

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**DISTRIBUTION OF 2004, 2005, 2006, 2007,
2008, and 2009 Cable Royalty Funds**

**DOCKET NO. 2012-6 CRB CD
2004-09 (Phase II)**

In re

**DISTRIBUTION OF 1999, 2000, 2001, 2002,
2003, 2004, 2005, 2006, 2007, 2008, and 2009
Satellite Royalty Funds**

**DOCKET NO. 2012-7 CRB SD
1999-2009 (Phase II)**

**ORDER DENYING INDEPENDENT PRODUCERS GROUP'S
EMERGENCY MOTION FOR STAY OF PROCEEDINGS**

On December 11, 2017, Worldwide Subsidy Group LLC (WSG) dba Independent Producers Group (IPG)¹ filed with the Copyright Royalty Judges (Judges) a motion for stay of proceedings (Motion). IPG requested a stay of proceedings in the captioned proceeding² pending resolution of a civil action that WSG filed in the United States District Court for the District of Columbia on December 8, 2017. *See Worldwide Subsidy Group, LLC v. Hayden*, Civ. A. No. 17-2643 (RC) (*WSG v. Hayden*). The Motion Picture Association of America, Inc. (MPAA) and the Settling Devotional Claimants (SDC) filed a joint response opposing the Motion (Joint Opposition) on December 15, 2017. IPG filed a reply in support of the Motion on December 22, 2017 (Reply).

For the reasons set forth below, the Judges **DENY** the Motion.

Discussion

In *WSG v. Hayden*, WSG challenges the Judges' interlocutory rulings on claims issues in this proceeding. WSG seeks declaratory and injunctive relief with the ultimate goal of having the District Court reinstate of a number of the claims that the Judges dismissed and reverse the Judges' ruling that IPG's claims are not entitled to a presumption of validity.³

¹ WSG and IPG are, thus, one and the same entity. Nevertheless, since the District Court action was filed in the name of WSG and the Motion was filed in the name of IPG, the Judges will use the two separate names as the context requires.

² Multigroup Claimants (MGC), as IPG's successor in interest, also filed separate, substantially identical motions in Docket Nos. 14-CRB-0010 CD and 14-CRB-0011 SD prior to their consolidation into a single proceeding under Consolidated Docket No. 14-CRB-0010-CD/SD (2010-13). The Judges will address them as a single motion in a separate order.

³ WSG has also moved the District Court for a temporary restraining order to stay this proceeding and the distribution phase of the now-consolidated 2010-13 cable and satellite distribution proceedings. That motion remains pending.

IPG argues in its Motion that the proceeding should be stayed because, were WSG to prevail in *WSG v. Hayden*, the Judges would have to re-open the proceeding to alter the amount of royalties awarded to IPG. Motion at 3. In addition, IPG argues that the Judges have “similarly stayed proceedings pending the outcome of litigation concerning the positions of the parties and claims at issue in pending distribution proceedings” *Id.* IPG concludes that “[t]hen, as now, there appeared to be little purpose in adjudicating claims before the CRB which could be significantly altered by outside litigation.” *Id.*

MPAA and the SDC argue in response that WSG is unlikely to prevail in *WSG v. Hayden* because (a) the District Court has no jurisdiction in this matter, Joint Opposition at 2-4; (b) WSG is unlikely to succeed on the merits of its claim, *id.* at 4-5; (c) WSG has not shown irreparable injury, because it has an adequate avenue for redress by appealing the Judges’ final determination to the United States Court of Appeals for the District of Columbia Circuit (DC Circuit), *id.* at 5-6; and (d) there is no “emergency” requiring urgent intervention by the Judges, since the underlying claims ruling was issued two and a half years ago. *Id.* at 6-9.

In reply, IPG contends that arguments put forward by MPAA and the SDC are largely irrelevant because they address the standards and criteria for issuance of a temporary restraining order, not a stay of proceedings. Reply at 2. Nevertheless, IPG generally controverts MPAA’s and the SDC’s procedural and substantive arguments. Reply at 3-11.

The Judges agree with IPG’s assertion that the standards and criteria governing the issuance of a temporary restraining order differ from those that the Judges employ when considering a motion for a stay of proceedings or other alteration to an established case schedule. Moreover, the Judges find that there would be no point in their adopting a standard that required them to opine on the likelihood that a party will prevail on the merits of a challenge to one of their decisions. Those are matters best left to the reviewing court.

