

Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

In the Matter of )  
 )  
Distribution of 2003 ) Docket No. 2005-4 CRB CD 2003  
Cable Royalty Funds )

**INDEPENDENT PRODUCERS GROUP'S  
RESPONSE TO CRB'S SOLICITATION OF COMMENTS TO PHASE I  
CLAIMANTS' MOTION FOR FURTHER DISTRIBUTION**

Claimant Worldwide Subsidy Group LLC (a Texas limited liability company) dba Independent Producers Group ("IPG"), hereby responds to the Copyright Royalty Board's ("CRB") solicitation of comments, published at 72 Fed. Reg. 46516, August 20, 2007.

**1. IPG's Comments to Proposed Distribution.**

- a) Distribution to NPR: IPG has no objection.
- b) Reserve of 0.5% for Devotional Claimants: IPG objects, as noted below.
- c) Reserve of 5.5% to satisfy disputes with the Canadian Claimants: IPG has no objection.
- d) Distribution of remainder to settling Phase I Claimants: IPG objects, as noted below.

In response to a Federal Register notice issued by the CRB, IPG previously issued its "Comments on the Existence of Controversy and Notice of Intent to Participate in 2003 Cable Proceedings." In such document, IPG notified the CRB of its intent to participate in Phase I proceedings relating to several Phase I categories in which IPG maintained claims.

In light of various rulings by the CRB, IPG at this time notifies the CRB of its intent only to participate in Phase I proceedings relating to the Devotional Programming category and the Spanish-language programming category (see *infra*).

Consistent with IPG's prior notice to the CRB, IPG believes that a reserve of no less than two percent (2%) of the 2003 Cable royalty pool should be reserved to cover Phase I claims in the Devotional Programming category, and no less than two percent (2%) of the 2003 Cable royalty pool should be reserved to cover Phase I claims in the Spanish-language programming category. Consequently, a reserve of only 0.5% of the pool to cover Phase I claims in the Devotional Programming category is inadequate as greater royalties remain in controversy. Additionally, distribution of the remainder of the royalties to a common agent for the settling Phase I claimants, without consideration for the Spanish-language programming category is objectionable, as such royalties remain in controversy.

As regards Phase II claims, IPG's prior notice informed the CRB of IPG's intent to participate in proceedings within the Syndicated Programming (aka Program Suppliers), Sports Programming, Devotional Programming, and Spanish-language Programming categories. To the extent that the "Phase I Claimants' Motion for Further Distribution" seeks distribution of royalties to which IPG seeks claim as a Phase II claimant, IPG objects. The Phase I claimants' motion requests distribution to a common agent in order to protect the confidentiality of such settlement, so IPG may only speculate as to what value of the aggregate pool IPG's Phase II claims are valued against. Nevertheless, IPG surmises that eight percent (8%) of the aggregate pool will sufficiently

protect IPG's Phase II Syndicated Programming claims, and that an additional 0.8% of the aggregate pool will sufficiently protect IPG's Phase II Sports Programming claims.<sup>1</sup>

In sum, and for the reasons set forth above, IPG believes that no less than 12.8% of the 2003 Cable royalty pool should be reserved in order to fully protect IPG's interests (i.e., 2% + 2% + 8% + 0.8%), in addition to reserves for the Canadian Claimants, and in addition to reserves for any expenses incurred by the CRB in the administration of these proceedings. Although the CRB is more capable of estimating the expenses involved for the anticipated Phase I and Phase II hearings, a reserve of two percent (2%) of the aggregate pool appears reasonable, thereby resulting in a grand total reserve of 18.8%. IPG, therefore, would not object to a lump sum partial distribution of 81.2% IPG, however, notes that it is unaware of other Phase II claims that may be pending, which would necessarily increase the necessary reserve in order to protect such parties' interests.

## **2. IPG's Comments regarding Conditions on Advance Distributions.**

The CRB has inquired as to what additional conditions should be imposed if the Judges find that a partial distribution is warranted, other than those required by section 801(b)(3)(C). To this question, IPG would maintain that any recipient of advance funds must address the value of the claims of its adversaries, and assert the minimum value of such claims under its elected methodology, thereby identifying the aggregate of funds "not in controversy".

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<sup>1</sup> IPG bases this estimate on the Phase II claims of IPG, calculated against the Phase I percentages awarded in the 1998-99 Cable proceedings, Docket No. 2001-8 CARP CD 98-99, 69 Fed. Reg. 3606 (January 26, 2004).

