

**Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

)
In the Matter of)
)
Distribution of the 2004, 2005, 2006)
2007, 2008 and 2009)
Cable Royalty Funds)
_____)

**Docket No. 2012-6 CRB CD 2004-2009
(Phase II)**

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Copyright Royalty Board

JAN 15 2016

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In the Matter of)
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Distribution of the 1999-2009)
Satellite Royalty Funds)
_____)

**Docket No. 2012-7 CRB SD 1999-2009
(Phase II)**

COMMENTS OF THE JOINT SPORTS CLAIMANTS

The Joint Sports Claimants (“JSC”)¹ submit the following response to the notice of the Copyright Royalty Judges (“Judges”) published at 80 Fed. Reg. 78252 (December 16, 2015) (“Notice”). The Notice solicits comments on the Independent Producers Group’s (“IPG”) “Motion for Partial Distribution of 2004-2009 Cable Royalties and 2000-2009 Satellite Royalties” (filed September 18, 2015) (“IPG Motion”).

IPG requests a partial distribution of royalties from the Program Suppliers category only. See IPG Motion at 1; Notice at 78252. It does not, and cannot, seek a distribution of any royalties in the Sports category; the Judges previously ordered the distribution of all of the 2004-2009 cable royalties and 2000-2009 satellite royalties in that category. See *Order Granting Final Distribution of 2004-2009 Cable and Satellite Sports Royalties*, Docket Nos. 2012-6 CRB CD 2004-09 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II) (September 23, 2014).

¹ JSC is comprised of the Office of the Commissioner of Baseball, the National Basketball Association, the National Football League, the National Collegiate Athletic Association, the National Hockey League and the Women’s National Basketball Association.

Nevertheless, JSC has a significant interest in this matter because in proceedings relating to later years IPG continues to claim royalties from the Sports category on behalf of claimants that it has no authority to represent.²

The Notice asks: “[A]ssuming 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,” to other years, and/or to the satellite fund? *See* 80 Fed. Reg. at 78253. There is no proper basis for extending IPG’s “established claimant” status from one category, one year or one fund to another. The fact that the Judges awarded IPG-represented claimants a share of 2000-03 cable royalties in the Program Suppliers category does not and cannot establish IPG’s capacity to represent *other* copyright owners, in *other* categories, for *other* years or for *other* funds. This is illustrated by IPG’s own claims history in proceedings before the Judges.

For example, the Judges determined that certain copyright owners represented by IPG are entitled to cable royalties from Programming Suppliers category in the 2000-2003 Phase II proceedings. Yet, in the same 2000-2003 Phase II proceedings, the Judges rejected IPG’s claims for a share of royalties in the Sports category. *See Independent Producers Group v. Librarian of Congress*, 792 F.3d 132, 136-37 (D.C. Cir. 2015) (“*IPG v. Librarian*”) (affirming the Judges’ determination that IPG is not authorized to receive any royalties in the Sports category). In the

² *See* “Multigroup Claimants’ Petition to Participate in Distribution Proceedings,” Docket No. 14-CRB-0010-CD (2013) (filed July 2, 2015) (asserting claims for Sports royalties on behalf of the Fédération Internationale de Football Association (“FIFA”), notwithstanding the Judges’ rulings that IPG has failed to show that it has authority to represent FIFA in cable royalty distribution proceedings); “Multigroup Claimants’ Petition to Participate in Distribution Proceedings,” Docket No. 14-CRV-0011-SD (2013) (filed July 2, 2015) (same); “Multigroup Claimants’ Petition to Participate in Distribution Proceedings,” Docket No. 14-CRB-0008-SD (2010-2012) (filed Jan. 21, 2015) (same); “Multigroup Claimants’ Petition to Participate in Distribution Proceedings,” Docket No. 14-CRB-0007-CD (2010-2012) (filed January 21, 2015) (same).

instant proceedings, involving the 2004-2009 cable royalty funds and the 1999-2009 satellite royalty funds, the Judges likewise granted summary adjudication in favor of JSC, finding as a matter of law that IPG had failed to establish that it represented any copyright owner with a claim in the Sports category. *See Order on Joint Sports Claimants' Motion for Summary Adjudication Dismissing Claims of Independent Producers Group*, Nos. 2012-6 CRB CD 2004-2009, 2012-7 CRB SD 1999-2009 (Aug. 29, 2014). IPG's repeated failure to establish any right to represent a claimant to the Sports category illustrates that the mere fact an entity represents a claimant in one category – such as Program Suppliers – does not demonstrate that it is an “established claimant” as to *other*, different categories, such as the Sports category.³

