding, Docket No. 2008-2 CRB CD 2000-2003 (Phase II).

*Federal Register* notices requiring category identification, IPG indicated that it had claims in three Phase I categories, including Devotional Programming. CRB 10.

In the Devotional Programming category, IPG's only adversary was SDC, a consortium of several claimants making claim for 2000-2003 devotional programming royalties. Pursuant to the Judges' order of July 10, 2012, the parties were provided a deadline of August 3, 2012 by which to file "motions unrelated to document production". CRB 98. On August 3, 2012, the SDC filed its "Motion to Strike Portions of IPG's Claims and Direct Case". CRB 132.

On September 14, 2012 and September 18, 2012, the Judges denied without prejudice the SDC motion and announced a process and schedule for the reconsideration of such motion following the exchange of supporting exhibits and presentation of oral testimony. CRB 181, 185. Per the Judges' order, both IPG and SDC submitted exhibits that they intended to introduce into evidence at the "Preliminary Hearing". *See* CRB 204, 209. Oral testimony occurred on November 13-14, and December 5, 2012. On December 19, 2012, the Judges directed the parties to submit proposed findings of fact and conclusions of law. CRB 242.

**a. SDC's Motion to Strike IPG claims.**

In pertinent part hereto, the SDC motion sought to strike claims attributable to Jack Van Impe Ministries for calendar years 2002-2003, and Salem Baptist

Church for calendar year 2002. CRB 132, at Table 1, at p.4. IPG had made claim on behalf of Jack Van Impe Ministries for calendar years 2001-2003, but the claim for 2001 was not being challenged by the SDC. Similarly, IPG had made claim on behalf of Salem Baptist Church for calendar years 2001-2002, but the claim for 2001 was not being challenged by the SDC. IPG had already demonstrated its entitlement to make 2001 claims on behalf of Jack Van Impe Ministries and Salem Baptist Church by submitting copies of its contracts to the SDC in discovery, which contracts were themselves part of the SDC-submitted exhibits. CRB 204, Exhs. 63, 104, 105. IPG noted the SDC's inclusion of 2001 contracts in IPG's proposed findings. CRB 252 at pp. 6-7; CRB 276, 288.

IPG defended itself from the SDC challenge to the (non-2001) claims of Jack Van Impe Ministries and Salem Baptist Church by introducing evidence that IPG timely filed a "July claim" on behalf of each entity for the years in question (CRB 209, Exhs. 55-62), and had engaged in recent correspondence with each such entity relating to these proceedings, pursuant to which each such entity had affirmed its engagement of IPG. CRB 209, Exhs. 95-100, 400. Such correspondence requested each such entity to review an Excel spreadsheet containing 50,000 compensable titles as part of IPG's representation of it in these proceedings, and subsequent to doing so, to review and confirm thousands of

broadcasts of the claimant's program.<sup>2</sup> Even a cursory review of such correspondence demonstrated the continuing knowledge and cooperation of the underlying copyright owner as to IPG's representation of them in the 2000-2003 cable proceedings. Each item of IPG correspondence expressly refers to IPG's engagement by the entity for the collection of cable royalties, and even the subject line of each item of correspondence was "Royalties Owed for 2000-2003 cable and satellite retransmission royalties" or "Final Broadcast Verification". *Id.*

IPG's representation was further corroborated by IPG's employee witness, who testified that while IPG's policy was to only make claim for a party following execution of a written confirmation of its engagement, neither IPG, Jack Van Impe Ministries, or Salem Baptist Church, could locate certain of the (non-2001) decade-old contracts that had been executed for the particular years of the challenged claims, though the contracts for 2001 had been produced to the SDC.<sup>3</sup> *See* CRB 252 (IPG Proposed Findings of Fact and Conclusions of Law, pp. 1, 3, 6-7).

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<sup>2</sup> The purpose of confirming broadcasts other than just by program name was to confirm that the identified broadcasts were actually broadcasts of the claimed program, as sometimes programs with identical names are erringly included as part of the claimant's claim.

