

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 15-1084**

**September Term, 2016**

FILED ON: FEBRUARY 10, 2017

SETTLING DEVOTIONAL CLAIMANTS,  
APPELLANTS

v.

COPYRIGHT ROYALTY BOARD AND LIBRARIAN OF CONGRESS,  
APPELLEES

WORLDWIDE SUBSIDY GROUP, LLC, D/A/B INDEPENDENT PRODUCERS GROUP,  
INTERVENOR

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Consolidated with 15-1093

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On Appeal from a Final Determination of the Copyright Royalty Judges

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Before: BROWN and PILLARD, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

**J U D G M E N T**

This cause was considered on the briefs and appendix filed by the parties and argued by counsel. It is

**ORDERED AND ADJUDGED** that the final determination of the Copyright Royalty Judges and underlying orders challenged on appeal be affirmed.

Appellants Settling Devotional Claimants (“SDC”) challenge orders issued by the Copyright Royalty Judges (“Judges”) on June 18, 2014 and July 3, 2014. SDC argue that the Judges’ decision to admit testimony that was unfavorable to their cause solely because of SDC’s “flagrant disregard” of a discovery order was an unwarranted and improper sanction. JA 2230. We agree with SDC that the “misconduct” of which they were accused was little more than an innocent mistake. SDC was ordered to indicate in “bold and capital letters that [a document directed to certain persons or entities was] a request and not a subpoena.” JA 1569. Their decision to label this document as a “REQUEST” rather than a “REQUEST AND NOT A SUBPOENA” hardly seems to be a “bald attempt...to mislead witnesses into believing that they had been commanded to appear by the Judges,” as the Judges found. JA 2230; *see* 2315–16. Nonetheless, the Judges’ error was harmless. The exclusion of this testimony, which concerned whether an entity was the copyright owner of

certain programs, would not have affected the outcome of this case. The record indicates that, even without the disputed testimony, the evidence offered by SDC would not have overcome the Judges' presumption that an organization owns the copyright to each of the programs it claims. *See* JA 2241, 2246–47.

Appellant Independent Producers Group (“IPG”) appeals the Judges’ June 18, 2014 order and their denial of IPG’s Motion to Strike written testimony from SDC’s expert witness and subsequent Motion *in Limine*. “Looking through the highly deferential lens of substantial evidence review,” we have no basis upon which to overturn the Judges’ dismissal of IPG’s claim on behalf of Adventist Media Center Productions. *Settling Devotional Claimants v. Copyright Royalty Bd.*, 797 F.3d 1106, 1115 (D.C. Cir. 2015). The justifications set forth in the Judges’ June 18, 2014 order are reasonable. *See* JA 2245–46. Likewise, in light of the “extreme deference” with which we review the Judges’ discovery determinations, we have no grounds to overturn their decision to admit the disputed written testimony into evidence. *Indep. Producers Grp. v. Librarian of Cong.*, 792 F.3d 132, 142 (D.C. Cir. 2015) (quoting *Hi-Tech Furnace Sys., Inc. v. FCC*, 224 F.3d 781, 789 (D.C. Cir. 2000)).

Finally, SDC and IPG both contend that the Judges erred in rendering their Final Determination of Distributions of 1999 Cable Royalty Funds (Phase II), which was subsequently published in the Federal Register. *See* Distribution of 1998 and 1999 Cable Royalty Funds, 80 Fed. Reg. 13,423 (Mar. 13, 2015), JA 4274–95. When reviewing royalty distribution decisions, however, this court asks only if the Board’s allocation percentages are “within a zone of reasonableness.” *Settling Devotional Claimants*, 797 F.3d at 1114 (quoting *Christian Broad. Network, Inc. v. Copyright Royalty Tribunal*, 720 F.2d 1295, 1304 (D.C. Cir. 1983)). The Judges’ final determination easily survives review under this deferential standard and its decision to rely on a viewership-based methodology, which IPG contests, has previously been upheld by this court. *See Indep. Producers Grp.*, 792 F.3d at 142.

Pursuant to Rule 36 of this Court, this disposition will not be published. The clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing or petition for rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/

Ken Meadows  
Deputy Clerk