

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

	)	
<i>In re</i>	)	
	)	
<b>DISTRIBUTION OF CABLE ROYALTY FUNDS</b>	)	<b>NO. 14-CRB-0010-CD (2010-13)</b>
	)	
	)	
<i>In re</i>	)	
	)	
<b>DISTRIBUTION OF SATELLITE ROYALTY FUNDS</b>	)	<b>NO. 14-CRB-0011-SD (2010-13)</b>
	)	
	)	

**RESPONSE OF THE JOINT SPORTS CLAIMANTS  
TO MULTIGROUP CLAIMANTS’ NOTICE OF RULING**

The Joint Sports Claimants (“JSC”)<sup>1</sup> submit this response to the Multigroup Claimants’ (“MGC”) Notice of Ruling (dated Jan. 17, 2017) regarding the unpublished memorandum opinion in *Worldwide Subsidy Grp. v. Fédération Internationale de Football Association*, No. 14-56819 (9th Cir. Jan. 11, 2017) (“FIFA Ruling”). The FIFA Ruling reversed a district court order granting FIFA’s motion to dismiss a breach of contract lawsuit filed by Independent Producers Group (“IPG”) (“FIFA Lawsuit”) for lack of personal jurisdiction, thus permitting IPG to pursue those claims on remand in the district court.

The FIFA Ruling – and the eventual outcome of the FIFA Lawsuit on remand – has no relevance to the issues pending here before the Copyright Royalty Judges (“Judges”) because it does not and could not change the fact that FIFA has “*unequivocally renounced* any ongoing principal: agent relationship with IPG,” and accordingly “IPG is not an ‘agent’ of FIFA for

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<sup>1</sup> The term “JSC” refers collectively to the Office of the Commissioner of Baseball, National Football League, National Basketball Association, Women’s National Basketball Association, National Hockey League and the National Collegiate Athletic Association.

purposes of this proceeding.” *Order on Joint Sports Claimants’ Mot. for Summ. Adjudication Dismissing Claims of Indep. Producers Grp.*, Nos. 2012-6 CRB CD 2004-09 (Phase II), 2012-7 CRB SD 1999-2009 (Phase II), at 5 (Aug. 29, 2014) (“2014 FIFA Order”) (emphasis in original). Even if one assumes *arguendo* that IPG had at some point entered into a valid contract with FIFA and can seek damages for its breach, IPG still has no right to represent FIFA in the current proceedings because, subsequent to the formation of the putative contract, FIFA expressly and unequivocally withdrew whatever authority IPG may have had to act as its agent.

Thus, the Judges’ 2014 FIFA Order, which expressly considered the potential impact of the FIFA Lawsuit (then pending in the district court), ruled that the outcome of the FIFA lawsuit, whatever it ultimately may be, “would have no bearing on the statutory question under the Act, *viz.*, whether IPG had achieved the statutory status of ‘agent’ or ‘copyright owner’ required in order to participate in these proceedings.” 2014 FIFA Order at 5 n.7. As the Judges explained, IPG clearly did not have the status of a copyright owner, and it cannot act as FIFA’s agent given FIFA’s express renunciation of any agency relationship that may at one time have existed. *Id.* at 4-7.

Indeed, the Judges repeatedly have made clear that where “a claimant has provided notice of an immediate termination of its agent, the Judges will honor the claimant’s intent, and the *termination becomes effective immediately to preclude further action by the agent under sections 111 and 119 of the Act.*” *Memorandum Opinion and Ruling on Validity and Categorization of Claims*, Nos. 2012-6 CRB CD 2004-09 (Phase II), 2012-7 CRB SD 1999-2009 (Phase II), at 30-31 (Mar. 13, 2015) (emphasis added). The Judges further observed that, if IPG believes such termination was a breach of contract, it can seek damages in a court of competent jurisdiction, but that does not alter the immediate and preclusive effect of the termination for purposes of

these proceedings. *Id.*; see also *Distribution of the 2000, 2001, 2002 and 2003 Cable Royalty Funds*, 78 Fed. Reg. 64,984, 64,988 (Oct. 30, 2013) (“Where a claimant has unambiguously manifested that it no longer wants a particular entity to represent its interests in these proceedings, the Judges will honor that request.”).

JSC further note that, contrary to MGC’s mischaracterization, the FIFA Ruling did not hold that “FIFA had entered into” a 2001 agreement with IPG. Notice at 2. Rather, the Ninth Circuit merely found that, *assuming* the truth of IPG’s allegations and construing the evidentiary materials “in the light most favorable” to IPG – which is the standard for ruling on a motion to dismiss – IPG had made a sufficient *prima facie* showing to defeat a motion to dismiss for lack of personal jurisdiction and proceed with its lawsuit. FIFA Ruling at 2, 6. In any event, for the reasons discussed above, even if the Judges were to assume that IPG ultimately might prevail on the merits in the FIFA Lawsuit, that would not alter IPG’s lack of authority to pursue claims for FIFA subsequent to FIFA’s express renunciation of any prior agency relationship.

Moreover, FIFA had made this renunciation clear by no later than July 30, 2012, when its counsel expressly told IPG: “As we have said before, FIFA has not and *does not authorize you [or] [IPG] to represent it before the Copyright Royalty Board.*” 2014 FIFA Order at 4 (emphasis by the Judges). Yet MGC now seeks to bring FIFA claims on the basis of a purported “authorization and transfer” of authority from IPG to MGC dated January 20, **2015** — more than two years after FIFA had renounced any agency relationship with IPG. At that point, IPG had no authority whatsoever to transfer any FIFA claim to MGC.<sup>2</sup>

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<sup>2</sup> Nor did FIFA ever assent to any representation by MGC; the “authorization and transfer” was signed only by purported representatives of IPG (Denise Vernon) and MGC (Alfred Galaz). See IPG/MGC Authorization and Transfer, attached as Ex. 4 to Motion of the Joint Sports Claimants To Disallow The Multigroup Claimants’ Claims Against The Sports Category (dated Oct. 11, 2016).

Finally, even if MGC could surmount this barrier (which it cannot), its FIFA claims still would fail for two additional, independent reasons: (1) MGC has failed to establish that FIFA owns the copyright in, and has the right to receive retransmission royalties for, the programming it purports to claim on FIFA's behalf; and (2) MGC has failed to show that the FIFA programs it claims are compensable in the Sports category.<sup>3</sup>

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<sup>3</sup> See Motion of the Joint Sports Claimants To Disallow The Multigroup Claimants' Claims Against The Sports Category, at 6-10 (dated Oct. 11, 2016); Reply Of The Joint Sports Claimants In Support Of Their Motion To Disallow The Multigroup Claimants' Claims Against The Sports Category, at 4-6 (dated Nov. 15, 2016).

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