

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

<i>In re</i>	
DISTRIBUTION OF 2000-03 CABLE ROYALTY FUNDS	Docket No. 2008-2 CRB CD 2000-03 (Phase II)
DISTRIBUTION OF 1998-99 CABLE ROYALTY FUNDS	Docket No. 2008-1 CRB CD 1998-99 (Phase II)
DISTRIBUTION OF 2004-09 CABLE ROYALTY FUNDS	Docket No. 2012-6 CRB CD 2004-09 (Phase II)
DISTRIBUTION OF 1999-2009 SATELLITE ROYALTY FUNDS	Docket No. 2012-7 CRB SD 1999-2009 (Phase II)

ORDER DENYING IPG MOTION FOR PARTIAL DISTRIBUTION

On November 29, 2013, Worldwide Subsidy Group LLC dba Independent Producers Group (IPG) filed a motion with the Copyright Royalty Judges (Judges) seeking partial distribution of royalty funds on deposit with the U.S. Copyright Office. The funds were deposited by licensees that retransmitted television programming and music over cable and satellite broadcasting systems. The Motion Picture Association of America, representing certain program suppliers (MPAA) and the Settling Devotional Claimants (SDC) filed responses in opposition to the IPG Motion.

IPG asserts that it is entitled to a partial distribution of funds deposited for royalty years 2000 through 2003. Because the Judges have now issued a Final Determination in the 2000-03 proceeding, IPG asserts that the reasons the Judges cited for denial of IPG's previous requests for partial distribution are now moot. IPG further asserts that the amount it seeks as a partial

distribution is less than the amount the Judges awarded and comparable to the amounts to which MPAA and SDC agreed during the course of the proceeding. IPG finally proffers a unique securitization of any distribution recoupment by asking the Judges to, in essence, lien any and all funds to which IPG might become entitled in the 2000-03 proceeding, as well as any of the other captioned proceedings.

MPAA and SDC oppose any distribution to IPG. Both respondents assert that IPG is not entitled to a partial distribution because *i)* IPG is not an “established claimant” in this or any other proceeding, *ii)* IPG has made previous requests for partial distribution, all of which were denied, and *iii)* the Determination in this proceeding is not “final” as it is on appeal.

In addition, MPAA asserts that IPG’s proposed cross-collateralization scheme is illegal. MPAA Opposition to IPG Motion for Partial Distribution, at 7-8 (Dec. 16, 2014) (MPAA Opposition). MPAA notes that the entities IPG represents in distribution proceedings are not identical as between proceedings. For that reason alone, MPAA argues the Judges cannot securitize distribution from one fund with distributions from other funds with different claimants.

SDC asserts that IPG is not likely to be capable of honoring any pledge to disgorge funds should the decision on appeal not be in its favor. SDC Opposition to IPG’s Motion for Partial Distribution, at 4-6 (Dec. 16, 2013) (SDC Opposition). SDC cites to past wrongdoing by former IPG principal and current IPG employee Raul Galaz, and a history of “litigation regarding money laundering and fraudulent transfers of assets” involving Mr. Galaz, IPG and related entities. *Id.* SDC also reiterates prior fraud by IPG and Raul Galaz, and earlier determinations and dispute settlements that resulted in IPG being barred from participation in earlier distributions. SDC further asserts that the Judges erred in finding that IPG had authority to represent any claimant.

Analysis

At first blush, it may seem odd that a party is seeking distribution of part of an allocation of royalties following a distribution determination that is currently on appeal. Section 801(b)(3)(C) of the Copyright Act (Act) grants the Judges discretionary authority to order partial distribution of royalty fees that are in controversy.¹ Neither the Act nor the Regulations promulgated thereunder provide a mandate or mechanism, however, to execute on a final determination or, in the alternative, to stay execution by means of a *supersedeas* bond. Consequently, notwithstanding the fact that the Judges have issued a final determination, that determination has been rendered non-final by IPG's and SDC's appeals to the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit).

Thus, the Judges appear to have authority to grant a partial distribution if the Judges "conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution"² 17 U.S.C. § 801(b)(3)(C). As discussed above, MPAA and SDC have raised a number of objections to IPG's request. The Judges therefore must determine if any of

¹ The Judges accept SDC's argument that it did not concede that any amount is due to IPG. SDC continuously has disputed that IPG has any entitlement to royalty funds from 2000-03. To preserve the rights of the SDC, however, SDC proffered evidence of the value of its own claims and, if valid, those of IPG. SDC would have been irresponsible not to present valuation and allocation evidence in the alternative, should its no-entitlement argument be rejected. Doing so did not constitute agreement to any level of distribution to IPG.

