

Before the COPYRIGHT ROYALTY JUDGES Washington, D.C.

PUBLIC VERSION

In the Matter of)))	Docket No. 2008-2 CRB CD 2000-2003
Distribution of the 2000, 2001, 2002 and 2003 Cable Royalty Funds)	(Phase II)
)	

JSC EXHIBITS

EXHIBITS FOR JOINT SPORTS CLAIMANTS

EXHIBIT NUMBER	DESCRIPTION	OBJECTION (Y/N)
201	Affidavit of Margaret A. Dale, dated September 21, 2012	
202	Transcript of Opening Statements, 2000-03 Phase I Proceeding, dated June 11, 2009	
203	Stipulation of the Parties on the Issues of Program Categorization and Scope of Claims, dated February 23, 1996	*.
204	Stipulation Between Phase I Representatives of the Joint Sports Category and Canadian Claimants Category, dated September 24, 2012	
205	Stipulation Between Phase I Representatives of the Joint Sports Category and Program Supplier Category, dated September 24, 2012	
206	Initial Discovery Requests of the JSC, dated June 6, 2012	
207	IPG's Responses to Document Requests of JSC, dated June 14, 2012	
208	Follow-Up Discovery Requests of the JSC, dated June 28, 2012	
209	IPG's Responses to Follow-Up Document Requests of JSC, dated July 5, 2012	
210	IPG's Responses to Document Requests of Joint Sports Claimants Pursuant to Order of, September 25, 2012, dated October 9, 2012	
211	IPG Discovery Item 29 - FIFA (Excerpt omitting director and actor columns)	
212	IPG Discovery Item 29 - United States Olympic Committee) (Excerpt omitting director and actor columns)	
213	IPG Discovery Item 29 - United Negro College Fund (Excerpt omitting director and actor columns)	
214	REDACTED	
215	Written Direct Testimony of Janice de Freitas, 2000-03 Phase I Proceeding, dated September 30, 2009	
216	Written Rebuttal Testimony of Marsha E. Kessler, 2004-05 Phase I Proceeding, dated February 2, 2010	
217	Transcript of Marsha Kessler's Testimony, 2004-05 Phase I Proceeding, dated February 4,	

	2010	
218	REDACTED	
219	Joint Motion of the Phase I Parties to Adopt	
	Stipulation as to Claimant Group	
	Categorization and Scope of Claims, 2004-05	
	Phase I Proceeding, dated October 2, 2009	
220	Response of Joint Sports Claimants to IPG's	
	Notification of Sports Claimants, dated	
	February 22, 2006	
221	Opposition of the Joint Sports Claimants to	
	IPG's Motion for Withdrawal of Order,	
	Modification of Order and/or Extension of	
	Time, dated February 24, 2006	
222	REDACTED	

EXHIBIT NUMBER 201

Before the COPYRIGHT ROYALTY JUDGES Washington, D.C.

In the Matter of	
) Docket No. 2008-2 CRB CD 2000-2003
Distribution of the 2000, 2001,)
2002, and 2003 Cable Royal)
Funds)

AFFIDAVIT OF MARGARET A. DALE

STATE OF NEW YORK))	
)	SS
COUNTY OF NEW YORK)	

MARGARET A. DALE, being duly sworn, deposes and says:

- I am a member of the Bar of the State of New York, and a partner at Proskauer
 Rose LLP, resident in the New York office. I submit this affidavit to place certain facts before
 the Copyright Royalty Judges in the above-captioned proceeding.
- 2. Proskauer represents Fédération Internationale de Football Association ("FIFA").

 On August 1, 2012, at the direction of FIFA's Senior Legal Counsel, Sanjiv Arora, I wrote to inform the Copyright Royalty Board that Worldwide Subsidy Group LLC dba Independent Producers Group does not represent FIFA, and that FIFA is not represented by Pick & Boydston, LLP, attorneys for Independent Producers Group, in connection with these proceedings. A copy of my August 1, 2012 letter is attached hereto as Exhibit A.

3. Attached hereto as Exhibit B is a true and correct copy of an email string between myself and Mr. Raul Galaz, who I understand works for Worldwide Subsidy Group LLC dba Independent Producers Group.

Margaret A Dale

Sworn to before me this 21st day of September, 2012

Notary Dublic

BEVERLY WALKER
Notary Public, State of New York
No. 01WA4683190
Qualified in Suffolk County
Certificate Filed in New York County
Commission Expires Oct. 31, 2014

EXHIBIT A



August 1, 2012

BY USPS EXPRESS MAIL

Copyright Royalty Board P.O. Box 70977 Southwest Station Washington, DC 20024-0977 Margaret A Dale Member of the Firm d 212.969.3315 f 212.969.2900 mdale@proskauer.com www.proskauer.com

Docket No. 2008-2 CRB CD 2000-2003 - Fédération Internationale de Football

Association

Dear Copyright Royalty Judges:

This firm represents Fédération Internationale de Football Association ("FIFA"). At the direction of our client's Senior Legal Counsel, Sanjiv Arora, we are writing to inform the Copyright Royalty Board that Worldwide Subsidy Group LLC dba Independent Producers Group does not represent FIFA in the Distribution of the 2000-2003 Cable Royalty Funds, Docket No. 2008-2 CRB CD 2000-2003. Furthermore, FIFA is not represented by Pick & Boydston, LLP, attorneys for Independent Producers Group, in connection with these proceedings.

Enclosed please find five copies of this letter, an electronic PDF copy of this letter on a CD, and proof of service of the individuals identified in the service list.

Please contact the undersigned if you have any questions regarding this matter.

Sincerely yours,

Margaret a. Dul Margaret A. Dale (N.Y. Bar No. 2318004)

Enclosures

cc: Service list

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2012, I caused a copy of the foregoing letter to be sent by Federal Express overnight mail to the individuals listed below:

Jeffrey H. Warshafsky

Independent Producers Group Brian D. Boydston PICK & BOYDSTON, LLP 617 S. Olive Street, Suite 400 Los Angeles, CA 90014

Public Television
Ronald G. Dove, Jr.
Lindsey Tonsager
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401

Gene Ashe Marc Magnum Public Broadcasting Service 2100 Crystal Drive Arlington, VA 22202-3785

MPAA-Represented Program Suppliers
Gregory O. Olaniran
Lucy Holmes Plovnick
MITCHELL SILVERBERG
& KNUPP LLP
1818 N. Street, N.W., 8th Floor
Washington, DC 20036

American Society of Composers, Authors and Publishers
Joan M. McGivern
Samuel Mosenkis
ASCAP
One Lincoln Plaza
New York, NY 10023

Broadcast Music, Inc.
Michael J. Remington
Jeffrey J. Lopez
Philip J. Cardinale
DRINKER, BIDDLE & REATH LLP
1500 K Street, N.W., Ste. 1100
Washington, DC 20005

Marvin L. Berenson Joseph J. DiMona BROADCAST MUSIC, INC. 7 World Trade Center 250 Greenwich Street New York, NY 10007-0042

SESAC, Inc.
John C. Beiter
ZUMWALT, ALMON & HAYES PLLC
1014 16th Avenue South
Nashville, TN 37212

National Association of Broadcasters
John I. Stewart, Jr.
Jennifer H. Burdman
Ann Mace
CROWELL & MORING, LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595

Joint Sports Claimants
Robert Alan Garrett
Stephen K. Marsh
Marco Palmieri
ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, DC 20004-1206

Canadian Claimants Group L. Kendall Satterfield FINKELSTEIN THOMSON LLP 1050 30th Street, N.W. Washington, DC 20007

Victor Cosentino LARSON & GASTON LLP 200 S. Los Robles Avenue, Suite 530 Pasadena, CA 91101

Devotional Claimants
Arnold P. Lutzker
Allison L. Rapp
Jeanette Carmadella
LUTZKER & LUTZKER LLP
1233 20th Street, NW, Suite 703
Washington, DC 20036

Clifford M. Harrington
Jack McKay
Paul Cicelski
Alison B. Rousseau
PILLSBURY WINTHROP SHAW
PITTMAN LLP
2300 N. Street, N.W.
Washington, DC 20037-1128

EXHIBIT B

Toner, Barbara

From: Dale, Margaret A.

Sent: Monday, July 30, 2012 2:59 PM

To: 'Raul Galaz'

Cc: 'brianb@ix.netcom.com'; Weinstein, Lawrence I.

Subject: RE: FIFA broadcasts

Mr. Galaz,

I am not aware of any communications prior to the July 31, 2001 email either.

Margaret Dale

From: Raul Galaz [mailto:raulgalaz1@aol.com]

Sent: Monday, July 30, 2012 2:53 PM

To: Dale, Margaret A.

Cc: brianb@ix.netcom.com; Weinstein, Lawrence I.

Subject: Fwd: FIFA broadcasts

Dear Ms. Dale,

my apologies, but I neglected to ask you about one of your comments. Specifically, you seem to choose your words very carefully that FIFA has no communications in its possession "following" the July 31, 2001 email from FIFA to WSG. Mr. Arora informed me that FIFA had no communications that precede or follow the July 31, 2001 email that would provide greater context to the July 31 email. Are you suggesting something other than that? If so, then please share such communications with us.

Thank you, and I look forward to your response.

Raul Galaz Worldwide Subsidy Group

----Original Message-----

From: Raul Galaz <raulgalaz1@aol.com>

To: mdale < mdale@proskauer.com>

Cc: brianb <bri>brianb@ix.netcom.com>; LWeinstein <LWeinstein@proskauer.com>

Sent: Mon, Jul 30, 2012 1:24 pm Subject: Re: FIFA broadcasts

Dear Ms. Dale,

clearly, we are at an impasse, as WSG considers a communication stating "FIFA is interested in testing the services of the Worldwide Subsidy Group in the administration of retransmission royalties. Please go ahead with the necessary steps and keep us informed about the proceedings and the outcome" to mean exactly that, i.e., WSG should take the necessary steps and keep FIFA informed about the proceedings. You and your client ascribe no meaning to this communication. As we explained previously, the only proceedings that have arisen are the proceedings with which we are currently involved, which took more than a decade to commence, and WSG promptly contacted FIFA regarding such proceedings.

As for my criminal conviction, you are only partially correct. All of my crimes, large and small, were addressed in my sole criminal conviction, and admitted by myself when I came forward to governmental authorities before ever being contacted by them. Moreover, this news was already addressed with FIFA almost a year ago, and FIFA was given the option of dealing with someone other than myself. Consequently, I am not certain why you are raising the matter at this time. The crime does not involve FIFA, and does not involve Worldwide Subsidy Group LLC. As such, while you may consider it to have a bearing on my personal credibility, it really has nothing to do with FIFA's contractual obligations, or WSG's entitlements.

You may certainly take whatever actions you believe are warranted in order to protect your client's interests. In many ways, it creates a cleaner record for review, and makes clear that WSG has taken all-

actions it reasonably could take in order to collect the subject royalties.

Thank you for your attention to this matter.

Raul Galaz Worldwide Subsidy Group

----Original Message----

From: Dale, Margaret A. <mdale@proskauer.com>

To: Raul Galaz < raulgalaz1@aol.com>

Cc: brianb

<u>brianb@ix.netcom.com</u>>; Weinstein, Lawrence I. <<u>LWeinstein@proskauer.com</u>>; Dale, Margaret A.

<mdale@proskauer.com>

Sent: Mon, Jul 30, 2012 12:16 pm Subject: RE: FIFA broadcasts

Dear Mr. Galaz,

We disagree with your two points. A single email from July 31, 2001 hardly qualifies as a "direction to act" with respect to the current proceeding, or any other for that matter. We are not aware of any communications between Worldwide Subsidy Group and FIFA after this email, and there exists no executed contract between your company and FIFA. Furthermore, on June 20, 2002, you pleaded guilty to one count of mail fraud in federal court in Washington DC. That felony conviction involved a falsification of royalty claims. Additionally, following this fraud, you were found by another court to have entered into an illegal money-laundering contract to place illicit royalty proceeds in an offshore bank account. As we have said before, FIFA has not and does not authorize you, Worldwide Subsidy Group, and/or Independent Producers Group to represent it before the Copyright Royalty Board. We intend to alert the Copyright Royalty Board to this fact.

Sincerely, Margaret Dale

From: Raul Galaz [mailto:raulgalaz1@aol.com]

Sent: Tuesday, July 17, 2012 11:06 AM

To: Dale, Margaret A.

Cc: brianb@ix.netcom.com; Weinstein, Lawrence I.; Kleiman, Zachary

Subject: Re: FIFA broadcasts

Dear Ms. Dale, two points:

1) has anyone on your side of the table looked at the Excel file that was forwarded? There are 168 program broadcasts, of 150-180 minutes in length, described as "World Cup Soccer", from "Seoul, South Korea" (and the other locations at which the 2002 World Cup Soccer matches were located), on the **exact** dates that those matches occurred. These program broadcasts do not just reflect commentary. Rather, they are the live transmissions of the matches. There are another 101 broadcasts of programming entitled "World Cup Soccer: Highlights" for which the average broadcast is over two hours in length, with lengths of up to 338 minutes, on the **same** dates. That would be a lot of "commentary" without footage.

With all due respect, it is not reasonable to suggest that these broadcasts do not reflect the live broadcasts, or do not otherwise include footage of the matches. It is also not reasonable to suggest that FIFA could not, if it so chose, review the contracts with the limited number of broadcasters that broadcast the matches. In fact, there might even be a single distributor contract. As reflected by the Excel file, the stations airing these broadcasts include only six broadcasters, CBET, CBLT, CBMT, CBWT, CKWS. [There are also two single broadcasts in 2003 of World Cup Soccer matches from Lyon, France, however we will ignore them for the time being.] In any event, and as I mentioned in a prior email to you, Sanjiv Arora explicitly described to me the continuing copyright ownership of FIFA in the program footage, which fact is substantiated even in filings with the U.S. Copyright Office.

2) I understand your issue with the failure to locate a signed copy of the agreement that was sent to FIFA. That bothers me as well. However, there is no issue that FIFA representatives instructed WSG to make the filings that were covered by the document proposed by WSG for signature. That much can be established. It therefore gives rise to the issue of what significance you and your client are giving to the instruction that can be established to exist? WSG acted on at least

that instruction (and perhaps a signed contract, yet to be located), has performed all it was required to do under that instruction, and now stands capable of recovering a significant royalty to FIFA pursuant to the very proceedings referenced in FIFA's email. Is it your client's position that there is no significance to the instruction of FIFA that "FIFA is interested in testing the services of the Worldwide Subsidy Group in the administration of retransmission royalties. Please go ahead with the necessary steps and keep us informed about the proceedings and the outcome"?

We are genuinely trying to be encouraging and cooperative here, but if your client is intent on giving no credence to the July 31, 2001 direction to act, and will make no effort to even check the handful of contracts relating to the specified broadcasts, then there really is little for us to discuss, and this becomes a legal matter. As we have also attempted to explain, of the two choices before FIFA, the one by which it receives royalties with a modicum of effort seems the most rational. I realize that you cannot compel your client to do anything, however if I were in your position (and I have been), I would be strongly urging your client to cooperate.

Raul Galaz Worldwide Subsidy Group

----Original Message----

From: Dale, Margaret A. <mdale@proskauer.com>

To: Raul Galaz < raulgalaz 1@aol.com>

Cc: brianb < brianb@ix.netcom.com>; Weinstein, Lawrence I. < LWeinstein@proskauer.com>; Kleiman, Zachary

<<u>zkleiman@proskauer.com</u>> Sent: Tue, Jul 17, 2012 8:43 am Subject: RE: FIFA broadcasts

Dear Mr. Galaz,

FIFA cannot say for certain that any FIFA copyright is contained within the programs for which re-transmission royalties are being sought as FIFA has not viewed those programs. For example, if the program is a panel of sports experts discussing the game with no footage, then FIFA certainly has no copyright to it.

More importantly, as previously stated, FIFA has not located an agreement authorizing WSG to represent FIFA before the Copyright Royalty Board in connection with the retransmission royalties. Further, we understand that WSG itself is not in possession of such an agreement. Under the circumstances, FIFA does not intend to provide further information concerning its agreements with broadcasters.

Sincerely,

Margaret Dale

From: Raul Galaz [mailto:raulgalaz1@aol.com]

Sent: Tuesday, July 10, 2012 12:28 PM

To: Dale, Margaret A.

Cc: brianb@ix.netcom.com; Weinstein, Lawrence I.; Kleiman, Zachary

Subject: Re: FIFA broadcasts

Dear Ms. Dale,

I am presuming that you reviewed the broadcast data that we sent. Armed with the information that we have provided about the specific broadcasters of the World Cup soccer matches, is FIFA currently attempting to review contracts with those broadcasters to see what information exists within those contracts?

When I spoke with Sanjiv Arora a few months ago, he explained the process by which the World Cup "IP" (intellectual property) was "licensed" to various broadcasters for live broadcast, and then replay rights allowed for a subsequent limited period of time (I think he said two years, typically). Mr. Arora's description makes clear what we are seeking confirmation of, i.e., that FIFA retains perpetual ownership of the underlying footage copyright.

Raul Galaz

----Original Message---From: Dale, Margaret A. <<u>mdale@proskauer.com</u>>
To: Raul Galaz <<u>raulgalaz1@aol.com</u>>

9/21/2012

Cc: Weinstein, Lawrence I. <<u>LWeinstein@proskauer.com</u>>; brianb <<u>brianb@ix.netcom.com</u>>; Kleiman, Zachary <<u>zkleiman@proskauer.com</u>>; Sent: Tue, Jul 10, 2012 8:29 am

Subject: RE: FIFA broadcasts

Dear Mr. Galaz,

Thank you for your email. We have seen the excel spreadsheet that you attached. However, that spreadsheet does not answer the fundamental question of whether FIFA retained the copyright to the content for the 2002 WorldCup or if the copyright was part of the license /assignment to the broadcasters. FIFA does not presently know the answer to that question and is not prepared to represent, or permit anyone else to represent, that it is entitled to retransmission royalties for the period in question.

Further, as we discussed, FIFA has not been able to locate an agreement between it and WSG authorizing WSG to represent FIFA before the Copyright Royalty Board in connection with the retransmission royalties. Under these circumstances, FIFA is not in a position to provide the information that you request.

Sincerely, Margaret Dale

From: Raul Galaz [mailto:raulgalaz1@aol.com]
Sent: Monday, July 09, 2012 4:01 PM

To: Kleiman, Zachary; Dale, Margaret A.

Cc: Weinstein, Lawrence I.; brianb@ix.netcom.com

Subject: FIFA broadcasts

Zack and Margaret,

I just had my first opportunity to look at the slew of emails that I received today, including an email forwarded from WSG's legal counsel that had your email addresses.

On the subject of what we were speaking about this morning, attached is the Excel spreadsheet that we previously provided to FIFA demonstrating the retransmitted broadcasts that have generated a retransmission royalty. As I noted, these are all Canadian or Mexican-originated broadcasts, because the U.S.-originated World Cup broadcasts were a network feed (NBC, if I recall), and network broadcasts do not qualify for cable retransmission royalties, only satellite retransmission royalties (the proceedings of which have not yet commenced).

Raul Galaz Worldwide Subsidy Group

9/21/2012

Treasury Regulations, Proskauer Rose LLP informs you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

transaction or matter addressed herein.

EXHIBIT NUMBER 202

	Page 1		Page 3
	BEFORE THE COPYRIGHT ROYALTY JUDGES	1	APPEARANCES (Continued):
	LIBRARY OF CONGRESS	2	On behalf of JOINT SPORTS CLAIMANTS:
	Washington, D.C.	3	ROBERT ALAN GARRETT, ESQUIRE
		4	STEPHEN K. MARSH, ESQUIRE
	X	5	Arnold & Porter, LLP
	In the Matter of: : Docket No:	6	555 Twelfth Street, N.W.
	Distribution of the 2000, : 2008-2 CRB CD 2000-2003	7	Washington, D.C. 20004-1206
	2001, 2003, and 2003 : Volume I	8	(202) 942-5444
	Cable Royalty Funds : (Pgs. 1 - 244)	9	
		10	On behalf of NATIONAL ASSOCIATION OF
		11	BROADCASTERS:
	Washington, D.C.	12	JOHN I. STEWART, JR., ESQUIRE
	Thursday, June 11, 2009	13	ANN MACE, ESQUIRE
		14	Crowell & Moring
	The following pages constitute the	15	1001 Pennsylvania Avenue, N.W.
	proceedings held in the above-captioned matter,	16	Washington, D.C. 20004-2595
	held at the Library of Congress, Madison Building,	17	(202) 624-2685
	101 Independence Avenue, Southeast, Washington, D.C.,	18	
	before Cindy L. Sebo, RMR, CRR, CSR, RPR, of	19	
	Capital Reporting Company, a Notary Public in and for	20	
	the District of Columbia, beginning at approximately	21	
	9:31 a.m.	22	
	Page 2		Page 4
1	APPEARANCES	1	APPEARANCES (Continued):
2	Copyright Royalty Tribunal:	2	On behalf of DEVOTIONAL CLAIMANTS:
3	CHIEF JUDGE JAMES SLEDGE	3	ARNOLD P. LUTZKER, ESQUIRE
4	JUDGE WILLIAM ROBERTS	4	Lutzker & Lutzker LLP
5	JUDGE STANLEY C. WISNIEWSKI	5	1233 Twentieth Street, N.W., Suite 703
6		6	Washington, D.C. 20036
7	On behalf of PROGRAM SUPPLIERS:	7	(202) 408-7600
8	GREGORY O. OLANIRAN, ESQUIRE	8	
9	LUCY HOLMES PLOVNICK, ESQUIRE	9	On behalf of BROADCAST MUSIC, INC.:
.0	Stinson Morrison Hecker LLP	10	JEFFREY J. LOPEZ, ESQUIRE
.1	1150 Eighteenth Street, N.W., Suite 800	11	Drinker Biddle & Reath LLP
.2	Washington, D.C. 20036-3816	12	1500 K Street, N.W.
.3	(202) 785-9100	13	Washington, D.C. 20005-1209
. 4		14	(202) 842-8465
. 5	On behalf of PUBLIC TELEVISION CLAIMANTS:	15	
. 6	RONALD G. DOVE, JR., ESQUIRE	16	On behalf of CANADIAN CLAIMANTS GROUP:
.7	LINDSEY L. TONSAGER, ESQUIRE	17	L. KENDALL SATTERFIELD, ESQUIRE
.8	Covington & Burling LLP	18	RICHARD M. VOLIN, ESQUIRE
. 9	1201 Pennsylvania Avenue, N.W.	19	Finkelstein Thompson LLP
20	Washington, D.C. 20004-2401	20	1050 Thirtieth Street, N.W.
21	(202) 662-5609	21	Washington, D.C. 20007
22		22	(202) 337-8000

	Page 5		Page 7
1	APPEARANCES (Continued):	1	EXHIBITS MARKED RECEIVED
2	On behalf of CANADIAN CLAIMANTS GROUP:	2	Settling Parties 1 74 76
3	VICTOR J. COSENTINO, ESQUIRE	3	Settling Parties 2 74 76
4	200 South Los Robles Avenue	4	Settling Parties 3 74 77
5	Suite 530	5	Settling Parties 4 74 77
6	Pasadena, CA 91101	6	Settling Parties 5 116 116
7	(626) 795-6001	7	Settling Parties 6 160 160
8	()	8	Settling Parties 7 192 201
9		9	Settling Parties 8 192 201
10		10	
11		11	MARKED RECEIVED
12		12	Settling Parties Demonstrative 1 118
13		13	Settling Parties Demonstrative 2 168
14		14	
15		15	
16		16	m 111 n 11 G 1)
17		17	(Exhibits Retained by Counsel.)
18		18	
19		19	
20		20 21	
21		22	
22	Para		Page 8
1	Page 6	1	PROCEEDINGS
1	CONTENTS OPENING STATEMENTS: PAGE	2	CHIEF JUDGE SLEDGE: Good morning.
2	OPENING STATEMENTS: PAGE On behalf of the Settling Parties 13	3	The United States Copyright Royalty Judges come to
3	On behalf of the Canadian Claimants Group 46	4	session.
5	On behalf of the Canadian Canadian Communic Croup	5	The Judges are assembled.
6		6	We will first only take up the
7		7	distribution of Cable Royalties 2000-2003.
8	WITNESSES: PAGE	8	Please be seated.
9	MARSHA E. KESSLER	9	We were just commenting that it's
10	Direct Examination by Mr. Olaniran 69, 118	10	been a year since we've began a proceeding, so
11		11	we're having to remind ourselves what we need to
12	JONDA K. MARTIN	12	do as we begin here.
13	Direct Examination by Mr. Olaniran 158	13	I hope you all have located where
14	Cross-Examination by Mr. Cosentino 210	14	the restrooms and all are in the building.
15		15	We will have one unusual schedule
16		16	today. There's a conflict that can't be changed.
17		17	We'll have to recess at 11:30 and start back at
18		18	1:30 today.
19		19	Normally, we'll try to recess
20		20	shortly before 12:00 and get back as quickly as an
21		21 22	hour as we can. That means, usually, it's difficult for you to go to the cafeterias or
22			

Page 9 Page 11 1 restaurants on Pennsylvania Avenue. 1 the past when the witness appearing for a side 2 There is a cafeteria up on the top 2 is -- and the counsel for that same side are at 3 floor of this building, and there is a cafeteria 3 this front table. The witnesses tend to want to 4 next door in the Rayburn Building that's pretty 4 communicate visually or orally sometimes with the 5 easily accessible. That's probably your best two 5 people seated at this front table. 6 6 alternatives for given a short time to recess. And as that arises, I'll ask you 7 7 We'll try to begin -- as we gave in to -- to -- when -- if your witness is in the 8 8 our announcement, we will try to begin every day chair and you're not over here (indicating), if 9 9 at 9:30, take an hour in the middle of the day, you will move one -- one table back at that point. 10 10 and then conclude by 4:30 each day so you can get And, again, that's a fairly natural 11 out just as the streets get impassable. That's an 11 thing that the witness is going to look -- if 12 unfortunate thing. 12 you're seated that closely, it's fairly natural 13 We will have the witnesses here at 13 that the witness is going to look to you for 14 14 this chair (indicating). We'll have counsel at direction when they're asked a question. So 15 this chair (indicating) -- at this podium. 15 giving some distance there is a bit of assistance 16 We have to usually remind the -- the 16 to them and to us and to the other side. 17 17 witnesses to -- to remember they're projecting to So we will begin with these opening 18 the back of the room and not only to us or to 18 statements without any order. 19 19 counsel, and that's a common event. It's Unless there's a problem with it, 20 20 physically hard to remember that -- that you're we'll hear from the Settling Parties first. 21 talking to the whole room as you're seated up in 21 MR. GARRETT: The podium there, 22 these close quarters here (indicating) at the 22 Your Honors? Page 10 Page 12 1 front. 1 CHIEF JUDGE SLEDGE: Yes. 2 For our benefit and for the benefit 2 JUDGE ROBERTS: Do me a favor and 3 of the court reporter, please identify yourselves 3 simply plug that fan in. I forgot to do that. 4 as you either make objections or come to the 4 MR. GARRETT: To drown out the 5 podium. 5 sound? 6 If you do make objections from your 6 JUDGE ROBERTS: I had it set on low, 7 chairs -- Cindy, we don't have any microphones out 7 but there's quite a few people in here and the air 8 on the tables, do we? 8 circulation in the room is poor. 9 So if you're distinct, you will be 9 MR. GARRETT: The same place, right 10 10 able to make any objection you need to without there? 11 coming to the podium. Cindy will let you know if 11 JUDGE ROBERTS: Yes. 12 that's a problem. 12 MR. GARRETT: Okay. 13 It is convenient for all of us if 13 CHIEF JUDGE SLEDGE: Is there 14 you will stand at the time you're talking to help 14 another one back there? 15 us find you and to help us hear you. 15 JUDGE ROBERTS: There is. 16 Any other preliminaries? 16 CHIEF JUDGE SLEDGE: If you feel the 17 JUDGE ROBERTS: No. 17 need in the middle of the room, that fan is 18 CHIEF JUDGE SLEDGE: Okay. We'll 18 available to you. 19 begin with 30-minute opening statements that 19 Do you all see it? It's back behind 20 you've requested. You didn't mention how you 20 the podium and it's on?

