

BEFORE THE  
COPYRIGHT ROYALTY BOARD  
WASHINGTON, D.C.

In the Matter of )  
 )  
 ) Docket No. 2010-6 CRB CD 2008  
Distribution of the )  
2008 Cable Royalty Funds )  
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**INDEPENDENT PRODUCERS GROUP COMMENTS ON EXISTENCE  
OF CONTROVERSIES (PHASE I AND PHASE II) RELATING TO DISTRIBUTION  
OF 2008 CABLE ROYALTY FUNDS**

Worldwide Subsidy Group LLC (a Texas limited liability company) dba Independent Producers Group ("IPG"), pursuant to the *Request for Comments on Existence of Controversies for 2008 Cable Royalty Funds* published October 29, 2010 by the Library of Congress, 75 Fed. Reg. 66798, hereby notifies the Copyright Royalty Board as follows:

**1. Comments on the Existence of a Controversy with respect to Phase I of the 2008 Cable Royalty Funds.**

IPG maintains claims on behalf of the producers and distributors of devotional programming. In connection therewith, IPG asserts that a controversy exists with respect to the 2008 cable royalty funds.

The extent of the controversy is not known at this time, however, the reservation of at least 2% of the cable proceedings funds as relates to claims on behalf of devotional programming, together with Phase I Claimants' pledges to return any amounts finally awarded in excess of sums partially released, is deemed sufficient to protect the interests of devotional programming

claimants.

**2. Comments on the Existence of a Controversy with respect to Phase II of the 2008 Cable Royalty Funds - - Syndicated Programming Category, Sports Programming Category, and Devotional Programming Category.**

IPG maintains claims in the syndicated programming, sports programming, and devotional programming categories. IPG asserts that a controversy exists with respect to the 2008 cable royalty funds in Phase II of the syndicated programming, sports programming, and devotional programming categories. The extent of the controversy is not known at this time, however, the reservation of at least (i) 20% of the syndicated programming category funds, (ii) 2% of the sports programming category funds, and (iii) 50% of the devotional programming category funds, together with Phase II Claimants' pledges to return any amounts finally awarded in excess of sums partially released, is deemed sufficient to protect IPG's interests.

IPG has been assigned the right to collect cable retransmission royalties in the above-referenced categories by numerous parties. IPG has previously made estimate regarding the maximum percentage that its claims represent of a particular Phase I or Phase II category, subject to the caveat that the full extent of IPG claims could not be determined. This is because IPG's aggregate claim, as with other claimants, is necessarily contingent upon the identity of other claimants and other claimants' programming. Until such information is revealed in these proceedings, estimates as to the value of IPG's claim remain imprecise. Notwithstanding, IPG is aware that its claim significantly exceeds the sum of \$10,000, as referenced at 37 C.F.R. §351.1(b).

**3. IPG Comments on the Partial Phase I Settlement.**

IPG does not object to the distribution of fifty-percent of the 2008 cable royalty funds to the settling Phase I category representatives. IPG does challenge the subsequent distribution of such funds to parties *within* such Phase I categories, i.e., Phase II claimants, until there is either an agreement in place for such distribution between the Phase II claimants, or unless only such funds as are determined to be not in controversy are distributed.

It is a fact that certain organizations, typically because of their size, represent the aggregate of a Phase I category for purposes of negotiating with other Phase I category representatives, but represent less than the aggregate of claimants *within* such Phase I category. Consequently, at the Phase II level, such organization represents only a portion of the claimants to the applicable royalties. To IPG's knowledge, the issue of what persons or organizations are entitled to represent a Phase I category has never been addressed. Is it the perceived largest organization? Is it the organization representing the greatest quantity of July claimants? Is it the organization representing July claimants with the perceived largest claims? These questions remain unanswered.

In connection with a proposed advance distribution of 2003 Cable Royalty funds, IPG informed the CRB that various parties had entered into Phase I settlement agreements purportedly on behalf of an entire Phase I category, received an advance distribution on behalf of the Phase I category, then distributed such funds *only to claimants they represented in the Phase II proceedings, to the exclusion of all other claimants in such category.*<sup>1</sup> As such, while the

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<sup>1</sup> For example, after receiving advance distributions applicable to the Phase I syndicated programming category, the MPAA has repeatedly distributed such funds to the approximately 100 claimants that it represents in the Phase II proceedings within such category, and refused to distribute any amount to IPG (as the representative of 200-250 claimants within such category).

strength of the category is affected by the aggregate of claimants making claim within a category, the royalties advanced to the entire category have gone exclusively to a subset of claimants within the category.

