

**UNITED STATES COPYRIGHT ROYALTY JUDGES**  
**The Library of Congress**

*In re*

**DISTRIBUTION OF 2000-2003 CABLE  
ROYALTY FUNDS**

**DOCKET NO. 2008-02 CD 2000-03  
(Phase II) (Remand)**

**ORDER REGARDING ALL PENDING MOTIONS  
FOR FINAL OR PARTIAL DISTRIBUTION OF  
FUNDS IN THE DEVOTIONAL CATEGORY**

**Background**

The captioned royalty distribution proceeding has a long and tortured history. Since December 2011, Independent Producers Group (IPG)<sup>1</sup> has filed motions and renewed motions for final or partial distribution of cable royalties<sup>2</sup> that were allocated to the devotional category of claimants<sup>3</sup> for the years 2000 through 2003. The Settling Devotional Claimants (SDC) have responded to each of IPG’s motions. In July 2019, IPG and the SDC notified the Copyright Royalty Judges (Judges) of a final settlement of all controversies relating to distribution of the devotional category funds for the years at issue (Settlement). *See* Notice of Settlement (Jul. 17, 2019) (Settlement Notice).

After filing the Settlement Notice, on July 25, 2019, the SDC filed a motion for final distribution of the 2000-03 cable royalty funds in the devotional category (SDC Motion). IPG filed a response in opposition to the final distribution motion. *See* Opposition (Aug. 5, 2019). The thrust of the IPG opposition was that, in filing the motion for an order of final distribution, the SDC had breached the parties’ confidentiality agreement relating to the settlement. *See* Opposition at 7-11. IPG also asked for sanctions against the SDC for the breach and demanded

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<sup>1</sup> For purposes of this Order, “IPG” shall refer to Independent Producers Group and all of its parents, subsidiaries, predecessors, successors, assignors, and assignees that have participated in proceedings before the Copyright Royalty Board, *e.g.*, Worldwide Subsidy Group, Multigroup Claimants, Spanish Language Producers.

<sup>2</sup> Under the Copyright Act, cable television system operators are required annually to file a Statement of Account detailing retransmissions of broadcast television programming and to deposit with the U.S. Copyright Office royalty payments for licensing those programs. *See* 17 U.S.C. § 111 (d). One of the functions of the Copyright Royalty Board is to oversee distribution of the deposited royalty funds to copyright owners, the licensors under the Copyright Act. *See* 17 U.S.C. § 801(b)(3).

<sup>3</sup> *See* Motions regarding distribution of devotional category funds filed December 14, 2011 (seeking partial distribution of \$3,000,000); November 29, 2013 (omnibus motion seeking partial distribution in the captioned case or, alternatively, partial distribution of funds at issue in two other proceedings, *viz.* 1998-99 or 2004-2009); April 21, 2017 (seeking 21.52% of devotional funds); October 25, 2019 (Renewed Motion); and July 23, 2021 (Second Renewed Motion); January 28, 2022 (Third Renewed Motion). The Judges denied the December 2011 motion by order dated January 17, 2012. By order dated February 11, 2014, the Judges denied the November 2013 motion because, *inter alia*, the final determination in the proceeding was on appeal at the behest of both IPG and the SDC as cross-appellants.

that “an entirely different panel of Judges be enlisted in order to review this administrative matter—Judges that have not seen the SDC motion or its exhibits.” *Id.* at 11.

Before ruling on the SDC Motion and based upon the parties’ filings relating to the SDC Motion, the Judges ascertained certain issues remained between the parties. The Judges ordered the parties to provide further legal briefing to address those issues: 1) the binding nature of a settlement agreement, 2) allocation and distribution of accrued interest, and 3) determination of the existence of “controversy” as contemplated by section 801(b)(3)(A) of the Copyright Act. Order for Further Briefing (Oct. 22, 2019).

While the SDC Motion was pending, IPG filed what it termed a “Renewed Motion” for partial distribution of devotional funds. *See* Renewed Motion for Partial Distribution (Oct. 25, 2019) (Renewed Motion). In the Renewed Motion, IPG asserted that, after the parties’ Settlement Notice, it considered the April 2017 motion to be moot.

Even after agreeing to a settlement, the SDC continued to respond in opposition to IPG’s motions for distributions. Taking seemingly incongruous positions, the SDC did not oppose *final* distribution of all funds at issue, but opposed *partial* distribution to IPG. After the date of the settlement between the parties, IPG continued to request partial distribution as an alternative to final distribution. The status of the alleged settlement remained, therefore, a mystery.

Following analysis of the parties’ briefs on the SDC Motion, the Judges GRANTED the SDC Motion. Order Granting SDC Motion for Final Distribution (Jan. 9, 2020) (January 2020 Order). In the January 2020 Order, the Judges recounted the history of the parties’ controversies, renewed and restated by each repeated motion and opposition. It is not necessary to analyze here the bases for opposition to IPG’s motions, as the Judges have now ordered a final distribution.

