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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 2)

INDEPENDENT PRODUCERS GROUP'S RESPONSE TO SDC'S COMMENTS TO IPG'S MOTION FOR PARTIAL DISTRIBUTION OF 2000-2003 CABLE ROYALTIES

Worldwide Subsidy Group LLC (a Texas limited liability company) dba Independent Producers Group ("IPG") hereby submits its *Response to Settling Devotional Claimants' Comments to IPG's Motion for Partial Distribution of 2000-2003 Cable Royalties*.

Despite taking no issue with an award to IPG of the percentage figures set forth in two prior 2000-2003 cable proceedings, the SDC nonetheless object that IPG is not entitled a partial distribution of the same royalties – as the SDC and all other parties have received – because IPG is merely an "agent" of claimants. While the SDC previously contended that IPG's status

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as an agent fails to satisfy the prerequisite of being an "established claimant", as a matter of law,[1] *now* it acknowledges that other "agents" have received partial distributions as "established claimants", but subjectively argues that IPG is not *sufficiently* an "established agent".[2] The SDC also challenge that it has "substantial questions relating to IPG's willingness and ability to disgorge funds".

The SDC's opposition brief reflects itself to be nothing more than yet another pleading submitted by the SDC in order to harass and besmirch IPG. It is submitted by an entity that typically engages no fewer than five legal counsel to appear at every CRB hearing, in contrast to one attorney for IPG, and two or three for the dramatically larger claims made by the MPAA. If

[1] The SDC retreated from this indefensible position only after IPG's prior pleadings noted that several "agents" had previously received partial distributions, including the Motion Picture Association of America, PBS, the National Association of Broadcasters, and the Canadian Claimants Group.

[2] The SDC ignore that IPG was already sufficiently deemed an "established claimant" in the program suppliers category when it sought and received a partial distribution of 2004-2009 cable royalties attributable to the program suppliers category. See *Order Directing Partial Distribution of Program Suppliers' Cable Royalties to IPG-Represented Claimants for 2004 through 2009* (Nov. 9, 2016).

there ever is a pleading that SDC counsel are capable of filing, irrespective of the merits thereto, rest assured that the SDC counsel will do so.

A. IPG seeks distribution of an amount far less than the lowest amount the SDC has *ever* contended that IPG was due for 2000-2003 cable royalties, and the SDC ignore their own contentions about the value of IPG's claims

In the initial round of these proceeding, the SDC contended that IPG was entitled 32.5%, 25%, 35%, and 31%, respectively, of the of the 2000-2003 cable royalty pool (devotional). See *SDC Proposed Findings of Fact and Conclusions of Law* at p. 27 (June 17, 2013). This resulted in a blended rate of 30.88% to IPG.[3]

Following that proceeding, the Judges issued their ruling, awarding IPG 37.14%, 39.08%, 41.02%, and 39.08%, respectively, of the 2000-2003 cable royalty pool (devotional). *Distribution of 2000-2003 Cable Royalty Funds*, 78 Fed. Reg 64984 (Oct. 30, 2013). This resulted in a blended rate of 39.08% to IPG. Notwithstanding, following the SDC's appeal thereof, the award was vacated. *Settling Devotional Claimants v. Copyright Royalty Board*, 797 F.3d 1106 (D.C. Cir. 2015).

[3] Although the amounts in each of the 2000-2003 devotional royalty pools vary, they vary insignificantly. For this reason, consideration of "blended" rates is reasonable.

In the second round of these hearings, the SDC contended that IPG was entitled 28.3%, 27.2%, 32.6%, and 31.8%, respectively, of the 2000-2003 cable royalty pool (devotional). See *Written Direct Statement of the Settling Devotional Claimants On Remand*, Test. of Sanders at p. 12 (April 15, 2016). This resulted in a blended rate of 29.98% to IPG.