<sup>3</sup> CRB 225 (Transcript of 11-14-12 at 428:20-429:11, 440:22-441:4, Jack Van Impe Ministries; 435:5-14, 443:10-13, Salem Baptist Church).

As such, as regards the 2001 claim of Jack Van Impe Ministries, before the Judges was the executed agreement between IPG and Jack Van Impe Ministries, as well as three items of correspondence received by IPG from Jack Van Impe Ministries, pursuant to which that entity responded to three separate inquiries for information from IPG, each inquiry requesting that Jack Van Impe Ministries review extraordinary amounts of information in connection with IPG's engagement for the 2000-2003 proceedings.<sup>4</sup> No differently, as regards the 2001 claim of Salem Baptist Church, before the Judges was the executed agreement between IPG and Salem Baptist Church, and Salem Baptist Church's response to correspondence from IPG requesting that Salem Baptist Church review an extensive list of broadcasts of its programming to be claimed by IPG in the 2000-2003 proceedings.<sup>5</sup>

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<sup>4</sup> The evidence introduced by IPG reflected that Jack Van Impe Ministries was requested to review lists of 25,000 titles, 50,000 titles, and lists of specific Jack Van Impe Ministries broadcasts, in order to confirm which titles and broadcasts thereof should be claimed by IPG in the 2000-2003 cable proceedings. *See* CRB 209, Exhs. 96, 98. Because of the printed size of the attached files, i.e., lists that would be 500 pages long and 1,000 pages long, IPG produced only the first page of the files, wherein the response of Jack Van Impe Ministries was reflected.

<sup>5</sup> *See* CRB 209, Exh. 100. CRB 209, Exhibit 400 to the proceedings, was a printout of the first page of the attachment that is referenced in the Exhibit 100 email, but was inexplicably excluded from admission against IPG's protest that it was the merely the attachment referenced in the immediately prior exhibit. CRB 225 (Transcript of 11-14-12 at 435:15-19, 437:4-21).

Per the Judges' order, IPG submitted its Proposed Findings of Fact and Conclusions of Law, summarizing and citing all relevant evidence, including reference to IPG's submission of the 2001 agreements with Jack Van Impe Ministries and Salem Baptist Church. *See* CRB 252.

**b. The March 21, 2013 Order.**

By order of March 21, 2013, the Judges rendered a decision on the SDC motion. CRB 271 at pp. 6-9 and 15-17.

As to the SDC motion to dismiss certain of the claims filed on behalf of Jack Van Impe Ministries and Salem Baptist Church, the Judges:

- dismissed the 2001-2003 claims of Jack Van Impe Ministries (even though the 2001 claim was not challenged by the SDC); and
- dismissed the 2001-2003 claims of Salem Baptist Church (even though IPG had not asserted a 2003 claim, and the 2001 claim was not challenged by the SDC).
- in ruling as to the dismissal of such claims, the Judges found IPG's submission of correspondence between IPG and such entities to be insufficient, even though it was substantially identical to the evidence that IPG submitted in the defense of its represented claims by Benny Hinn Ministries and Creflo Dollar Ministries, which evidence was accepted by the Judges as sufficient.

CRB 271 at pp.6, 8-9.

**c. IPG’s Motion to Reconsider rulings dismissing claims.**

On April 5, 2013, IPG submitted its “Motion for Reconsideration of Order Following Preliminary Hearing on Settling Devotional Claimants’ Motion to Strike Portions of Independent Producers Group Claims” on the grounds, *inter alia*, that the Judges had dismissed IPG-represented claims that were *not even being challenged*. CRB 276, 288. IPG noted that the SDC’s briefing made clear that its challenges to IPG claims were expressly based on IPG’s inability to produce contracts applicable to the particular claim years, but even the SDC brief made clear that IPG had produced executed contracts applicable to calendar year 2001, for both Jack Van Impe Ministries and Salem Baptist Church.<sup>6</sup> *Id.* In fact, the SDC motion had *even attached* the 2001 agreements for Jack Van Impe Ministries and Salem Baptist Church as Exhibit B thereto. CRB 132 at Exh. B. No testimony

