

Before the  
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In the Matter of )  
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Distribution of )  
2000-2003 )  
Cable Royalty Funds )  
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Docket No. 2008-2 CRB CD 2000-2003  
(Phase 2)

Received

APR 21 2017

Copyright Royalty Board

**INDEPENDENT PRODUCERS GROUP'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 "Motion for Partial Distribution of 2000-2003 Cable Royalties".

By this motion, IPG seeks a partial distribution of funds from the 2000 to 2003 Cable Royalty Funds in the Devotional category in the amount of 21.52% of those funds.

Prior motions of IPG for partial distributions have been denied on the grounds that IPG was not an "established claimant", a requirement uniquely applied only to IPG as a Phase II claimant requesting partial advance distribution. *See* Order Denying IPG Motion for Partial Distribution (Jan. 17, 2012); Order Denying IPG Motion for Partial Distribution (Feb. 11, 2014). Such was the basis for denial even when IPG sought less than one-third of the amounts that adverse parties asserted were due to IPG, and when the only matters on appeal were raised by IPG pursuant to which IPG's entitlement could only increase. The final determination of the Devotional aspect of Docket No. 2008-1 CRB CD 1998-1999 (Phase II) disposes of this impediment.

ORIGINAL

Specifically, on January 14, 2015, the Copyright Royalty Board (“CRB”) Judges issued their “Final Determination of Distributions Phase II” in the 1998-1999 Cable Royalties proceeding. On or about April 10, 2015 the Settling Devotional Claimants (“SDC”) appealed the orders of the CRB dated June 18, 2014, July 3, 2014, January 14, 2015, and March 13, 2015, regarding the Devotional Category in Docket No. 2008-1 CRB CD 1998-1999 (Phase II). Said appeal was assigned case number 15-1084. (IPG filed an appeal of the CRB Orders of June 18, 2014, and January 14, 2015 on April 13, 2015, which was assigned case number 15-1093. The Court of Appeal consolidated the two appeals and IPG later withdrew its appeal.)

On February 10, 2017, the United States Court of Appeals for the District of Columbia Circuit issued an Opinion and Judgment in Case No. 15-1084, in which it upheld the CRB orders referenced above, a copy of which is attached hereto as Exhibit A.

No party sought a petition for rehearing or rehearing en banc, and the time to seek such petitions has now past. On April 6, 2017, the United States Court of Appeals for the District of Columbia Circuit issued a Mandate of the Judgment in Case No. 15-1084, a copy of which is attached hereto as Exhibit B.

Therefore, the ruling of the CRB in that proceeding is now final, and IPG has filed a motion to distribute the 1998-1999 Cable Royalty Funds in the Devotional category consistent with the CRB’s ruling.

According to the Judges’ Final Determination, IPG was awarded 28.7% of the Devotional Royalty Phase II pool for the year 1999.

According to the most recent filing by the SDC, the SDC contends that IPG is 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). IPG contends that it is entitled significantly greater percentages, 40.69%, 46.05%, 62.69%, and 63.66%, respectively. See *Direct Statement of Independent Producers Group* (April 15, 2016).

**A. The Copyright Royalty Judges have Authority to Order Precontroversy Partial Distributions.**

Section 111 of the Copyright Act favors the early distribution of cable royalties. See 17 U.S.C. Section 111(d)(4)(B). Chapter 8 of the Copyright Act vests the Judges with statutory authority to order the precontroversy distribution of cable royalties. In the Copyright Royalty Judges Program Technical Corrections Act, Congress amended Section 801(b)(3)(C) to clarify that a partial distribution of royalties could be made at any time after the filing of claims. Pub. L. No. 109-303 Sections 3, 5, 109<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2006), 120 Stat. 1478. Congress reaffirmed the Judges' authority to partially distribute statutory royalties in advance of the declaration of a controversy. Section 801(b)(3)(C) provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111 . . . may, upon motion of one or more of the claimants and after publication in the Federal Register of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants –

- (i) Agree to the partial distribution;
- (ii) Sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final

determination on the distribution of the fees made under subparagraph (B);

- (iii) File the agreement with the Copyright Royalty Judges; and
- (iv) Agree that such funds are available for distribution.