21

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21

22

wanted to proceed in that.

We have had a bit of a problem in

AUDIENCE MEMBER: Yes.

CHIEF JUDGE SLEDGE: Thank you.

Page 15 Page 13 OPENING STATEMENT ON BEHALF OF SETTLING PARTIES on the time and resources of the Judges. 1 1 2 The February 9th, 2009 order of the MR. GARRETT: Good morning, 2 Your Honors. I'm Bob Garrett. I'm counsel for 3 Judges states that -- let me just read that 3 the Joint Sports Claimants in this proceeding. directly here -- that the sole issue to be 4 4 determined in this proceeding is whether the With me are my colleagues, 5 5 Stephen Marsh at counsel table; in the back, Canadians' 2000 through 2003 share should be no 6 6 James Cooper of Arnold & Porter; Phil Hochberg, 7 greater than the Canadian Claimant Group's average 7 who represents the National Football League, the share awarded in the last litigated Phase I 8 8 NBA and the NHL; and Tom Ostertag, who is the 9 distribution proceeding, the 1998-'99 cable 9 general counsel of Major League Baseball. 10 royalty distribution proceeding; or, two, should 10 As Your Honors know, the purpose of 11 be determined by applying to data from 2000 11 this proceeding is to determine the through 2003, the same methodology the 12 12 Canadian Claimants' share of the 2000-2003 cable 13 Copyright Arbitration Royalty Panel applied in the 13 1998-'99 proceeding. 14 14 royalty funds. The proceeding is unique in a couple 15 And that is the issue to which we 15 of respects. It is, of course, the first 16 have directed our evidence in this case. 16 proceeding litigated before the Copyright Royalty 17 Before addressing what we believe 17 Judges involving the distribution of Section 111 the evidence will show, I'd like to just briefly 18 18 identify the standard that we believe should guide 19 royalties. 19 20 the resolution of this issue. It's also the first time that the 20 Settling Parties have presented a joint case in a 21 Unlike the rate setting proceedings 21 that the Judges have conducted in the past, there 22 distribution proceeding. 22 Page 16 Page 14 1 is no expressed statutory provision for Given the diversity that the 1 2 distribution of Section 111 cable royalties. Settling Parties have and have had for many years 2 However, one standard that has been 3 and many different issues, traditionally, it had 3 been difficult to have a coalition of this nature. 4 applied consistently over the years has been 4 And so we give special thanks to Kendall for 5 relative market value. The objective in the past 5 6 proceedings has been to ensure that each Phase I 6 bringing us all together here. claimant group receive the same relative share of 7 7 (Laughter.) MR. GARRETT: Our common position, 8 royalties that it would have received in a free 8 9 Your Honors, our very strongly held view, very market absent compulsory licensing. 9 And we believe that this marketplace simply, that the Canadians' share of the 2000-2003 10 10 standard makes sense. There is no reason, either cable royalty funds should not be increased over 11 11 under the Copyright Act or its legislative history 12 12 its 1998-'99 level. or in fundamental fairness, for any one claimant 13 13 Now, this proceeding is also the 14 group to receive more or less than what it would first where the parties have stipulated as to the 14 have received in that free market setting and, specific issue that needs to be resolved in order 15 15 to determine the share in controversy. And we 16 furthermore, none of the Phase I parties disagrees 16 with that as the relevant standard here. very much appreciate the assistance of the Judges 17 17 18 We think that under these in helping us to narrow the scope of this 18 proceeding by adopting our proposed stipulations. 19 circumstances, that the Judges should follow 19 We believe that this will reduce the 20 precedent and should use the marketplace standard 20 21 in order to resolve the issue before it. In other overall cost of the proceeding for all of the 21 parties and impose the minimal extent that we can 22 words, the Judges should determine whether the 22

Page 17 Page 19 1 Canadians' methodology reliably shows that there 1 Your argument seems to say that 2 has been a material increase in the relative 2 there should be no increase because there is no 3 market value of Canadian programming between 3 change of circumstances without initially 4 1998 and 1999 and 2000-2003 or whether, as the 4 considering whether the survey information is 5 Settling Parties believe, there is no basis for 5 reliable before you get to whether there are 6 6 concluding that the relative market value of the changed circumstances. 7 7 Canadian programming has increased during this MR. GARRETT: Sure. 8 8 period. Your Honor, I think that the -- when 9 CHIEF JUDGE SLEDGE: Mr. Garrett, 9 we talk about survey -- in the '98-'99 proceeding. 10 let me ask you on that position, do you not get to 10 there were two surveys: there was the survey that 11 that point at Step 2? Don't you only consider the 11 the Joint Sports Claimants had submitted and was 12 issue of changed circumstances if you conclude, as 12 really the center of much of the debate during 13 the last decision concluded, that the survey 13 that hearing; there was the second survey that the 14 information was unreliable? 14 Canadians had submitted that was at issue in 15 Isn't that the only way that they 15 determining the Canadians' awards. 16 considered whether there was changed 16 There is no issue in this proceeding 17 circumstances? 17 about our survey, that is, the Joint Sports 18 I mean, it strikes me here that 18 Claimants' survey. It has not been presented in 19 19 you've gone to changed circumstances as Step 1 evidence here and no one is raising any issue 20 without considering the reliability of the 20 about that survey. 21 available survey information. 21 The only survey is the Canadians' 22 MR. GARRETT: I think there's two 22 survey. And, again, I think that what we're going Page 20 1 parts to the Canadians' case: one is the survey, 1 to be focusing on here is not so much the survey 2 the other is reliance upon the fee-generated 2 and what it shows, because the survey really 3 methodology. 3 doesn't show any significant changes at all in the 4 What you will find, Your Honors, is 4 two relevant periods. 5 most of the testimony is going to be directed in 5 CHIEF JUDGE SLEDGE: Which survey? 6 this case here towards whether or not the 6 MR. GARRETT: The Canadian survey, 7 7 fee-generation methodology has an appropriate Your Honor. 8 measure of relative market value. 8 The real focus here is on the -- on 9 And I think, in the context of 9 the concept of fee generation. 10 trying to decide whether or not the methodology, 10 We certainly didn't mean to skip 11 which is the first part of the issue that the 11 over any -- any -- any steps here. I think -- you know, the way we focus our -- the way we see the 12 Judges have framed at our request -- whether that 12 13 methodology is one that should be employed here, 13 case here is it's a case about relative market 14 that the relevant standard, the way of looking at 14 value, just like any other distribution case, but 15 it, whether that methodology really provides 15 we've narrowed the issues so that the issues here 16 relevant information about relative market value. 16 are to focus on their methodology and whether or 17 Does that respond to your question? 17 not it shows a -- a -- any kind of -- whether it 18 CHIEF JUDGE SLEDGE: Well, it does 18 can be used to determine relative market value.

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over Step 1?

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some, but I'm still a little uneasy.

doesn't seem to address Step 1.

It strikes me that, yes, that's true

on the Canadian argument, but still, your argument

CHIEF JUDGE SLEDGE: So is it your

position that the narrowed issue assumes skipping

MR. GARRETT: Tell me again,

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of energy.

proceeding?

market value.

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Your Honor, Step 1.

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CHIEF JUDGE SLEDGE: In the last case, they did not consider changed circumstances until they reached the conclusion that the survey information on which they were trying to determine the relative distributions was unreliable. And then, once they decided that the best way to decide the issue based on the survey information was not available because it was unreliable, then they moved to a consideration and an analysis of whether the -- there were changed circumstances to justify adjusting the prior determinations.

MR. GARRETT: Again, I don't think there really is an issue with the survey that the Canadians are putting in here. It has to do more with fee-generated methodology.

And I think, in the context of -- of deciding whether or not that fee-generated methodology is a useful way of determining relative market value, you need look at it, the standard of relative market value. It's not an assessment of the -- of the survey in that case.

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So in that sense, I believe the answer to your question is yes, Your Honor. We don't feel the need to assess the value of the survey here.

CHIEF JUDGE SLEDGE: All right. Thank you.

JUDGE ROBERTS: If that is so, Mr. Garrett, why don't we have a stipulation on the admission of that survey?

MR. GARRETT: I think that's a fair question, Your Honor. I think that there will be cross-examination concerning this survey: exactly what it shows, what it means, how it was done.

But I don't think those issues really go to the question of whether or not this is a -- a reliable survey. It's really more of a question of what -- what it means.

If it helps Your Honors for us to -to try to work out a stipulation concerning the survey, we're certainly happy to do that. But I've got to tell you, in trying to stipulate as much as we have stipulated in this case took a lot

MR. GARRETT: I believe that's where we have come in these proceedings, Your Honor. I'm aware of the early standards --

JUDGE ROBERTS: I know you may believe that's where we have come. I want to know is that your position that is the one?

MR. GARRETT: That is our position. JUDGE ROBERTS: All right.

MR. GARRETT: Let me go back again to the -- the nature of the evidence that we're going to be presenting here.

As I mentioned earlier on, there's really two principal components of the Canadians' methodology, one being fee generation and the other being their survey. And their entire case for an increase in royalties really hinges upon the fee-generation component of that methodology.

As I mentioned earlier, the survey results for 2000 to 2003 are virtually unchanged from 1998 to '99.

The testimony of Marsha Kessler of the Motion Picture Association, which

Program Suppliers are sponsoring, and Jonda Martin
of the Cable Data Corporation, which all of the
seven parties are sponsoring, will explain what
fee generation is and how it relates to the
Section 111 compulsory licensing system.

As you will hear, the Cable Data

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As you will hear, the Cable Data Corporation, which collects information from statements of accounts filed by cable operators with the Copyright Office, developed this concept of fee generation as a means of matching statutory royalty payments with different signals.

Fee generation and changes in fee generation are attributable to many factors unrelated to the programming that's carried pursuant to Section 111.

Linda McLaughlin, an economist sponsored by the Commercial Television Claimants and the Public TV Claimants, will testify that fee generation does not reflect market value and that changes in fee generation do not reflect changes in relative market value.

Let me just also add that this

Phase I claimant groups litigated over the 1998-'99 funds because there had been what was described at the time as a seismic shift in the distant signal marketplace.

The most widely carried distant signal, Superstation WTBS, converted, in 1998, to a cable network. And this result decreased the royalty pool from -- in 1998 by almost \$70 million from the level it had been in 1990 through 1992.

And by virtually every metric, the U.S. distant signal category had declined precipitously with the loss of WTBS, while the Canadian distant signal category had essentially held its own in absolute terms.

It was undisputed that TBS had no Canadian programming and that its elimination as a distant signal improved the Canadians' relative position in the distant signal market. And had the Canadians' percentage share remained the same in 1998-'99 as it was in 1992, they would have received less in terms of total dollars, even though they were obviously in no way responsible

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concept of fee generation has a long and tortured history in these proceedings. The

Copyright Royalty Tribunal, the CARP and the

parties themselves have had different and often

conflicting views on the usefulness of feegeneration.

And the purpose of the testimony of Ms. McLaughlin, Ms. Martin and Ms. Kessler is really to provide the Judges with a record basis for understanding what fee generation is and for assessing whether or not fee generation is an appropriate measure of the relative market value of Canadian programming, as well as changes in that relative market value

that relative market value. Our remaining witness is Dr. Hal Singer, an economist sponsored by the Joint Sports Claimants. The principal purpose of Dr. Singer's testimony is to put in context the decision of the 1998-'99 CARP to increase the Canadian award based upon the Canadian methodology.

As Dr. Singer will explain, the

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1 for the decline in the royalty fund.
2 And some of the Settling

And some of the Settling Parties, including the Joint Sports Claimants, agreed that, taken as a whole, these and other facts supported an increase in the Canadians' award.

As Dr. Singer will show, the situation that existed in 1998 to '99 vastly differ from the situation that exists here in this proceeding. There's nothing like the WTBS conversion and its impact upon the distant signal marketplace to corroborate the use of a fee-generated methodology in this proceeding in order to increase the Canadians' award.

Now, Dr. Singer will discuss his analysis of the factors cited by the Canadians in the '98-'99 proceeding to support their request for an increased award and whether those same factors support a change in the award for 2000 through 2003.

What he will show is that although there has been some change in fee generation attributable to Canadians' signals during this

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period, there is no basis to conclude that the relative market value of the Canadians' programming has increased between the relevant years and, thus, there is no basis to increase their award for 2000 through 2003.

Now, the Canadians will offer various charts and other data showing percentage increases for Canadian signals that are higher than percentage increases for U.S. signals during the relevant period, but the reason for this disparity is that on each of the metrics that the Canadians offer, the Canadians start with a much lower absolute number than the — than the remaining Claimants, the reflection of the fact that only about 1 out of every 25 cable systems in the United States actually imports Canadian signals as distant signals.

As you know, under Section 111, only those stations -- I'm sorry -- only those systems near the Canadian border are allowed to retransmit Canadian programming pursuant to compulsory license.

proceedings, there is no record justification for
 the rote application of the Canadians' formula in
 this proceeding.

Let me just make one other point here in conclusion, Your Honors. As you mentioned at the outset, this proceeding is unique in several respects. There is one additional respect that is unique.

It marks the first time that we have had a litigated Phase I proceeding in more than 25 years where there has not been some seismic change in the distant signal marketplace or in the FCC regulations that affect that -- that marketplace.

Historically, we have been successful, as Phase I parties, in settling controversies concerning royalty distributions, and those settlements, we believe, are critically important to the effective functioning of the entire 111 system. We cannot have proceedings involving every year and every claimant.

So the proceeding to litigation in

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As Dr. Singer will show in absolute terms, the U.S. signals outpaced the Canadians' signals in terms of growth between '99 to 2000 -- '98-'99 and in '1 -- and in 2000 through 2003.

Let me just say also that the Canadians' position in this proceeding is rather simple, the CARP used the fee-generation methodology in the 1998-'99 and the '90 to '92 proceeding to set the Canadians' award and, thus, the Judges should mechanically do the same thing here.

But they don't present any witness to explain this approach makes sense in the context of this proceeding, and they don't provide any evidence to explain why the relative value of their programming or the programming of other Claimants has changed during this period or that there's been other -- some other significant change as there was in the 1998-'99 proceeding.

We believe that the testimony of Dr. Singer, as well as the other witnesses, will show that regardless of what happened in prior

this case was not an easy one, certainly not for any of the Settling Parties, and I suspect not for the Canadians either.

As the Settling Parties, we are acutely aware that we will receive the vast bulk of the royalties regardless of how you decide this case. And we also recognize that the amount that is in dispute, which is about \$4 million for the four years in question, while not insignificant, neither to the Canadians or to our clients, is nevertheless small in comparison to the overall --overall fund.

But the reason we are here before you and taking up your valuable time is because we believe there is a critically important principle that's at stake. And we don't dispute the right of the Canadians or any other party to seek an award greater than what it received in past proceedings and to initiate proceedings where it feels that it was undercompensated by a prior decision.

But this case really raises the

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issue of whether the proper benchmarks for settlement should be the last litigated awards or whether a formula used by the CARP in the context of another 20,000-page record to set one party's award should be the standard for all future years, even where the circumstances -- circumstances surrounding the adoption of that formula no longer exist and where the formula produces what can best be described as minor variations in the overall results.

This is an issue that, frankly, we need the Judges' guidance so we can continue to resolve these controversies over royalty distributions through settlement rather than litigation.

Our evidence addresses this issue by showing that the Canadians are not entitled to any increase in the prior award.

And, Your Honors, that concluded my prepared remarks. If there are any other questions, I would be happy to answer them.

JUDGE ROBERTS: I do, Mr. Garrett.

those awards were arrived at in the last proceeding, they became the benchmark of the standards.

That was the best judgment of the Copyright Arbitration Royalty Panel, as well as the Register of Copyrights, the Librarian of Congress and the D.C. Circuit as to what the relative market value of the different parties -- different Claimants' programming was at that time.

And we all probably have some issue with the way awards were arrived at or how it could better have been done. And, as you know, the cracks in the solidarity of the Settling Parties are already evident by virtue of the fact that we now have a proceeding scheduled for 2004-'05, a slightly different lineup.

But the bottom line to your question is those were the benchmark awards. They do reflect the relative market value as of that point in time, and our view is unless there is other evidence proving that those awards should be changed, then those are the benchmarks that you—

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You're going to be presenting a significant amount of testimony on why the fee-generation approach is flawed and should not be used. And I assume you're developing that so that in a future case, you may enlighten us as to what the correct, in your view, distribution method is.

However, at the same time, you are asking us to adopt percentages from -- that were developed in a prior proceeding, the '98-'99 proceeding, that were, in fact, created and generated by the fee-generation method.

So isn't it a contradiction that you're telling us fee generation is not the way to determine relative value, but you're asking us to adopt percentages that were, in fact, generated by that same methodology?

MR. GARRETT: That's a fair question, Your Honor, and my answer -- maybe I should speak on behalf of the Joint Sports Claimants more than anyone else at this point.

But our point is simply that however

1 that you stick with.

JUDGE ROBERTS: You're saying we're stuck with those?

MR. GARRETT: Not for all times, no, Your Honor. We still believe, certainly, that where there are changed circumstances that show a change in -- in relative market values, that the Judges should make changes.

But what we're saying is on the record of this case, we do not believe that the kinds of changes that are being relied upon here in the context of that fee-generation formula are the kinds of changes that show that there has been an increase in relative market value of -- of the Canadian programming.

But -- but we -- you know, there's nothing that is set in stone in these proceedings. I understand that Your Honors, under the Copyright Act, must act on the basis of precedent, and that's important to all of us, but that doesn't mean that -- you are on a different record and, you know, given other evidence, that you are

Page 39 Page 37 1 answer these two questions, depending upon the bound to follow everything that has been decided. 1 2 JUDGE ROBERTS: Understanding that answers --2 JUDGE ROBERTS: I understand that's we can't change what happened in '98-'99, are you 3 3 what you've agreed to, but what I'm asking you is, suggesting that we lack the authority to go back 4 4 5 is that the only choice for us here in this and reevaluate that evidence of '98-'99 for 5 proceeding? 6 purposes of this proceeding? 6 7 MR. GARRETT: I believe, Your Honor, MR. GARRETT: It's always dangerous 7 that that's the way the record will shape out to make arguments that Judges lack authority to do 8 8 here. I think what -- the way the record will 9 9 things. show is that the only basis they really have for CHIEF JUDGE SLEDGE: We hear that 10 10 an increase in their award is by relying upon this 11 all time. 11 12 fee-generated methodology, and that our evidence 12 (Laughter.) 13 will show that that evidence alone does not MR. GARRETT: I hope probably not 13 from me, Your Honors, at least not on the first provide -- given the broader context, as 14 14 15 Dr. Singer will testify, does not provide a 15 context for applying the fee-generated methodology 16 But, no, I think that the real 16 question before you is what you're going to do on 17 to change their award here. 17 CHIEF JUDGE SLEDGE: I think that 18 the basis of the record that's before you in this 18 19 last discussion helps clarify where we are. proceeding. And I think you should look to the 19 20 Frankly, your answer to decisions in the past to see how similar issues 20 were decided and whether you think that they make Judge Roberts' questions appear to me to be 21 21 sense on the basis of the record that's here 22 correct answers, but they seem to me to be very 22 Page 40 Page 38 1 confusing to your position that an earlier 1 before you today. decision based on the facts somehow becomes a 2 And what we're saying is that we're 2 benchmark for future decisions based on the facts. going to present a record that's going to make 3 3 And I've never understood precedent to have that clear that it doesn't make sense to follow that --4 4 5 that fee-generated methodology here in of itself. kind of application. 5 As I said, there was a 20,000-page 6 But notwithstanding that, we have a 6 7 settlement that's presented that we have adopted record created in that 1998-'99 proceeding here 7 to govern our finding of an either/or proposition dealing with a wide variety of issues. 8 8 9 in this case, which leads me to a couple of I'm not taking issue with whether it 9 questions that I've -- some, I wanted to get on did or did not make sense for the CARP to do what 10 10 the record and, some, I'm anxious to hear your it did then. The question is whether it makes 11 11 sense for you to do it in the context of this 12 view on. 12 13 It appears that with the issue 13 proceeding. 14 presented for us for decision, that the parties JUDGE ROBERTS: Is it your view that 14 have settled the issue of using a Phase I-Phase II 15 our choice here, then, is solely between the 15 framework for distributions. There has not been '98-'99 percentages, which you have stipulated to, 16 16 17 any adoption by the Copyright Royalty Judges of or what Mr. Satterfield is going to present for 17 the Canadians? So it's an either/or? 18 that framework. 18 19 Frankly, there's been very little MR. GARRETT: I believe that's the 19 analysis or consideration of that framework by any way the stipulation reads, Your Honor --20 20 regulatory body. It is a framework that the JUDGE ROBERTS: It is. 21 21 22 parties seem to have adopted and seem to be happy MR. GARRETT: -- that we ask you to 22

Page 41 Page 43 1 with. 1 choose. 2 2 I want to clarify on the record that CHIEF JUDGE SLEDGE: Not in this 3 the parties in this proceeding are adopting that 3 proceeding? 4 framework by stipulation, and that is the 4 MR. GARRETT: Well, no. 5 framework under which we are operating here as a 5 CHIEF JUDGE SLEDGE: This is a 6 result of the stipulation, not as a result of any 6 difficult question to ask and probably a more 7 7 determination by the Judges. difficult question to answer. 8 MR. GARRETT: Yes, Your Honors. If 8 With the position -- with the issue 9 I understand your questions correctly, we have 9 presented for us in this proceeding, the either/or 10 adopted the Phase I-Phase II framework. We have 10 alternative that you've just laid out, have the 11 reached a settlement on most, but not all, of the 11 parties addressed and do you think it will be 12 Phase I issues. We have not addressed the 12 resolved in this proceeding or have to be resolved 13 Phase II issues. 13 in this proceeding the issue that is currently on 14 It is possible that within the 14 appeal before the Circuit of whether the Judges 15 Phase I categories, there may be, down the road, 15 adopt settlements of the parties or whether the --16 Phase II disputes. Our settlement does not 16 whether the Judges have an obligation to make 17 address that. It simply addresses the issue of --17 threshold determinations and findings before 18 of Phase I. 18 adopting settlements under the statute? 19 CHIEF JUDGE SLEDGE: And implicit in 19 MR. GARRETT: No one here has raised 20 that statement is the stipulation that the parties 20 that issue. I don't think it's an issue that the 21 are adopting the categories of Phase I that have 21 Judges need to resolve in this particular case 22 never been determined by any regulatory group, but 22 here. Page 44 1 have been informally adopted by the parties in 1 Again, with the Phase I-Phase II 2 these distribution proceedings. And those 2 framework, what happens is you make awards to the 3 categories are what you're relying on in your 3 broad categories who are all represented here by 4 Phase I proceedings? 4 a -- by different counsel. And then, in Phase II. 5 MR. GARRETT: Your Honor, I believe 5 it's the individual claimants who are members of 6 the answer to that is yes as well. 6 those -- those groups could raise issues about the 7 And I will just say, by way of 7 impacts of settlements. 8 history, there was a point, I believe it was in 8 But, you know, every one -- every 9 the 1983 litigated proceeding, where all the 9 one of the Phase I claimant groups is represented 10 parties had agreed upon the definitions of the 10 here in -- in this proceedings, and I don't 11 categories. 11 believe that the issues that you have in the music 12 I believe that the Copyright Royalty 12 cases will apply at least in the Phase I portion 13 Tribunal in that case had accepted that as the --13 of this case. 14 as the definition of the various categories, and 14 JUDGE ROBERTS: Is that because. 15 we have used it consistently since then. 15 Mr. Garrett, your view is a settlement for a 16 CHIEF JUDGE SLEDGE: And "accepted" 16 distribution is not a -- a determination of the 17 is an important word, not made any finding, not 17 provision of law, and that's the difference? 18 adopted it, but accepted it I think is an 18 MR. GARRETT: I can't say that I've important concept there. 19 19 thought it through in those terms. It's --20 MR. GARRETT: Yes, Your Honor. I 20 historically, Phase I claimants have reached 21 think that's right. That is an issue that -- that 21 these -- these settlements. There has never been

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the Judges can certainly look at if they so

an issue in the 30 years of proceedings as to the

Page 47 Perhaps folks in this room or other where have seen us in the last few days. He hasn't been lobbying me for anything -- a Canadian position. As a matter of fact, we didn't discuss this proceeding at all. MR. SATTERFIELD: Well, actually, I'm from the same neck of the woods you are. I'm from America's Georgia, so it's a little closer to Birmingham. I've learned to hide the accent, you know, over the years --CHIEF JUDGE SLEDGE: You do better 12 than I do. MR. SATTERFIELD: -- but it took 13 14 some time. 15 In sort of listening to the -- to the questions presented to Mr. Garrett, I think, 16 17 sort of gets -- gets to sort of the difficulty that the Canadian Claimants have always faced in 18 these proceedings, because we're truly different 19 20 than -- than the other types of categories of 21 programming. The problem is, like public 22 Page 48 1 television, we represent a signal. Unlike public television, our programming encompasses all the 2 other categories of programming in this room, 3 including and to further complicate the fact is 4 the factors is that we have network television 5 6 programming, Canadian network television 7 programming. But as Mr. Garrett pointed out, our 8 9 signals are only carried in a very limited geographic region. So our carriage is small 10 11 compared to the other types of signals. 12

Your Honor. Thank you, also, as I said earlier, for the Judges' cooperation in adopting the stipulations and allowing us to -- to narrow the issues. We appreciate that help very much, and we hope nothing goes downhill from here. (Laughter.) OPENING STATEMENT ON BEHALF OF CANADIAN CLAIMANTS GROUP MR. SATTERFIELD: Good morning. My name is Kendall Satterfield. I'm representing the Canadian Claimants Group.

ability to do that, which is not to say that there

I certainly don't think that's an

some point -- I quickly commented earlier and I

Canadian Claimants, deserve great applause for

your work in resolving and clarifying the issues

And as I was opining yesterday to

some folks at the World Copyright Summit, I don't

think there's any question about what -- judges do

good job from us in this case because you have

presented it well and clearly. And maybe as

clearly as you presented it, there would be a

whole lot less risk that we will confuse things.