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<sup>6</sup> The opening phrase of the SDC’s motion was “. . . the [SDC] move to strike from IPG’s Direct Case any and all of IPG’s Devotional claims that are not supported by an Agreement.” CRB 132 at p.1. At page 4 thereafter, Table 1, the SDC acknowledge the existence of a 2001 agreement both for Jack Van Impe Ministries and Salem Baptist Church. Section I.A. of that motion is devoted to the argument that “The [CRB] Should Strike from IPG’s Direct Case All Putatively Represented Devotional Claimants With Which IPG Has No Agreement.” CRB 132 at p.2. The only other SDC argument related to IPG’s lack of “authentication” of such agreements. CRB 132 at p.5. Such was the only challenge to the Jack Van Impe Ministries and Salem Baptist Church agreements, and was made only as a non-specific challenge to *all* IPG agreements, but as IPG aptly pointed out in its Reply In Support of Motion for Reconsideration, “authentication” was impossible until an evidentiary hearing had occurred, the SDC did not ultimately challenge authentication of such agreements at the hearing, and the Judges made no reference to a failure to authenticate in its decision. CRB 288.

was received in the Preliminary Hearing as to the inadequacy of such 2001 agreements, nor was there any further challenge to such 2001 claims.

For the Judges' edification, IPG attached to its motion the fully-executed contracts previously produced to the SDC, bearing the discovery date-stamp numbers. CRB 276. Nonetheless, seeking to take advantage of the Judges' evident error, SDC gratuitously maintained that it *had* challenged such 2001 claims, conspicuously failing to acknowledge that the 2001 contracts had been produced to SDC in discovery, and had been attached to the SDC's moving brief. CRB 284; CRB 132 at Exh. B.

On May 14, 2013, the Judges summarily denied IPG's motion, focusing predominantly on the prevailing standard for entertaining motions for reconsideration.<sup>7</sup> CRB 310. Ironically, although the Judges' March 21, 2013 order had determined that the SDC had provided insufficient evidence to demonstrate that the broadcast cited in SDC-represented claim no. 308 (2000) had been distantly retransmitted, rather than dismiss such claim the Judges solicited

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<sup>7</sup> In addressing whether the Judges' ruling satisfied any prerequisites for a motion for reconsideration, the Judges summarily concluded that IPG "made no showing of clear error or manifest injustice that would warrant reconsideration" of the Judges' order dismissing the 2001 claims of Jack Van Impe Ministries and Salem Baptist Church. That is, no reference was made to the applicable evidence, and no mention was made of the fact that **the SDC did not challenge such claims** and, even if it had, that the Judges had before them the executed contracts that the ruling errantly indicated did not exist.



additional evidence from SDC in order to address such matter.<sup>8</sup> By contrast, the Judges refused to acknowledge the contracts in evidence that were between IPG, Jack Van Impe Ministries, and Salem Baptist Church relating to 2001, which IPG had additionally attached to its motion for reconsideration. While the Judges asserted that they had reviewed the entire record, no reference was made to any of the content of such record, and the Judges simply concluded that IPG had made “no showing of clear error or manifest injustice”, i.e., tracking the standard for reconsideration of a ruling. CRB 310.

## ARGUMENT

### **A. It was clear error for the Judges to strike the 2001 claims of Jack Van Impe Media Ministries and Salem Baptist Church; manifest injustice will occur if the 2001 claims are not reinstated.**

A motion for reconsideration should be granted only where (1) there has been an intervening change in controlling law; (2) new evidence is available; or (3) there is a need to correct a clear error or prevent manifest injustice. See *Order Denying IPG Motion to Reconsider Preliminary Hearing Order Relating to Claims Challenged by SDC* (May 14, 2013).

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<sup>8</sup> After briefing, by order of April 10, 2013, the Judges allowed SDC-represented Claim no. 308 (2000) to stand. CRB 279.