² Section 801(b)(3)(C) obliges the Judges to publish notice of any proposed partial distribution for comment by interested parties. IPG, in its Motion, and MPAA, in its Opposition, averred that public notice was unnecessary, as the only interested parties are MPAA and SDC, both of which have responded in opposition to the motion. IPG Motion, at 3-4 n.2; MPAA Opposition, at 2 n.1. SDC argues that the Judges should publish IPG's request in the *Federal Register* "in light of the possibility that IPG itself might later challenge the propriety of any distribution ordered at IPG's own request," given IPG's contention in its appeal of the Judges' distribution of 1998 cable royalties that it lacked constructive notice of a distribution pursuant to a settlement to which it was a party. SDC Opposition, at 7-8.

As the Judges find that MPAA and SDC have raised reasonable objections to the requested partial distribution, publication is unnecessary. The Judges note, however, that the Judges have concluded previously that the statutory requirement for published notice and a comment period is inapplicable after the filing of Petitions to Participate (PTPs) and commencement of distribution proceedings. *See* Order Denying Independent Producers Groups' Motion for Partial Distribution, Docket No. 2008-2 CRB 2000-2003 (Phase II), at 2 n.1 (January 17, 2012) (January 17, 2012 Order). Publication after the receipt of PTPs would be "unnecessary and duplicative" because only those claimants who submitted acceptable PTPs are entitled to receive a Phase II distribution and only participants in the proceeding have standing to respond to the motion. *Id.*

those objections is reasonable. The Judges conclude that MPAA and SDC have raised at least two reasonable objections, either of which is sufficient to preclude partial distribution to IPG.

IPG is not an “Established Claimant”

Both MPAA and SDC rely upon decisions in prior proceedings and a Phase I order in this proceeding (the first captioned proceeding) to assert that IPG lacks the status of an “established claimant” in this proceeding. The Register of Copyrights (Register) labeled IPG as a “new claimant” without a stable client base for which it had received previous allocations.³ See Order, Docket No. 2001-8 CARP CD 98-99 at 2-3 (April 10, 2002) (April 10, 2002 Order). The Register deflected IPG’s attempt to obtain partial distribution in the 1998-99 cable distribution proceeding as IPG was not a Phase I participant and had not established a right to any Phase II allocation.⁴

In this proceeding (2000-03 cable distribution), the Judges conclude that the circumstances in which IPG files this motion are not different from the circumstances upon which MPAA and SDC rely to oppose the distribution, notwithstanding that the Judges have now weighed the evidence and reached a conclusion with regard to 2000-03 allocations. See 17 USC § 803(d)(1); cf. 2001-8 Order at 2 (implying that a matter on remand from the Librarian to the CARP is not a final determination). More particularly, the status of the final determination (*i.e.*, pending appeal) places IPG in the same position it occupied in the earlier proceedings, *viz.*,

³ IPG proffered its distribution percentage in the 1997 fund as a basis for partial distribution of the 1998-99 funds. The Register found this evidence insufficient, particularly in light of the remand of the 1997 proceeding to the CARP, rendering that asserted percentage unsettled. The Librarian later vacated the 1997 determination in the context of a global settlement. See 69 FR 23821 (Apr. 30, 2004). The 1997 Determination never became final.

⁴ Earlier, in the 2000-03 proceeding, the Judges denied an IPG request for partial distribution during Phase II before the Judges had determined any allocations. See January 17, 2012 Order at 3. The Judges acknowledged the passage of the Copyright Royalty and Distribution Reform Act, which codifies a scheme for partial distributions pending a final determination. See 17 USC § 801(b)(3)(C). Finding that not all claimants agreed to a partial distribution of 2000-03 royalty funds and that objecting parties had stated “reasonable objection” to the requested distribution, the Judges denied IPG’s request. The Judges concluded that, in the face of a continuing controversy regarding Phase II allocations, a determination in a proceeding under section 803 was more appropriate than an attempt to weigh incomplete evidence and forge ahead under section 801. See January 17, 2012 Order, at 3.

without a track record of final distribution allocations.⁵ The Judges, therefore, reiterate the Librarian's conclusion (derived from the history of distributions under the Tribunal and the CARP system): "partial distributions are primarily based upon percentages established in a prior proceeding." *Id.* at 2-3. IPG has a varying complement of claimant-clients. The 1997 proceeding did not end with a final determination and the 2000-03 proceeding is not yet final. Together, these facts mean that IPG cannot point to any percentage of allocation in a final determination that would inform a current allocation. The Judges, therefore, find that MPAA and SDC have raised a reasonable objection to IPG's request for a partial distribution.

