

**Before the
COPYRIGHT ROYALTY JUDGES
Washington, DC**

In the Matter of)	
)	
Phase II Distribution of the 2000, 2001, 2002, and 2003 Cable Royalty Funds)	Docket No. 2008-2 CRB CD 2000-2003 (Phase II)
)	

**SETTLING DEVOTIONAL CLAIMANTS' OPPOSITION TO INDEPENDENT
PRODUCERS GROUP'S MOTION FOR RECONSIDERATION OF ORDER
DISMISSING 2001 CLAIMS OF JACK VAN IMPE MINISTRIES AND SALEM
BAPTIST CHURCH**

The Settling Devotional Claimants ("SDC") hereby oppose Independent Producers Group's ("IPG") Motion for Reconsideration of Order Dismissing 2001 Claims of Jack Van Impe Ministries and Salem Baptist Church.

IPG already moved once for reconsideration of the same order dismissing claims of Jack Van Impe Ministries and Salem Baptist Church, on substantially the same grounds as IPG now asserts in its current motion. The Judges denied that motion for reconsideration, finding:

IPG has *i)* offered no evidence that was unavailable at the time of the preliminary hearing, *ii)* cited no extant law or change in the law that would warrant reconsideration, and *iii)* made no showing of clear error or manifest injustice that would warrant reconsideration of the March 21, 2013 Memorandum Opinion and Order.

Order Denying IPG Motion to Reconsider Preliminary Hearing Order Relating to Claims Challenged by SDC, May 14, 2013 (attached hereto as Exhibit A). The Judges' conclusions remain true today.

Since the last time the Judges denied IPG's motion for reconsideration, the Judges issued a final determination, the SDC and IPG both appealed, and IPG withdrew its appeal. Because IPG chose not to pursue its appeal, it has now waived its right to challenge the ruling on claims. The ruling is law of the case, not subject to reconsideration based on the standard for other

interlocutory orders. “[A] legal decision made at one stage of litigation, unchallenged in a subsequent appeal when the opportunity to do so existed, becomes the law of the case for future stages of the same litigation, and the parties are deemed to have waived the right to challenge that decision at a later time.” *Williamsburg Wax Museum, Inc. v. Historic Figures, Inc.*, 810 F.2d 243, 250 (D.C. Cir. 1987); *Palmer v. Kelly*, 17 F.3d 1490, 1494 (D.C. Cir. 1994). “[T]he same issue presented a second time in the same case in the same court should lead to the *same result*.” *United States v. Thomas*, 572 F.3d 945, 949 (D.C. Cir. 2009) (quoting *LaShawn A. v. Barry*, 87 F.3d 1389, 1393 (1996) (en banc)) (emphasis in original). As the Judges have already recognized, “IPG supported the Judges’ claims rulings in the devotional category; those rulings are not an issue on remand” *Order for Proceedings on Remand and Scheduling Order*, Jan. 14, 2016, at 2 n. 2.

Conclusion

For the foregoing reasons, IPG’s latest motion for reconsideration should be denied.

Date: May 23, 2017

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served electronically and via overnight delivery through Federal Express on May 23, 2017, to the following:

INDEPENDENT PRODUCERS GROUP
Brian D. Boydston
Pick & Boydston, LLP
10786 Le Conte Avenue
Los Angeles, CA 90024


Michael A. Warley

Exhibit A

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of

Distribution of 2000, 2001, 2002 and
2003 Cable Royalty Funds

Docket No. 2008-2 CRB CD 2000-2003
(Phase II)

ORDER DENYING IPG MOTION TO RECONSIDER PRELIMINARY HEARING
ORDER RELATING TO CLAIMS CHALLENGED BY SDC

On March 21, 2013, the Copyright Royalty Judges (Judges) issued their Memorandum Opinion and Order Following Preliminary Hearing on Validity of Claims in this proceeding. On April 5, 2013, Worldwide Subsidy Group LLC dba Independent Producers Group (IPG) filed a motion for reconsideration of the portion of the ruling relating to the claims asserted by IPG and challenged by the Settling Devotional Claimants (SDC). SDC filed a response in opposition to IPG's motion on April 10, 2013, and IPG filed a reply on April 15, 2013.

The issue presented by IPG is whether the Judges should reconsider dismissal of certain claims that IPG alleges were not subject to challenge by SDC. SDC responded that its challenge was sufficiently stated and sufficiently broad to include all the claims IPG seeks to have reinstated on reconsideration.

The Judges' procedural regulations are silent on the standard for reconsideration of a ruling on a motion or, as in this case, an interlocutory ruling after preliminary hearing. Under 17 U.S.C. § 802(f)(1)(A), however, the Judges clearly have authority to consider and rule on such a motion. In *Order Denying SoundExchange's Motion to Reconsider the Board's Order Requiring, In Part, the Production of Certain Income Tax Returns*, Docket No. 2005-1 CRB DTRA, 1 (May 3, 2006) the Judges applied the following standard of review in ruling on a motion to reconsider an interlocutory decision regarding production of documentary evidence: "Such motions 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. *Regency Communications Inc. v. Cleartel Communications, Inc.* 212 F. Supp 2d 1,3 (D.D.C. 2002); see also *Firestone v. Firestone*, 76 F. 3rd 1205, 1208 (D.C. Cir. 1996)." The Judges find this standard to be appropriate and applicable in connection with the instant Motion to reconsider portions of the March 21, 2013 Memorandum Opinion and Order.

Although IPG states no legal bases for reconsideration, the motion appears to rest on the third category articulated above. The Judges have reviewed, again, SDC's Motion to Strike Portions of IPG's Claims, IPG's response, SDC's reply, the record of the preliminary hearing, and the exhibits admitted at that hearing. The Judges find that IPG has *i*) offered no evidence that was unavailable at the time of the preliminary hearing, *ii*) cited no extant law or change in the law that would warrant reconsideration, and *iii*) made no showing of clear error or manifest injustice that would warrant reconsideration of the March 21, 2013 Memorandum Opinion and Order.

The Judges, therefore, **DENY** IPG's motion to reconsider in this instance.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'SMBarnett', written above a horizontal line.

Suzanne M. Barnett
Chief U.S. Copyright Royalty Judge

Dated: May 14, 2013