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## **LIBRARY OF CONGRESS**

### **Copyright Royalty Board**

**[Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II)]**

### **Distribution of Cable and Satellite Royalty Funds**

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Notice requesting comments.

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**SUMMARY:** The Copyright Royalty Judges are soliciting comments on a motion by Independent Producers Group for a partial distribution of royalty funds.

**DATES:** Comments are due on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** Interested claimants must submit comments to only one of the following addresses. Unless responding by email or online, claimants must submit an original, five paper copies, and an electronic version on a CD.

*Email:* [crb@loc.gov](mailto:crb@loc.gov); or

*Online:* Use the Federal eRulemaking Portal “Regulations.gov” at: <http://www.regulations.gov>.

*U.S. mail:* Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

*Overnight service (only USPS Express Mail is acceptable):* Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

*Commercial courier:* Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE, Washington, DC 20559-

6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

*Hand delivery:* Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue SE, Washington, DC 20559-6000.

**FOR FURTHER INFORMATION CONTACT:** Lakeshia Keys, Program Specialist, by telephone at (202) 707-7658 or e-mail at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:**

On September 18, 2015, Worldwide Subsidy Group LLC dba Independent Producers Group (“IPG”) filed with the Copyright Royalty Board Judges (“Judges”) a Motion for Partial Distribution of 2004-2009 Cable Royalties and 2000-2009 Satellite Royalties (“IPG Motion”) pursuant to Section 801(b)(3)(C) of the Copyright Act. *Motion for Partial Distribution of 2004-2009 Cable Royalties and 2000-2009 Satellite Royalties*, Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II) (consolidated); *see* 17 U.S.C. 801(b)(3)(C).

IPG seeks a 0.20% share of royalties from the Phase I Program Suppliers Category for the years 2004-2009 for cable and 2000-2009 for satellite.<sup>1</sup> The Motion Picture Association of America, Inc. (“MPAA”) opposes, in part, IPG’s requested partial distribution. *MPAA*

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<sup>1</sup> MPAA and IPG settled all remaining Phase II controversies regarding 1999 satellite royalties in the Program Suppliers Category, and the Judges ordered a final distribution of those royalties. Order Directing Final Distribution of 1999 Satellite Royalty Funds Except Devotional Share, Docket No. 2008-5 CRB SD 1999-2000 (Jun. 19, 2013) and Order Granting In Part Motion for Final Distribution of the 1998 and 1999 Cable Royalty Funds and the 1999 Satellite Royalty Funds, Docket Nos. 2008-1 CRB CD 98-99 and 2008-5 CRB SD 1999-2000 (Jan. 31, 2013).

*Opposition, in Part, to Independent Producer Group’s Motion for Partial Distribution of 2004-2009 Cable Royalties and 2000-2009 Satellite Royalties* (Sept. 25, 2015) (“MPAA Opposition”).

MPAA does not object to IPG’s request with respect to cable royalties, subject to IPG signing a pay-back agreement as contemplated by Section 801(b)(3)(C) of the Copyright Act.<sup>2</sup> MPAA does, however, oppose IPG’s request regarding satellite royalties because, according to MPAA (1) IPG has not yet established its entitlement to receive a share of satellite royalties, and (2) the 0.20% percentage share of the Program Suppliers Category royalties that IPG seeks is either equivalent to or greater than the total royalty award that MPAA proposed for IPG for some of the 2000-2009 satellite funds. *MPAA Opposition* at 1-2. MPAA also states that it has concerns, which it contends the Judges share, “not only about IPG’s ability, but also its willingness, to disgorge funds, should the need arise.” *Id.* at 4, *quoting Order Denying IPG Motion For Partial Distribution*, Docket Nos. 2008-2 CRB CD 2000-03 (Phase II), 2008-1 CRB CD 1998-99 (Phase II), 2012-6 CRB CD 2004-09 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II) at 6 (Feb. 11, 2014).