Pursuant to a recent filing, the SDC have sought to obtain data developed and generated by the Motion Picture Association of America ("MPAA"), and then apply it to the devotional programming category. While application thereof to the devotional programming category is questionable for several reasons, SDC witnesses have previously testified that the MPAA's methodology results in a *larger* allocation to IPG than the SDC had previously advocated. See *Amended Rebuttal Testimony of SDC Witness Dr. William Brown* at p. 15 (May 24, 2013).

As such, by its motion, IPG seeks a partial distribution -- 21.52% of the 2000-2003 devotional pools -- that is less than 75% of the *lowest* blended figures that the SDC has *ever* argued IPG is due in the 2000-2003 cable proceedings. For its part, the SDC received advance distributions for the same royalty pools *over a decade ago*. Moreover, despite purporting to be

receiving such funds as the representative of the Phase I devotional category, the SDC has refused to distribute any such funds except to itself, and has utilized such advance distributions to fund only its own agenda within the Phase II category. It does not take much to recognize the inequitable nature of this situation. The CRB has funded the SDC's activities, while IPG has borne them independently.

B. The SDC's comparisons to IPG's awards in other years, and for satellite royalty pools, are without merit, and again ignore the SDC's own contentions about the value of IPG's claims for such royalty pools.

The SDC seeks to diminish the value of IPG's 2000-2003 cable claims by comparison to 1999-2013 satellite royalties, and 2004-2013 cable royalties. For various reasons, these are meritless comparisons.

On its face, any comparison between *cable* and *satellite* awards lacks significance. The devotional royalty pool is represented by a dramatically smaller number of programs (relative either to viewership or distribution to system operators), appearing on a much smaller percentage of cable-retransmitted broadcast stations than *any* other category other than the Canadian Claimants Group. A dramatically smaller number of satellite-retransmitted broadcast stations exist compared to cable-retransmitted

stations, and the presence or absence of a single satellite-retransmitted broadcast station carrying devotional programming therefore results in significant swings in a devotional party's potential claim for satellite royalties.

For this obvious reason, comparison between cable and satellite royalty pools has limited significance, and for precisely such reasoning the CRB has previously held that IPG's status as an "established" claimant in the cable proceedings has no application to such status in the satellite proceedings. Docket nos. 2012-6 CRB CD 2004-2009, 2012-7 CRB SD 1999-2009, *Order Granting In Part and Denying In Part IPG's Motion for Partial Distribution of Program Suppliers' Royalties* (Sept. 29, 2016) at 10-11. Logically, the reverse holds true then, i.e., that satellite awards are not dispositive, or even relevant, to cable awards. The SDC nonetheless seek to avoid this ruling, which it advocated to the Judges, and *now* make comparison between cable and satellite awards.

Next, the SDC make comparison to IPG's cable awards for calendar years 2004-2009. As has been addressed at length in motions for reconsideration, and now appellate briefs, IPG's 2004-2009 cable claims were decimated when the Judges imposed a discovery sanction on IPG and

dismissed the claims of entities controlling broadcasts that generated over half of the devotional programming category royalties – Kenneth Copeland Ministries, Creflo Dollar Ministries, and Benny Hinn Ministries. See *Memorandum Opinion and Ruling on Validity and Categorization of Claims* (March 13, 2015), at 39. However, prior to such dismissal, in the years adjacent to 2000-2003, the SDC advocated distribution to IPG of 31.2% (2004), 25.4% (2005), and 32.6% (2006) of the devotional cable pools. Docket no. 2012-6 CRB CD 2004-2009, *Amended Written Direct Statement of SDC*, Test. of Sanders at 11 (July 8, 2014).

The claims validity process in the 2000-2003 cable proceedings was long ago exhausted, and no possibility exists of a comparable sanction or dismissal of IPG claims, so on what basis the SDC advocates figures significantly lower than the lowest it has ever advocated for IPG's cable claims, remains unexplained. The Judges should find little credence in the SDC's claim that it might employ a new alternative methodology based solely on comparison to satellite awards, which are irrelevant, or adjacent years, as IPG's cable claim for 1999 resulted in a 28.7% award, and the SDC advocated a 2004 cable award of 31.2% prior to the aforementioned

discovery sanction. Such facts only buttress the reasonableness of IPG's motion for partial distribution.