Questions Regarding IPG's Cross-collateralization Proposal

IPG, as an entity, has a hazy corporate history, clouded by internecine disputes and litigation. Mr. Galaz, the former principal of IPG, having been convicted of fraud, disclaims any current ownership or leadership role, yet appears at hearings before the Judges as the primary witness for and on behalf of IPG. Mr. Galaz, IPG, and related entities have been embroiled in litigation related to financial improprieties, and have been accused of further illegal activities. SDC alleges that, based on its history, IPG is unable to, or would refuse to, disgorge any funds that might be distributed before the D.C. Circuit's decision becomes final. MPAA attacks IPG's credibility by attacking IPG's offer to securitize a distribution of 2000-03 royalty funds by liening funds from other royalty years. The Judges have no evidence, either from the hearings in the 2000-03 distribution hearing or proffered to support the theories of the objecting parties, regarding IPG's financial status. Claims of inability to pay, without more, are insufficient to sustain a reasonable objection to partial distribution.

⁵ The Judges interpret earlier decisions' reference to IPG as a "new claimant" or not being an "established claimant" to derive from this lack of a reliable client base and the lack of a final determination with regard to any IPG claimants April 10, 2002 Order at 2-3 (reciting Tribunal reasoning for denying IPG partial distributions); *id.* at 4 (Register's reasoning that IPG's status not yet "established" for partial distribution of '98-'99 funds).

IPG's proposal is troubling for other reasons, however. The plan to cross-collateralize a partial distribution by encumbering other years' funds highlights IPG's misunderstanding of how the Copyright Office maintains and accounts for deposited funds by royalty year. Different claimants are entitled, if at all, to funds only for the years in which they have valid claims and only to the extent that they can prove the value of those claims in any given year. If the Judges were to require, or even allow, IPG to dip into funds from a different royalty year to permit a recoupment by the 2000-03 participants, then IPG would be unable to distribute to the claimants entitled to the funds on hand.

Even without financial evidence, the IPG proposal raises concerns not only about IPG's ability, but also its willingness, to disgorge funds, should the need arise. IPG acts in a fiduciary capacity as representative of the various claimants for whom it collects royalties. IPG proposes that the Judges obligate funds in controversy for one group of beneficiaries to secure repayment of funds in a second disputed fund for a different group of beneficiaries. The Judges cannot grant IPG's request to breach its fiduciary duty to the claimants it represents.

Nothing in the record engenders confidence that IPG would disgorge funds, if a partial distribution were determined finally to have been inconsistent with a potential decision by the D.C. Circuit or with any subsequent proceeding before the Judges in the event of remand. The Judges find, therefore, that SDC has raised a reasonable objection to IPG's request for a partial distribution, though for a slightly different reason than that articulated by SDC.

Conclusion

Under section 801(b)(3)(C), the Judges may make a partial distribution of royalty fees if they conclude that no claimant entitled to receive fees from the fund at issue states a "reasonable objection" to the partial distribution and that all entitled claimants (*i*) agree to the partial

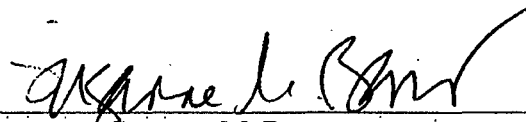
distribution, (ii) sign a disgorgement agreement, (iii) file that agreement with the Judges, and (iv) agree that the funds are available for the partial distribution. In this case, the entitled claimants that responded in opposition to the IPG motion have stated reasonable objections to partial distribution to IPG.

Specifically, the objecting claimants have successfully argued that the absence of a final determination establishing even a range of reasonable entitlement for IPG leaves the Judges with no basis upon which to make a partial distribution. Further, the objecting claimants reasonably argue that IPG is without evidence of an ability to disgorge funds, should the need arise at some point after appeals with respect to the Judges' determination are exhausted. Either of these reasons is a sufficient basis upon which to deny the requested partial distribution.

Order

For the foregoing reasons, the Judges hereby **DENY** the IPG motion for partial distribution in this proceeding.

SO ORDERED.



Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: February 11, 2014

Keys, LaKeshia

From: . crb
Sent: Tuesday, February 11, 2014 12:14 PM
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Attachments: 2-11-14 Order Denying IPG Motion for Partial Distribution.pdf

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