IPG did not object to the partial distribution *to* Phase I representatives, but requested that any distribution of Phase I royalties be subject to the caveat that further distribution *within* a Phase I category be contingent on agreement or resolution within such category, i.e., Phase II agreement or resolution.<sup>2</sup> See “Independent Producers Group’s Opposition to ‘Phase I Claimants’ Notice of Partial Phase I Settlement and Motion for Further Distribution”, Docket No. 2005-4 CRB CD 2003. Notwithstanding, the CRB’s responded by stating:

“The Board is also rejecting IPG’s request to prohibit the common agent receiving the royalties from distributing them to parties within the Phase I categories. Not only would IPG’s request frustrate the purpose of making a Phase I distribution, it is contrary to well-established precedent. Citing *Nat’l Assn. of Broadcasters v. Copyright Royalty Tribunal*, 722 F.2d 922, 939 (D.C. Cir. 1985)(claimant with no claim to settled royalties not permitted to “upset the apple cart”).

Order of August 23, 2006, Docket No. 2005-4 CRB CD 2003.

It is IPG’s belief that the CRB misunderstood IPG’s request and thought that IPG objected to distribution *to* particular Phase I category representatives. This belief is derived from the phrasing of the CRB order, and the authority cited by the CRB. The cited authority involved a situation pursuant to which one Phase I claimant objected to the distribution to other Phase I

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<sup>2</sup> At a Phase II level, resolution can also include advance distribution of funds not in controversy, no different than at the Phase I level.

claimants of funds, despite the fact that such funds were not in controversy. As appropriately pointed out by the court in that action:

“As we previously observed, the Copyright Act anticipates that parties may settle their claims, and that they can receive any part of the fund not in controversy. . . . We would effectively eliminate the likelihood for settlements if we accepted the Devotionals' contention that when one claimant -- no matter how modest that claimant's likely share under even the most sanguine view -- chooses not to settle with the other claimants, all awards would thereby be in controversy and a full hearing on all claims would be required. Past history suggests that at least one claimant will in any given proceeding feel sufficiently aggrieved to upset the settlement apple cart.”

Id. The foregoing did not represent the situation before the Copyright Royalty Board. IPG was not challenging the distribution of funds *to* the Phase I category representatives, i.e., funds “not in controversy.” Rather, IPG was challenging the subsequent distribution of funds only to certain Phase II representatives within a Phase I category, i.e., funds that *were* “in controversy”, though only at the Phase II level.<sup>3</sup>

As noted, the dilemma presented to IPG is that various parties that participate both in Phase I and Phase II proceedings have seen fit to act with pure self-dealing, refusing to inform all others within such Phase I category of the nature or even amount of the settlement,<sup>4</sup> and then distributing the settled funds exclusively to themselves and to their represented individual

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<sup>3</sup> For example, IPG does not challenge the advance distribution of funds to representatives of the devotional programming category, but by every conceivable method of measurement – quantity of programming, ratings, etc. – suggests that IPG represents the majority of devotional claims. As such, it would be inequitable for a representative of the devotional programming category to receive an advance distribution on behalf of the entire devotional category, then distribute such funds only to the Phase II devotional claimants that such person represents, to the exclusion of IPG.

<sup>4</sup> Such refusal to inform other Phase II parties of the Phase I settlement amount was, in fact, addressed within the 1997 Cable Royalty proceedings (Phase II, syndicated programming), and held to be impermissible. That is, in that proceeding, a participant in the Phase II proceedings (MPAA) who had represented the Phase I category in the aggregate, was compelled to reveal to

claimants. Such distributions are without any recognition of the viable, legitimate claims of other Phase II claimants, *within* their Phase I category.

IPG has previously informed the CRB of the nature of its represented claimants. IPG represents the programming of literally hundreds of film and television producers, and the majority of programming in certain categories. IPG's catalogue represents daytime soap operas, late-night and prime-time television, devotional broadcasters, sports programming, children's programming, etc. Yet while almost a decade's worth of Phase II proceedings remain unresolved, *certain* Phase II parties have received advance distributions of hundreds of millions of dollars and other Phase II parties, irrespective of the validity of their claims, have received nothing.<sup>5</sup>

For the foregoing reasons, IPG does not object to the distribution of fifty-percent of the 2008 cable royalty funds to the settling Phase I category representatives, *provided that* the subsequent distribution of such funds to parties *within* such Phase I categories, i.e., Phase II claimants, does not occur until there is either an agreement in place for such distribution between

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IPG the Phase I settlement amount for such category. See Order of June 28, 2000 at 5, Docket No. 2000-2 CARP CD 93-97.

<sup>5</sup> Further inequity exists by the fact that those Phase II parties receiving advance distributions, in their competition to represent claimants, have advertised that they are able to secure funds prior to other Phase II parties.

the Phase II claimants, or unless only such funds as are determined to be not in controversy are distributed.

Respectfully submitted,

Dated: November 27, 2010

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