MR. GARRETT: Well, thank you,

And, hopefully, you should expect a

a better job when there's good lawyering.

want to make sure that it's clearly stated, that

the Judges feel all of the parties to this

proceeding, the Settling Parties and the

in this proceeding.

CHIEF JUDGE SLEDGE: Mr. Garrett, at

might not be at some future point in time.

issue here in this proceeding, Your Honor.

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With me today is Victor Cosentino -he's an attorney that's been involved in the case for a long time, but he's now -- he used to be at our firm. Now, he's in Pasadena, California -and Rich Volin, one of the partners from my firm.

CHIEF JUDGE SLEDGE:

Mr. Satterfield, I've had the pleasure the last two days of spending a good deal of time with Justice Vancise of the Canadian Board so that I would understand Canadian as you make your presentation.

And in the greater scheme of things, we are a niche. So then we're faced with how to compare ourselves with the other categories. And as you know, over the years, there have been -there's been a sort of major battle between the studies put on by the Sports Claimants and the studies put on by the Program Suppliers which are intended to look at the country as a whole, look at the programming categories of -- that's -that's broadcast on the television stations around the country and come up with some way of -- of

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doing a relative comparison of the valuation of that programming to cable operators, viewers,

And because, one, we're only carried in a limited part of the country; we only are ever sampled in a very small way. And then, secondly, our programming categories are not easily defined as a type of programming.

whatever. And that's always been the battle.

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the signal carriage.

I don't really know what Canadian programming is. It's everything. And so to say what's the value of Canadian programming versus what's the value of live team sports is not really a comparison.

You know, the Canadian signals have live team sports, live team sports owned by Mr. Garrett's clients, some of it, and live team sports owned by other Claimants that the Canadians represent.

So it's really not an easily definable metric when -- when these studies are done. And that's the problem that we've faced over the years.

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1 Now, the last two CARPs have been 2 willing to -- to adopt our suggestion that it's 3 okay to look at the fees paid for the Canadian 4 stations. Notwithstanding the fact that I think 5 all the Copyright Owners in this room are of the 6 strongly held opinion that the statutory fees 7 undervalue the programs, but the Canadian Group is 8 accepting of the fact that -- we're still willing 9 to use those fees as a starting point and let the 10 Judges and the parties recommend adjustments. 11 possibly, for whatever reason, because there's --12 there's some ambiguity in how the fees are 13 calculated, maybe other programming, you know, 14 really does need some extra compensation, but that 15 for the Canadians, these fees are really the best 16 evidence that we can look at to set some outer 17 bound on our claim.

> Now, I wish, when the categories were first defined, that the Canadian category had been treated like public television and we could just claim for the entire signal. In which case, then our case really would be look at the

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Now, the approach that we've suggested and, as Mr. Garrett reviewed, is, as -as -- has been with tremendous controversy over the years, is to look at -- step back and look at

There essentially -- in -- broadly speaking, there are three types of signal groups that are involved in these proceedings: there's U.S. commercial television stations, there's public television stations, and then there's the Canadian stations.

What we've long advocated is that you focus within those groups. The studies that the Sports Claimants have put on and the Program Suppliers have put on have done very good jobs for what they're trying to do in trying to compare the programming on the U.S. commercial television stations.

They have a lot of difficulty when they try to start including the public television stations and when they include the Canadian television stations.

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1 royalties, that's the Canadian pool, and then we 2 would move to a Phase II proceeding with 3 Joint Sports and the Program Suppliers to 4 determine a fair share allocation for their

programming on Canadian stations.

But, for historical reasons or happenstance, that wasn't the way it was established.

Now, one of the things that we dealt with in the early days was even establishing to the Copyright Royalty Tribunal that the Canadian stations were carried for any reason other than the fact they broadcast NHL Hockey. And that's what really prompted us to start our own cable operator survey so that we could go to the cable operators that carry the Canadian stations and ask them -- you know, give them a -- we've -- we've, you know -- you know, we modeled our survey on the board survey and -- but adopted it to ask about the royalty value programming of the Canadian stations so that we could have some evidence of what was the relative value or importance of the

Page 55 Page 53 suggest almost a mechanical outcome for the 1 hockey programming or the U.S. television 1 programming on the Canadian stations. 2 Canadian Claimants, because we are in the 2 situation where we have a limited number of 3 And the results were that cable 3 4 signals. operators put a lot of value on the U.S. sports 4 5 And except for the sports programming on Canadian stations and, therefore, 5 6 programming and the Program Suppliers' we have to give them a fairly generous share of 6 programming, everyone else who's programming is on whatever royalties are paid for the Canadian 7 7 those signals has agreed to let us represent their 8 8 stations. interest to collect these royalties. So there is 9 They give less value to the U.S. 9 no dispute amongst what is the value of that other 10 programming, which sort of makes common sense, 10 since why would you bring in a Canadian station 11 programming. 11 So that's the approach that, you 12 just to get U.S. programming. 12 know, we put forward in our evidence this year. 13 Now, there's really two types of 13 Whether the parties can find mistakes or questions 14 Canadian stations being retransmitted. 14 15 about how we calculated something, I think that's They are the CBC stations, the 15 16 all fair game. Canadian Broadcasting Corporation, which is a 16 17 And quite frankly, notwithstanding large, public broadcaster, but it's not really 17 18 the stipulation, I am of the mind that if there is like -- it's not similar to public television from 18 some dispute about how we calculated the 3.75 fees the standpoint that it is a true broadcaster like 19 19 20 or anything else within -- within -- that's really CBS or NBC or ABC, except that it's Government 20 more of a -- in the nature of the proper way to do chartered, certain parts of the day are -- there's 21 21 22 it, then I think I would prefer that the Judges 22 no U.S. advertising, and the Government requires Page 56 Page 54 1 issue a ruling on that. the substantial percentage of all -- the vast 1 2 Because my goal as a small claimant majority of the programming be Canadian in origin. 2 Then there are private broadcasters. 3 group is to get a ruling that -- that adopts an 3 4 approach that will get me out of these And the private broadcasters are permitted to 4 proceedings, because that's my -- that's our goal 5 carry a much larger share of U.S. programming. 5 6 In fact, you will hear cited as an is to get out of these cases. 6 example by one of the Settling Parties' witnesses, 7 There're going to be -- you know, 7 8 there are going to be things that happen over time station CFTO, which is a private station and 8 9 as to the mix -- you know, the makeup of the which, in the evening, carries a lot of U.S. 9 10 programming on commercial television stations network programming. 10 that's going to cause periodic fights, but I don't 11 But the evidence has shown over 11 want to be in the middle of those, because it's 12 the years that over time, the primary station --12 13 just -- it's ridiculously expensive for us to the CBC stations are the primary stations 13 retransmitted by cable operators. Those are the 14 participate. 14 15 My goal is to -- is to adopt an stations that are primarily Canadian in origin. 15 16 approach that says when the Canadian stations are In this proceeding, we tailored our 16 17 not carried anymore, you know, we're not a member case to provide the information relied upon by the 17 18 here or -- or if the Canadian carriage drops last CARP in making its allocation to our group. 18 19 precipitously, our award automatically drops, that We didn't go beyond that. 19 20 there's no argument or debate about it. So that was -- that is the criteria 20 It's the same as if there was a that exists at the -- at this moment in time. And 21 21 cable network being carried. If the cable under that type of criteria, in essence, it does 22 22

networks carriage declines, the fees that go to that network decline also. And that's the approach that -- that we've long sought.

And I realize that it causes all kinds of consternation as to relative marketplace value, but that's -- the problem that is faced under that standard is that the programming categories are -- well, Claimant groups are programming categories, but no cable operator carries a programming category; they carry stations, they have to pick stations.

And as I said, from our perspective, there's commercial station -- there's commercial stations, there's public television stations, and then there's Canadian stations. And we're willing to live within the confines of the statutory royalty role.

JUDGE ROBERTS: Mr. Satterfield, I have three questions for you. The first question is the same one I asked Mr. Garrett, and that is, is it your view that relative market value is the only standard to be applied in this proceeding to

determining that relative value.

And I don't want to get in trouble with my Program Supplier friends in the room. I mean, they certainly take the perspective that the views of the cable subscriber should also be taken into consideration.

But.-- but not withstanding, both of those studies is really designed to measure the comparative value, relative value of the programming on the -- on the U.S. commercial television stations. That's what -- that's what they're best at doing.

And I think that if the Judges look at it from that perspective, then they do a terrific job. Where they come into a problem is when you have just a signal and you don't even have a lot of carriage.

JUDGE ROBERTS: My second question relates to your testimony that you will present on fee generation. We have the '98-'99 numbers, and you will be presenting testimony to show that the fee generation has gone up from 1998 to 1999 and

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determine this distribution?

MR. SATTERFIELD: My view is that it's an aspirational standard that should be applied when it's possible, but that where the evidence is not clear, then the -- the Judges need to be permitted to adopt some other type of reliable and useful standard.

JUDGE ROBERTS: Such as?

MR. SATTERFIELD: Such as, for the Canadian stations, the statutory royalty fees, because that is -- that's what -- I mean, that's

because that is -- that's what -- I mean, that's

the money that we all have to live with.The commercial stations gener

The commercial stations generate a certain amount of royalties every year. And -- and whether you call it fee generation or not, the Judges are trying to come up with a way to award the -- make awards to the different programming on those stations.

And as I — and in my opinion, the study that the Joint Sports Claimants have put forward has, over time, been seen as — as taking — making a pretty good attempt at

that is the changed circumstances on which we are to base the award, correct?

3 MR. SATTERFIELD: Correct.

JUDGE ROBERTS: Okay. How is that consistent with -- and I'm looking at the D.C. Circuit's decision in the NAB versus CRT case in 1985, where the Court says it would be inappropriate as a matter of law for the Tribunal to rely solely upon a standard of changed circumstances.

Yet, the way I look at your case, that is what you are presenting to us is solely changed circumstances.

MR. SATTERFIELD: I apologize for that -- that decision was on the last case before I got involved here.

I think, notwithstanding that opinion, that is, in essence, what --

JUDGE ROBERTS: I don't mean to put you on the spot today. If you wish to take time to look at it and you wish to get back to us at another time, a later time, that would be fine.

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But I would like to know the answer to that.

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MR. SATTERFIELD: Yes, sir. We will certainly address that.

I will say those are the same judges that referred to us as a litigious subculture. So they were tired of us, I think.

JUDGE ROBERTS: My third question for you is, in reviewing your case and looking at the fact that you present that the numbers in the fee-generation approach have gone up since the '98-'99 proceeding, my third question to you is, what is the explanatory power of that?

How does that show that circumstances have changed simply because your particular numbers have gone up?

MR. SATTERFIELD: Well, what -- all it -- all it can really explain is that the royalty pool available for those years has changed based on the actual carriage and the payment of -of -- for those particular signals.

There are any number of factors that

ways. Some things are constant, but there's always a lot of change. And, in fact, one of the exhibits put forth by the Program Suppliers and sponsored by Ms. Martin shows the carriage history of the systems that carry Canadian stations over the years.

And it's fascinating just looking down these lists at how carriage changes over time. It's also fascinating that you can see how systems merge. Suddenly, it will have -- you go from 50,000 subscribers to 150,000 subscribers. So there's been a lot of dynamic activities in the industry.

And we don't try to go out and understand everything that's going on. We just report the results, you know, the good, the bad or the ugly.

JUDGE ROBERTS: So to make sure I understand clearly, the fact that your fee-generation numbers went up, which appears to be the result of more subscribers receiving

Canadian programming, hence, generating more fees 22

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go into changing from one -- from one year to the next, systems merging. And so I'm not standing here -- I'm not going to stand here and argue that, suddenly, a certain number of cable operators decided having a Canadian station is that much more valuable to us than it was two years ago.

What our position is that the data is whatever the data is. So that if, from one year to the next, they decide to drop certain signals or they drop us, I mean, that's -- that's the point about our approach is that if our carriage goes down, I'm not going to dispute or argue that, somehow or another, our value is what it was the prior year.

Now, from the standpoint of individual cable operators, you know, they value it enough -- either value it enough to carry it or they don't value it enough and they drop it, you know, for whatever reason, they drop it.

But over time, I mean, the carriage on these systems really has changed in a lot of Page 64

paid by the cable systems that carry them, that, 1 alone, explains that the value of the Canadian 2 3 programming has gone up? 4

MR. SATTERFIELD: Relative to the other distant signal programming putting in claims in this proceeding, because they all have to claim against the same pot of money.

And the question is, which of those -- and -- and they can only claim if the stations are carried and royalties are paid.

So for our Claimant group, we had more stations either being carried or being viewed by more subscribers than -- during this time period than we did in the prior time period, and the result was a greater contribution to the royalty pool.

JUDGE ROBERTS: So your focus is on the royalty pool, rather than necessarily how cable systems may value your programming or how subscribers may value your programming?

MR. SATTERFIELD: Well, our cable operator study has to ask the question of how they 22

1	Page 65		Page 67
1	value the programming on our signal, yes.	1	MR. OLANIRAN: O-l-a-n-i-r-a-n.
2	We rely on their actions for how	2	THE WITNESS: You don't really want
3	they value whether or not they valued us enough	3	me to sit down, do you?
4	to carry us, because that's that's actual	4	CHIEF JUDGE SLEDGE: Mr. Olaniran, I
5	behavior.	5	think you will need to abandon this table with
6	JUDGE ROBERTS: We'll hear that,	6	this witness.
7	All right.	7	Ms. Kessler, with your great effort
8	CHIEF JUDGE SLEDGE: Let me get that	8	to sit down, will you please rise?
. 9	preliminary matter simply addressed with	9	THE WITNESS: I have a hurt foot,
10	Mr. Garrett concluded.	10	too.
11	Is it stipulated in this proceeding	11	CHIEF JUDGE SLEDGE: I don't know
12	by the Canadian Claimants that the framework of	12	why that's well, before you sit back down,
13	using Phase I and Phase II is the proper framework	13	we'll pull it out.
14	for this proceeding?	14	WHEREUPON,
15	MR. SATTERFIELD: Yes, from the	15	MARSHA E. KESSLER
16	standpoint that this is a Phase this is the	16	was called as a witness and, having been first
17	Phase I proceeding.	17	duly sworn, was examined and testified
18	CHIEF JUDGE SLEDGE: Well, it's	18	as follows:
19	been you call it a Phase I proceeding, but	19	CHIEF JUDGE SLEDGE: Before you sit
20	you're in reaching that conclusion, you're	20	down, let me pull that out.
21	adopting that framework of using Phase I and	21	THE WITNESS: Judge, thank you.
22	Phase II for distributions?	22	Possibly, together, we can do it.
	Page 66		Page 68
1	MR. SATTERFIELD: Correct. From the	1	CHIEF JUDGE SLEDGE: This is not a
1 _			
2	standpoint that the other groups have represented	2	
3	standpoint that the other groups have represented that they have the authority to — to settle	2	room of which we have any control. We are present in this room by the charity of others.
ł			room of which we have any control. We are present
3	that they have the authority to to settle	3	room of which we have any control. We are present in this room by the charity of others.
3 4	that they have the authority to — to settle amongst themselves and to enter into a proceeding	3 4	room of which we have any control. We are present in this room by the charity of others. All right. I think I'll have to
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	Page 69		Page 71
_	MR. OLANIRAN: Good enough.	1	Q. So between your experience at the
1	DIRECT EXAMINATION	2	Motion Picture Association and your experience at
2	BY MR. OLANIRAN:	3	the Copyright Office, you have about how
3		4	many years of experience?
4	Q. Good morning, Ms. Kessler.	5	A. I think it's roughly 30.
5	Will you please state your name for	6	Q. Okay. Have you testified before
6	the record?	7	this body or any other body with regard to
7	A. Marsha E. Kessler.	8	compulsory license?
8	Q. And where do you work? A. Motion Picture Association of	9	A. I helieve I've testified before all
9		10	of the bodies in charge of allocating the
10	America.	11	royalties, certainly before the CRT, before the
11	Q. What is your current position at the	12	CARP, here have I missed one?
12	Motion Picture Association?	13	I believe
13	A. I'm the vice president of	14	JUDGE ROBERTS: I don't know. We
14	retransmission royalty distribution.		
15	Q. And how long have you been in that	15	may still be counting in the future.
16	position?	16 17	(Laughter.) THE WITNESS: and I believe as
17	A. Twenty-seven years, since 1982.		far as I can recollect, I have testified before
18	Q. What are your responsibilities at	18 19	all of them.
19	that position?	20	BY MR. OLANIRAN:
20	A. My primary responsibility is	21	
21	allocating the funds that MPA receives on behalf	22	Q. Okay. And any other bodies outside of the decisionmakers distribution proceedings
22	of Program Suppliers, cable and satellite	22	
	Page 70		Page 72
1	royalties to our represented companies.	1	proceedings? I'm sorry.
2	I also assist our claimants in	2	A I actually travaled once to tryice
_			A. I actually traveled once to twice
3	filing their claims annual. I assist in the	3	to Canada to assist Canadians in some
	filing their claims annual. I assist in the supervision of our enforcement program and other	3 4	to Canada to assist Canadians in some retransmission royalty issues. And I also have
3	filing their claims annual. I assist in the supervision of our enforcement program and other duties as assigned.	3 4 5	to Canada to assist Canadians in some retransmission royalty issues. And I also have appeared upon the Hill before a subcommittee.
3 4	filing their claims annual. I assist in the supervision of our enforcement program and other duties as assigned. Q. All right. Where were you before	3 4 5 6	to Canada to assist Canadians in some retransmission royalty issues. And I also have appeared upon the Hill before a subcommittee. Q. When you testified before those
3 4 5	filing their claims annual. I assist in the supervision of our enforcement program and other duties as assigned. Q. All right. Where were you before you joined the Motion Picture Association?	3 4 5 6 7	to Canada to assist Canadians in some retransmission royalty issues. And I also have appeared upon the Hill before a subcommittee. Q. When you testified before those different bodies, on whose behalf did you testify?
3 4 5 6	filing their claims annual. I assist in the supervision of our enforcement program and other duties as assigned. Q. All right. Where were you before you joined the Motion Picture Association? A. In this building on this floor. I	3 4 5 6 7 8	to Canada to assist Canadians in some retransmission royalty issues. And I also have appeared upon the Hill before a subcommittee. Q. When you testified before those different bodies, on whose behalf did you testify? A. On the Hill and here on the Hill,
3 4 5 6 7 8 9	filing their claims annual. I assist in the supervision of our enforcement program and other duties as assigned. Q. All right. Where were you before you joined the Motion Picture Association? A. In this building on this floor. I was employed by the Copyright Office Licensing	3 4 5 6 7 8 9	to Canada to assist Canadians in some retransmission royalty issues. And I also have appeared upon the Hill before a subcommittee. Q. When you testified before those different bodies, on whose behalf did you testify? A. On the Hill and here on the Hill, I believe I represented all program owners; here,
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	Page 73		Page 75
1	A. Yes, I am.	1	And MEK-4 constitute statements of
2	Q. I was hoping so.	2	account filed by cable systems serving Dunkirk,
3	Is this your written testimony?	3	New York.
4	A. Yes, it is.	4	Q. Okay. Do you intend to rely on
5	Q. And are you familiar with the	5	these exhibits in your testimony?
6	accompanying exhibits which were filed along with	6	A. I do.
7	your testimony?	7	Q. And did you prepare the exhibits or
8	A. Yes, I am.	. 8	were you personally involved in either gathering
9	MR. OLANIRAN: Your Honors, I would	9	the exhibits or preparing the exhibits for your
10	like to have marked I'd like to have the	10	testimony?
11	following exhibits marked. The first one is	11	A. I think I prepared most of them and
12	PS Exhibit MEK-1. I'd like to have it marked as	12	others gathered them upon my request.
13	Settling Parties Exhibit 1.	13	Q. Okay.
14	The next one is PS Exhibit MEK-2. I	14	MR. OLANIRAN: Your Honors, I would
15	would like to have that marked as Settling	15	like to have SP Exhibits exhibits marked as
16	Parties, or SP, Exhibit 2.	16	SP Exhibits 1, SP Exhibits 2, SP Exhibits 3
17	The next one is PS Exhibit MEK-3, I	17	CHIEF JUDGE SLEDGE: We'll take the
18	would like to have that marked as SP Exhibit 3.	18	exhibits one at a time.
19	And, finally, PS Exhibit 4	19	MR. OLANIRAN: I'm sorry?
20	PS MEK-4, I'd like to have that marked as	20	CHIEF JUDGE SLEDGE: We'll take
21	Exhibit SP Exhibit 4.	21	exhibits one at a time.
22		22	MR. OLANIRAN: Okay. I would like
	Page 74		Page 76
1	(Settling Parties Exhibit	1	to have admitted SP Exhibit 1.
2	Nos. 1 through 4 were	2	CHIEF JUDGE SLEDGE: Any objection
3	marked for	3	to SP Exhibit 1?
4	identification.)	4	(Pause.)
5	BY MR. OLANIRAN:	5	CHIEF JUDGE SLEDGE: Without
6	Q. Ms. Kessler, would you please take a	6	objection, it's admitted.
7	look at those exhibits that I just mentioned?	7	(Settling Parties Exhibit
8	A. My exhibits disappeared.	8	No. 1 was received in
9	Uh-huh.	9	evidence.)
10	Okay. I'm looking at them.	10	MR. OLANIRAN: I would also move
11	Q. Okay. Would you please tell us,	11	that SP Exhibit 2 be admitted into evidence.
12	briefly, what each of those exhibits are and	12	CHIEF JUDGE SLEDGE: Any objection
13	identify the exhibits, please, before you tell us	13	to Exhibit 2?
14	what they are?	14	(Pause.)
15	A. The Exhibit MEK-1 is a listing of	15	CHIEF JUDGE SLEDGE: Without
16	the former FCC signal carriage rules. It consists	16	objection, it's admitted.
17	of, it looks like, three pages, front and back.	17	(Settling Parties Exhibit
1	MEK-2 is a statement of account	18	No. 2 was received in
118		1	
18	filed by Form 1, 2 systems, which I'll talk more	19	evidence)
19	filed by Form 1, 2 systems, which I'll talk more	19	evidence.) MR OI ANIRAN: I would also sek that
1	filed by Form 1, 2 systems, which I'll talk more about. MEK-3 is the long form statement of	19 20 21	evidence.) MR. OLANIRAN: I would also ask that SP Exhibit 3 be admitted into evidence.