Turning to the Judges’ prior decisions to grant a stay in a proceeding, IPG draws the Judges’ attention to a decision staying the proceeding to distribute 1998 and 1999 cable royalty funds.⁴ In granting the parties’ motions, the Judges noted that, ordinarily, they cannot deviate from the timelines and milestones set forth in the Copyright Act. Nevertheless, they acknowledged that the motions identified “an unusual and narrow set of circumstances that requires an unusual remedy.” *Order Granting Motions to Stay*, Docket No. 2008-1 CRB CD 98-99 at 2 (Jul. 23, 2008) (*Order Granting Motions to Stay*). In particular, the Judges noted that a pending lawsuit by IPG would determine the legitimacy and scope of a settlement agreement potentially covering royalty funds at issue in that proceeding. *Id.* “Without such resolution, it [would] be difficult—if not impossible—for the parties to prepare their written direct statements and present their arguments” *Id.* The Judges granted the motions “to address these concerns and in the interest of conducting a ... proceeding that is both *fair and efficient*” *Id.* (emphasis added).

⁴ *Order Granting Motions to Stay*, Docket No. 2008-1 CRB CD 98-99 (Jul. 23, 2008). IPG unhelpfully failed to identify the Order on which it relies in the Motion, merely mentioning the docket numbers for the 1998-99 cable proceeding and the 2000-03 cable proceeding. IPG attached a different Order (from the 1998-99 cable proceeding) to its Reply that continued the *Order Granting Motions to Stay*. The Judges refer to the original *Order Granting Motions to Stay*, since it more fully articulates the Judges’ basis for granting the requested relief. The Judges are unable to identify which document IPG intended to identify by mentioning the 2000-03 cable proceeding and, therefore, do not consider it.

The *Order Granting Motions to Stay* makes clear that the Judges' principal considerations when asked to stay proceedings are fairness and efficiency. In that particular instance both considerations weighed in favor of granting the stay because the external litigation that gave rise to the motions was potentially dispositive of some or all controversies over the remaining funds for those years.

The outcome of *WSG v. Hayden*, by contrast, would not be dispositive of the instant proceeding. To be sure, it could affect the final distribution shares. It would not, however, remove any funds or parties from the controversy, and it would not affect the Judge's consideration of appropriate methodologies for determining distribution shares. As the Judges observed in ruling on a motion for a continuance of the 2010-13 cable and satellite distribution proceedings, "a final list of accepted claims is not necessary for distribution phase parties to present their proposed methodologies." *Order Granting in Part Multigroup Claimants' Expedited Motion to Continue Distribution Proceedings Following Resolution of Pending Motions*, Docket Nos. 14-CRB-0010-CD (2010-13) and 14 CRB-0011-SD (2010-13) at 4 (Aug. 11, 2017) (citation omitted) (*Order Granting Motion to Continue*).⁵ Once the Judges have determined the appropriate methodology for computing distribution shares, the parties will be able to accommodate changes to the final list of claimed programs, if any, necessitated by a decision of the District Court by applying that methodology to the updated program list. In other words, the outcome of *WSG v. Hayden* will, at most, require a recalculation with new data—not a relitigation of distribution methodologies to determine the appropriate formula for performing that calculation.

A great deal remains to be done before the Judges can distribute the cable and satellite royalty funds at issue in this proceeding. The Judges have scheduled an evidentiary hearing in April, after which they must consider the evidence and arguments and prepare a written determination of the appropriate methodology for computing distribution shares. The Register of Copyrights must review the Judges' determination prior to publication by the Librarian of Congress. The parties then have thirty days to appeal the determination to the U.S. Court of Appeals for the District of Columbia Circuit. The Judges conclude that considerations of fairness and efficiency tilt decidedly in favor moving forward with the proceeding and determining the appropriate methodology for computing distribution shares, while *WSG v. Hayden* proceeds in parallel before the District Court. The Motion is **DENIED** and the existing case schedule remains in effect.

SO ORDERED.

Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: January 4, 2018

⁵ The Judges thus ruled that the pendency of motions to dismiss claims of opposing parties did not require the granting of the requested continuance and was "insufficient justification for MGC's failure" to meet a filing deadline while its motion for a continuance was pending. *Order Granting Motion to Continue* at 4. The Judges nevertheless exercised their discretion to grant a scaled-back version of the requested continuance in recognition of the fact that the Judges' delays in ruling on both the pending claims motions and MGC's motion for a continuance had put MGC in a difficult position. *Id.* at 4-5.