

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

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

Docket Number 2008-2 CRB CD 2000-03
(Phase II) (Remand)

ORDER DENYING IPG’S MOTION FOR RECONSIDERATION
(Jack Van Impe Ministries and Salem Baptist Church)

The parties to the captioned remand proceeding are Worldwide Subsidy Group LLC dba Independent Producers Group (IPG) and the Settling Devotional Claimants (SDC), a consortium of copyright owners asserting claims to funds allocated to the Devotional Programming category. In May 2017, IPG filed with the Copyright Royalty Judges (Judges) a Motion for Reconsideration of Order Dismissing 2001 Claims of Jack Van Impe Ministries and Salem Baptist Church (Motion) seeking reconsideration of a claims ruling the Judges made in 2013 (March 2013 Order).¹ IPG argues that the Judges erred in dismissing the 2001 claims because, according to IPG, the claims were validly filed, SDC did not challenge those claims, and “no issue exists that IPG had been engaged to pursue such claims.” Motion at 10. IPG further contends that the Judges denied IPG due process by refusing to consider post-hearing evidence offered by IPG to support its position while soliciting post-hearing evidence from SDC to support its position on a disputed claim. Motion at 12. According to IPG, that asserted disparity is “unfair and inconsistent with due process.” *Id.*

The Judges denied IPG’s first motion for reconsideration of the March 2013 Order entered in May 2013 (May 2013 Order).² At the time of the first request for reconsideration, the Judges noted that IPG had not met the standard for reconsideration, *i.e.*, IPG had (1) offered no new evidence that was unavailable at the time of the preliminary hearing, (2) cited no legal

¹ The order IPG challenges in this motion is the Judges’ Memorandum Opinion and Order Following Preliminary Hearing on Validity of Claims (Mar. 21, 2013) (March 2013 Order). In that opinion and order, the Judges found: “With respect to IPG’s authority to file claims on Jack Van Impe’s behalf for 2001-2003, the only evidence in the record, other than self-serving correspondence and testimony from IPG’s own witnesses, is [sic] curt response from a representative of Jack Van Impe to IPG stating ‘Yes, these titles belong to our ministry.’ See IPG Ex. 99. That evidence alone is insufficient to show that IPG was duly authorized to file claims on Jack Van Impe’s behalf from 2001-2003. Therefore, SDC’s request to dismiss those claims is GRANTED.” March 2013 Order at 8-9. The Judges further found: “With respect to claims for 2001-2003 royalties, the only evidence, other than that prepared by IPG, to show IPG’s authority to represent Salem Baptist in this proceeding is a statement from Salem Baptist stating: ‘Attached is the revised list of the unclaimed Spreadsheet.’ IPG Ex. 100. After reviewing all relevant evidence in the record, the Judges find insufficient evidence to show that IPG was authorized to file claims on Salem Baptist’s behalf for 2001-2003. Therefore, SDC’s request to dismiss those claims is GRANTED.” March 2013 Order at 9.

² See Order Denying IPG Motion to Reconsider Preliminary Hearing Order Relating to Claims Challenged by SDC (May 14, 2013).

authority or change in the law to warrant a reconsideration, and (3) made no showing of clear error or manifest injustice. *See* May 2013 Order at 1.

In their response to the Motion (Response), the SDC related that (1) the Judges issued a final determination in the captioned proceeding, (2) IPG appealed that final determination, and (3) IPG withdrew its appeal. The SDC assert that IPG's failure to challenge the final determination makes the ruling therein the "law of the case." Response at 2. IPG counters in its reply (Reply) that the proper avenue to challenge the March 2013 order is to present the issue to the U.S. District Court for the District of Columbia, asserting violations of the Administrative Procedures Act (APA) and the Due Process Clause of the Fifth Amendment to the Constitution. Reply at 4. The Judges offer no opinion regarding the substantive merits of IPG's assertion that it has avenues of redress that negate the SDC's "law of the case" argument.