	Page 77		Page 79
1	to Exhibit 3?	1	Section 111 exists to provide a means of
1 2	(Pause.)	2	compensating program owners for the use of their
	CHIEF JUDGE SLEDGE: Without	3	works in these circumstances.
3	objection, SP Exhibit 3 is admitted.	4	Q. There are a couple of phrases that I
4	(Settling Parties Exhibit	5	want to make sure you clarify for the benefit of
5	No. 3 was received in	6	the Judges.
6	evidence.)	7	When you refer to a "broadcast
7	MR. OLANIRAN: And, finally, I would	8	station," what do you mean by that?
8	ask that SP Exhibit 4 be admitted into evidence.	9	A. A broadcast station is what every
9	CHIEF JUDGE SLEDGE: Any objection	10	one of us, at least in this group, would look at
10	to Exhibit 4?	11	when we were children. Turn on the television
11		12	station and programs would appear. It's a
12	(Pause.) CHIEF JUDGE SLEDGE: Without	13	facility licensed in the United States by the FCC
13	objection, SP Exhibit 4 is admitted.	14	or by the Canadian Government or by the
14	(Settling Parties Exhibit	15	Mexican Government to broadcast or air on a
15	No. 4 was received in	16	specific channel in a specific market.
16	evidence.)	17	For example, here, in
17	MR. OLANIRAN: Thank you,	18	Washington, D.C., we have Channel 5, WTTG,
18	· · · · · · · · · · · · · · · · · · ·	19	licensed to Washington, D.C.
19	Your Honor. BY MR. OLANIRAN:	20	You can usually tell a broadcast
20		21	station, because on the Eastern part of the
21	Q. Ms. Kessler, do you have any corrections to your testimony?	22	United States, in general, the call sign will
22			Page 80
	Page 78	_	
1	A. No.	1	begin with a W; in the Western part of the
2	Q. Now, what is the purpose of your	2	United States, in general, the call sign will
3	testimony today?	3	begin with a K; in Canada, call sign begins with a
4	A. I'm here to talk about different	4	C; in Mexico, a call sign begins with an X.
5	kinds of cable systems, the statements of account,	5	Q. You frame your discussion of
6	sort of to be an educator in the way 111 works,	6	Section 111 in terms of retransmissions or
7	and the way statements of account are to be	7	retransmit.
8	reviewed.	8	Would you please explain what that
9	Q. And what is your general	9	means also?
10	understanding of how Section 111 works?	10	A. When a free, over-the-air TV
11	A. When program owners license, say, a	11	station, like WTTG, here, in Washington,
12	TV show to a particular broadcast station, the	12	broadcasts another word for broadcast is
13	license roughly covers a certain geographical area	13	transmit. It means to air, to send out into the
14	surrounding the station. And there is an	14	airwaves television programming. So we say the TV
15	exchange, usually, of money between the	15	station transmits.
16	broadcaster and the program owner.	16	When a cable system picks up a
17	When a cable system picks up that	17	broadcast station and simultaneously redelivers
18	broadcast station and carries it outside that	18	it, we call that retransmission.
19	market, there is a new audience for that	19	Q. You also framed the discussion in
20	programming for whom the program owner has not	20	terms of distant signal or local market.
21	been compensated.	21	Would you please also explain what
22	It's my understanding that	22	that what that means what that term means?

Page 81 Page 83 1 Certainly. 1 deposit of royalties and, with that deposit of 2 In the example I gave of Channel 5, 2 royalties, the payment must be accompanied by a 3 here, in Washington, Channel 5's local market 3 document called a statement of account. 4 would be this geographic area that I referred to 4 And how often must the cable system 5 in the Washington area. It generally consists of 5 file the statement of account? 6 6 a grouping of counties surrounding the They file twice a year. They file 7 7 Washington, D.C. market. for the first six months, January through June, on 8 8 If a cable system picks up WTTG and August 29th of the same year; and for July through 9 carries it outside the D.C. market, we then say 9 December, they file on March 1st of the following 10 that is a distant carriage of Channel 5. 10 11 I'm not sure this is an accurate 11 And we refer to these accounting 12 example, but we'll pretend for the sake of example 12 periods -- for example, 2003, if it were the first 13 that it is. If a system in Reading, Pennsylvania 13 accounting period, we would say 2003-1 or '03-1 is 14 delivered Channel 5, WTTG to its subscribers, then 14 the jargon we use. 15 15 WTTG would be considered distant to the Okay. Now, I'm going to direct your 16 subscribers in Reading, Pennsylvania. 16 attention to the document admitted as SP Exhibit 2 17 JUDGE WISNIEWSKI: As a native of 17 and, later on, SP Exhibit 3. 18 Reading, Pennsylvania, I would find that it would 18 Would you please identify 19 be very distant. 19 SP Exhibit 2 for us? 20 20 THE WITNESS: God, I swear I did not SP Exhibit 2 -- and here it is on 21 know. I picked it out of my head. And a lovely 21 the screen in front of us -- is the form filed by 22 city it is, too. 22 the cable systems whose gross receipts are under a Page 82 Page 84 1 (Laughter.) 1 certain threshold. 2 BY MR. OLANIRAN: 2 Okay. And what about SP Exhibit 3? 3 Q. Are all programs compensable -- are 3 That is the long form, Form 3, and 4 all programs compensable on the Section 111? 4 that is the statement of account that is filed by 5 A. No, they are not. Anything -- first 5 cable systems -- larger cable systems whose gross 6 of all, just a big push to the side. Anything on 6 receipts are equal to or more than a certain 7 7 a cable network is not compensable. That's threshold. 8 because the financial arrangements have already 8 Q. And would you please take us through 9 been made between the program owner and the cable 9 the contents of these exhibits -- perhaps 10 network. 10 Exhibit -- SP Exhibit 3, which I think has very 11 In terms of programming on broadcast 11 similar information to the third one? stations, programming disseminated by the ABC, CBS 12 12 Certainly. This is the long form 13 or NBC networks is not compensable. 13 filed by cable systems whose gross receipts -- I Beginning on Page 6 of your 14 14 apologize -- I believe they are 379,600 or more 15 testimony, you discuss the operation of the 15 semiannually. 16 Section 111 license. 16 The cable system tells, in Space A, 17 Now, how does this license operate 17 what accounting period is covered by the 18 exactly? 18 statement. Space B has the owner named and the 19 Well, it's not a piece of paper; 19 address and a way to get in touch with the system. 20 it's an implied license. And under its 20 It's my understanding that the 21 requirements, a cable operator has to do two 21 Copyright Office actually provides that 22 things: the operator has to make a semiannual

22

information on the statement of account, along

Page 87 Page 85 time period is this particular statement of 1 with a bar code. But -- I don't have access to 1 2 account for? that, but I think this -- this is a general 2 3 THE WITNESS: Let's see. statement of account document. 3 Can you go forward, Lucy, please, to Space C is just a d/b/a, any d/b/a's 4 4 the rate page -- actually, hold on. Hold on. I 5 or a local address for this system. 5 6 may be able to answer. Space D, which actually, in real 6 7 July 2002. life, can take up several pages of information, 7 JUDGE ROBERTS: July 2002? are the communities served by the cable system. 8 8 9 THE WITNESS: Um-hum. 9 When I was first in the JUDGE ROBERTS: So for 2000 to 2001, Licensing Division examining statements of 10 10 which are subject to this proceeding, can you tell 11 account, there would be one or two communities 11 us what the differences between those statements 12 listed in a statement. 12 on the account form are and this one? 13 Now, when I look at them, I see two 13 THE WITNESS: There will only be one and three pages, sometimes covering multiple 14 14 difference, and that will be the percentages of 15 15 counties. gross receipts that are charged in the royalty fee 16 If you'll go ahead flip the page, 16 calculation. Other than that, the forms are the most important block on this page is E. In 17 17 18 identical. Block E, the cable system reports information 18 related to the subscribers and the rates that the 19 BY MR. OLANIRAN: 19 20 And do you cover those in your O. cable system charges. 20 21 The rates are broken down according testimony? 21 I do. I'm only going to cover 22 to services, residential, for a first set, the A. 22 Page 88 Page 86 2000-2, but certainly, I can cover both periods if number of subscribers to that, and the rate 1 1 charged, if there are additional sets in the 2 you like. 2 3 The reason I picked 2000-2 is house, how many subscribers to that, what is the 3 because there was a rate change then. And so for charge to that, radio, commercial establishments, 4 4 these proceedings, I think there was only one hotel and motel and converter, any kind of 5 5 accounting period under the old rates, and the converters that are used to supply broadcast 6 6 rest of the accounting periods are the new rates. 7 stations to the household. 7 And so I picked this one because it covered the 8 Again, the number --8 majority of time that we're presenting data to you 9 Q. May I interrupt you for a second? 9 10 guys. 10 A. Um-hum. 11 Continue? By "sets," you're referring to 11 Q. 12 Q. Yes. 12 television sets? Go to Space G. This is the space 13 A. Correct, um-hum. 13 where the cable operator lists all the broadcast And for each of the categories, the 14 14 stations that are retransmitted to the subscribers operator is required to supply the number of 15 15 subscribers, the rate that's charged. And in that 16 of the system. 16 block on the right-hand side, if it turns out that 17 The columns are -- the first column 17 none of these categories is descriptive of what 18 is the call sign. So let's pretend I'm the 18 the operator offers his customers, the operator 19 Reading, Pennsylvania cable system and I'm 19 carrying WTTG. I would write WTTG in Column 1. can supply his own description of the service, the 20 20 number of subscribers and the rate. 21 For Column 2, you don't use the -- the operator 21 uses the local channel over which the station JUDGE ROBERTS: Ms. Kessler, what 22 22

Page 89 Page 91 1 broadcasts. 1 put an O. I don't know what the O stands for, but 2 So here, in D.C., Channel -- WTTG is 2 it means you carry it full-time. 3 Channel 5, so they would put a 5 in Column 2. 3 Going on to -- let's skip H and I 4 For these purposes -- and I'll 4 and J. 5 explain more about this later -- WTTG is 5 And let's go to K. This is where 6 considered an independent station, so I would put 6 the cable operator reports his gross receipts for 7 I in Column 3. 7 the six-month period covered by this statement of 8 Column 4, I'm required to say is 8 account. 9 this a distant or a local station. And because 9 The following Column, L -- I'm 10 I'm the Reading, Pennsylvania cable operator, I 10 sorry. The following block, L, is a summary-type 11 write yes in that column. 11 page which reports the calculation of different 12 In Column 5, I have to say the 12 fee schedules that I'll cover later in my 13 basis --13 testimony. CHIEF JUDGE SLEDGE: How can you say 14 14 There is more to the statement of 15 yes if it's an either/or question? 15 account than this, but these are the basics. 16 THE WITNESS: If you'll look at 16 There are various schedules in the statement of Channel -- I'm sorry -- Column 4, the cable 17 17 account that I'm going to cover in my testimony 18 operator has to declare for the Reading, 18 later. And if you want to see the page in the 19 Pennsylvania system whether WTTG is distant or 19 statement, we can certainly refer to that if you 20 local. And it is distant. 20 like. 21 CHIEF JUDGE SLEDGE: If the question 21 BY MR. OLANIRAN: 22 is distant or local, the answer can't be yes. 22 All right. So SP Exhibits 2 and 3 Page 90 Page 92 1 THE WITNESS: I'm sorry. If you 1 are what the operators use to calculate, at least 2 could look at the column, it says --2 for the period in question, 2002 going forward, 3 CHIEF JUDGE SLEDGE: I can't see the 3 the operators would use -- would submit to the 4 column. 4 Copyright Office and pay the related fees? 5 THE WITNESS: -- is the station 5 A. That's correct. distant? Yes or no. 6 6 And the only difference between the 7 CHIEF JUDGE SLEDGE: So the question 7 ones -- like I said, that I used in my testimony 8 8 is whether it's distant, not whether it's local? and the ones from the previous period is the 9 THE WITNESS: I'm sorry. Yes. I 9 statutorily provided rate schedule. 10 10 apologize for the confusion. Other than that, the forms are 11 Column 5 asks for the basis upon 11 identical. 12 which it was carried. And in that column, the 12 Q. Now, all of the cable systems don't 13 information being sought is was it carried 13 calculate their royalties the same way, do they? 14 full-time, meaning 24 hours, or 100 percent of the 14 No, they don't. 15 station's broadcast day, or for any other period. 15 Q. Okay. How are the royalties 16 And then Column 6, the location of 16 calculated for the cable systems? 17 the station, our Reading cable operator would 17 For the Form 1 systems -- and, 18 write Washington, D.C. 18 again, forgive me, but I don't recall off the top 19 19 And for the sake of argument, going of my head -- for 2000-2 going forward, a Form 1 20 20 back to Column 5, I'm going to pretend in this system was one whose semiannual gross receipts 21 hypothetical that the operator carries it 21 were 98,600 or less. That system paid a flat fee full-time. And according to the instructions, you 22 22 of \$37.

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Page 93

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I believe, for the previous period, it was \$28. And when the rate change went into effect, the new flat rate went from 28 to \$37.

The Form 2 systems are those whose gross receipts were more than 98,600 and less that 379,600. And those operators pay flat percentages of their gross receipts.

The Form 2, they pay .5 percent up to a certain threshold and -- or .1 plus a flat fee up to a certain threshold.

- And if I understand your testimony correctly, then, the cable systems, in terms of the forms that they file, are defined by gross receipts cited?
 - A. That's correct.

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Okay. Now, let me focus you on how Form 3 systems, which are, I guess, the larger systems, calculate the royalties.

What are the key factors that they take into account when they calculate these

royalties? Two key factors: gross receipts and A.

for \$25, that goes in the bucket.

If a package of service does not contain a broadcast station, for example, if it's Internet service or telephone or burglar alarm or cable -- premium cable networks, those monies do not go into the pot. Only a package of -- any and all packages of service that have free over-the-air TV stations in them.

CHIEF JUDGE SLEDGE: Did you make any intentional distinction when you said premium cable networks as opposed to any other cable network?

THE WITNESS: Yes, I did, sir. I think of the basic cable networks, such as TNT, USA, et cetera, as being in the -- I don't even know what the word is, but it's a cable network.

The premiums are usually in packages, like HBO, Showtime, and you may get three of them for a certain fee.

So when I was referring to the premiums, I was referring to those that you actually have to pay extra for in order to

Page 94

distant signals.

And what are gross receipts? Q.

Gross receipts are those revenues collected by the system from its subscribers for any and all services that contain broadcast stations.

Q. And what do you mean by that?

A. Let me make up a hypothetical example. Let's say that a cable operator has its lowest basic -- its lowest tier of service is called basic, and they charge 15 bucks a month for that. That typically contains all of the broadcast -- local broadcast stations and possibly

So for each subscriber who pays 15 bucks a month, that 15 bucks goes into the bucket.

some distant broadcast stations.

If the cable operator carries an expanded basic tier for \$10 and that also has broadcast stations in it, distant or local, the operator has to first buy the lower tier for 50 -for \$15 and then the expanded basic for \$10. So receive, whereas the basic cable networks are often bundled in with other things.

CHIEF JUDGE SLEDGE: That's a marketing conclusion you've given, isn't it?

THE WITNESS: Actually, I'm a cable subscriber and it's my own experience in my household.

CHIEF JUDGE SLEDGE: But is there any legal standard or anything for the answer you just gave? It's just your observation from your experience?

THE WITNESS: Certainly, it's my experience. I believe that is how the industry operates based on my 30 years of being involved with it.

> CHIEF JUDGE SLEDGE: All right. BY MR. OLANIRAN:

- Q. By the way, do cable operators also report on the Form 3 or whatever form they file as to what types of cable networks they carry?
- No, they don't.
 - Q. Okay.

	Page 101		Page 103
1	A. Next, I'm going to we're talking	1	wherewithal of calculating the royalty fee
2	about the base rate.	2	obligation.
3	If we could go over to the box on	3	Q. Now, you also mentioned the
4	16, the next page at the bottom.	4	3.75 royalty obligation.
5	Okay. For the base rate, cable	5	Would you please explain what that
6	operators pay a stair step going down royalty, the	6	is?
7	more distant stations that are carried.	. 7	A. A long time ago, the FCC limited the
8	So if it carries so for the first	8	number and the type of distance or the number
9	DSE, the rate is .956 percent times gross	9	of distant stations that cable systems could
10	receipts; for the second, third and fourth DSEs,	10	retransmit.
11	it's .630 percent of gross receipts; for the fifth	11	They lifted those restrictions, I
12	DSE and all of those above yeah, above, it's	12	believe, in 1981. And when that happened, cable
13	2.96 percent of gross receipts.	13	operators were allowed to retransmit, I believe,
14	So in this hypothetical, where we	14	an unlimited number of distant stations.
15	have a cable system whose semiannual gross	15	All of the parties in this room,
16	receipts were 1.3 million, here's how the royalty	16	went to the-then CRT and asked for a higher rate
17	is calculated.	17	for those newly added stations. And the rate that
18	The first DSE, you take 0.956 times	18	we were awarded was 3.75 percent per DSE.
19	1.3 million, and for the first DSE, the fee is	19	Q. And how would you how does the
20	12,428.	20	cable operator calculate the 3.75 DSE?
21	This cable system had a total of	21	A. It's essentially the same way.
22	three DSEs, so you've paid for one at the high	22	Let's just say that in a
	Page 102		Page 104
1	level. The final two will be paid for at the next	1	hypothetical situation, we had 1.25 DSEs for which
2	level.	2	a 3.75 liability was necessary.
3	So you take the rate, 0.63 percent,	3	I feel like I'm speaking in numbers
4	times \$1.3 million times two DSEs, and you get	4	here. I apologize. It's just the way it is.
5	\$16,380.	5	So he would pay his gross receipts
6	So for this particular hypothetical	6	times 3.75 times 1.25 in this hypothetical that I
7	system, the royalty for the base rate fee is	7	just set up.
8	28,808.	8	Q. Okay. On Page 19 of your testimony,
9	Q. Now, the percentage the	9	you describe this arbitrary choice that cable
10	percentages that you're applying to the DSE, where	10	operators make with respect to which signal is
		11	designated as 3.75, as opposed to a signal that
7 7	do the LINES Where no muse belochiages come		
11	do the DSEs, where do those percentages come	1	
12	from?	12	would be paid at the base rate.
12 13	from? A. Those are in the statute.	12 13	
12 13 14	from? A. Those are in the statute. Q. Okay. And, second, when a cable	12 13 14	would be paid at the base rate. Explain what you mean by that. A. What I mean is when there are
12 13 14 15	from? A. Those are in the statute. Q. Okay. And, second, when a cable operator is paying is calculating these	12 13 14 15	would be paid at the base rate. Explain what you mean by that. A. What I mean is when there are multiple stations for which distant stations
12 13 14 15 16	from? A. Those are in the statute. Q. Okay. And, second, when a cable operator is paying is calculating these royalties, is the cable operator distinguishing	12 13 14 15 16	would be paid at the base rate. Explain what you mean by that. A. What I mean is when there are multiple stations for which distant stations and it's clear that some will be paid for at the
12 13 14 15 16	from? A. Those are in the statute. Q. Okay. And, second, when a cable operator is paying is calculating these royalties, is the cable operator distinguishing between which signal is the first DSE or a portion	12 13 14 15 16 17	would be paid at the base rate. Explain what you mean by that. A. What I mean is when there are multiple stations for which distant stations and it's clear that some will be paid for at the base rate, but the number carried exceeded the old
12 13 14 15 16 17	from? A. Those are in the statute. Q. Okay. And, second, when a cable operator is paying is calculating these royalties, is the cable operator distinguishing between which signal is the first DSE or a portion of the first DSE and so on and so forth?	12 13 14 15 16 17 18	would be paid at the base rate. Explain what you mean by that. A. What I mean is when there are multiple stations for which distant stations and it's clear that some will be paid for at the base rate, but the number carried exceeded the old limits, the operator can pick which distant signal
12 13 14 15 16 17 18	from? A. Those are in the statute. Q. Okay. And, second, when a cable operator is paying is calculating these royalties, is the cable operator distinguishing between which signal is the first DSE or a portion of the first DSE and so on and so forth? A. No. The DSE at this point is not	12 13 14 15 16 17 18 19	would be paid at the base rate. Explain what you mean by that. A. What I mean is when there are multiple stations for which distant stations and it's clear that some will be paid for at the base rate, but the number carried exceeded the old limits, the operator can pick which distant signal he pays the base rate for and the one for which he
12 13 14 15 16 17	from? A. Those are in the statute. Q. Okay. And, second, when a cable operator is paying is calculating these royalties, is the cable operator distinguishing between which signal is the first DSE or a portion of the first DSE and so on and so forth?	12 13 14 15 16 17 18	would be paid at the base rate. Explain what you mean by that. A. What I mean is when there are multiple stations for which distant stations and it's clear that some will be paid for at the base rate, but the number carried exceeded the old limits, the operator can pick which distant signal

Γ.	Page 105		Pow 107
1		-	Page 107
2	switch gears and talk about the fees-generation concept, which you also discuss in your testimony.	1 2	because it has to. And that money would go into
3	What is your understanding of that		the minimum fee category.
		3	If there is a cable system that
4	term of the term "fees generated"?	4	carried let's just say a hypothetical situation
5	A. Fees gen or fees generated is	5	where it carried two I'm referring to distant
6	another term of jargon here in this 111 world.	6	stations now carried two distant networks and a
7	And it refers to the allocation of royalties among	7	necessary and a public television station
8	distant stations carried by a cable system.	8	remember, those had a quarter of a point each.
9	Q. Who calculates fees gen or fees	9	So for those three stations, you'd
10	generated?	10	have .75 DSEs, but the system would've paid the
11	A. There is only one vendor of data in	11	equivalent of one DSE.
12	town, and that is Cable Data Corporation, whose	12	What Cable Data would do is they
13	president is going to be here today. And it is	13	would put 75 percent they would put 25 percent
14	Cable Data who performs the fees-gen calculation.	14	of the money in the minimum fee bucket, and they
15	Q. And is there a connection between	15	would allocate 25 percent of the for the
16	the way the cable operators calculate and pay	16	remaining two networks and one public television
17	royalties and the way that you understand the	17	station.
18	fees-gen calculations is there any connection	18	Did you understand that? Did that
19	between the two?	19	make sense?
20	A. No, there's not.	20	Okay. Then for Form 3s
21	Q. Let's go back.	21	JUDGE WISNIEWSKI: Let me put it
22	What I'd like you to explain is your	22	this way: I understood what you said.
	Page 106		Page 108
,		-	
1	understanding of how the fees-gen concept works.	1	THE WITNESS: Okay. Well, I'm going
2	A. Actually, I don't want to go there	2	to make it, hopefully, clearer.
3	yet.	3	Let's go to Page 24.
4	Lucy, let me just cover a few	4	JUDGE WISNIEWSKI: Whether it makes
5	things.	5	sense or not, of course, is a product of the
6	There are cable systems who carry no	6	system.
7	distant stations. So as so it's not possible	7	THE WITNESS: Well, I want it, more
8	to allocate a royalty to something that doesn't	8	than anything, Your Honor, to make sense to you.
9	exist.	9	JUDGE WISNIEWSKI: Well, you can't
10	So in those cases, the I	10	change the system.
11	understand that Cable Data assigns those monies	11	THE WITNESS: That's true oh, I
12	into a bucket it calls the "minimum fee."	12	can't make the system make sense, I can just tell
13	The reason it's called minimum fee	13	you how it works inside it.
14	is, in the case of those cable systems that don't	14	Okay. This is the hypothetical
15	carry a distant station, they still have to pay	15	cable system that I set up a while ago with the
16	what is called a minimum fee, and it's the	16	\$1.3 million in gross receipts, the six distant
17	equivalent of one DSE.	17	stations with a total of three DSEs.
18	So if you recall the example in my	18	Here is how I believe
19	hypothetical that I gave just a few minutes	19	CHIEF JUDGE SLEDGE: Let me
20	earlier, that cable system would pay .956 percent	20	interrupt you just a second.
21	of its royalty of its gross receipts, not for	21	Mr. Olaniran, I caution you that
22	the carriage of any broadcast station, just	22	your examination is producing a record that will
1//			

200 200 200
Page 111
he six distant stations according to
f total DSEs. So, for example,
independent with one DSE at
total DSEs times 28,808 gave a
station of 9,603.
suming that this were the only
at was reporting fees gen, what
n?
rry?
er words, is this how is
be reported as fees generated for
uming this were the only
nis was the only system here?
correct.
'd like to go back, if we
ble you first had up, Lucy.
JUDGE SLEDGE: Is this a good
your examination?
LANIRAN: I'm sorry,
JUDGE SLEDGE: Is this a good
her testimony?
Page 112
LANIRAN: Probably yes.
JUDGE SLEDGE: We'll recess
able to return until 1:30, and we
n at 1:30.
LANIRAN: Okay. Thank you,
eupon, at 11:30 a.m., a
eon recess was taken.)
fitting of the contract of the

	Page 112		
	Page 113	_	Page 115
1	AFTERNOON SESSION	1	at this point.
2	(1:30 p.m.)	2	MR. OLANIRAN: All of the exhibits
3	WHEREUPON,	3	that were referred to were part of the exhibits
4	MARSHA E. KESSLER	4	that were admitted earlier this morning. All of
5	was called for continued examination and, having been	5	the parties have those exhibits. They were part
6	previously duly sworn, was examined and testified	6	of the filed testimony that were filed originally.
7	further as follows:	7	CHIEF JUDGE SLEDGE: Not marked as
8	CHIEF JUDGE SLEDGE: Thank you.	8	the exhibits that you have which you have
9	We'll come to order.	9	described them?
10	Mr. Olaniran, after some reflection	10	MR. OLANTRAN: I'm not sure of that.
11	over the recess, I must insist that you do what I	11	CHIEF JUDGE SLEDGE: You've given
12	suggested shortly before we recessed.	12	exhibit numbers of Settling Parties Exhibits 1
13	You'll have to present your witness	13	through 4. That's all that's been offered and
14	by asking questions, and you'll have to have your	14	admitted.
15	witness only refer to documents that are in	15	MR. OLANIRAN: That's correct.
16	evidence.	16	CHIEF JUDGE SLEDGE: I haven't seen
17	I understand we hadn't had any	17	any exhibits that you are describing that fit
18	objections, but still, there's a I just cringe	18	those those labels.
19	to think of what this record looks like in the	19	MR. OLANIRAN: Ms. Kessler covered
20	manner that you've elected to proceed.	20	Exhibits 2 and 3 as part of the exhibits that
21	So if you will, as you go forward,	21	were portions of which were being flashed on
22	please follow those rules.	22	the screen. The remainder of her discussion
	Page 114		Page 116
1	MR. OLANIRAN: I appreciate the	1	really pertains to excerpts from her testimony,
2	the comments, Your Honor. And the first question	2	which has already been filed.
3	that I had was about the the before I	3	CHIEF JUDGE SLEDGE: It's been
4	proceed, is the use of visual aid.	4	filed, but it's not been offered nor admitted.
5	And all of the documents that were	5	It's not evidence.
6	on the screen are actually either from	6	MR. OLANIRAN: Oh, my apologies. I
7	Ms. Kessler's written testimony or from the	7	did not realize that we also had to move for the
8	exhibits that have already been admitted into	8	testimony to be to be admitted.
9	evidence.	9	CHIEF JUDGE SLEDGE: For it to be
10	And we will we thought it would	10	evidence, something has to be admitted.
11	be helpful if we could blow it up on the screen so	11	MR. OLANIRAN: Okay. In light of
12	that the Judges would not have to flip through	12	Your Honor's comments, I would ask, before I
13	pages. And that was really the intention.	13	proceed, that Ms. Kessler's testimony written
14	If you don't find that helpful, we	14	testimony be admitted into evidence. And I would
15	have the same excerpts available that we can make	15	ask that it be marked as
16	available to you if that's easier for you to to	16	Settling Parties Exhibit 5.
17	follow.	17	CHIEF JUDGE SLEDGE: Any objection
18	CHIEF JUDGE SLEDGE: It is pretty	18	to Settling Parties Exhibit 5?
19	clearly set out in our Rules of Procedure as to	19	MR. SATTERFIELD: No.
20	what should be done, and that includes the	20	CHIEF JUDGE SLEDGE: Without
21	delivery of marked exhibits to all parties present	21	objection, it's admitted.
22	and to the Bench. And we haven't gotten any yet	22	(Settling Parties Exhibit
		1	(Setting 1 at the Livillett