Finally, as for a comparison of 2010-2013 royalties, such figures are inapplicable for even more significant reasons. First, the closest royalty pool is separated by seven years from the last royalty pool considered by IPG's motion for partial distribution. Apparently evident to everyone other than the SDC counsel is that broadcasts during one year are not necessarily comparable in scope or extent to the same producer's broadcasts almost a decade later. Second, the percentages allocated to IPG for 2010-2013 were the product of a consent order, not a litigated proceeding. Docket no. 14-CRB-0010-CD/SD (2010-13), *Final Determination Regarding Distribution of Royalties for Claimants in Devotional Category* (July 18, 2018). Consequently, to suggest that such figures bear any resemblance to what would have resulted following scrutinization of the SDC data and methodology, is simply wishful thinking on the part of the SDC.

For all the foregoing reasons, the SDC's contention that the Judges should consider IPG's satellite awards, or cable awards that were subject to a significant sanction that does not appear during 2000-2003, or stipulated

awards agreed that are for no earlier than seven years afterwards, is clearly not "reasonable".

C. The SDC's ostensible concern that IPG will be unable or unwilling to disgorge funds is contrived, and based on a disturbing number of misrepresentations and non-sequitur arguments. The SDC have no standing to involve itself in contractual matters between IPG and its represented claimants, and the Judges have already ruled their lack of authority to involve themselves in such matters.

Ostensibly out of the goodness of its heart, the SDC embark upon an area for which it has no standing, and argue that they are concerned that IPG will be unable or unwilling to disgorge the funds collected on behalf of its represented devotional claimants.[4] On such grounds, the SDC argue that the Judges should not make a partial distribution of royalties to IPG for 2000-2003 cable royalties from the devotional category.

Following prior attempts to inject the Judges in the contractual relationships between IPG and its represented claimants, including IPG's dispute with Bob Ross, Inc., the Judges have correctly declined to involve

[4] The SDC's disingenuous concern for the well-being of IPG-represented devotional claimants may be properly evaluated against the SDC's prior attempts in all proceedings to dismiss the valid claims of such claimants, in order that such claimants receive no royalties for any of their cable and satellite retransmitted programs.

themselves.[5] Nevertheless, refusing to abide by such ruling, the SDC persist, and lob a host of accusations against IPG based on its unsubstantiated and non-sequitur "suspicions" of IPG's alleged insolvency and alleged refusal to abide by its contractual relationships. The logic by which the SDC reaches its conclusions regarding these matters is as flawed and contrived as the SDC's purported motives.

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[5] Following IPG's most recent request for a partial distribution of royalties, the Judges held the following:

> "With respect to IPG's willingness to pay its own claimants funds that are due to them, MPAA alleges that IPG continues to withhold cable royalties it received on behalf of Bob Ross, Inc. As a preliminary matter, the Judges note that no IPG claimant responded to the *Federal Register* notice announcing IPG's request for partial distribution. Therefore, the Judges have no evidence from IPG-represented claimants to support MPAA's allegation. Assuming, for the sake of argument, that MPAA's allegations are true, MPAA describes a contract dispute between IPG and a claimant. The Act does not authorize the Judges to adjudicate or mediate contract disputes.
>
> Therefore, the Judges conclude that MPAA has not stated a reasonable objection to IPG-represented claimants receiving a partial distribution of cable royalties from the Program Suppliers category for 2004-2009."

See *Order Granting In Part and Denying In Part IPG's Motion for Partial Distribution of Program Suppliers Royalties* at p. 9 (Sept. 29, 2016), Docket nos. 2012-6 CRB CD 2004-09 (Phase II), 2012-7 CRB SD 2004-09 (Phase II).