17 U.S.C. Section 801(b)(3)(C).

**B. IPG's Motion Occurs in a Context that is Fundamentally Different than Existed at the time of IPG's Prior Motions for Partial Distribution; No Reasonable Objection Exists to the Proposed Partial Distribution.**

IPG previously moved for a distribution of cable royalties, and such motion was denied pursuant to the Judges' Order of January 17, 2012. As such Order reflects, absent all claimants agreeing to a proposed partial distribution, the Judges are charged with determining the reasonableness of any objection to a proposed partial distribution. At such time, the Judges determined that a reasonable objection had been made to the partial distribution to IPG of 2000-2003 cable royalties.

Then, following the adjudication of the 2000-2003 cable royalties and the issuance of the Judge's August 13, 2013 "Final Determination of Distributions Phase II" in this proceeding, IPG again moved for a proposed partial distribution. The Motion Picture Association of America ("MPAA") and SDC objected thereto and the Judges' denied IPG's motion on the grounds that since the Judge's 2000-2003 Cable Royalty decision was on appeal, IPG did not yet qualify as an "established claimant".

Now that Court of Appeals has ruled on the appeal of the decision in the 1999 Cable Royalty proceeding, and said decision is final with regard to the Devotional category, it can no longer be said that IPG is not an "established claimant", and no reasonable objection can be sustained to the proposed partial distribution. IPG seeks

distribution of seventy-five percent (75%) of the 1999 award, i.e., 21.52% of the 2000-2003 cable pools attributable to the devotional programming category, well within the parameters of the minimum award advocated by the SDC, and comparable to amounts awarded on multiple occasions to other participants in these proceedings, including the SDC.

IPG agrees to sign the separate agreement contemplated in Section 801(b)(3)(C)(ii) obligating it to return any excess royalty amounts received, in a form to be provided by the Office or the Copyright Royalty Judges, in advance of the requested distribution, and agrees to file such an agreement with the Copyright Royalty Judges or as otherwise directed.

### CONCLUSION

For the foregoing reasons, IPG moves that the Judges order a partial distribution to IPG in the amount of 21.52% of the Devotional share of the 2000-2003 Cable Royalty fund, to be recouped from any final award to IPG in those proceedings.

Respectfully submitted,

Dated: April 19, 2017

\_\_\_\_\_/s/\_\_\_\_\_  
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Attorneys for Independent Producers Group

# **EXHIBIT A**

File pl

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 15-1084****September Term, 2016**

FILED ON: FEBRUARY 10, 2017

SETTLING DEVOTIONAL CLAIMANTS,  
APPELLANTS

v.

COPYRIGHT ROYALTY BOARD AND LIBRARIAN OF CONGRESS,  
APPELLEES

WORLDWIDE SUBSIDY GROUP, LLC, D/A/B INDEPENDENT PRODUCERS GROUP,  
INTERVENOR

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Consolidated with 15-1093

On Appeal from a Final Determination of the Copyright Royalty Judges

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Before: BROWN and PILLARD, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

**J U D G M E N T**

This cause was considered on the briefs and appendix filed by the parties and argued by counsel. It is

**ORDERED AND ADJUDGED** that the final determination of the Copyright Royalty Judges and underlying orders challenged on appeal be affirmed.