	Page 117	\	Page 119
1	No. 5 was marked and	1	Are you familiar with that document?
1 2	received in evidence.)	2	A. Yes, I am.
3	MR. OLANIRAN: As a follow-up to	3	Q. And what is it?
	that, my question for Your Honors is whether or	4	A. These are Pages 15, 16, 24 and
4	not you want the visual aid back on or would you	5	Appendix F from direct testimony of
5	simply prefer to have excerpts of Ms. Kessler's	6	Marsha E. Kessler.
6		7	Q. And that is your testimony, right?
7	testimony? CHIEF JUDGE SLEDGE: One of the main	8	A. Yes, it is.
8	reasons I hesitated to make the comment I made is	9	Q. Just keep in mind that your
9		10	testimony has now been admitted into evidence as
10	that I never like to direct counsel how to present	11	SP Exhibit 5, okay?
11	your case. That's something you're much better	12	A. Yes.
12	qualified doing than I can direct you.	13	MR. OLANIRAN: Your Honor, I'd like
13	MR. OLANIRAN: In that case,	14	to ask that this exhibit be moved as
14	Your Honors, before I proceed, what I would ask be	15	SP Demonstrative Exhibit 1.
15	done is to have the document which I'm offering to		CHIEF JUDGE SLEDGE: As evidence?
16	have marked as demonstrative exhibits, which are	16	MR. OLANIRAN: As a demonstrative
17	excerpts of Ms. Kessler's testimony that she	17	
18	referred to earlier and that she will be referring	18	evidence. CHIEF JUDGE SLEDGE: I don't know
19	to during the remainder of of the discussion.	19	
20	And I'm going to show it to	20	what that means.
21	counsel opposing counsel. And I have copies	21	MR. OLANIRAN: As a demonstrative
22	for Your Honor.	22	exhibit. I'm sorry.
	Page 118	6	Page 120
1	May I proceed?	1	CHIEF JUDGE SLEDGE: What Rule of
2	CHIEF JUDGE SLEDGE: Yes.	2	Evidence are you referring to, to admit something
3	MR. OLANIRAN: Thank you.	3	as a demonstrative evidence?
4	Your Honor, I would like to have the	4	MR. OLANIRAN: I'm not referring to
5	document that I have just handed to Ms. Kessler	5	any particular Rule of Evidence.
6	marked as Demonstrative as Settling Parties	6	CHIEF JUDGE SLEDGE: Then I won't
7	Demonstrative Exhibit 1.	7	respond to that. I don't know what it means.
	CHIEF JUDGE SLEDGE: I don't mark	8	JUDGE ROBERTS: Mr. Olaniran, you've
8		9	1 1 1 miles and demand white and abjection
8 9	exhibits. That's your category.	٦	already moved into evidence, without objection,
	exhibits. That's your category. MR. OLANIRAN: Okay. I'd like to	10	the written direct statement of Ms. Kessler.
9			the written direct statement of Ms. Kessler. I echo Judge Sledge's question or
9 10	MR. OLANIRAN: Okay. I'd like to	10	the written direct statement of Ms. Kessler. I echo Judge Sledge's question or as to why you would want to, in essence, offer the
9 10 11 12	MR. OLANIRAN: Okay. I'd like to have the document marked as	10 11	the written direct statement of Ms. Kessler. I echo Judge Sledge's question or
9 10 11 12 13	MR. OLANIRAN: Okay. I'd like to have the document marked as Settling Parties Demonstrative Exhibit I'd like	10 11 12	the written direct statement of Ms. Kessler. I echo Judge Sledge's question or as to why you would want to, in essence, offer the
9 10 11 12 13 14	MR. OLANIRAN: Okay. I'd like to have the document marked as Settling Parties Demonstrative Exhibit I'd like to mark it as Demonstrative Exhibit 1.	10 11 12 13	the written direct statement of Ms. Kessler. I echo Judge Sledge's question or as to why you would want to, in essence, offer the same evidence again, albeit it in pieces.
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9 10 11 12 13 14 15 16 17	MR. OLANIRAN: Okay. I'd like to have the document marked as Settling Parties Demonstrative Exhibit I'd like to mark it as Demonstrative Exhibit 1. (Settling Parties Demonstrative Exhibit No. 1 was marked for identification.) DIRECT EXAMINATION (CONTINUED)	10 11 12 13 14 15 16 17 18	the written direct statement of Ms. Kessler. I echo Judge Sledge's question or as to why you would want to, in essence, offer the same evidence again, albeit it in pieces. MR. OLANIRAN: Well, Your Honor, this is simply something to refer to during Ms. Kessler's testimony. JUDGE ROBERTS: It's fine for us to use it and refer to it while she's speaking, but,

Page 121 Page 123 1 BY MR. OLANIRAN: the first part of a hypothetical cable system's 2 Ms. Kessler, before the break, we royalty obligation. 3 3 had started discussing the calculation of -- of What it does is it determines the 4 the fees gen that Cable Data Corporation engages 4 total number of points or DSEs for which this 5 in. And prior to that discussion you had 5 cable system is going to be liable for a base rate 6 identified three types cable systems, Form 1, 6 royalty payment. 7 7 Form 2, and Form 3 --Q. And then describe the contents of 8 A. Right. 8 that table. I need you to explain what you mean 9 -- correct? 9 O. by DSEs when you used the word "independent 10 And you had also told us that these 10 network" and "PBS station" -- PBS, what you mean 11 systems are classified based on the size of their 11 by "PBS." 12 gross receipts, correct? 12 A. Okay. 13 13 A. Correct. For each distant system 14 Q. You had also explained to us how 14 retransmitted by a cable system, the statute 15 Form 1 and Form 2 systems pay their royalty 15 requires that the cable operator assign a value. 16 obligations based on a statutorily set fee, right? 16 The value is a point, also known as a distant 17 17 signal equivalent or, as we abbreviate it, DSE. A. Correct. 18 Q. And you also went through a 18 Independent stations have a DSE 19 19 discussion of how -- how the Form 3 system value of 1.0. ABC, NBC and CBS network affiliates 20 calculate the royalty -- the royalties -- royalty 20 have a DSE of .25 DSEs. Public television 21 21 obligations? stations have a DSE value of .25. 22 A. Yes. 22 In order to proceed with the Page 122 Page 124 And we were about to begin the 1 1 calculations, what the cable operator does is sum 2 discussion of how fees-generated calculations work 2 the total DSEs for the particular cable system. 3 before we went on break. 3 In the hypothetical that I have on 4 Now, before -- before we get back 4 Page 15 of Direct Testimony of Marsha E. Kessler, 5 into that discussion, Judge Sledge had admonished 5 I have hypothesized a cable system that carries a me that we be clear about the record in terms of 6 6 total of six distant stations. Two of those 7 the discussion of all of these various 7 stations are independent stations, three are 8 calculations. 8 network affiliated stations, one is a public 9 So what I would like you to do is 9 television station. 10 to -- is to take a look at the 10 So what the cable operator does is 11 Settling Parties Demonstrative Exhibit 1. And I 11 he first calculates two DSEs, representing two 12 would like to direct your attention to the second 12 distant independent stations times one DSE each. 13 page of that exhibit, which is Page 15 of -- of 13 Then he calculates the value of the three distant 14 your testimony. 14 network stations, that's .75, which is calculated 15 A. I have it open in front of me. 15 by multiplying three distant network affiliates at 16 And in the first full paragraph of 16 .25 DSEs each. 17 that page, you talk about a hypothetical cable 17 In the hypothetical, the cable 18 system. 18 operator carries a distant public television 19 And would you please, again, explain 19 station, so the DSE value for that distant public 20 what exactly this is? 20 television station is .25 DSEs. 21 The table at the bottom of Page 15 21 The cable operator then sums the 22 of Direct Testimony of Marsha E. Kessler sets up 22 total DSEs for his system. In this case, that sum

	Page 125		Page 127
1	is three DSEs derived from two DSEs for the	1	accounted for one DSE of a total of three.
2	distant independent stations, .75 DSEs for the	2	For the next two DSEs, the rate is
3	distant network affiliates, and .25 for the	3	.630 percent of gross receipts. So the
4	distant public television station.	4	calculation is \$1,300,000 times the rate
5	O. Okay. Now, what's the next step in	5	.630 percent times two DSEs. And the result of
6	the royalty calculation process for the Form 3	6	that calculation is \$16,380.
7	systems?	7	We have now accounted for the total
8	A. If you will turn to Page 16 of	8	DSEs in this hypothetical.
9	Direct Testimony of Marsha E. Kessler, there is a	9	So when you add together the two
10	chart in the middle of the page that sets out the	10	products that I described a second ago, 12,428,
11	royalty rates and the base rate fee schedule.	11	plus 16,380, the total royalty for the base rate
12	O. Where do these rates come from?	12	of this hypothetical system is \$28,808.
13	A. These rates are in the statute.	13	Q. Okay. So you've just explained to
14		14	us how Form 3 systems calculate the base rate fee.
15	Q. Okay. Please describe what you have in that chart in the middle of the page.	15	And I think, earlier in the testimony, you also
	A. The more distant stations a cable	16	explained the 3.75 fee and the and the syndex
16 17	operator pays, the lower the the rate is	17	fee. And I want to go over that testimony.
	staggered downwards.	18	What I want to turn now to is
18	By that I mean for the first DSE,	19	A. We didn't do syndex.
19	the cable operator pays .956 percent of his gross	20	Q. Oh, I'm sorry. I thought we did.
20		21	You're absolutely right.
21 22	receipts. For the second, third and fourth	22	In that case, would you please tell
	Page 126		Page 128
		1	me how you had mentioned that in your
1	DSEs, an operator pays .630 percent of gross	1 2	testimony earlier today, you mentioned that there
2	receipts per DSE.	3	are essentially three royalty pools: the base
3	In the event a cable system carries	4	the base rate fee, the 3.75 fee, and the syndex.
4	more than four DSEs, the operator pays .296 times	5	You explained the first two, but
5	gross receipts for those DSEs, per DSE.	6	please explain the syndex what the syndex fee
6	Q. And then the next what is the	7	is for.
7	next step in this in the process for	8	
8	calculating the base rate fees for cable		A. I'll explain it very briefly, because it is a very small portion of the overall
9	operators Form 3 cable operators? I'm sorry.	10	
10	A. The next step is demonstrated with a	11	royalty fund. And a discussion of the syndicated
11	hypothetical at the bottom of Page 16 of	1	
12	Direct Testimony of Marsha E. Kessler.	12	exclusivity surcharge fee is found beginning at the bottom of Page 19 of Direct Testimony of
13	What I have done in this table is	13	Marsha E. Kessler.
14	assume that a cable system in this hypothetical	14	
15	has gross receipts of \$1,300,000 and has a total	15	At one time, cable systems were
16	of three DSEs based on the carriage of the six	16	required to black out programming on a local station on a distant station when the local
17	distant television stations that I hypothesized on	17	
18	Page 15 of Direct Testimony of Marsha E. Kessler.	18	market had the same programming in deference to
19	What the operator does then is	19	the local broadcaster.
20	calculate the royalty for the first DSE at the	20	Let me give you an example of that.
	c 056 time - \$1 200 000 and in the	21	Suppose, for example, here, in
21	rate of .956 times \$1,300,000, and in the result of that calculation is \$12,428. We've now	22	Washington, we have, on Channel 5, Seinfeld, if a

cable system serving Washington, D.C. carried a distant station that also had Seinfeld, the local cable operator was required to black out Seinfeld on the distant station in deference to the local station.

That rule has been in and out and in and out multiple times. That is an FCC rule.

- Q. What do you mean by "in and out, in and out"?
- 10 A. It has been in effect, out effect, 11 in effect, out effect. And I've got to be honest 12 with you. I don't know whether it's in or out 13 right now.

But at the time this rate schedule was made available, syndicated exclusivity protection had been withdrawn. And in a certain number of very limited situations, which I describe on Page 20 of Direct Testimony of Marsha E. Kessler, there is a fee that cable operators pay.

Just like the base rate fee, the rate for the first DSE is one rate; the second, What I want you to do is please turn to -- to Page 24 of the Demonstrative Exhibit -- SP Demonstrative Exhibit 1. And you have a chart at the top of that page. I want to talk to you about that chart.

Just tell us, in general, what this chart represents, and then I'll ask you some specific questions.

- A. This chart at the top of Page 24 of Direct Testimony of Marsha E. Kessler represents my understanding of the calculation of a base rate royalty in my hypothetical that I covered earlier among the six distant stations retransmitted by that hypothetical cable system.
- Q. Okay. You have four different columns.

Could you please explain what each column represents?

- A. The first column describes the station type, independent station versus network affiliate versus public television station.
 - Q. And, in general, for purposes of

Page 130

Page 132

third and fourth are lower; anything above fourth is even lower. And the rate also differs whether the cable system serves subscribers located in one section -- one particular market situation versus another, what we call top 50 markets versus second 50 markets.

It does not bear a lot of

It does not bear a lot of discussion, because there's very few royalties and very few circumstances where this actually kicks in.

- Q. What percentage of the royalty pool, in general, is the syndex fee versus the 3.75 fee versus the base -- the base rate fee?
- 14 A. I believe, even with rounding, it 15 comes to less than 1 percent.
- Q. We had begun the discussion of
 calculation of fees generation. You indicated
 that this is a calculation that's done by
 Cable Data Corporation, and it is -- I think you
 described it as a system of allocating the
 royalties paid by the cable system to the signals

that those cable systems carried.

- calculating this fees generated, are there generally three station types?
 - A. Yes.
- Q. Okay. And the next column on the chart represents what?
- A. The DSE value associated with the station type. Independents get one DSE, network affiliates get .25 DSEs, public television stations get .25 DSEs.
- Q. Okay. What does the next column -- the third column represent?
- A. The third column is a calculation which was performed by dividing one DSE by the total of three DSEs showing that one distant independent would be allocated 33.33 percent of the fees of the base rate royalty paid by the cable system.
- Q. And what does the -- the fourth and final column represent on this chart?
- A. The fourth column represents the pro-rata allocation based on DSE value of the base rate of \$28,808 in my hypothetical amongst the six

Page 133 Page 135 television station would be .25 divided by 1.25 1 distant stations. 1 So as compared to the -- the chart 2 times gross receipts. 2 You mentioned earlier that the cable you showed us on Page -- on Page 16 of your 3 Q. 3 testimony regarding how cable operators calculate 4 operators had -- at their discretion, can 4 designate a particular signal as being subject to royalties versus how Cable Data Corporation 5 5 calculates these royalties, what are -- what are 6 the 3.75 royalty obligation. 6 the differences? What is the difference between 7 Now, tell us exactly how that 7 impacts the calculation of fees generated. 8 the two calculations? 8 A. As I understand it, Cable Data does 9 A. I would just say there's no 9 congruency between the two methods. 10 not interpret data; they just reflect the data as 10 they are provided by the cable operator on the 11 Why's that? Q. 11 12 statement of account form. Well, the - if you look at the 12 A. So if a cable operator is carrying example on the bottom of Page 16 of 13 13 two distant independents at 1.0 DSE each and one Direct Testimony of Marsha E. Kessler, you see 14 14 of them -- and it's -- and there is 3.75 liability that one DSE, the royalty was 12,428, but in the 15 15 fees-generated calculation, the royalty 16 for one distant independent, the operator can 16 select which one he reports in the DSE schedule --17 attributable to one DSE is 9,603. 17 18 in the 3.75 schedule. O. Okay. So there's no connection 18 Q. Let me ask the question a different between how cable operators pay and how 19 19 way, just for clarification. 20 Cable Data Corporation actually calculates the 20 Let's assume then that the cable 21 21 fees generation? operator is carrying three independent signals --22 No, there's no connection. The 22 Page 136 Page 134 Um-hum. fees-generated allocation is an arithmetic 1 A. 1 -- and it has a 3.75 obligation for 2 2 concept. an independent signal. And let's assume that the Q. I also wanted to ask you, how does 3 3 three signals are a Canadian signal and two other Cable Data Corporation calculate the 3.75 fees? 4 4 A. Essentially the same way as shown at 5 U.S. commercial television independent signals. 5 the top of Page 24 of my testimony. It would --6 And let's say in one of the 6 accounting periods, it designates the Canadian the cable system would total the number of DSEs 7 7 signal as the 3.75 signal. 8 for which there was 3.75 liability, then multiply 8 And could it, in another accounting to DSEs times 3.75 percent times the gross 9 9 period, designate one of the other three --10 10 receipts. assuming it's still carrying the same signal, one Q. Now, you mentioned earlier that the 11 11 or the other two signals as a 3.75 signal? 12 cable --12 13 Yes, it could. I'm sorry. I did not describe that 13 A. Now, how does that -- what impact 14 14 correctly. 15 does that have on the fees generated when you Q. Okay. 15 calculate the fees-generated method using CDC's What I just described was the 16 A. 16 methodology? 17 calculation of the royalty. 17 18 In the accounting period in which If, in that royalty, total DSEs were 18 1.25 and that was one distant independent and one 19 the Canadian signal was reported as the station 19 distant public television station, the amount 20 for which there was 3.75 liability, the 3.75 20 allocated to the independent would be 1 divided by royalty would be allocated to that station. 21 21

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1.25. And the amount allocated to the public

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Whereas, if the cable operator in a

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different accounting period paid for the Canadian station at base rate and put another independent station in the 3.75 schedule, then the allocate -the fees-gen allocation would go to that other independent -- distant independent station.

Essentially --

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JUDGE ROBERTS: Ms. Kessler, is it your contention that the Cable Data Corporation methodology is flawed for allocating these fees?

THE WITNESS: I wouldn't use "flawed."

12 JUDGE ROBERTS: Is there a better 13 way to do it in your viewpoint?

THE WITNESS: To allocate the fees to the stations or to allocate fees amongst us? JUDGE ROBERTS: To the stations. THE WITNESS: To the stations.

I know of no other way.

19 BY MR. OLANIRAN:

> Essentially, the manner in which the cable operator designates a signal as 3.75 could lead to fluctuation in the royalty fees --

whether they would be a Form 1, 2 or a Form 3. And the second was that it increased the rates,

3 the DSE rates for Form 3 systems. 4

So the effect of that -- I'm sorry. The effect of that could be that -- if you'll refer to Pages 10 and 11 of my testimony, you will see the changes in the thresholds.

Ms. Kessler, I'm not sure that the Judges have an exact copy of your testimony, so you might have to provide a little bit more detail as to what's going on on those pages.

Okay. I was going to go there.

I'm going to do one example. The Form 1 as of 2000-1, the threshold for filing of Form 1 and paying the flat fee of \$28 per accounting period was \$75,800.

Commencing with accounting period 2000-2, the gross receipts limitation was increased to \$96,600, and the flat rate increased from \$28 to \$37. Similar changes took place at the Form 2 and Form 3 level.

And so what could happen is a cable

Page 138

A. That's right.

Q. -- based on the fees-gen method?

A. (No audible response.)

Are there other ways in which a royalty fee -- fees-gen calculations could be -are affected in terms of fluctuations?

Yes, there are. And, in fact, one of those took place during the period covered by these hearings. One of them can certainly be a rate change --

Q. And what do you mean by that?

Every five years, the program owners are allowed by law to see if we can have the rates almost always increased to keep pace with inflation. That takes place either via a proceeding here before this body or through settlement.

And in period 2000 -- 2000-2, there was a rate change, and what the rate change in that particular period did was twofold.

21 Number 1, it increased the gross 22 receipts thresholds for cable operators to use -- Page 140

system that was a Form 3 in 2000-1 could drop down to a Form 2 or possibly even a Form 1 in the next

3 accounting period, and the payment would

4 automatically lower. And if that happens, a lower

5 royalty would result in a lower fees-gen

6 allocation.

> Q. What other factors could affect the fluctuation in royalties?

There -- we see this all the time in the industry. Cable systems merge and you could have a cable system that carried the same group of distant signals throughout its history, but if it either took on subscribers from another cable system and, thus, increased its gross receipts, it would increase the amount of fees gen allocated amongst its distant stations.

And, conversely, if that cable system's portion of its subscribers were sold off. the gross receipts would decline; therefore, the royalty would decline; and, therefore, the amount allocated to any individual station would also decline.

	Page 141		Page 143
1	Q. Any other factors	1	A. Yes. Appendix F, which is contained
	JUDGE WISNIEWSKI: Wouldn't that be	2	in Direct Testimony of Marsha E. Kessler, is a
2	reflected in the counterpart entry for the	3	table that sets out, by accounting period, various
3 4	other	4	information associated with statements of account
	THE WITNESS: It would be an	5	filed by the cable systems serving Dunkirk,
5	accounting balance, but it's not a tit for	6	New York.
6	tat-type thing. It could have been sold to a	7	Q. And where did you get this
7	Form 1, 2 I mean, you just don't know where it	8	information from?
8	goes. So there is not I am not aware of any	9	A. The data came from Cable Data.
9	offsetting that truly takes place.	10	Q. Would you please take a look at
10	JUDGE WISNIEWSKI: But you're not	11	SP Exhibit 4?
11	aware of any that doesn't either?	12	A. Yes, I'm looking at it.
12	THE WITNESS: That's right.	13	Q. Okay. Are you familiar with that?
13 14	BY MR. OLANIRAN:	14	A. Yes, I am.
14	O. Any other factors that affect the	15	Q. I hope so.
	fluctuation in royalty payments?	16	And what is the connection between
16 17	A. Another thing that we see quite	17	that and this Appendix F?
18	common is cable systems adding and letting go the	18	A. That's the real answer to the
19	carriage of distant stations.	19	question, right?
20	So if a cable system carried had	20	These are the statements of account
21	three DSEs for whatever number of distant stations	21	filed by the Dunkirk, New York cable system for
22	in one period and it dropped the one distant	22	the periods 1998-1 through 2005-1.
	Page 142		Page 144
1	station, the royalty would go down and there would	1	Q. And what is the purpose of this
1 2	be fewer stations to allocate that money amongst.	2	exhibit?
3	Or, conversely, a cable system could	3	A. The purpose of the exhibit is to
4	add a distant station, and the royalty would	4	show a cable system that carries roughly the same
5	probably go up, and there would be more stations	5	number of distant stations from one period to the
6	amongst which to allocate the funds.	6	next; can see how their royalties can fluctuate, I
7	So it's an arithmetic it's	7	would say, pretty dramatically from one period to
8	arithmetic. That's all.	8	the next.
9	Q. Now, the rate change, the merger	9	Q. So tell me describe briefly,
		10	starting from the first column, what the column
	these factors that you just discussed, could all	1 10	starting from the first column, what the column
10	these factors that you just discussed, could all of all this could affect the royalties paid by	11	headings represent in terms of the information
10 11	of all this could affect the royalties paid by		
10 11 12	of all this could affect the royalties paid by the cable operators and there could they do so	11	headings represent in terms of the information
10 11 12 13	of all this could affect the royalties paid by the cable operators and there could they do so without a change or a significant change in the	11 12	headings represent in terms of the information that we're looking at.
10 11 12 13 14	of all this could affect the royalties paid by the cable operators and there could they do so without a change or a significant change in the number and type of distant signals that are	11 12 13	headings represent in terms of the information that we're looking at. A. The first column is the accounting
10 11 12 13 14 15	of all this could affect the royalties paid by the cable operators and there could they do so without a change or a significant change in the number and type of distant signals that are carried by this system?	11 12 13 14	headings represent in terms of the information that we're looking at. A. The first column is the accounting period, 1998-1 through 2005-1.
10 11 12 13 14 15	of all this could affect the royalties paid by the cable operators and there could they do so without a change or a significant change in the number and type of distant signals that are carried by this system? A. Yes. And, in fact, I have an	11 12 13 14 15	headings represent in terms of the information that we're looking at. A. The first column is the accounting period, 1998-1 through 2005-1. The second column reports the number
10 11 12 13 14 15 16 17	of all this could affect the royalties paid by the cable operators and there could they do so without a change or a significant change in the number and type of distant signals that are carried by this system? A. Yes. And, in fact, I have an example of that in my Appendix F, which is the	11 12 13 14 15 16	headings represent in terms of the information that we're looking at. A. The first column is the accounting period, 1998-1 through 2005-1. The second column reports the number of subscribers served by the cable system for that period.
10 11 12 13 14 15 16 17	of all this could affect the royalties paid by the cable operators and there could they do so without a change or a significant change in the number and type of distant signals that are carried by this system? A. Yes. And, in fact, I have an example of that in my Appendix F, which is the last page of the demonstrative exhibit that you	11 12 13 14 15 16 17	headings represent in terms of the information that we're looking at. A. The first column is the accounting period, 1998-1 through 2005-1. The second column reports the number of subscribers served by the cable system for that
10 11 12 13 14 15 16 17 18	of all this could affect the royalties paid by the cable operators and there could they do so without a change or a significant change in the number and type of distant signals that are carried by this system? A. Yes. And, in fact, I have an example of that in my Appendix F, which is the last page of the demonstrative exhibit that you handed out earlier.	11 12 13 14 15 16 17 18	headings represent in terms of the information that we're looking at. A. The first column is the accounting period, 1998-1 through 2005-1. The second column reports the number of subscribers served by the cable system for that period. The next column, entitled royalty,
10 11 12 13 14 15 16 17	of all this could affect the royalties paid by the cable operators and there could they do so without a change or a significant change in the number and type of distant signals that are carried by this system? A. Yes. And, in fact, I have an example of that in my Appendix F, which is the last page of the demonstrative exhibit that you	11 12 13 14 15 16 17 18	headings represent in terms of the information that we're looking at. A. The first column is the accounting period, 1998-1 through 2005-1. The second column reports the number of subscribers served by the cable system for that period. The next column, entitled royalty, is the royalty that that system paid for that