First, the SDC states that "there is substantial reason to suspect that IPG is insolvent". SDC Comments at 6. In fact, this is fabrication, used by the SDC as a platform to besmirch IPG based on matters lacking any logical segue (e.g., IPG's 2010-prospective transfer to Multigroup Claimants), none of which are unrelated to IPG's activities, much less its finances.

The sole predicate of this conclusion is the SDC's false statement that IPG "engaged in a large conveyance of assets [to Multigroup Claimants and Spanish Language Producers for the years 2010 and later] without consideration". As even the SDC note, the SDC make this allegation without a shred of familiarity with the intra-family transfer amongst the principals of IPG, Multigroup Claimants, and Spanish Language Producers, nor provides any explanation as to why transfers relating to 2010 and after have *any* relation to 2000-2003 cable royalties or IPG's solvency. Such observations were previously raised in IPG's reply brief in support of its motion, yet while the SDC knew of these arguments, still failed to address them in their comments.

Second, and based on the SDC-contrived assertion that IPG conveyed assets "without consideration", the SDC refers to a matter involving Raul Galaz (an employee or consultant to IPG, based on the dates) and Alfred

Galaz, whom did not have an aligned interest with IPG until January 2015. The matter for which the SDC makes comparison, an action before the United States Bankruptcy Court for the Western District of Texas, has already been briefed at length to the Judges in the 2010-2013 proceeding, and simply bears no relation, logical or otherwise, to IPG. That matter did not involve any rights of IPG, and involved a dramatically different factual scenario than the IPG/Multigroup Claimants transfer. Therein, Raul Galaz (not Alfred Galaz) was found liable because he ostensibly transferred rights that he co-owned with others.

Nevertheless, the SDC attempt to equate that matter with the intra-family transfer amongst Denise Vernon and Alfred Galaz, whereby Denise Vernon transferred 2010-forward rights for which it is universally acknowledged that only Ms. Vernon controlled. Nonetheless, in order to evoke a negative reaction by the Judges, the jingoistic mantra of the SDC is to contend the latter transaction to be "fraudulent", regardless of *any* suggestion to such effect. Again, no basis exists to characterize Ms. Vernon's transfer to Alfred Galaz as "fraudulent", and the SDC's

characterization is revealed as but another gratuitously false accusation thrown out by the SDC.[6]

Third, for the umpteenth time the SDC raise the contractual dispute between IPG and Bob Ross, Inc. as a tenuous basis for denying IPG a partial distribution of royalties, and despite this panel's explicit rulings on this matter. See cited excerpt, footnote 5, supra. The SDC rehash the entire Bob

[6] In its tortured listing of why the IPG/Multigroup Claimants transfer is fraudulent – a transfer exclusively relating to 2010-prospective royalties, and altogether unrelated to the royalties at issue herein -- the SDC identify six purported "badges of fraud" that qualify such transfer as a violation of the Uniform Fraudulent Transfer Act. Claiming that "all six badges of fraud" are present, the SDC then present a list that summarily fabricates the positions. For example, although the transfer was between Denise Vernon and Al Galaz, the first "badge of fraud" recites that "the transfer was to Raul Galaz's father." Next, the SDC contend, again without substantiation, that Raul Galaz (a non-party to the transfer) retains substantial control over the royalty rights. Third, the SDC again fabricate their *already-rejected* contention that Al Galaz attempted to deceive the Judges as to the identity of Multigroup Claimants and Spanish Language Producers (even though the transfer bore his name as the signatory for such entities), then continues with its unsubstantiated allegations that there was "no consideration" and that IPG is insolvent and refuses to disgorge funds. Literally every contention rests of fabricated conclusions derived from unsubstantiated allegations, *and nothing more,* many of which the Judges have *already* rejected. See *Ruling and Order Regarding Objections to Cable and Satellite Claims* at 2, et seq. (Oct. 23, 2017), Docket nos. 14-CRB-0010-CD (2010-2013), 14-CRB-0011-SD (2010-2013). In addition to these several unsubstantiated allegations, which even if accurate would be logical disconnects, what is never explained by the SDC is how a transfer relating to 2010-prospective claims affects the "solvency" of IPG in connection with 2000-2003 royalties.