Appellants Settling Devotional Claimants (“SDC”) challenge orders issued by the Copyright Royalty Judges (“Judges”) on June 18, 2014 and July 3, 2014. SDC argue that the Judges’ decision to admit testimony that was unfavorable to their cause solely because of SDC’s “flagrant disregard” of a discovery order was an unwarranted and improper sanction. JA 2230. We agree with SDC that the “misconduct” of which they were accused was little more than an innocent mistake. SDC was ordered to indicate in “bold and capital letters that [a document directed to certain persons or entities was] a request and not a subpoena.” JA 1569. Their decision to label this document as a “REQUEST” rather than a “REQUEST AND NOT A SUBPOENA” hardly seems to be a “bald attempt...to mislead witnesses into believing that they had been commanded to appear by the Judges,” as the Judges found. JA 2230; *see* 2315–16. Nonetheless, the Judges’ error was harmless. The exclusion of this testimony, which concerned whether an entity was the copyright owner of

certain programs, would not have affected the outcome of this case. The record indicates that, even without the disputed testimony, the evidence offered by SDC would not have overcome the Judges' presumption that an organization owns the copyright to each of the programs it claims. *See* JA 2241, 2246–47.

Appellant Independent Producers Group (“IPG”) appeals the Judges’ June 18, 2014 order and their denial of IPG’s Motion to Strike written testimony from SDC’s expert witness and subsequent Motion *in Limine*. “Looking through the highly deferential lens of substantial evidence review,” we have no basis upon which to overturn the Judges’ dismissal of IPG’s claim on behalf of Adventist Media Center Productions. *Settling Devotional Claimants v. Copyright Royalty Bd.*, 797 F.3d 1106, 1115 (D.C. Cir. 2015). The justifications set forth in the Judges’ June 18, 2014 order are reasonable. *See* JA 2245–46. Likewise, in light of the “extreme deference” with which we review the Judges’ discovery determinations, we have no grounds to overturn their decision to admit the disputed written testimony into evidence. *Indep. Producers Grp. v. Librarian of Cong.*, 792 F.3d 132, 142 (D.C. Cir. 2015) (quoting *Hi-Tech Furnace Sys., Inc. v. FCC*, 224 F.3d 781, 789 (D.C. Cir. 2000)).

Finally, SDC and IPG both contend that the Judges erred in rendering their Final Determination of Distributions of 1999 Cable Royalty Funds (Phase II), which was subsequently published in the Federal Register. *See* Distribution of 1998 and 1999 Cable Royalty Funds, 80 Fed. Reg. 13,423 (Mar. 13, 2015), JA 4274–95. When reviewing royalty distribution decisions, however, this court asks only if the Board’s allocation percentages are “within a zone of reasonableness.” *Settling Devotional Claimants*, 797 F.3d at 1114 (quoting *Christian Broad. Network, Inc. v. Copyright Royalty Tribunal*, 720 F.2d 1295, 1304 (D.C. Cir. 1983)). The Judges’ final determination easily survives review under this deferential standard and its decision to rely on a viewership-based methodology, which IPG contests, has previously been upheld by this court. *See Indep. Producers Grp.*, 792 F.3d at 142.

Pursuant to Rule 36 of this Court, this disposition will not be published. The clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing or petition for rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/

Ken Meadows  
Deputy Clerk



# **EXHIBIT B**

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 15-1084****September Term, 2016****LOC-80FR13423****LOC-2008-1 CRB CD 98-99****Filed On: April 6, 2017** [1669820]

Settling Devotional Claimants,

Appellant

v.

Copyright Royalty Board and Librarian of  
Congress,

Appellees

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Worldwide Subsidy Group, LLC, d/a/b  
Independent Producers Group,  
Intervenor

---

Consolidated with 15-1093

**MANDATE**

In accordance with the judgment of February 10, 2017, and pursuant to Federal Rule of Appellate Procedure 41, this constitutes the formal mandate of this court.

**FOR THE COURT:**

Mark J. Langer, Clerk

BY:

/s/

Ken R. Meadows

Deputy Clerk

[Link to the judgment filed February 10, 2017](#)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of April, 2017, a copy of the foregoing was sent by overnight mail and email to the parties listed on the attached Service List.

\_\_\_\_\_  
/s/

Brian D. Boydston, Esq.

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