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Copyright Royalty Board

[Docket No. 2008-2 CRB CD 2000-2003 (Phase II) (Remand)]

Distribution of 2000-2003 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges solicit comments on a motion of Independent Producers Group for partial distribution of 2000-2003 cable royalty funds.

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

ADDRESSES: You may submit comments and proposals, identified by docket number 2008-2 CRB CD 2000-2003 (Phase II) (Remand), by any of the following methods:

CRB's electronic filing application: Submit comments online in eCRB at <https://app.crb.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.

Instructions: Unless submitting online, commenters must submit an original, two paper copies, and an electronic version on a CD. All submissions must include a reference to the CRB and this docket number. All submissions will be posted without change to eCRB at <https://app.crb.gov/> including any personal information provided.

Docket: For access to the docket to read submitted documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 2008-2 CRB CD 2000-2003 (Phase II) (Remand).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, Program Specialist, by telephone at (202) 707-7658 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in sec. 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying transmission and who timely filed a claim for royalties.

Allocation of the royalties collected occurs in one of two ways. In the first instance, the Judges may authorize distribution in accordance with a negotiated settlement among all claiming parties. 17 U.S.C. 111(d)(4)(A). If all claimants do not reach agreement with respect to the royalties, the Judges must conduct a proceeding to

determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B). Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to resolve identified disputes. 17 U.S.C. 111(d)(4)(C), 801(b)(3)(C).

On April 21, 2017, Worldwide Subsidy Group LLC dba Independent Producers Group (“IPG”) filed with the Judges a motion requesting a partial distribution amounting to 21.52% of the cable royalty funds for 2000-2003 in the Devotional Category pursuant to sec. 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). Motion at 1, 5. IPG arrived at 21.52% by multiplying IPG’s final distribution of 28.7% of funds in the Devotional Category for 1999 by 75%,

On April 26, 2017, the Settling Devotional Claimants (“SDC”) filed an opposition to IPG’s motion arguing, among other things, that IPG is not an established claimant (but rather is a “commercial entity representing claimants”) and that “there are strong reasons to doubt that its single final distribution for 1999 will be predictive of results in later years.” SDC Opposition at 1-2. The SDC also questioned whether IPG would be willing and able to disgorge funds if necessary. *Id.*

On May 2, 2017, IPG replied to the SDC’s opposition, contending that IPG was already deemed an “established claimant” in the program suppliers’ category with respect to 2004-2009 cable royalties and that IPG should not be precluded from receiving a partial distribution merely because it is a claimant representative as opposed to an actual claimant. IPG Reply at 2-3. IPG noted that “[t]he vast majority of entities receiving advances are ‘agents’ of claimants.” *Id.* at 3. IPG argues that the SDC seeks to

distinguish between IPG and other agents, such as the Motion Picture Association of America (“MPAA”), the National Association of Broadcasters (“NAB”), and PBS, which have received partial distributions in the past, on the ground that MPAA, NAB, and PBS are not commercially motivated, unlike IPG. IPG questioned the relevancy of the distinction between for-profit organizations and not for profit organizations, contending that “while many of the entities receiving advances are ostensibly non-commercial, they nonetheless represent (and have received partial distributions on behalf of) commercially motivated agents and commercially motivated claimants.” *Id.* at 4. IPG argued that were there such a rule precluding for-profit entities from receiving partial distributions, IPG would not have been permitted to receive a partial distribution of royalties in the program suppliers’ category. *Id.* at 4-5.¹ IPG dismissed the SDC’s concerns regarding IPG’s ability or willingness to disgorge funds if necessary as “unsubstantiated and non-sequitur ‘suspicions’ of IPG’s alleged insolvency and alleged refusal to abide by its contractual relationships.” *Id.* at 8.

Prior to ruling on a motion for partial distribution filed under § 801(b)(3)(C) of the Copyright Act, the Judges must publish a notice in the Federal Register to determine whether any interested claimant entitled to receive such royalty fees has a reasonable objection to the partial distribution. Accordingly, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the

¹ For its part, the SDC concedes that, based on IPG’s final award for 2000-2003 in the program suppliers’ category, MPAA conceded that IPG was entitled to a partial distribution in that category for 2004-2009 and that the Judges accepted MPAA’s concession. Nevertheless, the SDC “did not and do not make such a concession in the Devotional category based on IPG’s final award for a single year.” SDC Opposition at n.2.

distribution of 21.52% of the 2000-2003 cable royalty funds in the Devotional category to IPG. As the Judges have commenced a distribution proceeding concerning 2000-03 cable royalties, only claimants that have filed petitions to participate in the proceeding (or are included in a petition to participate filed on their behalf) are “interested claimants” for purposes of this Notice. Interested claimants objecting to the partial distribution must advise the Judges of the existence and extent of all objections by 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 the comment period.

Dated: March 27, 2019.

Jesse M. Feder,
Chief Copyright Royalty Judge.

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