	Page 145		Page 147
1	reported by the system for that accounting	1	
2	period.	2	the first DSE in the column labeled Rate for the First DSE.
3	The following column, number of	3	
4	distant stations, is the number of distant	3 4	Then the following column, Base Rate
5	stations retransmitted by the Dunkirk cable system	5	Royalty for the First DSE, multiplies, in this
6	during the particular accounting period.	5 6	particular case for 1998-1, .893 percent times
7	The following column, total DSEs, is	7	gross receipts of 299,058 for a royalty of 2,671.
8	the DSE calculation for those eight distant		Q. And, again, this is how the cable
9	stations.	8 9	operators would calculate if they were going to be
10		_	calculating it?
	The following column, rate for the	10	A. That's correct.
11	first DSE, is was calculated by taking whatever	11	Q. Okay. Now, the next column are
12	rate was comparable to the .956 percent in 1998	12	you done with that column?
13	I don't know what it was then times one DSE	13	A. I'm done with that column.
14	times gross receipts.	14	Q. Okay. Next column?
15	Q. And let me stop you.	15	A. The next column is the base rate if
16	In the rate for first DSE that you	16	it were allocated to a station on one DSE I'm
17	have here, you had testified earlier to some rates	17	sorry, not to a station to one DSE per the
18	that are set by statute, I think, for the period	18	fees-generation methodology. The royalty would be
19	you were looking at was .956 and so on and so	19	1,744.
20	forth.	20	Q. What does the last column
21	A. Okay.	21	represent?
22	Q. If you look at the top part of the	22	A. In the event that one DSE were
	Page 146		
			Page 148
1	column, you don't have the same rates.	1	Page 148 subject to the 3.75 liability, this is
1 2	column, you don't have the same rates. Could you please explain why those	1 2	1 · · · · · · · · · · · · · · · · · · ·
	column, you don't have the same rates. Could you please explain why those rates are different?		subject to the 3.75 liability, this is
2	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you.	2	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a
2	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates	2 3	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879.
2 3 4	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier?	2 3 4	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column,
2 3 4 5	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier? A. Oh, I understand.	2 3 4 5	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2.
2 3 4 5 6	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier?	2 3 4 5 6	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2. Could you please explain what the
2 3 4 5 6 7 8 9	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier? A. Oh, I understand. No. The rate for the first DSE changes roughly every five years	2 3 4 5 6 7	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2. Could you please explain what the note represents?
2 3 4 5 6 7 8 9	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier? A. Oh, I understand. No. The rate for the first DSE changes roughly every five years Q. Okay.	2 3 4 5 6 7 8	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2. Could you please explain what the note represents? A. The note on the line for 2000-2
2 3 4 5 6 7 8 9 10	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier? A. Oh, I understand. No. The rate for the first DSE changes roughly every five years Q. Okay. A so if there was a rate change in	2 3 4 5 6 7 8 9	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2. Could you please explain what the note represents? A. The note on the line for 2000-2 shows that the rate changed for that accounting
2 3 4 5 6 7 8 9 10 11	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier? A. Oh, I understand. No. The rate for the first DSE changes roughly every five years Q. Okay. A so if there was a rate change in 2000-2, I believe the previous rate change would	2 3 4 5 6 7 8 9	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2. Could you please explain what the note represents? A. The note on the line for 2000-2 shows that the rate changed for that accounting period. And what this did now, let me just see
2 3 4 5 6 7 8 9 10	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier? A. Oh, I understand. No. The rate for the first DSE changes roughly every five years Q. Okay. A so if there was a rate change in 2000-2, I believe the previous rate change would have been in 1995 during one of those two	2 3 4 5 6 7 8 9 10	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2. Could you please explain what the note represents? A. The note on the line for 2000-2 shows that the rate changed for that accounting period. And what this did now, let me just see here.
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2 3 4 5 6 7 8 9 10 11 12 13	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier? A. Oh, I understand. No. The rate for the first DSE changes roughly every five years Q. Okay. A so if there was a rate change in 2000-2, I believe the previous rate change would have been in 1995 during one of those two	2 3 4 5 6 7 8 9 10 11 12	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2. Could you please explain what the note represents? A. The note on the line for 2000-2 shows that the rate changed for that accounting period. And what this did now, let me just see here. In 2000-1, the gross receipts were 383,820, which meant that this cable system was a
2 3 4 5 6 7 8 9 10 11 12 13 14	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier? A. Oh, I understand. No. The rate for the first DSE changes roughly every five years Q. Okay. A so if there was a rate change in 2000-2, I believe the previous rate change would have been in 1995 during one of those two accounting periods.	2 3 4 5 6 7 8 9 10 11 12 13	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2. Could you please explain what the note represents? A. The note on the line for 2000-2 shows that the rate changed for that accounting period. And what this did now, let me just see here. In 2000-1, the gross receipts were 383,820, which meant that this cable system was a Form 3 cable system and would've paid at least
2 3 4 5 6 7 8 9 10 11 12 13 14 15	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier? A. Oh, I understand. No. The rate for the first DSE changes roughly every five years Q. Okay. A so if there was a rate change in 2000-2, I believe the previous rate change would have been in 1995 during one of those two accounting periods. And, I'm sorry, I just don't know	2 3 4 5 6 7 8 9 10 11 12 13 14 15	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2. Could you please explain what the note represents? A. The note on the line for 2000-2 shows that the rate changed for that accounting period. And what this did now, let me just see here. In 2000-1, the gross receipts were 383,820, which meant that this cable system was a Form 3 cable system and would've paid at least base rate, if not some syndex, and 3.75. However, in the following accounting
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier? A. Oh, I understand. No. The rate for the first DSE changes roughly every five years Q. Okay. A so if there was a rate change in 2000-2, I believe the previous rate change would have been in 1995 during one of those two accounting periods. And, I'm sorry, I just don't know what the rate was back then.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2. Could you please explain what the note represents? A. The note on the line for 2000-2 shows that the rate changed for that accounting period. And what this did now, let me just see here. In 2000-1, the gross receipts were 383,820, which meant that this cable system was a Form 3 cable system and would've paid at least base rate, if not some syndex, and 3.75.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier? A. Oh, I understand. No. The rate for the first DSE changes roughly every five years Q. Okay. A so if there was a rate change in 2000-2, I believe the previous rate change would have been in 1995 during one of those two accounting periods. And, I'm sorry, I just don't know what the rate was back then. Q. Okay. And then the next column, you have the base rate royalty, first DSE.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2. Could you please explain what the note represents? A. The note on the line for 2000-2 shows that the rate changed for that accounting period. And what this did now, let me just see here. In 2000-1, the gross receipts were 383,820, which meant that this cable system was a Form 3 cable system and would've paid at least base rate, if not some syndex, and 3.75. However, in the following accounting period, 2000-2, you recall I said that the gross receipts limitations increased. And what this had the effect of doing was to put this cable system
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier? A. Oh, I understand. No. The rate for the first DSE changes roughly every five years Q. Okay. A so if there was a rate change in 2000-2, I believe the previous rate change would have been in 1995 during one of those two accounting periods. And, I'm sorry, I just don't know what the rate was back then. Q. Okay. And then the next column, you have the base rate royalty, first DSE. What is that calculation?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2. Could you please explain what the note represents? A. The note on the line for 2000-2 shows that the rate changed for that accounting period. And what this did now, let me just see here. In 2000-1, the gross receipts were 383,820, which meant that this cable system was a Form 3 cable system and would've paid at least base rate, if not some syndex, and 3.75. However, in the following accounting period, 2000-2, you recall I said that the gross receipts limitations increased. And what this had
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	column, you don't have the same rates. Could you please explain why those rates are different? A. I'm sorry. I'm not following you. Q. We're not looking at the same rates that you told us about earlier? A. Oh, I understand. No. The rate for the first DSE changes roughly every five years Q. Okay. A so if there was a rate change in 2000-2, I believe the previous rate change would have been in 1995 during one of those two accounting periods. And, I'm sorry, I just don't know what the rate was back then. Q. Okay. And then the next column, you have the base rate royalty, first DSE. What is that calculation? A. Let's go back to the previous	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	subject to the 3.75 liability, this is 3.75 percent times the gross receipts for a royalty of 2,879. Q. Okay. And the very final column, you have made some notes with respect to 2000-2. Could you please explain what the note represents? A. The note on the line for 2000-2 shows that the rate changed for that accounting period. And what this did now, let me just see here. In 2000-1, the gross receipts were 383,820, which meant that this cable system was a Form 3 cable system and would've paid at least base rate, if not some syndex, and 3.75. However, in the following accounting period, 2000-2, you recall I said that the gross receipts limitations increased. And what this had the effect of doing was to put this cable system in a Form 2 category, meaning its statutory

	Page 149		Page 151
		1	
1	Therefore, it did not have to	1	Canadian Claimants' claim? THE WITNESS: I'm not here to
2	account for distant stations or be responsible for	2	
3	a base rate and/or 3.75 and/or syndex payment.	3	comment on the Canadian Claimants' claim. I'm
4	Q. The next note you have has to do	4	here to demonstrate arithmetically that different
5	with adding a satellite tier.	5	procedures produce different results, different
6	What do you mean by that?	6	applications, different methodologies produce
7	A. When I look at the statement of	7	different results.
8	account for 2002-2 in the block where the cable	8	JUDGE ROBERTS: All right.
9	system reports its subscriber counts and rates,	9	BY MR. OLANIRAN:
10	they noted that they had added a satellite tier	10	Q. You were going to illustrate the
11	and they reported the number of subscribers that	11	fluctuations in the royalty payments in Appendix F
12	received that tier and the rate attributable to	12	to your testimony. And we just completed going
13	that tier. So we see that the gross receipts	13	on actually, we had just one more note, the
14	increased.	14	very last note on that column of Appendix F.
15	The period before their gross	15	A. For the period 2004-2, the statement
16	receipts were 652,787. That was in accounting	16	of account noted that they were now providing the
17	period 2002-1. And when they added the satellite	17	satellite tier for free. So the effect was to
18	tier in 2002-2, they added roughly a million	18	reduce the gross receipts by more than a million
19	dollars to their gross receipts, compared to the	19	dollars.
20	previous period.	20	And, again, if you look at 2004-1
21	JUDGE ROBERTS: Ms. Kessler, you	21	and compare it against 2004-2, you will see
22	have a lot of fluctuation here on what cable	22	allocating \$1,600,000 amongst eight distant
	Page 150		Page 152
1	systems are paying. Some are paying more in a	1	stations is going to be a different calculation or
2	given year, some are paying less, some are adding	2	yield different results than not being able to
3	signals, some are dropping signals, some are	3	allocate \$327,000 to any station, because it was a
4	rearranging how they pay for particular signals,	4	Form 2 at that point.
5	some are Form 3s, they go up to Form 1, 2s, and	5	Q. Do you have any comment any other
6	back up again.	6	comments with respect to Appendix F?
7	Why isn't this all just a wash? You	7	A. I just wanted to note that you
8	have this influctuation, but the ups and the downs	8	know, you were talking or we were talking
9	are they just balance each other out.	9	earlier about various effects various things
10	THE WITNESS: They don't balance	10	that can have an effect on the royalty payment.
11	each out.	11	If you look at this particular cable
12	JUDGE ROBERTS: Why not?	12	system and focus on the column titled
13	THE WITNESS: It's above my pay	13	Subscribers
14	grade.	14	Q. Ms. Kessler, are you still on
15	I know that they don't.	15	Appendix F?
16	JUDGE ROBERTS: Well, the royalty	16	A. Yes, I am.
17	pool keeps going up in the years at issue?	17	Is that where you wanted me?
	THE WITNESS: Yes, it does. It	18	Q. Yes.
18		19	A. Okay.
19	does. Bear with me.	20	you'll see that this particular
20		21	cable system had, at one time, as many as 13,912
21	JUDGE ROBERTS: I guess my question	22	subscribers and, at a different time in history,
22	is, what relevance does this have to	1 44	Subscribers and, at a different time in mistery,

Page 153 Page 155 1 had 6,387 subscribers. That's the very last 1 THE WITNESS: Thank you. I'm a lot 2 period that's accounted for here, 2005. 2 happier than I was 15 seconds ago. 3 So in a space of just a few years, 3 CHIEF JUDGE SLEDGE: Ms. Martin is 4 this particular cable system lost half of its 4 next? subscribers. I, personally, don't know why, but 5 5 THE WITNESS: We have to find her, 6 they reported almost half of the subscribers as 6 Your Honor. 7 7 time went by. JUDGE WISNIEWSKI: Counselor, at the 8 That not -- that loss of 8 end of the day -- and this is for the benefit of 9 all counsel -- if there are exhibits that have not subscribers, notwithstanding, their royalty 9 10 payments are higher. In other words, lots of 10 been admitted into evidence or demonstratives like 11 subscribers didn't necessarily give a big royalty, 11 this, I and perhaps some of my colleagues are 12 if you look up in the 1998s and 1999s, and 12 going to leave them up here. 13 conversely, fewer subscribers gave more money. 13 We want you to take them with you at 14 So it -- when you were asking, 14 the end of the day. Don't leave them. 15 Judge Roberts, about don't things come out in the 15 MR. OLANIRAN: Yes. 16 wash, I'm not able to respond specifically to your 16 JUDGE ROBERTS: Yes. 17 question, but what I'm saying is that there are so 17 MR. SATTERFIELD: I have an issue of 18 many influences on a particular cable system's 18 a copying mistake that we discovered last night. 19 payment, for example, this Dunkirk system, which I 19 We had an exhibit that's supposed to 20 believe is typical of many systems, that it is 20 be in color, and it only makes sense if it's in 21 not -- it's possibly not possible to quantify if 21 color. And, unfortunately, we have made copies 22 you lost X here, did you get it here. 22 for counsel, I have copies to be filed, but I was Page 154 Page 156 1 I, personally, don't think that that 1 planning on going around and making an official 2 happens. I don't think there is an evening of the 2 filing to resubmit the original and five copies. 3 score, but I don't know how to demonstrate that to 3 But I wanted to distribute the -- the color 4 4 you on the spot. copies. 5 MR. OLANIRAN: I have no further 5 I don't know what procedure you 6 questions, Your Honor. 6 would like me to follow -- to follow to make this 7 CHIEF JUDGE SLEDGE: Okay. 7 correction. 8 I got a question I want to ask my 8 JUDGE ROBERTS: What witness are 9 colleagues. We'll recess five minutes. 9 they related to? 10 10 (Recess taken from 2:25 p.m. to MR. SATTERFIELD: Ms. de Freitas. 11 2:39 p.m.) CHIEF JUDGE SLEDGE: Maybe I don't 11 CHIEF JUDGE SLEDGE: Thank you. 12 12 understand your -- you said you're going to file. 13 We'll come to order. 13 What else are you going to do? 14 Cross-examination? 14 MR. SATTERFIELD: I was just going 15 MR. SATTERFIELD: We have none, sir. 15 to -- I was going to inform the Judges, and I'm 16 THE WITNESS: I have been sweating 16 planning on distributing the copies by hand to the 17 bullets. 17 other parties today so that they have the copy in 18 CHIEF JUDGE SLEDGE: Any questions 18 hand and it could be substituted. 19 from the Bench? 19 But the electronic copy that was 20 (Pause.) 20 filed was in color. The printed copy was not in 21 CHIEF JUDGE SLEDGE: Thank you, 21 color. And, unfortunately, one of the colors is 22 ma'am. 22 yellow ---

	7.7		Page 159
	Page 157		
1	CHIEF JUDGE SLEDGE: Let me correct	1	Q. Okay. Where do you work?
2	something you said there. There are no electronic	2	A. Cable Data Corporation.
3	copies filed.	3	Q. And what does Cable Data Corporation
4	MR. SATTERFIELD: Right, there's	4	do?
5	a there's a copy of the direct case was	5	A. Cable Data is a company that our
6	submitted on CD per by the Copyright Royalty	6	primary role is to collect, summarize and report
7	Judges' rules. The PDF copy is in color. So I	7	data as reported on the statements of account
8	apologize for this late mistake.	8	filed here at the Licensing Division.
9	MR. OLANIRAN: Your Honors, my	9	Q. When did you start working for
10	apologies for delaying the proceedings.	10	Cable Data if it's okay, I may refer to Cable
11	Ms. Martin did not anticipate that we would finish	11	Data Corporation as "CDC," just so
12	quite so early with Ms. Kessler. She was asked to	12	A. Okay.
13	be sequestered, so here she comes.	13	Q. Thank you.
14	THE WITNESS: Sorry.	14	A. Twenty-one years ago, so 1988.
15	WHEREUPON,	15	Q. Okay. And what were your duties and
16	JONDA K. MARTIN	16	responsibilities when you first started at
17	was called as a witness and, having been first	17	Cable Data Corporation?
18	duly sworn, was examined and testified	18	A. I started out as a data research
19	as follows:	19	analyst doing research here at the
20	CHIEF JUDGE SLEDGE: Thank you.	20	Licensing Division.
21	Please be seated.	21	Q. Okay. Did those responsibilities
22		22	change over time?
	Page 158		Page 160
1	DIRECT EXAMINATION	1	A. Yes, they did.
2	BY MR. OLANIRAN:	2	Q. Okay. And what are your
3	Q. Good afternoon, Ms. Martin. My name	3	responsibilities, presently?
4	is Greg Olaniran. I'm counsel for	4	A. I currently am the owner and
5	Program Suppliers, which is a member of the	5	president of Cable Data.
6	Settling Parties.	6	I oversee all operations of the
7	Would you please state your name for	7	business, including all the data collection
8	the record?	8	operations, updating, processing, summarizing,
9	A. Jonda K. Martin.	9	reporting and sharing data with the clients, doing
10	Q. Would you please speak up a little	10	some consulting.
11	bit?	11	MR. OLANIRAN: Your Honors, may I
12	A. Sure.	12	please mark the document entitled Direct Testimony
13	Q. Thank you.	13	of Jonda Martin marked as SP Exhibit 6?
14	And, Ms. Martin, what is your	14	CHIEF JUDGE SLEDGE: Any objection
15	educational background?	15	to Exhibit 6?
16	A. I have a Bachelor's of Science	16	MR. SATTERFIELD: No, Your Honor.
17	Science/Business Administration from	17	(Settling Parties Exhibit
18	American University with a concentration in	18	No. 6 was marked for
19	international business and management information	19	identification.)
20	systems.	20	CHIEF JUDGE SLEDGE: Without
21	And I also have an MBA from	21	objection, it's admitted.
22	University of Maryland.	22	(Settling Parties Exhibit

	Page 161		Page 163
1	No. 6 was received in	1	A. I have two full-time employees at
2	evidence.)	2	the Licensing Division here, and their sole
3	BY MR. OLANIRAN:	3	purpose is to code or data enter all of the
4	Q. Ms. Martin, are you familiar with	4	data or most of the data from the statements of
5	the document I've just marked as SP Exhibit 6	5	account as they're filed into laptops. And then
6	titled, Testimony of Jonda K. Martin?	6	we subsequently take that data and update our
7	A. I am.	7	database.
8	Q. Are you familiar with I'm sorry.	8	Q. Are they they where do the
9	Is this your testimony?	9	employees get the data from?
10	A. It is.	10	A. Directly from the filed statements
11	Q. Do you have any corrections to your	11	of account.
12	testimony?	12	Q. And where are those available?
13	A. I don't think so, no.	13	A. At the Licensing Division in, I
14	MR. OLANIRAN: Your Honors, I'd like	14	think, Room 408
15	to move for admission of SP Exhibit 6 the	15	Q. Okay.
16	document marked as SP Exhibit 6.	16	A here at the Copyright Office.
17	CHIEF JUDGE SLEDGE: You did that.	17	Q. Okay. So they bring their laptops
18	You did that.	18	here, enter the information on their laptop?
19	MR. OLANIRAN: Oh.	19	A. (No audible response.)
20	CHIEF JUDGE SLEDGE: You're too	20	Q. And what do they with it after that?
21	young to have memory lapses.	21	A. That is correct. Periodically, we
22	MR. OLANIRAN: I had asked for it to	22	transfer those files to our office, to the
	Page 162		Page 164
1	be marked, and if I asked for it to be moved into	1	mainframe in our office, update the database,
2	evidence if I did that, I stand corrected.	2	generate summary reports, do a lot it takes
3	Thank you.	3	about 72 hours.
4	BY MR. OLANIRAN:	4	There's a lot of checking and
5	Q. Ms. Martin, who uses Cable Data	5	calculating and summarizing, and then, in and
6	Corporation data?	6	then we prepare reports from that.
. 7	A. A wide range of people. At most, if	7	Q. I'm sorry. You what do you do
8	not all, the claimant groups in these proceedings.	8	with the with the information that after you
9	Q. Again, I'm going to have to ask you	9	load the information into your mainframe computer,
10	to speak up a little bit, if you don't mind.	10	what do you do with that information?
11	A. Okay. Most, if not all, of the	11	A. There are several processes that we
12	people in the claimant groups, broadcast	12	do.
13	television station owners, the cable companies	13	Q. Okay.
14	themselves, the National Association of I mean,	14	A. In addition to updating the records,
15	National Cable Television Association, the	15	it also summarizes and aggregates the data at the
16	Telecommunications Association.	16	system level, at the television station level,
17	Q. All the Claimants in this proceeding	17	basically looking at various snapshots. So I am
18	do use CDC data?	18	prepared to run summary reports on on those
19	A. Most, yes. Most, if not all.	19	data.
20	Q. Okay. And how does Cable Data	2.0	Q. All right. I have to dial back a
21	collect the what data does it collect and how	21	little bit.
22	does it collect it?	22	When you say "aggregates the data at

			*
	Page 165		Page 167
1	the system level," could you please explain that a	1	collection it's an aggregation of carriage of
2	little bit in a little bit more detail?	2	each television station. And then we group those
3	A. Sure.	3	television stations by affiliation by station
	A given cable system may they	4	type, independent station, network station,
4	have subscribers, the rate that they charge, the	5	educational station, and aggregate the carriage
5	gross receipts that are reported on the statement	6	statistics for each television station itself, as
6	of account, the royalty, the carriage, the	7	well as the group, the category of station.
7	television stations that they report.	8	We summarize the subscribers, the
8	In addition, we collect the bases of	9	total subscribers, and then we actually break out
9	carriage of those stations; namely, if it's local	10	what portion of those subscribers are carried on a
10		11	distant basis.
11	or distant and if it's permitted or not permitted.	12	We show the total royalty the
12	And then we actually enter it as	13	total fees generated, which we're all going to be
13	reported, and we will subsequently sometimes	14	very familiar with, and not only at the station
14	there's amendments to those filings, and so maybe	15	level, but at the category of station.
15	an update would include an amendment that was	16	Q. Ms. Martin, let me direct your
16	filed here. But essentially, all of the and	17	attention to Appendix B of your testimony.
17	the various types of royalty, whether it's the	18	A. Yes.
18	total royalty, the base royalty the basic fund	19	Q. Is this the report you were just
19	royalty, the 3.75, the syndex we collect every	20	describing?
20	level of detail.	21	A. Yes, it is.
21	Q. Okay. You calculate information	22	MR. OLANIRAN: Yeah. Your Honor, if
22	that the cable operators report in precisely the		
	Page 166		Page 168
1	manner in which they report it and you put it in	1	I may, I'd like to mark another document as a
2	your system and you create a database?	2	SP Demonstrative Exhibit Number 2.
3	A. That is correct.	3	(Settling Parties
4	Q. Okay. And what do you do with that	4	Demonstrative Exhibit No.
5	information?	5	2 was marked for
6	A. Whatever the clients need. A lot of	6	identification.)
7	times well, the two main reports that we run	7	MR. OLANIRAN: And I have shown the
8	are a station summary report and an accounting	8	document to opposing counsel. And if I may ask
9	period summary report.	9	you to
10	But we use those data to provide	10	BY MR. OLANIRAN:
11	carriage information. If somebody wants to know	11	Q. Ms. Martin, you should have in front
	what television station or what cable systems are	12	of you the document marked as SP Demonstrative
11	what television station or what cable systems are reporting carriage of their television station, we	Į.	of you the document marked as SP Demonstrative Exhibit Number 2.
11 12	what television station or what cable systems are	12	of you the document marked as SP Demonstrative
11 12 13	what television station or what cable systems are reporting carriage of their television station, we	12 13	of you the document marked as SP Demonstrative Exhibit Number 2.
11 12 13 14	what television station or what cable systems are reporting carriage of their television station, we can look nationwide in our database and be able to	12 13 14	of you the document marked as SP Demonstrative Exhibit Number 2. Are you familiar with that document? A. Yes, I am.
11 12 13 14 15	what television station or what cable systems are reporting carriage of their television station, we can look nationwide in our database and be able to kick out a detailed list of which cable systems	12 13 14 15	of you the document marked as SP Demonstrative Exhibit Number 2. Are you familiar with that document?
11 12 13 14 15	what television station or what cable systems are reporting carriage of their television station, we can look nationwide in our database and be able to kick out a detailed list of which cable systems are reporting that specific television station.	12 13 14 15 16	of you the document marked as SP Demonstrative Exhibit Number 2. Are you familiar with that document? A. Yes, I am. Q. And what is that? A. This is a copy of our station
11 12 13 14 15 16	what television station or what cable systems are reporting carriage of their television station, we can look nationwide in our database and be able to kick out a detailed list of which cable systems are reporting that specific television station. Q. Okay. Now, you mentioned two	12 13 14 15 16 17	of you the document marked as SP Demonstrative Exhibit Number 2. Are you familiar with that document? A. Yes, I am. Q. And what is that? A. This is a copy of our station summary report that I was just discussing.
11 12 13 14 15 16 17	what television station or what cable systems are reporting carriage of their television station, we can look nationwide in our database and be able to kick out a detailed list of which cable systems are reporting that specific television station. Q. Okay. Now, you mentioned two different reports as the reports that you	12 13 14 15 16 17 18	of you the document marked as SP Demonstrative Exhibit Number 2. Are you familiar with that document? A. Yes, I am. Q. And what is that? A. This is a copy of our station
11 12 13 14 15 16 17 18	what television station or what cable systems are reporting carriage of their television station, we can look nationwide in our database and be able to kick out a detailed list of which cable systems are reporting that specific television station. Q. Okay. Now, you mentioned two different reports as the reports that you routinely produce, right?	12 13 14 15 16 17 18 19	of you the document marked as SP Demonstrative Exhibit Number 2. Are you familiar with that document? A. Yes, I am. Q. And what is that? A. This is a copy of our station summary report that I was just discussing.