Historically, and despite IPG's representation of hundreds of well-known producers, certain participants have denied the validity of *any* WSG-represented claimants.<sup>2</sup> Quite bluntly, such positions are not taken in good faith, and merely asserted to preclude advance distributions. However, equipped only with lists of an adversary's represented parties, a matter of record, it is possible for any participant to calculate on a rough basis what it believes to be the minimum value of the adversary's claim. In fact, in order to assess its own claim, and thereby assert that such funds are not "in controversy", each participant must necessarily assess the claims of all other participants. Moreover, such prima facie review of an adversary's claims would encourage settlement discussions.

### 3. IPG's Comments regarding Phase I and Phase II controversies.

As set forth in IPG's "Comments on the Existence of Controversy and Notice of Intent to Participate in 2003 Cable Proceedings", IPG notified the CRB of its intent to participate in Phase I and certain Phase II proceedings in which IPG maintained claims.

At this time, IPG notifies the CRB of its intent only to participate in Phase I proceedings relating to the Devotional Programming category and the Spanish-language programming category (see *infra*). As mentioned previously, the extent of the controversy is not known, however IPG believes that reservation of no less than two percent (2%) of the 2003 Cable royalty pool should be reserved to cover Phase I claims in

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<sup>2</sup> In connection with the 1997 Phase II Syndicated Programming proceedings, IPG discovered that the adverse party therein had warranted under penalty of perjury its representation of more than 100 claimants, and received approximately \$65 Million in advance funds, prior to ever soliciting representation of a single claimant, which solicitation came only after receipt of the advance distribution. Ironically, such participant has without exception denied any validity to any claims made by IPG.

the Devotional Programming category, and no less than two percent (2%) of the 2003 Cable royalty pool should be reserved to cover Phase I claims in the Spanish-language programming category. Together with Phase I Claimants' pledges to return any amounts finally awarded in excess of sums partially released, IPG believes such reservation is sufficient to protect IPG's interests.

As regards Phase II proceedings, IPG notifies the CRB of its intent only to participate in Phase II proceedings relating to the Syndicated Programming (aka Program Suppliers), Sports Programming, Devotional Programming and the Spanish-language 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, (iii) 50% of the Devotional Programming category funds, and (iv) 80% of the Spanish-language Programming category funds, together with Phase I Claimants' pledges to return any amounts finally awarded in excess of sums partially released, is sufficient to protect IPG's interests.

#### **4. IPG's Comments regarding Addition of Phase I Categories.**

In connection with its one litigated proceeding, relating to 1997 Cable royalties, IPG recognized that no spanish-language television stations were included in its adversary's methodology, predominantly because such stations were not the most significantly retransmitted stations. Moreover, IPG is aware of no methodology currently being advocated that addresses the retransmission of spanish-language programming.

At the time of the aforementioned litigated proceeding, IPG represented no spanish-language programmers. Progressively, however, IPG began to represent multiple spanish-language programmers, and preliminary data reflects that two percent (2%) of the

households to which programming is retransmitted are from spanish-language stations. As should be immediately recognized, this cognizable percentage is equal to or vastly exceeds the percentage of retransmitted programming falling in other Phase I categories. Moreover, and as has been publicly reported for the last several years, the percentage of spanish-language programming available in the United States has been growing significantly. IPG, therefore, anticipates that spanish-language programming will grow to be a significantly larger category.

In light of the fact that a cognizable percentage of programming exists, and currently equals or exceeds the percentage of retransmitted programming of certain other Phase I categories, and such programming is not addressed or compensated by any current distribution methodology, acceptance of spanish-language programming as a Phase I category is warranted. It is, of course, also significant that one Phase I category, the Canadian Claimants, is based solely on the nationality of the claimants, irrespective of the fact that the language of much of the claimed programming is English, and would still be capable of representation within other Phase I categories, e.g., syndicated programming category. By contrast, Spanish-language programming includes retransmitted signals originating both in Mexico and the United States, and includes both U.S. and foreign producers, all of whom have legitimate claims that are unrepresented by any of the other Phase I categories.