IPG counters that the “touchstone as to whether a party may seek and be advance distributed [sic] royalties has been determined to be whether such party has established itself as a ‘legitimate’ claimant, and whether adverse parties can set forth a ‘reasonable’ objection to such advance distribution.” *IPG Reply* at 5. IPG contends that for each year from 2000-2009 it

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<sup>2</sup> In its opposition, MPAA provides what it calls a “good faith estimate of the dollar amounts of the shares requested” by IPG for cable royalties. *MPAA Opposition* at 2-3. MPAA does not explain the methodology it used to derive the estimates. In its reply, IPG questions the accuracy of MPAA’s estimates, which IPG states are “substantially lower than what was previously reported by the MPAA to IPG to be the Program Supplier share of such royalty pools.” *Independent Producer Group’s Reply in Support of Motion for Partial Distribution of 2004-2009 Cable Royalties and 2000-2009 Satellite Royalties* (“IPG Reply”) at 1-2 (Oct. 1, 2015). MPAA, in turn, filed a motion to strike IPG’s reply which motion the Judges denied because it was not ripe. *MPAA Motion to Strike IPG’s Reply* . . . (Oct. 6, 2015); *Order Denying MPAA Motion to Strike IG’s Reply* (December 10, 2015).

maintains cable and satellite claims that survived all claims-hearing challenges and to which even MPAA has assigned a value. IPG contends that those facts establish IPG as a “legitimate” claimant entitled to a partial distribution of satellite royalties. *Id.*

IPG also disputes MPAA’s contention that the partial distribution percentage that IPG seeks is equivalent to or greater than the total royalty award that MPAA proposed for IPG for some of the 2000-2009 satellite funds, arguing that MPAA’s “unfounded assertion...is simply inaccurate...” *Id.* at 6.<sup>3</sup>

Lastly, IPG discounts the above-quoted passage from the Judges’ February 11, 2014 *Order Denying IPG Motion for Partial Distribution* regarding the Judges’ concerns about IPG’s ability and willingness to disgorge funds should the need arise. IPG contends that the Judges’ concern expressed in that order (which IPG contends was “unwarranted”) “was inspired by nothing more than inflammatory rhetoric of the [Settling Devotional Claimants].” *IPG Reply* at 7.

Before authorizing a partial distribution of royalty funds requested under Section 801(b)(3)(C) of the Copyright Act, the Judges must first publish a notice in the **Federal Register** seeking responses to the request to ascertain whether any claimant entitled to receive such royalty fees has a reasonable objection to the proposed distribution. This Notice seeks comments on whether any interested claimant asserts a reasonable objection to IPG’s request. The Judges must receive written objections detailing the existence and extent of any entity’s objection(s) by

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<sup>3</sup> The Judges note that MPAA proposed a Program Suppliers satellite share allocation to IPG of 0.20% in 2002 and 0.13% in 2004. For the eight remaining years in controversy, MPAA proposed shares higher than 0.20%. *MPAA-Represented Program Suppliers’ Proposed Findings of Fact and Conclusions of Law* at 7 (Aug. 17, 2015).

the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of that period.

In particular, the Judges seek comment on whether IPG should be considered an “established claimant” for purposes of receiving a partial distribution of royalties, and, if so, for what years and for which Phase I categories, and for which funds. For example, assuming for the sake of argument that IPG is deemed an “established claimant” with respect to the Phase I Program Suppliers Category for cable for a particular year, does that status carry over to other Phase I categories (*e.g.*, Devotionals, Joint Sports, etc.)? Does it carry over to all years? If not, to which years does the “established claimant” status apply? Moreover, does the status of an established cable claimant (or claimant representative) carry over to satellite royalties, as IPG contends, or only to cable royalties? Does the reverse also apply (*i.e.*, is an “established claimant” for purposes of satellite also an “established claimant” for cable)?

If the Judges determine that IPG is an “established claimant” for the first time for any fund, are there safeguards (in addition to the pay-back agreement) the Judges can and should employ to ensure that IPG is able and willing to disgorge in the event of overpaid funds? Which safeguards would be appropriate or necessary? How long should they last and how would they be enforced?

If the Judges determine that IPG is entitled to the partial distribution it requests, what methodology should the Judges use to determine the dollar amount to which IPG is entitled? Would it be necessary for the Judges (or the Licensing Division of the Copyright Office, or both) to have access to all applicable Phase I confidential agreements to make the necessary calculations or is another means available? Commenters should consider what special

calculations would have to be made to determine IPG's share of the various subfunds (Basic, Syndex and 3.75%) in addition to calculating interest on (and deductions of applicable expenses against) funds deposited with the Licensing Division.

The issues and questions set forth above are not necessarily exhaustive. Commenters may address any other issues or questions that they believe are relevant to the pending Motion.

The Copyright Royalty Board has posted IPG's Motion at <http://www.loc.gov/crb>.

Dated: December 10, 2015

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Jesse M. Feder  
U.S. Copyright Royalty Judge.

**[BILLING CODE: 1410-72-P]**

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