As to the Judges' rulings on the SDC's motion to strike claims, the Judges erred by dismissing the IPG-represented claims of Jack Van Impe Ministries and Salem Baptist Church that complied with 17 U.S.C. § 111(d)(4)(A), and for which sufficient evidence of IPG's representation was presented. The Judges erred by dismissing IPG-represented claims for 2001 **that were not challenged by the SDC**, for which executed contracts for such entities were in the record, and for which correspondence also existed aptly demonstrating IPG's representation of such entities in the 2000-2003 proceedings. No countervailing evidence was presented to dispute the evidence submitted by IPG.

No issue exists that the claims of Jack Van Impe Ministries and Salem Baptist Church were validly filed, and no issue exists that IPG had been engaged to pursue such claims. Several items of correspondence reflect such entities' continuing knowledge and participation in the 2000-2003 proceedings, and literally no evidence to the contrary exists. Even a cursory review of such correspondence verifies such fact, and it is beyond reasonable understanding on what grounds the Judges would have dismissed such claims. IPG even attempted to demonstrate such evidently misguided determination as part of a separately filed motion for reconsideration, but to no avail, the Judges summarily maintained the legitimacy of such dismissal, again without any reference to the evidence before it.

At this juncture, these proceedings offer an opportune moment for the Judges to remedy an apparent error, and avoid manifest injustice. IPG submits its motion on the grounds that clear error has occurred and/or to prevent manifest injustice.<sup>9</sup> The 2001 claims of Jack Van Impe Ministries and Salem Baptist Church were not even challenged by the SDC and clearly the Judges, while engaged in a complex and multi-faceted review of evidence, mistakenly lumped those 2001 claims together with other claims being dismissed. Such errors periodically occur, no different when the Judges erringly dismissed the 2001-2002 and 2004-2009 claims of Salem Baptist Church in the consolidated 1999-2009 satellite/2004-2009 cable proceedings, **then subsequently reinstated such claims when the Judges were apprised of such error.**<sup>10</sup> Regardless, such claims should be reinstated at this time.

**B. The CRB denied IPG due process.**

Additionally, the Judges denied IPG due process by refusing to consider post-hearing evidence offered by IPG to support its position, while nevertheless

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<sup>9</sup> The Judges lack of discussion of the evidence relied on for their decision theoretically allows that the Judges' consider IPG's cited evidence to be "new evidence", but IPG does not presume such position by the Judges.

<sup>10</sup> *Order on IPG Motions for Modification* at p. 5 (April 9, 2015), Docket nos. 2012-6 CRB CD 2004-09, 2012-7 CRB SD 1999-2009.

soliciting post-hearing evidence from SDC to support its position on a disputed claim.

Following the Preliminary Hearing, the Judges determined that SDC had failed to demonstrate that the broadcast cited within SDC-represented Claim no. 308 (2000) had been distantly retransmitted. Notwithstanding, rather than dismiss such claim, as occurred with the IPG-represented claims addressed above, the Judges solicited additional evidence from the SDC in order for the SDC to preserve such claim. By contrast, IPG's attempt to submit post-hearing evidence was soundly ignored, despite contradicting on its face the very basis upon which the Judges had dismissed the related 2001 claims of Jack Van Impe Ministries and Salem Baptist Church.<sup>11</sup>

Basic due process requires that “what is good for the goose is good for the gander”. Here, the Judges allowed the SDC to present *post hoc* evidence regarding its claims, but then refused to allow IPG to do the same. Obviously, such disparity is unfair and inconsistent with due process.

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<sup>11</sup> As noted previously, while IPG submitted the contracts relating to the 2001 claims of Jack Van Impe Ministries and Salem Baptist Church, such documents had already been attached as exhibits to the SDC's “Motion to Strike Portions of IPG's Claims and Direct Case”. CRB 132.

## CONCLUSION

For the reasons set forth herein, the Judges should reinstate the 2001 claims of Jack Van Impe Ministries and Salem Baptist Church.

Respectfully submitted,

Dated: May 10, 2017

\_\_\_\_\_/s/\_\_\_\_\_  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of May, 2017, a copy of the foregoing was sent by overnight mail and email to the parties listed on the attached Service List.

\_\_\_\_\_/s/\_\_\_\_\_  
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