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so I want you to sort of give us a general description of what information is captured on this, and then, if you will, very briefly touch on the different categories of information that's represented on this.

So what information does this generally capture? What does this appendix capture?

A. This report really focuses on the actual carriage of the television stations that are reported on the statement of account. This aggregates for a given accounting period by station type, "station type" meaning independent network, educational, Canadian, Mexican network.

And what it shows is the instances of carriage, total instances of carriage. If you look at the first group, it's the educational category.

Q. When you say "look at," are we now looking at Appendix B?

A. Correct. The first -- yes. We have the -- the description, which it says regular. It

subscriber instances. So those subscribers are -- have access to two educational stations.

Q. The next column is titled Total Fees Generated.

What is that column for?

A. Fees generated is a Cable Data calculation. When a cable system pays its royalties, it pays it based on the DSEs, the distant signal equivalents.

What Cable Data does is we attempt to match those royalties back to the distant stations they report, and we call those fees generated.

Now, we do not assign which DSE is first, second, third or fourth. We use a proportional DSE basis to allocate those fees.

Q. And we'll talk about that in a little bit.

The next column is capturing the number of unique stations total?

A. That's right.

Q. What information is captured in that

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means it's just a regular educational or PBS station; total instances of carriage, which is the instances and educational station is reported on a statement of account.

And the reason I say "instances" is because one cable system could carry two educational stations, and each instance is counted once. So this is not systems; this is system instances of carriage.

Q. And what is total subscriber instances, which is the next column?

A. The first number -- I was talking about instances of carriage first.

Subscriber instances, likewise, are the subscribers that are reported in Space E on the statement of account. And if an -- if a system carries an educational -- only one educational station, those subscribers are called -- are counted once. If that cable system carries two educational stations, those subscribers would be counted twice.

That's why we refer to them as

column?

A. The next column, there are 356 unique educational stations being reported on Form 3 -- and I should say this is just the Form 3s, not Form 1, 2s.

There are 356 unique educational stations being reported by Form 3s in this accounting period, which is 2000-1.

Q. And the next?

A. And the next -- those first four columns that I just discussed were the total statistics. The next four columns refer to the portion of those data that are distant.

So the next column, distant instances of carriage, as you can see, the total instances for educational was 3,000- -- I don't have my glasses on -- 892, and there are 626 distant instances of educational stations -- regular educational stations and distant subscriber instances.

Those are the subscribers that are receiving an educational station on a distant

	Page 173		Page 175
-		1	How different is that protocol now
1	basis as reported on the statement of account. And then you'll see that the distant	2	from, for instance, the the last proceeding,
2		3	the '98-'99 cable, that you testified or the
3	fees gen are there. We do we only allocate	4	company testified?
4	distant fees gen in all cases except for the minimum fee, which I think we'll talk about later.	5	THE WITNESS: It's only it's
5		6	really the the premise and the
6	But in this case, all fees are distant. And the last column are the number	7	definition of our protocols has really not changed
7		8	very much.
8	of unique educational stations that are retransmitted on a distant basis.	9	What happened was the dynamics of
9		10	the of the filing, the systems filing
10	Q. Just to make sure I understand your	11	when I think, earlier, somebody mentioned the
11	analysis, then, if I looked at the line titled	12	change of WTBS to a cable network. And what
12	Educational	13	happened is our protocols always used the DSE
13	A. Yes.		proportional DSE-based approach, but what
14	Q and the second column will be the	14 15	happened, we didn't account for the rapid increase
15	Total Instances of Carriage, and the sixth column		of systems that carried no distant station or were
16	titled Distant Instances of Carriage, that would	16	
17	mean that 626 of the 3,900 instances are distant?	17	subject to the minimum carried one distant
18	A. That is correct.	18	station, but were still subject to the minimum
19	Q. And the same would apply to total	19	fee. So we needed to make some
20	subscriber instances versus distant subscriber	20	The state of the s
21	instances, total fees generated versus distant	21	modifications to make sure that our protocols were
22	fees generated, correct?	22	treating each station consistently, on a DSE
	Page 174		Page 176
1	A. That is correct.	1	basis, across all systems. So we needed to make
2	Q. And you do this for all of the	2	that refinement.
3	station types?	3	JUDGE ROBERTS: Looking at Page 6 of
4	A. That's correct. This is just	4	your testimony, and you indicate that you changed
5	educational, but you can see that I we're	5	your protocol from '98-'99 or what was used in
6	consistent in in reporting for all categories	6	that time period in response to criticism from the
7	of stations.	7	Canadian Claimants.
8	JUDGE ROBERTS: Ms. Martin, you have	8	And the sentence in particular, The
9	been using this specific fees-generation	9	Canadian Claimants criticized CDC's then existing
10	methodology that you refer to, I believe, as	10	fees-generated protocols as not properly
11	protocols, particular protocol for as your	11	allocating the minimum fees for systems. It
12	methodology for calculating fees generated.	12	carried at least one distant signal.
13	That's what you have in your testimony.	13	And then you go on to say that as a
14	You've been using it for about	14	result of that criticism, you worked diligently
15	five years now?	15	over the last five years to create new
16	THE WITNESS: Well, fees generated	16	fees-generated protocols.
17	goes back a long	17	My question to you is: Why did you
18	JUDGE ROBERTS: No, no. I mean your	18	respond to criticisms of the Canadian Claimants to
19	particular current way of calculating.	19	change your protocols?
20	THE WITNESS: Technically, we	20	THE WITNESS: Well, I think I should
		1	
21	updated the protocol last June.	21	clarify that. They were the first to notice, I

regard to the number of systems that had minimum fees -- that were subject to the minimum fees.

We went from 95 percent of the systems -- or -- let me think here.

There were only 40 systems that were subject to the minimum fee prior to the change of WTBS changing to a cable network.

When that number jumped to 400 -- and that accounted for about \$330,000.

When WTBS changed, that minimum fee total increased to over a \$11 million. So what we were doing is we were -- in the cases of a minimum fee, we were just saying -- if it carried zero distant stations, we would take whatever fee was paid as a minimum fee and divide it equally among the reported local stations as local fees gen.

And for those systems that — well, let me follow up on that. When we changed the protocol, what we did instead was say we're not we can't directly say it's fees generated for those stations, because it's — we decided to take those dollars and put them in a neutral minimum those protocols because you thought it was a good idea to do or did you change those protocols because somebody paid you to implement new protocols?

THE WITNESS: Nobody paid me. That's for sure. Nobody paid me to do that.

We felt it was the best way -- it was a way -- it was the best way -- it felt, to us, the most consistent way to allocate fees gen back to the distant stations.

It really brought it back to the pure definition of fees gen when it was written in the early '80s. Because back then, there weren't very many stations that were subject to the minimum fee. So almost all of the systems we're paying on a -- you know, paying for distant stations, and we were allocating back on a proportional DSE basis.

When the dynamics of the data being reported or being filed changed, we were forced to -- and it's true that the Canadians were the first to bring it to our attention, and we really

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we're not

fee account to say, well, we're not — we're not going to say that it's local fees gen, because the

foundation essentially is royalties are paid in based on distant signals.

So we decided not to allocate local fees gen any longer. We decided to put it in a separate account and let other people decide how those should be allocated.

With regard to the systems that carry at least one distant station, like a distant network whose total DSE value would be .25, but they still pay the minimum fee based on a 1.0, we would allocate distant fees -- a quarter of that 1.0 DSE to that distant network station and then we would take that .7, or three quarters of the minimum fee, and put it into this same minimum fee account to say that our fees generated are on the proportional DSE basis for distant stations only, put the rest of the dollars in a -- in a separate fund and let other people decide how those should be allocated.

JUDGE ROBERTS: So did you change

Page 180 struggled with what was the best approach to do.

You know, it's a lot of programming, and there's a lot of complexities with these systems that may not be apparent on the form. But when you're processing them or the subscriber groups, there's a lot of complexities.

We wanted to make sure that we did it right and we did it consistently. And this was what we came up with as the most consistent approach across all systems for all television stations.

JUDGE ROBERTS: So does this approach that you used for the years involved in this proceeding, 2000-2003, does this reflect what you believe is your best -- your best effort in allocating these fees, or do you have an intention to further modify your protocol in the time period to come?

THE WITNESS: I do feel that this is -- this is the best. I think it's very tidy. I think that -- I don't have any plans to change it again, not in the near future.

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7	JUDGE ROBERTS: Okay. Thank you.	1	have "we," meaning Cable Data have seen,
1	BY MR. OLANIRAN:	2	have touched.
3	O. Ms. Martin, we were looking at	3	Q. Okay. So for 2001-2 in the second
4	SP Demonstrative Exhibit Number 2. And I think we	4	column, you had 5,094 cable Form 1 cable
5	just had concluded a review of Appendix B, which	5	systems, correct?
6	is an appendix to your testimony.	6	A. That's correct. And actually, those
7	You mentioned two reports that	7	could be in the form of a remittance sheet.
8	Cable Data produces, and the first one was the	8	The Licensing Division creates
9	station summary.	9	remittance sheets that shows item by item lists of
10	Let's go to Appendix A, which is	10	cable systems that pay and the dollars that they
11	Appendix A to your testimony. And it's the second	11	pay.
12	page of the demonstrative exhibit,	12	Sometimes we get access to the
13	SP Demonstrative Exhibit Number 2.	13	remittance sheets before we actually see the
14	What is that report that we're	14	the actual statement of account. So that total
15	looking at?	15	system is usually from the remittance sheets and
16	A. This report is our account period	16	the total and the corresponding royalty paid by
17	summary report. This is a snapshot of all cable	17	those systems.
18	systems, all file all cable system filings, all	18	The next column is average royalty.
19	statement of account filings across all forums for	19	That is just what it says; it's the average
20	a given range of accounting periods that	20	royalty paid by those systems.
21	summarizes them the statements of account by	21	Q. Actually, I think the next column is
22	form number. This one is just by form number.	22	royalty. I don't think we talked about that.
	Page 182		Page 184
1	We do have another one that breaks	1	A. I thought I mentioned that.
2	it down by market, top 50, second 50, but this one	2	Anyway, but it's the aggregation of
3	is the aggregation of all systems as filed, the	3	all the royalty paid by those those cable
4	total number of systems, the total number of	4	systems.
- 5	royalties paid in by those systems.	5	
5 6	royalties paid in by those systems. Of If you don't mind, I'd like you to	5 6	And then so if you look at
6	Q. If you don't mind, I'd like you to		And then so if you look at Form 1, you'll see it's 173,000, but if you go
6 7	Q. If you don't mind, I'd like you to just take just give a brief description of what	6	And then so if you look at
6 7 8	Q. If you don't mind, I'd like you to just take just give a brief description of what data is captured in these columns so we're able to	6 7	And then so if you look at Form 1, you'll see it's 173,000, but if you go down a couple of rows, you'll see that the Form 3, the total royalty is 58 million.
6 7 8 9	Q. If you don't mind, I'd like you to just take just give a brief description of what data is captured in these columns so we're able to easily follow those descriptions.	6 7 8	And then so if you look at Form 1, you'll see it's 173,000, but if you go down a couple of rows, you'll see that the Form 3, the total royalty is 58 million. So you can see that not only does it
6 7 8 9 10	Q. If you don't mind, I'd like you to just take just give a brief description of what data is captured in these columns so we're able to easily follow those descriptions. The first column says Form DES	6 7 8 9	And then so if you look at Form 1, you'll see it's 173,000, but if you go down a couple of rows, you'll see that the Form 3, the total royalty is 58 million.
6 7 8 9 10	Q. If you don't mind, I'd like you to just take just give a brief description of what data is captured in these columns so we're able to easily follow those descriptions. The first column says Form DES A. Form description, that's right. And	6 7 8 9	And then so if you look at Form 1, you'll see it's 173,000, but if you go down a couple of rows, you'll see that the Form 3, the total royalty is 58 million. So you can see that not only does it show the total royalty by form number, but it also shows the relative share kind of the relative
6 7 8 9 10 11 12	Q. If you don't mind, I'd like you to just take just give a brief description of what data is captured in these columns so we're able to easily follow those descriptions. The first column says Form DES A. Form description, that's right. And just above form description. That shows that	6 7 8 9 10	And then so if you look at Form 1, you'll see it's 173,000, but if you go down a couple of rows, you'll see that the Form 3, the total royalty is 58 million. So you can see that not only does it show the total royalty by form number, but it also
6 7 8 9 10 11 12	Q. If you don't mind, I'd like you to just take just give a brief description of what data is captured in these columns so we're able to easily follow those descriptions. The first column says Form DES A. Form description, that's right. And just above form description. That shows that we have the Number 1 and Form 1 spelled out. But	6 7 8 9 10 11 12	And then so if you look at Form 1, you'll see it's 173,000, but if you go down a couple of rows, you'll see that the Form 3, the total royalty is 58 million. So you can see that not only does it show the total royalty by form number, but it also shows the relative share kind of the relative amounts across all forms for a given accounting
6 7 8 9 10 11 12 13	Q. If you don't mind, I'd like you to just take just give a brief description of what data is captured in these columns so we're able to easily follow those descriptions. The first column says Form DES A. Form description, that's right. And just above form description. That shows that we have the Number 1 and Form 1 spelled out. But that's just the description of what category of	6 7 8 9 10 11 12 13	And then so if you look at Form 1, you'll see it's 173,000, but if you go down a couple of rows, you'll see that the Form 3, the total royalty is 58 million. So you can see that not only does it show the total royalty by form number, but it also shows the relative share kind of the relative amounts across all forms for a given accounting period.
6 7 8 9 10 11 12 13 14	Q. If you don't mind, I'd like you to just take just give a brief description of what data is captured in these columns so we're able to easily follow those descriptions. The first column says Form DES A. Form description, that's right. And just above form description. That shows that we have the Number 1 and Form 1 spelled out. But that's just the description of what category of SOA is being summarized in that row.	6 7 8 9 10 11 12 13	And then so if you look at Form 1, you'll see it's 173,000, but if you go down a couple of rows, you'll see that the Form 3, the total royalty is 58 million. So you can see that not only does it show the total royalty by form number, but it also shows the relative share kind of the relative amounts across all forms for a given accounting period. Q. Now, the next column is average
6 7 8 9 10 11 12 13 14 15	Q. If you don't mind, I'd like you to just take just give a brief description of what data is captured in these columns so we're able to easily follow those descriptions. The first column says Form DES A. Form description, that's right. And just above form description. That shows that we have the Number 1 and Form 1 spelled out. But that's just the description of what category of SOA is being summarized in that row. Q. What type of cable system, you mean?	6 7 8 9 10 11 12 13 14 15	And then so if you look at Form 1, you'll see it's 173,000, but if you go down a couple of rows, you'll see that the Form 3, the total royalty is 58 million. So you can see that not only does it show the total royalty by form number, but it also shows the relative share kind of the relative amounts across all forms for a given accounting period. Q. Now, the next column is average royalty.
6 7 8 9 10 11 12 13 14 15 16	Q. If you don't mind, I'd like you to just take just give a brief description of what data is captured in these columns so we're able to easily follow those descriptions. The first column says Form DES A. Form description, that's right. And just above form description. That shows that we have the Number 1 and Form 1 spelled out. But that's just the description of what category of SOA is being summarized in that row. Q. What type of cable system, you mean? A. What yes.	6 7 8 9 10 11 12 13 14 15	And then so if you look at Form 1, you'll see it's 173,000, but if you go down a couple of rows, you'll see that the Form 3, the total royalty is 58 million. So you can see that not only does it show the total royalty by form number, but it also shows the relative share kind of the relative amounts across all forms for a given accounting period. Q. Now, the next column is average royalty. What is that information what's
6 7 8 9 10 11 12 13 14 15 16 17	Q. If you don't mind, I'd like you to just take just give a brief description of what data is captured in these columns so we're able to easily follow those descriptions. The first column says Form DES A. Form description, that's right. And just above form description. That shows that we have the Number 1 and Form 1 spelled out. But that's just the description of what category of SOA is being summarized in that row. Q. What type of cable system, you mean? A. What yes. Q. Whether it's a Form 1, Form 2 or	6 7 8 9 10 11 12 13 14 15 16	And then so if you look at Form 1, you'll see it's 173,000, but if you go down a couple of rows, you'll see that the Form 3, the total royalty is 58 million. So you can see that not only does it show the total royalty by form number, but it also shows the relative share kind of the relative amounts across all forms for a given accounting period. Q. Now, the next column is average royalty. What is that information what's the information in that column?
6 7 8 9 10 11 12 13 14 15 16 17 18	Q. If you don't mind, I'd like you to just take just give a brief description of what data is captured in these columns so we're able to easily follow those descriptions. The first column says Form DES A. Form description, that's right. And just above form description. That shows that we have the Number 1 and Form 1 spelled out. But that's just the description of what category of SOA is being summarized in that row. Q. What type of cable system, you mean? A. What yes. Q. Whether it's a Form 1, Form 2 or Form 3?	6 7 8 9 10 11 12 13 14 15 16 17	And then so if you look at Form 1, you'll see it's 173,000, but if you go down a couple of rows, you'll see that the Form 3, the total royalty is 58 million. So you can see that not only does it show the total royalty by form number, but it also shows the relative share kind of the relative amounts across all forms for a given accounting period. Q. Now, the next column is average royalty. What is that information what's the information in that column? A. It's just the the total number
6 7 8 9 10 11 12 13 14 15 16 17	Q. If you don't mind, I'd like you to just take just give a brief description of what data is captured in these columns so we're able to easily follow those descriptions. The first column says Form DES A. Form description, that's right. And just above form description. That shows that we have the Number 1 and Form 1 spelled out. But that's just the description of what category of SOA is being summarized in that row. Q. What type of cable system, you mean? A. What yes. Q. Whether it's a Form 1, Form 2 or	6 7 8 9 10 11 12 13 14 15 16 17 18	And then so if you look at Form 1, you'll see it's 173,000, but if you go down a couple of rows, you'll see that the Form 3, the total royalty is 58 million. So you can see that not only does it show the total royalty by form number, but it also shows the relative share kind of the relative amounts across all forms for a given accounting period. Q. Now, the next column is average royalty. What is that information what's the information in that column? A. It's just the the total number of the total royalty divided by the total

Page 185		Page 187
1 number SOA systems.	1	total subscribers divided by the number of actual
2 What is it that information?	2	SOAs we touch, because the remittance sheets don't
3 A. Yeah. This is very similar to the	3	
4 total systems, except that these are the actual	4	have subscriber information. So the only place to
		get subscriber information is from the actual SOA
5 SOAs that we've actually touched, the actual	5	form.
6 filings.	6	So the average subscribers for each
7 Sometimes it happens in data	7	form are shown here, ranging from 301 for Form 1s
8 collection that these systems these statement	8	down to 33,000 over 33,000 for Form 3s.
9 of accounts are filed, but either they get	9	Q. Now, the next column talks about
10 misfiled in the public area or they just we	10	gross receipts.
just couldn't get our hands on every one.	11	Would you please tell us what that
We know there's a record of payment,	12	information captures?
so we show a remittance, but the actual number of	13	A. This is the aggregation of the gross
14 SOA systems represents the actual statements of	14	receipts as reported on the statement of account
15 account that my researchers have actually touched	15	form for each cable system. I think it's Space G.
16 and entered from the source document.	16	Q. Again, I'm sorry. I didn't hear it.
17 Q. The next column is titled	17	A. I'm I think it's Space G. It's
18 Subscribers.	18	been a long time since I've been a coder, but
19 What is that information? Is that	19	Q. The next column is average receipts.
20 the same as subscriber instances?	20	What does that information
21 A. No, it isn't. No, it is not.	21	represent?
22 Q. Okay.	22	A. The same thing, it shows average
Page 186		Page 188
1 A. These are the subscribers	1	the total gross receipts divided by the number of
2 primarily service to first set subscribers as	2	SOA systems.
3 reported in Space E.	3	Q. Okay. The next column is a number
4 Q. What do you mean by "service to	4	with CARR'G.
5 first set subscribers"?	5	What does that mean?
6 A. A lot of times, cable systems will	6	A. That's the number with carriage.
7 report basic subscribers, expanded basic. It's	7	Q. Okay.
8 basically the tiers of service that the	8	A. Sometimes either a statement of
9 subscribers are receiving.	9	account doesn't fill out the carriage portion of
10 We collect all tiers of service, but	10	their statement of account form or sometimes data
for summarizing purposes, we usually use the	11	gets lost or it just shows that we have
12 service to first set subscriber number.	12	
		carriage records for that many statement of
	13	account records from the form.
14 Space E, Space E of what?	14	So you can see that in this case,
A. Of the actual statement of account	15	we're missing 100 Form 1s, but in Form 3s, we are
16 form.	16	only missing one. We have carriage for all but
Q. Okay. The next column is the	17	one statement of account form.
18 average subscribers.	18	Q. And the next column, please?
19 What is that for?	19	A. Average number of stations. This is
20 A. Yeah. That is actually calculated	20	the total number of stations, broadcast stations,
21 in a similar fashion. It actually shows the	21	being reported. There's a an item there's
22 and it comes from the actual number of the	22	channels TV and channels active items on the

	Page 189		Page 191
1	statement of account form.	1	but the Form 3 average DSE is from the reported
2	These are the television stations,	2	data from the statement of account.
3	and that's the average number of stations reported	3	Q. And the station summary in
4	by each form within each form category, Form 1,	4	Appendix A and the account period summary I'm
5	Form 2, Form 3.	5	sorry station summary in Appendix B and account
6	Q. I see. So Form 1 systems in 2001-2	6	period summary in Appendix A are the two reports
7	carries an average of 7.83 channels; is that	7	that you produce routinely?
8	correct?	8	A. Yes, these are our two standard
9	A. Stations, yes.	9	reports.
10	Q. Stations?	10	Q. Do you produce other reports for
11	A. Yes.	11	your clients?
12	Q. Okay. And the average distant, what	12	A. I do.
13	is that, which is the next column?	13	Q. Okay.
14	A. Of those total number of stations	14	A. We a lot of times, clients will
15	being reported, the average number of distant	15	call for a special analysis. They'd like to see a
16	refers to how many of those stations are indicated	16	summary of if they give me WABC and they say
17	as distant on the statement of account form.	17	can you please tell me all the cable systems in
18	Now, in this column, it's important	18	the country that are carrying WABC on a distant
19	to note that Form 1, 2s are not required to	19	basis, I can generate that.
20	indicate whether a station is local or distant.	20	Sometimes they just want to look at,
21	Cable Data estimates distance for	21	you know just if they're if it's it
22	Form 1, 2s in this case based on whether the	22	ranges so much, the custom level of reports that I
	Page 190		Page 192
1	must carry rules, meaning that it's within the	1	do.
2	same DMA, if it's significantly viewed or if it's	2	MR. OLANIRAN: Your Honor, I would
3	not significantly viewed, if it's not in the same	3	like to have marked as Exhibit SP SP Exhibit 7
4	DMA, a few other criteria.	4	a document numbered as SP Exhibit JKM-1.
5	We estimate if it's greater than 35	5	I would also like to have marked as
6	or 50 miles away. So we estimate if that system	6	SP Exhibit 8 the document numbered
7	were a Form 3, would that station be distant or	7	SP Exhibit JKM-2.
8	not so that I have to it's important to note	8	(Settling Parties Exhibit
9	that Form 1, 2s, with regard to distance, that is	9	Nos. 7 and 8 were marked
10	a Cable Data estimate of distance. The Form 3 is	10	for identification.)
11	as reported.	11	BY MR. OLANIRAN:
12	Q. And what is the next column?	12	Q. Ms. Martin, do you have in front of
13	A. The number of systems with zero	13	you the document marked as SP Exhibit 1, but
14	distant stations. So it has a tally of systems	14	titled with regard to your testimony as
15	that have whose carriage shows all local	15	SP Exhibit JKM-1?
	stations.	16	A. Yes.
16	P ************************************	17	Q. Do you have that?
16 17	O. And the last column, is that average	1 - '	
17	Q. And the last column, is that average DSE?	18	A. Yes, I do.
17 18	DSE?	1	A. Yes, I do.Q. And do you also have the document
17 18 19	DSE? A. Yes, that's the average DSE for	18	
17 18	DSE?	18 19	Q. And do you also have the document