As a preliminary matter, the Judges note that IPG had the opportunity to raise the issues that it now raises regarding its authority to represent certain claimants in the initial appeal but chose not to. The U.S. Court of Appeals affirmed the Judges' claims rulings with respect to the Devotional Programming Category while remanding the Judges' decision on the issue of allocation methodology. IPG chose not to seek further review of the Court's decision. Therefore, IPG has waived its right to do so on remand.³

Moreover, the Judges doubt that they have the authority to rule on the constitutionality of their own prior actions⁴, and it is not clear that IPG believes otherwise.⁵ As to the allegation that underlies IPG's due process claim (*i.e.*, that the Judges solicited post-hearing evidence from SDC to support a challenged claim while refusing to allow IPG to submit evidence to support IPG's dismissed claims), however, IPG simply misstates the facts. The Judges' review of the disputed claims of Jack Van Impe Ministries and Salem Baptist Church was based on all of the factual evidence in the record at that time regarding IPG's authority under the Copyright Act and the rules of the CRB to file the disputed claims. The Judges concluded that IPG did not have the

³ *Settling Devotional Claimants v. CRB*, 797 F.3d 1106, 1109-10 (Aug. 14, 2015) ("We affirm the Royalty Judges' procedural rulings resolving which IPG claims could go forward..."). The Judges already addressed this issue in their January 14, 2016 Order For Proceeding on Remand and Scheduling Order at 2, n.2 ("IPG invites the Judges to use the remand proceeding as an opportunity to revisit some of their rulings on claims issues.... With regard to the SDC appeal, IPG supported the Judges' claims rulings in the devotional category; those rulings are not an issue on remand. The Judges decline IPG's invitation."). In its Reply IPG takes exception with the Judges' characterization that IPG "supported the Judges' claims rulings." Reply at 3, n.3. IPG accepted the Judges' claims rulings by choosing not to pursue an appeal on those rulings. IPG now attempts to revisit its own decision to abandon its 2001 claims on a remand that is narrowly focused on allocation methodology. The Judges reject IPG's attempt to relitigate questions of fact that it abandoned in the initial appeal.

⁴ *See, e.g., Ryan v. Bentsen*, 12 F.3d 245, 247 (D.C. Cir. 1993) (constitutionality of a statutory requirement is beyond an agency head's jurisdiction).

⁵ To the extent that IPG raises its due process claim now to exhaust its administrative remedies, the Judges observe that IPG's efforts are unnecessary because IPG exhausted its administrative remedies during the initial appeal. *See* IPG's Motion for Reconsideration of Order Following Preliminary Hearing on Settling Devotional Claimants' Motion to Strike Portions of Independent Producers Group Claims (April 5, 2013). The Judges denied that motion in the May 2013 Order.

authority to do so and therefore dismissed the claims.⁶ By contrast, SDC's argument with respect to its challenged claim was based on an interpretation of regulations administered by the Federal Communication Commission. The Judges deferred a determination pending legal briefing and related testimony regarding those regulations. March 2013 Order at 16. The two situations were materially different. The Judges did not exercise disparate treatment.

In its second request for reconsideration, IPG has offered nothing new. IPG has again failed to meet the minimal standard for reconsideration.⁷

For purposes of the present proceeding now before the Judges on remand from the U.S. Court of Appeals for the D.C. Circuit the Judges **DENY** IPG's Motion.

SO ORDERED.

Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: October 6, 2017.

⁶ Despite IPG's assertion to the contrary, SDC's challenge to IPG's authority with respect to the 2001 claims of Jack Van Impe Ministries and Salem Baptist Church was included in SDC's proposed findings of fact and conclusions of law. SDC PFFCL at ¶ 80 and ¶ 85. Even if SDC had not specifically challenged the 2001 claims at issue, however, the Judges were well within their authority, in administering CRB regulations for filing cable claims, to review IPG's authority to file claims on behalf of a claimant. *See, e.g.*, 37 CFR 360.3(b)(vii).

⁷ The Judges note that a second request for reconsideration four years after the fact would be untimely. They do not opine whether or to what extent that time factor might affect IPG's asserted appellate rights.