Furthermore, the mere fact of IPG's representation of particular claimants in specific years cannot justify deeming it an “established claimant” as to *other* years. Unlike, for example, the JSC – which has for decades been comprised of a cohesive group of sports organizations, whose content is embodied in distant retransmissions by cable systems consistently throughout every royalty year – IPG has claimed to represent a shifting, ad hoc group of diverse claimants, whose claims may vary from year to year. *See, e.g., Memorandum Opinion* and Order Following Preliminary Hearing on Validity of Claims*, Docket No. 2008-2 CRB CD 2000-20003 (Phase II) (Mar. 21, 2013) (recognizing that IPG had made no claim to sports programming

³ It should be noted that IPG once sought a partial distribution of \$3 million of the 2000-2003 cable royalties attributable to the Sports, Program Suppliers and Devotional categories, more than \$1 million of which would have come from the Sports category. *See Independent Producer Group's Motion for Partial Distribution*, Doc. No. 2008-2 CRB CD 2000-2003 (Phase II) at 1-2 (dated December 14, 2011). The Judges properly denied that request. *See Order Denying Independent Producers Group's Motion for Partial Distribution*, Doc. No. 2008-2 CRB CD 2000-2003 (Phase II) (January 17, 2012). In doing so, the Judges explained: “The reasoning of the Copyright Royalty Tribunal and the Librarian applied in denying unestablished claimants partial distributions is applicable here; we simply do not know at this stage of the proceedings if IPG is entitled to a royalty distribution, let alone the amount.” *Id.* at 3. That same rationale applies where, as here, IPG has yet to establish that it is entitled to receive any share of the Sports royalties.

royalties in the 2001 cable royalty fund). And, on those occasions where IPG has been found to represent an entity, the Judges have not infrequently found that IPG's representation extended only to certain specific years and had been limited – or at some point terminated – by the copyright owner. *See, e.g., Distribution of the 2000, 2001, 2002 and 2003 Cable Royalty Funds*, 78 Fed. Reg. 64984, 64989-90 (Oct. 30, 2013) (chart setting forth purported claims as to which IPG lacked authority for some or all claimed years and claimants who had terminated IPG's authority), *aff'd IPG v. Librarian*, 792 F.3d at 144.

Similarly, the fact that IPG represented a Program Suppliers claimant as to the cable fund for certain years would not justify automatically conferring “established claimant” status on IPG for purposes of that claimant in the other funds (*i.e.*, satellite) – let alone claimants in other programming categories in the satellite fund. To be sure, where a represented copyright owner has claims against both the cable and satellite funds, it typically will participate in both proceedings through the same representative. But that is neither required nor automatic, and particularly in view of the limited, *ad hoc* nature of IPG's prior claimant representations – and the fact that a number of its prior purported representations were refuted or terminated by the copyright owner – IPG's capacity to represent a claimant as to one fund (*e.g.*, cable) should not be presumed based on its representation of that claimant as to a different fund (*e.g.*, satellite).

If and to the extent IPG does in the future establish that it represents claimants entitled to Sports royalties – and assuming *arguendo* that JSC had no reasonable objection to a partial distribution to those claimants – the Judges should prescribe safeguards to ensure that the distributions actually reach the claimants. Sections 111(d)(3) and (d)(4)(B) of the Copyright Act make clear that the Judges may authorize royalty distributions only to “copyright owners entitled to receive them, or to their designated agents” 17 U.S.C. §§ 111(d)(3) & (d)(4)(B). Given

IPG's history, good faith compliance with these provisions requires more than simply having IPG itself execute the repayment agreement contemplated by Section 801(b)(3)(C) of the Act. JSC believes that, at a minimum, IPG must be required to provide contemporaneous evidence that each of the copyright owners it claims to represent has authorized IPG to receive the distribution at issue and has, in fact, received any prior distributions that copyright owner was entitled to receive.

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Respectfully submitted,

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