Before the
Copyright Royalty Judges
Washington, D.C.

In the Matter of	)	
Distribution of 2000-2003 Cable Royalty Funds	)	Docket No. 2008-2 CRB CD 2000-2003 (Phase II) (REMAND)

INDEPENDENT PRODUCERS GROUP'S REPLY IN SUPPORT OF 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 *Reply In Support of Motion for Reconsideration of Order Dismissing 2001 Claims of Jack Van Impe Ministries and Salem Baptist Church*.

A. THE SETTLING DEVOTIONAL CLAIMANTS ALTOGETHER FAIL TO ADDRESS THE MERITS OF IPG'S MOTION, MISTATE THE ENTITY FOR REVIEW OF THE JUDGES' DECISION AND, THEREFORE, CITE INAPPLICABLE AUTHORITY.

The Settling Devotional Claimants ("SDC") offer a two-page response to IPG's motion. Not one word addresses the substantive basis for IPG's motion.

That is, not one word addresses the fact that the SDC never challenged the validity of the 2001 claims of Jack Van Impe Ministries and Salem Baptist Church. Not one word addresses that the Judges had no basis for dismissing the 2001 claims of Jack Van Impe Ministries and Salem Baptist Church because (i) such claims were timely filed by IPG, (ii) IPG had agreements in place with such entities,[1] (iii) IPG produced such agreements to the SDC, and (iv) even though not the basis of an SDC challenge, such IPG agreements were in evidence before the Judges. Nor does the SDC address the Judges' perfunctory explanation as to why the 2001 claims were being dismissed, nor address the discrepant treatment afforded for the benefit of the SDC.[2] In sum, literally no discussion is presented as to whether the Judges' dismissal of such claims is "clear error or a manifestation of injustice" or a denial of due process.

Rather, the SDC offer an opposition based purely on procedural grounds, effectively arguing "what's done is done" because IPG did not appeal the Judges'

[1] As noted in the motion, IPG also directed the Judges' attention to the several items of correspondence whereby such entities identified their programming and communicated such information to IPG for the purpose of IPG prosecuting their claims.

[2] As noted in IPG's moving papers, the SDC were given an opportunity to produce additional documentation in opposition to a challenge to an SDC claim, rather than the abrupt dismissal levied on IPG for the 2001 claims of Jack Van Impe Ministries and Salem Baptist Church.

dismissal of such 2001 claims to the Court of Appeals for the D.C. Circuit. The SDC then submit authority for the holding that the failure to appeal a determination when the opportunity was presented becomes the "law of the case", and results in a waiver of any further opportunity to address the particular issue. Specifically, the SDC argue that IPG had an opportunity to appeal the Judges' refusal to acknowledge valid 2001 claims by Jack Van Impe Ministries and Salem Baptist Church to the Court of Appeals for the D.C. Circuit, but failed to do so.[3]

The SDC's citation of authority labors under the misimpression that IPG's avenue for the Judges' refusal to consider the 2001 claims of Jack Van Impe Ministries and Salem Baptist Church was an appeal to the Court of Appeals for the D.C. Circuit. On the contrary, no different than any whole-handed refusal to

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[3] To evidence the Judges' agreement with the same concept, the SDC cite to the Judges' footnoted statement in a prior order:

> "With regard to the SDC appeal, IPG *supported* the Judges' claims rulings in the devotional category; those rulings are not an issue on remand."

SDC Opp. at p. 2, citing *Order for Proceedings On Remand and Scheduling Order* at fn. 2 (Jan. 14, 2016) (emphasis added).

Obviously, IPG did not *support* the Judges' dismissal of the 2001 claims, so the basis of such statement is unclear. In fact, the appealability of the Judges' ruling was not even a subject being briefed in advance of the Judges' *Order for Proceedings On Remand and Scheduling Order*, so the language could appropriately be considered dicta.

consider claims submitted to and filed with the Copyright Office, the avenue for review is vis-à-vis the United States District Court, based on a violation of the Administrative Procedures Act and the Due Process Clause of the Fifth Amendment.[4]

Consequently, the SDC cite inapplicable legal authority. In the event that the Judges maintain their refusal to consider the 2001 claims addressed above, IPG's recourse is to address such matter with the U.S. District Court, not the Court of Appeals for the D.C. Circuit. In light of the fact that IPG is not foreclosed from addressing such matter with the U.S. District Court, no "law of the case" precedent applies, and the Judges are not foreclosed from reconsidering this clearly errant ruling.

B. ISSUES SHOULD BE RECONSIDERED WHERE A PRIOR DECISION IS CLEARLY ERRONEOUS AND WOULD WORK A MANIFEST INJUSTICE.

The SDC cites authority for the general rule of the "law of the case"; i.e., that prior rulings in a proceeding should not be disturbed, specifically when not challenged on an appeal. However, as explained above, the ruling at issue here was not subject to direct appeal to the Court of Appeals, and was therefore not part of the appeal in this proceeding.

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[4] See, e.g., *Universal City Studios LLLP, et al. v. Marybeth Peters*, Case nos. 04-5138, 04-5142 (USCA, D.C. Cir.)(Apr. 8, 2005), citing *Universal City Studios LLLP, et al. v. Marybeth Peters*, 308 F.Supp. 2d 1 (D.C. 2004), *Metro-Goldwyn-Mayer Studios v. Marybeth Peters*, 308 F.Supp. 2d 48 (D.C. 2004).

In addition, while the general rule of the "law of the case" makes good sense, the United States Supreme Court, and other courts, have always upheld the all important caveat, that reconsideration of prior rulings is appropriate to correct an erroneous finding that constitutes a manifest injustice. *See Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988) (quoting *Arizona v. California,* 460 U.S. 605, 618 n. 8 (1983)) (stating that courts should be "loathe" to reconsider matters "in the absence of extraordinary circumstances such as where the initial decision was 'clearly erroneous and would work a manifest injustice.'"). Consistent therewith, the Supreme Court has held that every order short of a final decree is subject to reconsideration at the discretion of district judges. *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 12 & n. 14 (1983).

Therefore, to the extent that continuing to deny claims of Jack Van Impe Ministries and Salem Baptist Church which have never even been challenged constitutes an erroneous decision which will work a manifest injustice, the Judges are not handcuffed by their prior ruling on the matter and may remedy the situation.

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,

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_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that on this 30th 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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