Ross, Inc. matter then, based on a knowingly misattributed position of IPG, argue that: IPG has reversed position, that such reversal bears on IPG's credibility, and such reversal bears on the partial distribution sought by IPG herein. Specifically, the SDC falsely assert that on October 28, 2016 "Multigroup Claimants further expressed to the Judges that IPG was willing for the entire amount to be returned to PBS", citing to an October 28, 2016 pleading filed by Multigroup Claimants. See *Multigroup Claimants' Opposition to SDC Motion for Disallowance of Claims Made by Multigroup Claimants*, No. 14-CRB-0010-CD 2010-13, Oct. 28, 2016, at 33.

Review of that pleading makes clear that Multigroup Claimants was detailing an offer that had been made by IPG *over six years ago*, and prior to revelation by Bob Ross, Inc. of documents relevant to the dispute. IPG's position as to the Bob Ross, Inc. matter is succinctly and comprehensively set forth in recent correspondence attached to the SDC opposition brief, has been set forth on countless occasions, and is no different than has been stated for several years. See SDC Comments at Exh. 11 (April 12, 2017 letter by Brian Boydston). Notwithstanding, dissatisfied with the relevant facts, in an effort to prop up its arguments regarding Bob Ross, Inc., the

SDC misrepresent IPG's position, and misrepresent the position of IPG as set forth in pleadings filed by Multigroup Claimants.

In any event, IPG's contractual dispute with Bob Ross, Inc. has never had any relation to the devotional programming category, has no relation to this proceeding, presents a unique factual scenario that bears no relation on IPG's contractual relationships with devotional producers and, most significantly, is a contractual dispute for which the Judges have already indicated they have no authority to adjudicate.[7] The SDC's desire to continually draw the Judges into that contractual dispute – which has long passed – certainly does not provide the Judges license to adjudicate such dispute as a basis of determining the credibility of the SDC's unsubstantiated accusation that the Judges should be worried about IPG's willingness to disgorge funds. Moreover, and no different than when the MPAA attempted to raise the Bob Ross, Inc. contractual dispute as a basis for opposing a partial distribution to IPG, the Judges should recognize the same fact as it did therein: "As a preliminary matter, the Judges note that no IPG claimant

[7] See *Order Granting In Part and Denying In Part IPG's Motion for Partial Distribution of Program Supplier's Royalties* at p. 9, Docket nos. 2012-6 CRB CD 2004-2009 (Phase II), 2012-7 CRB SD 1999-2009 (Phase II).

[e.g., Bob Ross, Inc.] responded to the *Federal Register* notice announcing IPG's request for partial distribution."[8]

Finally, despite an absolute lack of relevance, the SDC cite IPG's litigation with its former clients Worldwide Pants and Federation Internationale de Football Association ("FIFA"). Both of those cases were brought by IPG for those entities' breach of contract. In the Worldwide Pants litigation, the SDC correctly notes that Worldwide Pants *accused* Raul Galaz of stealing royalties from Worldwide Pants – $325,000 – as a defense to rationalize its breach of contract. Notably, no ruling to such effect ever occurred, nor did Worldwide Pants ever seek such a ruling. In fact, despite its accusation, and despite the forum to do so, Worldwide Pants never attempted to countersue IPG based on such allegation. IPG was so infuriated by the accusation, which was affirmatively disproven by documents in Worldwide Pants' possession, that it sought to strike such

[8] *Order Granting In Part and Denying In Part IPG's Motion for Partial Distribution of Program Suppliers Royalties* at p. 9 (Sept. 29, 2016), Docket nos. 2012-6 CRB CD 2004-09 (Phase II), 2012-7 CRB SD 2004-09 (Phase II).

pleadings,[9] publicly announcing that were Worldwide Pants to utter such contention outside of the context of legal pleadings, where an absolute privilege to defamation exists, IPG and Mr. Galaz would file suit against Worldwide Pants for defamation.