##### **5. IPG's Comments to Timing of Proceedings.**

Although a certain amount of preparation must inevitably be conducted merely to get to the present stage of royalty pool distribution proceedings, the expense and preparation that is required prohibits "litigation-ready" completeness until such time as it

is evident that a proceeding will, in fact, occur. For this reason, IPG would request that no Phase I proceedings commence for at least a six-month period following the CRB's determination regarding the acceptance or rejection of spanish-language programming as a Phase I category. Upon the conclusion of such period, IPG is confident that it would be capable of adequately presenting a case in support for the separate distribution of spanish-language programming as a Phase I category, as well as a presentation regarding the royalties that should be accorded to the Devotional Programming category, or perhaps negotiate settlement of such claims.

As regards Phase II proceedings, IPG's response to the CRB inquiry is less certain. Logically, it follows that the Phase II proceedings should follow the Phase I proceedings, and the amounts ultimately allocated in each Phase I category will necessarily affect a Phase II claimant's decision as to whether it is of value to move forward with a Phase II proceeding, or settle. Nevertheless, Phase II proceedings can be more time-consuming to prepare because of the necessary focus on program-by-program valuation, and assessment of which claimant is entitled to receive royalties for which programs. Consequently, and with the same considerations in mind as exist for Phase I proceedings, IPG would suggest that Phase II proceedings be commenced no earlier than six months following final conclusion of the Phase I proceedings.

#### **6. IPG's Comments regarding Notice of Pre-Proceedings Filings.**

Of notable concern to IPG are the filing notice provisions and the publishing of CRB Orders. Despite the fact that the CRB website includes a page entitled "Rate and Distribution Proceedings", none of the documents related to cable/satellite distribution proceedings are published thereon at this time. IPG has, in fact, only recently learned of

three (3) CRB Orders that affect IPG's rights, but for which IPG was not served, nor IPG had any reasonable method of discovering. That is, the documents were not published in the Federal Register, did not appear on the CRB website, and were not referenced in the "CRB News" e-letter.

The CRB's suggestion to post the filings on a website, as has occurred with other proceedings, would be helpful if for no reason other than to utilize the website as a resource. IPG strongly supports posting all filings in such manner. Nevertheless, absent some sort of process whereby participants are electronically notified of the postings (e.g., "CRB News"), participants would be required to check the website daily.

The other alternative cited by the CRB, requiring service of process prior to the commencement of a proceeding, presents a different set of problems. Initially, many more parties are involved because there has yet to occur the segregation that occurs once Phase I and Phase II proceedings are commenced. That is, all parties to all proceedings remain on a master service list. For instance, in this proceeding there are no fewer than seventeen (17) parties appearing on the service list, and in other CARP proceedings there are as many as thirty-three (33) parties appearing on the service lists. With this many parties requiring service, many of whom may be unaffected by a particular filing, the service rules that apply once a proceeding has commenced are extraordinarily expensive and difficult to comply with.

Current CRB regulations require service "by means no slower than overnight express mail on the day the pleading is filed." 37 C.F.R. Section 350.4(h). If submitted in an envelope package, which is oftentimes inadequate, the cost for overnight delivery is no less than approximately \$15. As such, a single filing, if involving both a moving and



reply brief, could cost a party up to \$990, and even though many of the recipients are not affected by the motion. In November 2006, IPG submitted its “Comments to Proposed Amendments to Procedural Regulations”.<sup>3</sup> Therein, IPG argued that the shortening of dates for opposition and reply briefs creates unnecessary time constraints, particularly on those parties not residing within the Washington, D.C. area.

A few solutions exist. Initially, service provisions could exist that do not compel “overnight mail delivery”. In light of the fact that pre-proceeding filings do not necessitate the immediacy involved once proceedings have commenced, normal mail delivery and lengthier response times could be allowed, comparable to what exists in most legal proceedings in most jurisdictions. Similarly, the CRB could compel service by email, or even allow a party to compel service to it by email, rather than require both parties to agree whether service by email will be acceptable. While issues of receipt will inevitably occur, these would be no different than issues arising from the hard copy service of pleadings through the mail.

Respectfully submitted,

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<sup>3</sup> IPG is unaware whether the CRB reviewed or considered such comments, as no announcement was made regarding open hearings to discuss the proposed regulations, nor was any Order served on IPG, or appeared in either the Federal Register, the CRB website, or the “CRB News” e-letter.

## CERTIFICATE OF SERVICE

I, Venus Zometz, hereby certify that I have caused copies of the foregoing  
“**INDEPENDENT PRODUCERS GROUP'S RESPONSE TO CRB'S  
SOLICITATION OF COMMENTS TO PHASE I CLAIMANTS' MOTION FOR  
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