In the January 2020 Order, the Judges authorized final distribution “in amounts to be calculated by the Licensing Division ...” January 2020 Order at 5. The January 2020 Order should have ended the proceeding with a final distribution of all funds remaining on deposit for the devotional category. In March 2020, IPG filed an Emergency Motion seeking an order to compel Licensing to comply with the January 2020 Order and make the final disbursement. The Judges denied the IPG Emergency Motion noting that the Judges lack authority to issue orders to the Librarian of Congress or those acting under her authority. *See* Order Denying IPG Emergency Motion to Compel Licensing Division (Apr. 10, 2020).

On May 1, 2020, the Judges provided the Licensing calculations to both IPG and the SDC and ordered the parties to review the calculations and respond thereto with any necessary clarifications to the calculations. Both the SDC and IPG objected to the Licensing calculations. IPG alleged that the documentation was insufficient for a true review because it failed to detail prior distributions to other claimant categories and details of partial distributions to the SDC. In their review of the documentation, the SDC identified apparent discrepancies in the Licensing calculations, as compared to information previously available to the parties.

The SDC proposed three options as possible methods to address the discrepancies, most notably and apparent surplus of funds in the devotional category for the year 2000. By order

dated August 28, 2020, the Judges sought input from all “Phase I” participants regarding the apparent discrepancies in the calculations and regarding the SDC’s proposed methods of addressing any discrepancies. *See Order Directing Recalculation ... in the Devotional Category ... 4 (Aug. 28, 2020) (August 2020 Order).* The SDC as well as Motion Picture Association, representing program suppliers (MPA) and the Joint Sports Claimants (JSC) all responded to the August 2020 Order.<sup>4</sup> Until November 2020, the Phase I parties exchanged filings in this matter, wrangling over appropriate calculations of distributions and accrued interest.

Notwithstanding the unsettled nature of the distribution calculations, in July 2021, IPG filed the Second Renewed Motion seeking final or partial distribution of the funds at issue. In September 2021, MPA and the SDC filed a Joint Motion for Order Addressing Overpayment and Surplus Issues (Sep. 10, 2021) (Joint Motion). In January 2022, IPG filed the most recent motion, the Third Renewed Motion. In response to the Third Renewed Motion, the SDC referred to the Joint Motion and urged an expeditious conclusion of “this matter so that final distributions can be made.” SDC Partial Opposition to [Third Renewed Motion] (Feb. 8, 2022).

### **Ongoing Activities**

The path to finality in this distribution proceeding has been long and winding. For example,

- both IPG and the SDC appealed the Judges’ 2014 final determination of appropriate distribution of the 2000 to 2003 royalty funds, including those at issue in this proceeding.
- The SDC sought to supplement the record in this proceeding with evidence from a different proceeding of bad acts of principals or alleged principals of IPG.
- IPG filed a motion asking the Judges to compel release of information from Licensing regarding earnings and cost deductions relating to royalty funds.
- IPG subsequently filed an emergency motion asking the Judges to compel action by Licensing.
- The Judges sought further input and guidance from the parties regarding recalculation of the distribution, which revealed that final distributions to other claimant categories had resulted in overpayment to the Program Suppliers category. The Judges permitted the implicated parties opportunities to file pleadings and briefs.

In the most recent, the Third Renewed Motion, IPG asserts that “no reasonable explanation exists as to why the royalties have not been distributed...” Third Renewed Motion at 2.

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<sup>4</sup> The Judges entered a subsequent order permitting MPA and JSC to file supplemental materials after those parties received what had been restricted and unavailable to them. *See Order Granting... Leave to File Supplemental Responses ... (Sep. 24, 2020).*

From and after the time the parties (including MPA) raised accounting issues, the Judges have been in discussions, formal and informal, with the Copyright Office.

### **Analysis and Conclusions**

In its more recent repeated motions, IPG has implied, or stated outright, that it is receiving disparate and discriminatory treatment in this proceeding. Delays in resolving the issue of final distribution, however, are the result of the procedural posture of the proceeding and pending motions regarding the accuracy of calculations relating to the funds on deposit. In August 2020, the Judges detailed the issues raised by both IPG and the SDC and sought direction from the parties with regard to addressing the discrepancies in distribution calculations. Contrary to IPG's assertions that it is being ignored, mistreated, discriminated against, the Judges have conscientiously worked in the background to address the calculation/surplus/deficit issues in order to bring this matter to a close.

The Judges continue to work toward a full and fair accounting of royalty deposits, charges against those deposits, interest accrued on those deposits, and to the extent necessary, reclamation of funds inadvertently distributed from those deposits. Final distributions to the remaining participants in this proceeding will follow resolution of the accounting.

The Judges **DENY** IPG's Second Renewed Motion as moot. The January 2020 Order of final distribution preceded the Second Renewed Motion. The judges **DENY** IPG's Third Renewed Motion as redundant. Only ongoing discrepancies among the parties and Licensing, and the resulting need for potential repayment from other participants, are delaying the final disbursement of funds. These are administrative delays not susceptible at this point to further adjudication by the Judges.

The Judges will notify the participants when Licensing provides a final accounting. Until that time, the Judges will not entertain any further motions for final or partial distribution from the devotional category of funds for the years 2000, 2001, 2002, or 2003. The Judges, therefore, hereby **ORDER** that no party file further pleadings in the captioned proceeding seeking distribution of the remaining contested funds.

**SO ORDERED.**

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Suzanne M. Barnett  
Chief Copyright Royalty Judge

Dated: March 11, 2022.