As regards the FIFA litigation, a matter that has also been extensively briefed to the Judges[10], the SDC tellingly fail to inform the Judges the full status of the matter. Specifically, although the Ninth Circuit found that IPG had established a *prima facie* case of contract formation, a jury of eight subsequently found exactly the opposite based on the *identical* contract formation documents. This occurred because the overseeing trial court failed to instruct the jury that an agreement did not require a single instrument signed by both parties, but could instead be formed in counterparts via email, as occurred between IPG and FIFA. See generally *Worldwide Subsidy Group v. Federation Internationale de Football*

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[9] The District Court declined to strike the pleading because it ruled that it was not within its authority to do so. *Worldwide Subsidy Group v. Worldwide Pants*, Case no. CV 14-03682-AB (ASx) (U.S.D.C., C.D. CA), *Order Granting Defendant's Motion for Summary Judgment and Denying Plaintiff's Motion to Strike* (Feb. 14, 2017).

[10] See *Memorandum Opinion and Ruling on Validity and Categorization of Claims* (March 13, 2015), at 45-47.

Association, Case no. 18-56033 (U.S.C.A. 9th Cir.). Far from a situation where IPG made claim to royalties on behalf of a claimant that had not authorized IPG to do so – as the SDC mischaracterize – IPG had written authorization from FIFA, according to the Ninth Circuit Court of Appeals.

CONCLUSION

The SDC's challenge to IPG's receipt of any partial distribution is, simply put, maliciously motivated. This fact resonates clearly by the sheer number of allegations of "fraud", "insolvency", "intention to deceive", and "refusal to disgorge" that remain nothing more than unsubstantiated allegations.

Now that IPG has received a final, non-appealable award of 1999 cable royalties in the devotional category, IPG has qualified itself as an "established claimant" in the devotional category. Advance distribution of 75% of the minimum amount that IPG will receive is therefore warranted. No "reasonable objection" has been set forth to such proposed partial distribution.

As to the "substantial questions" that ostensibly drive the SDC's concern for IPG clients, the SDC has no support from the IPG-represented claimants, nor have the IPG-represented claimants expressed such concern.

In fact, with the sole exception of Billy Graham Evangelistic Association, all of the devotional claimants on whose behalf IPG makes claim in the 2000-2003 proceedings are still represented by IPG, and have been represented by IPG without interruption since no later than for calendar year 2000 royalties. Most of such entities have engaged IPG for the collection of royalties ex-U.S. and, consequently, for twenty-one (21) years IPG has collected ex-U.S. royalties on behalf of such entities and accounted to them, all without incident.

Notwithstanding the foregoing, and that there is no evidence or even suggestion of discord between IPG and its represented claimants, the SDC claim that they know better, and that it has "substantial questions relating to IPG's willingness and ability to disgorge funds". However, the SDC's "substantial questions" are nothing more than poorly thought out excuses raised by the SDC in order to disrupt or antagonize IPG's operations, and to delay distributions to IPG and its represented claimants. Quite simply, the SDC seek to accomplish this goal by requiring the Judges to engage in endless consideration of specious arguments. The Judges should rule in IPG's favor, without further delay.

Respectfully submitted,

Dated: May 10, 2019

_____/s/_____
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Proof of Delivery

I hereby certify that on Thursday, May 16, 2019 I provided a true and correct copy of the Independent Producers Group's Response to the SDC's Comments to IPG's Motion for Partial Distribution of 2000-2003 Cable Royalties to the following:

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Signed: /s/ Brian D Boydston