	Page 193		Page 195
1	Q. Okay. With reference to the	1	believe this is a document listing all of the
2	document marked as SP Exhibit Number 7	2	cable systems that are reporting Canadian stations
3	MR. OLANIRAN: Let me go back to the	3	on a distant basis from 1998-1, it looks like,
4	exhibit references again just to make sure the	4	through 2003-2.
5	record is clear.	5	Q. And if you would, could you please
6	I would like to have marked as	6	tell us, just briefly, the the information
7	SP Exhibit Number 7 the exhibit attached to	7	that's captured in all of these different columns?
8	Ms. Martin's testimony that's referenced	8	A. Yes.
9	referenced as SP Exhibit JKM-1. And also, I would	9	The first column, SIS ID SIS ID
10	like to mark as SP Exhibit 8 the document	10	is Cable Data's unique identifier for each system.
11	referenced in Ms. Martin's testimony that's	11	MAA200, Massachusetts A200 the first two
12	referenced as SP Exhibit JKM-2.	12	
13	BY MR. OLANIRAN:	13	letters refer to the state that the system is in
14	Q. Okay. And, Ms. Martin, are you	00.000	
	familiar with the document document marked as	14	Q. Okay.
15 16	SP Exhibit Number 7?	15	A and, typically, the the next
16		16	letter is the first letter of the prime community
		17	served, which can change over time, but we keep
18	Q. Okay. And did you prepare this	18	the same SIS ID, and then a number indicating
19	document or did you, personally, supervise the	19	alphabetically where it is in relation to the
20	preparation of this document?	20	other Form 3 systems.
21	A. Yes, I created this document.	21	Q. And just just to be clear on the
22	Q. And what is this report?	22	record, the SIS ID that you're referring to is the
22	Page 194	22	record, the SIS ID that you're referring to is the Page 196
22		22	
	Page 194		Page 196
1	Page 194 A. This is referred to as our CD index	1	Page 196 very first column in Exhibit in the
1 2	A. This is referred to as our CD index report.	1 2	Page 196 very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what?
1 2 3	A. This is referred to as our CD index report. Q. Okay.	1 2 3	Page 196 very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what?
1 2 3 4	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a	1 2 3 4	Page 196 very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system.
1 2 3 4 5	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time.	1 2 3 4 5	Page 196 very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the
1 2 3 4 5	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the	1 2 3 4 5 6	Page 196 very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be
1 2 3 4 5 6 7	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case,	1 2 3 4 5 6	Page 196 very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory
1 2 3 4 5 6 7 8	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case, from 1987-1 through 2007-2.	1 2 3 4 5 6 7 8	Page 196 very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory Q self-explanatory.
1 2 3 4 5 6 7 8	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case, from 1987-1 through 2007-2. Q. All right. And would this be an	1 2 3 4 5 6 7 8	very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory Q self-explanatory. A basically, it's the first half,
1 2 3 4 5 6 7 8 9	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case, from 1987-1 through 2007-2. Q. All right. And would this be an example of a custom report that a client would ask you to prepare?	1 2 3 4 5 6 7 8 9 10	Page 196 very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory Q self-explanatory. A basically, it's the first half, second half of each year.
1 2 3 4 5 6 7 8 9 10	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case, from 1987-1 through 2007-2. Q. All right. And would this be an example of a custom report that a client would ask you to prepare? A. Yes. It's one that I prepare a lot.	1 2 3 4 5 6 7 8 9 10 11	Page 196 very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory Q self-explanatory. A basically, it's the first half, second half of each year. Q. Okay. And the next talks about
1 2 3 4 5 6 7 8 9 10 11 12 13	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case, from 1987-1 through 2007-2. Q. All right. And would this be an example of a custom report that a client would ask you to prepare? A. Yes. It's one that I prepare a lot. It's almost standard, yes. It's custom.	1 2 3 4 5 6 7 8 9 10 11 12 13	very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory Q self-explanatory. A basically, it's the first half, second half of each year. Q. Okay. And the next talks about receipts.
1 2 3 4 5 6 7 8 9 10 11 12 13 14	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case, from 1987-1 through 2007-2. Q. All right. And would this be an example of a custom report that a client would ask you to prepare? A. Yes. It's one that I prepare a lot.	1 2 3 4 5 6 7 8 9 10 11 12 13	very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory Q self-explanatory. A basically, it's the first half, second half of each year. Q. Okay. And the next talks about receipts. What types of receipts are we
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case, from 1987-1 through 2007-2. Q. All right. And would this be an example of a custom report that a client would ask you to prepare? A. Yes. It's one that I prepare a lot. It's almost standard, yes. It's custom. Q. Okay. Let me direct your attention to the document marked as SP Exhibit Number 8.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory Q self-explanatory. A basically, it's the first half, second half of each year. Q. Okay. And the next talks about receipts. What types of receipts are we talking about?
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case, from 1987-1 through 2007-2. Q. All right. And would this be an example of a custom report that a client would ask you to prepare? A. Yes. It's one that I prepare a lot. It's almost standard, yes. It's custom. Q. Okay. Let me direct your attention to the document marked as SP Exhibit Number 8. Are you familiar with that document	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory Q self-explanatory. A basically, it's the first half, second half of each year. Q. Okay. And the next talks about receipts. What types of receipts are we talking about? A. Those are the gross receipts that
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case, from 1987-1 through 2007-2. Q. All right. And would this be an example of a custom report that a client would ask you to prepare? A. Yes. It's one that I prepare a lot. It's almost standard, yes. It's custom. Q. Okay. Let me direct your attention to the document marked as SP Exhibit Number 8. Are you familiar with that document also?	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory Q self-explanatory. A basically, it's the first half, second half of each year. Q. Okay. And the next talks about receipts. What types of receipts are we talking about? A. Those are the gross receipts that are reported by that system that system, in
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case, from 1987-1 through 2007-2. Q. All right. And would this be an example of a custom report that a client would ask you to prepare? A. Yes. It's one that I prepare a lot. It's almost standard, yes. It's custom. Q. Okay. Let me direct your attention to the document marked as SP Exhibit Number 8. Are you familiar with that document also? A. Yes.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory Q self-explanatory. A basically, it's the first half, second half of each year. Q. Okay. And the next talks about receipts. What types of receipts are we talking about? A. Those are the gross receipts that are reported by that system that system, in this case, MAA200. In 1998-1, they reported
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case, from 1987-1 through 2007-2. Q. All right. And would this be an example of a custom report that a client would ask you to prepare? A. Yes. It's one that I prepare a lot. It's almost standard, yes. It's custom. Q. Okay. Let me direct your attention to the document marked as SP Exhibit Number 8. Are you familiar with that document also? A. Yes. Q. And tell me exactly what this	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory Q self-explanatory. A basically, it's the first half, second half of each year. Q. Okay. And the next talks about receipts. What types of receipts are we talking about? A. Those are the gross receipts that are reported by that system that system, in this case, MAA200. In 1998-1, they reported receipts of 728,000. Then the next column is the
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case, from 1987-1 through 2007-2. Q. All right. And would this be an example of a custom report that a client would ask you to prepare? A. Yes. It's one that I prepare a lot. It's almost standard, yes. It's custom. Q. Okay. Let me direct your attention to the document marked as SP Exhibit Number 8. Are you familiar with that document also? A. Yes. Q. And tell me exactly what this document is.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory Q self-explanatory. A basically, it's the first half, second half of each year. Q. Okay. And the next talks about receipts. What types of receipts are we talking about? A. Those are the gross receipts that are reported by that system that system, in this case, MAA200. In 1998-1, they reported receipts of 728,000. Then the next column is the royalty that they paid on those receipts for that
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. This is referred to as our CD index report. Q. Okay. A. This is a history it's a historical snapshot of a single system over time. So what it does is it shows the filing behavior for a single system, in this case, from 1987-1 through 2007-2. Q. All right. And would this be an example of a custom report that a client would ask you to prepare? A. Yes. It's one that I prepare a lot. It's almost standard, yes. It's custom. Q. Okay. Let me direct your attention to the document marked as SP Exhibit Number 8. Are you familiar with that document also? A. Yes. Q. And tell me exactly what this	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	very first column in Exhibit in the exhibit marked as SP Exhibit Number 8. And SIS ID refers to what? A. It's Cable Data's unique system identifier for each cable system. Q. Okay. The next column is the accounting period, which appears to be A. Self-explanatory Q self-explanatory. A basically, it's the first half, second half of each year. Q. Okay. And the next talks about receipts. What types of receipts are we talking about? A. Those are the gross receipts that are reported by that system that system, in this case, MAA200. In 1998-1, they reported receipts of 728,000. Then the next column is the

	Page 197		Page 199
1	gorry.	1	that figure would have gone there. But in this
2	A. The next column is the royalty	2	case, they do not. So the Canadian fee gen-3.75
3	the 3.75 royalty. In this case, they did not pay	3	is the 3.75 fees gen.
4	any, so there's a dash, nor did they pay the	4	Q. And when you say if the system is
5	syndex royalty.	5	not permitted, what do you mean by "permitted"?
6	Q. Okay.	6	A. The cable systems there's
7	A. The channel's active shows the	7	there's a schedule of a carriage schedule that
8	the total number of activated channels for that	8	says if a station is permitted based on market
9	system.	9	quota or if it's grandfathered. There are, I
10	Q. What do you mean by "activated	10	think, six or seven, A through G, different
11	channels"?	11	reasons a cable system can identify a station as
12	A. I guess, in my world, it's as	12	permitted.
13	opposed to broadcast television stations. So they	13	If they're permitted, they are not
14	don't carry 55 broadcast television stations.	14	subject to the 3.75 fee. If they're not
15	That's just their capacity, I'm guessing	15	permitted, they are subject to the 3.75 fee.
16	channel capacity. I really don't know.	16	Q. Okay. The next column, that's the
17	O. In any event, this is the	17	fee gen total; is that correct?
18	information that they report on their statement of	18	A. That's the totals fees gen by that
19	accounts?	19	system. And in this case, they only carry
20	A. Right.	20	obviously, CKSH is their only distant station, so
21	Q. The next column is call, c-a-l-l?	21	the entire royalty fee of 6,506 is allocated to
22	A. Yes. This is the call sign, the	22	CKSH as Canadian fees gen and as total fees gen.
	Page 198		Page 200
1	call letters for the television station being	1	Q. And then the next column, you have
2	reported, in this case, CKSH.	2	the fee gen base?
3	Q. Okay. That will be the call letters	3	A. Yes.
4	for the television station?	4	Q. What is that?
5	A. For the television station.	5	A. This is the we differentiate our
6	Q. And the next column is CAN-FG.	6	fees-generated dollars from the basic fund or from
7	What information is captured in that	7	the 3.75 fund. So in this case, since CKSH was
8	column?	8	permitted, it paid 1.0 DSEs at the basic rate.
9	A. This is the Canadian the fees	9	And so we allocated those fees to
10	gen the fees generated for carriage of that	10	fees generated-base. So we categorize
11	Canadian station.	11	accordingly.
12	So this is a customized data item	12	If that hypothetically, if this
13	that we created at the request by request	13	station was not permitted, the fees generated
14	identifying how many dollars how much of the	14	would be in the 3.75 column, the fees gen-3.75
15	fees gen are allocated to the Canadian station	15	column.
16	being reported	16	MR. OLANIRAN: Your Honors, may I
17	Q. Okay.	17	have admitted into evidence SP Exhibit Number 7?
18	A so we we define that as	18	CHIEF JUDGE SLEDGE: Any objection
19	Canadian fees generated.	19	to Exhibit 7?
20	Q. Okay. And the next one?	20	MR. SATTERFIELD: No objection.
21	A. If that Canadian station was not	21	MR. OLANIRAN: And may I have
	permitted, they would have paid 3.75 on it, and	22	admitted into evidence SP Exhibit Number 8?

	Page 201		Page 203
1	CHIEF JUDGE SLEDGE: We need to	1	What's the third category
2 f	finish with 7.	2	A. Oh, I was still on the first one.
3	Without objection, Exhibit 7 is	3	Q of your protocol?
4 a	admitted.	4	A. Okay. So there's three protocols.
5	(Settling Parties Exhibit	5	I apologize.
6	No. 7 was received in	6	Q. Yes. What are those three?
7	evidence.)	7	A. The first category are systems that
8	CHIEF JUDGE SLEDGE: Now, any	8	have 1.0 DSE or greater.
9 0	objection to Exhibit 8?	9	The second category are those
10	MR. SATTERFIELD: No objection.	10	systems who have zero DSE or carry or import
11	CHIEF JUDGE SLEDGE: Without	11	zero distant stations or, in other words, all of
12 c	objection, Exhibit 8 is admitted.	12	the reported stations are local to the subscribers
13	(Settling Parties Exhibit	13	in the cable system.
14	No. 8 was received in	14	And the third group, which can be
15	evidence.)	15	the most complex, is are the cases where a
16	MR. OLANIRÁN: Thank you,	16	cable system does report at least one distant
17 3	Your Honor.	17	station, but is still subject to the minimum fee.
18	BY MR. OLANIRAN:	18	Q. Okay. And you have different
19	Q. Ms. Martin, in SP Exhibit 8 and also	19	protocols for calculating royalties for these
20 v	when you're discussing the data that's captured	20	three different categories of systems, correct?
1	n in Appendix A of your testimony, you had	21	A. Yeah. I mean, essentially, the
	columns titled Fees Generated.	22	the allocation the proportional allocation
	Page 202		Page 204
1	And before you tell us exactly how	1	based on DSE is the same across all. I break it
	ou allocate these royalties, why don't you just	2	
	ell us, in general, what what fees generated	3	up into groups because the way we treat the case of minimum fee is different in all three cases.
	neans the concept in general? I'm sorry.	4	That's why I break it up that way.
5	A. Yeah. I think it is royalties	5	Q. Okay. Now, let's describe for us
	re paid in on a DSE basis by the cable systems.	6	how you do your fees-gen calculations for the
	The fees-generated calculation is Cable Data's way	7	first group
	of matching those royalties with the distant	8	
	stations being reported by each station.	9	
10	Q. And how do you go about doing this?	10	Q which I believe was
11	A. In my testimony, I break down our	11	A. Yeah, I had I think I used, in my
	protocols into three categories: systems that have	12	testimony, an example where a cable system pays
	one DSE or greater, a case where we have a system	13	\$15,000 in in royalty base royalty basic
1	reporting two networks and one independent station	14	fund royalty, they carry two distant networks and
	s distant for a total DSE value of 1.5.	I	one distant independent station for a total DSE
16	What we would do in that case	15	value of 1.5.
		16	In that case, the networks the
1	et's say they paid I can't remember what I	17	two network stations comprise it's they have
	used. Let's just use \$15,000 in royalty that that	18	a total value of .5. Each one has .25 in the
	system paid	19	so they would get one-third of each station
20	Q. Actually, I don't I have to stop	20	let's do it at the station level.
	you. Just let's go back. You were going to	21	Each of those network stations would
22 i	dentify three and you identified two.	22	get .25 of the total system's 1.5 DSEs worth of

Page 207 Page 205 they would each get \$2,500. And the educational 1 fees generated. So it's a proportional thing. 1 So in that case, the two network 2 station would also get \$2,500. 2 The remaining quarter of the DSE 3 stations would be .5. They would get, 3 that is not -- that we are not able to allocate essentially, one-third of the royalty paid in as 4 4 fees generated, and the independent station would 5 back to a distant station gets allocated to the 5 get -- with a DSE value of 1.0 would get 6 minimum fee account. 6 7 Do you also have an allocation two-thirds of that royalty, or \$10,000 in that 7 mechanism for the 3.75 royalty fees that the cable 8 8 case. Q. Now, in the case of the second group 9 operators pay? 9 of systems which I believe are the systems with 10 A. Yes. 10 11 Fees -- 3.75 fees generated. In the zero distant signals --11 case I mentioned earlier, if a station is reported 12 That's correct. 12 A. as nonpermitted and, therefore, is subject to the 13 -- how would you allocate the 13 3.75 fee, we would allocate the 3.75 fee back to 14 royalties in those cases? 14 15 that nonpermitted station. A. In those cases, we do not allocate 15 We don't -- we don't have any any of the fees back to the stations. If a system 16 16 discussion on that. We allocate as reported. carries 10 local stations and pay \$10,000, that 17 17 Q. From your experience with the 18 entire \$10,000 royalty fee we allocate to the 18 statements of account, do cable operators have a minimum fee account or fund. It doesn't go back 19 19 choice as to which -- in certain instances, which 20 20 to a specific station. signal they can designate as a 3.75 -- as a signal 21 Q. And this new minimum fee category is 21 the discussion you were having a few minutes ago 22 subject to the 3.75 fee? 22 Page 208 The only instance I can think of is with Judge Roberts, which you had to create in 1 1 under the market quota rule. response to -- in effect, to place aside the 2 2 Yes. What is that? effect of the minimum fee category on the 3 Q. 3 4 A. Well, it depends on the market. remainder of your allocations? 4 5 Station carriage rules are a little bit 5 That's right. A. complicated sometimes. For example, I think a And in the third category of -- of 6 6 Q. market -- a top 50 market, what we refer to as a 7 7 systems -market one, can import two distant independent 8 In the third category, yes, we 8 A. 9 stations. 9 have --And when you -- let me stop you. -- how do you do your allocation 10 Q. 10 Q. When you say "top 50 market," what 11 11 protocol? 12 do you mean by "top 50 market"? In that case, it's, again, on a 12 The top 50 ranking. 13 proportional DSE basis. I think the example in my A. 13 testimony uses two distant network and one distant 14 Top 50 television markets? Q. 14 That's correct. educational station. The total system DSE value 15 A. 15 is .75, clearly under the minimum fee DSE basis of 16 Okay. Keep going. Q. 16 17 And in those cases, they can only 17 In that case, the networks would 18 import two distant stations without being subject 18 get -- each get .25 of that -- well, let's see. 19 to the 3.75 fee. 19 20 And would you please speak up a Q. Let me back up one step. 20 little bit? They pay \$10,000. Each of the 21 21 network stations would get a quarter of that, so 22 A. Yes. 22

Page 209 Page 211 1 If they import a third distant 1 Good afternoon. 2 station, that DSE -- that one DSE is subject to --2 Ο. I would like to go back towards the 3 that additional independent station or 1.0 DSE is 3 beginning of your testimony. You said that you 4 subject to the 3.75 fee. 4 worked for Cable Data Corporation for 20 years. 5 Now, I don't -- I'm not the one that 5 When was Cable Data Corporation 6 6 picks which of those independent stations is founded? 7 7 permitted and nonpermitted. We just -- if they're A. It actually started 1980 under the 8 carrying three independent and they have two is 8 name Larson Associates and became incorporated and 9 permitted and one is nonpermitted, we allocate the 9 became Cable Data, I think, in 1983, '4, something 10 3.75 to the nonpermitted station as reported. 10 like that. 11 The systems choose to do it the way 11 Q. Q. Okay. And who founded the company? 12 they see fit? 12 Thomas Larson. A. 13 A. Well, possibly in that case, there 13 And when did Cable Data Corporation are other permitted basis, like grandfathered and 14 14 become involved in cable data -- cable royalty 15 specialty stations that are station-specific that 15 distribution proceedings? 16 are not arbitrary. 16 Very early on. My understanding is 17 17 Can the cable system designate a there was a -- I think they started some 18 different -- under the same scenario, can they, in 18 proceeding -- I wasn't there, but my understanding 19 another accounting period, designate another 19 is that when they first started to try to 20 signal as a 3.75 signal? 20 distribute some of the royalty funds under the new 21 21 I have seen a case where the copyright law, I think around 1981-'2 -- I'm not 22 carriage remained the same between two accounting 22 sure of the date, but a lot of the parties were Page 210 Page 212 1 periods and they identified different out --1 collecting their own data, and there clearly was a 2 2 identified different permitted stations. need for a neutral, third-party group to collect, 3 3 So it's the same three independent, summarize and report these data for some 4 but in one accounting period, there were -- the 4 consistency for these types of proceedings. 5 two that were permitted were different in the 5 Okay. Do you know if Cable Data 6 subsequent period. 6 Corporation provided data -- well, do you know 7 MR. OLANIRAN: I have no further 7 what the first proceeding they provided data was, 8 8 questions, Your Honor. the first distribution proceeding? 9 CHIEF JUDGE SLEDGE: 9 JUDGE ROBERTS: Mr. Cosentino, keep Cross-examination? 10 10 your voice up so people in the back can hear you. 11 MR. COSENTINO: Yes, Your Honor. 11 MR. COSENTINO: Sure. 12 12 I'll be doing cross. THE WITNESS: I don't. I think 13 JUDGE ROBERTS: Are we done with the 13 1982-1983 rings a bell, but I don't know. 14 projector? If we are, I'd like to get that out of 14 BY MR. COSENTINO: 15 the way. I'm nervous any time anyone walks past 15 All right. In Cable Data 16 it. 16 Corporation's database, how many years of 17 MR. COSENTINO: Good afternoon. My 17 statements of accounts do they have? 18 name is Victor Cosentino. I'm one of the 18 We have statement of account data 19 attorneys for the Canadian Claimants Group. 19 going back to 1979-2 -- or maybe -- I think we 20 CROSS-EXAMINATION 20 even have some '70 -- yes, we may have a '78 in 21 BY MR. COSENTINO: 21 there. 22 Good afternoon, Ms. Martin. 22 Do you know what the first year

	Page 213		Page 215
		1	NCTA or, when there's a rate regulation or a rate
1	statements of accounts were required? A. 1979 1978	2	review, we do provide data for those negotiations
2		3	as well, but not in terms of any other type of
3	1000	4	distribution, for instance.
4		5	Q. So cable distribution proceedings
5	Q. 1978. Thank you. In that time, do you have any idea	6	are the primary or
6	how many statement of account Cable Data	7	A. Yes.
7	Corporation has entered into its systems?	8	Q. Your testimony on about Page 4
8		9	starts talking about fee allocation, and you
9	A. I don't know that number right off in the beginning in the early days?	10	say let's see here you say that CDC
10		11	apportions this is the bottom of Page 4 of your
11 12	Q. Well, I mean, how big is this database that you have?	12	testimony CDC apportions the total royalty fees
13	A. Currently or back then?	13	paid by an individual cable system among all the
		14	distant broadcast stations the system carries.
14	Q. Currently. A. Currently we process about 5600	15	And we've talked you've testified
15 16	statements of account currently. There are	16	earlier about some of the protocols by which you
17	roughly 6,000 statements of account well, a	17	do that.
18	range back in the it ranges from 6 from	18	Can you tell us the genesis of this
19	5,500 to, in some years, 8,000 or 9,000 statements	19	concept of fee allocation?
20	of account filed.	20	A. It was not mine. Tom Larson, the
21	Q. Per accounting period?	21	founder of the company I he he was he
22	A. Per accounting period for	22	either challenged himself or he was challenged to
	Page 214		Page 216
		1	do something that gave us an idea of which
1	30 years, 60 accounting periods. O. Sixty accounting periods. Thank	2	stations were accounting for the majority of
2		3	royalties being put in.
3	you. Now, just to be clear, you're	4	I know that MPAA, the former vice
4	appearing here on behalf of the Settling Parties,	5	president and Tom were very close in numbers
5	but you do provide data to the Canadian Claimants	6	number crunchers, so there was probably a
6	Group; is that correct?	7	conversation there.
7		8	But knowing Tom, he enjoyed this
8		9	project, getting this project started. If you
9	Q. Okay. In addition to cable distribution proceedings, where else is Cable Data	10	talk about the genesis, it was Tom.
10	Corporation used?	11	Q. Okay. So Tom Tom Larson
11	Is it let me rephrase that.	12	A. That's correct.
12		13	Q started this process of fee
13	Is it used in any other type of copyright arbitration, Copyright Royalty Tribunal	14	allocation?
14		15	And the basic concept that you've
15	or CHIEF JUDGE SLEDGE: Louder, please.	16	described of allocating fees to signals according
16	BY MR. COSENTINO:	17	to a DSE according to DSE on a pro-rata basis,
17		18	how long has that been in place at Cable Data
18		19	Corporation?
19	Copyright Royalty Judges proceedings other than	20	A. Since day one. I mean, that that
20	cable distribution proceedings?	21	was the that was the foundation of the fees-gen
21	A. We provide data to well, that's	22	allocation, to to do it proportionally based on
22	the main use of our data. We do provide data to	144	anocation, to to do it proportionally based on

Page 217 Page 219 1 reported DSE. pro-rata fee allocation that you said had been in 2 The only reason we had to make those place prior to the change? 3 modifications, as I mentioned, was because the 3 No -- I mean, in the spirit of 4 dynamics of the data being reported changed 4 proportional or pro-rata DSE, no, they are the 5 5 radically. 6 6 Okay. So let's go up to that point. Q. What we're really doing is dealing 7 7 Prior to the period of time when TBS with the situation that you talked about, the 8 was dropped as -- WTBS was dropped as a distant 8 category between zero and one DSE? That's where 9 signal, your cable protocols, your protocols for 9 there's a difference between the protocol that was 10 fee allocation used this pro-rata DSE number? 10 in effect prior to a year ago -11 A. That is correct. 11 A. That is correct. 12 Okay. And then, subsequent to that, 12 -- and the one that's in effect now? 13 you changed them; is that correct? 13 A. That is correct. 14 A. That is correct. 14 Do you know how much money in any 15 Okay. And earlier, I think you told 15 given accounting period of that issue is affected 16 Judge Roberts that it was approximately 16 by that swing? 17 eight months ago, nine months ago or something 17 Well, it's approximately -- well, if 18 that you finished them. 18 you're talking about all the minimum fees, 19 Did I hear that correctly? 19 including the zero - no. You're just talking 20 No. It was about a year ago. 20 about between zero and one? 21 About a year ago. 21 Q. Yes. 22 In this proceeding, I think at the 22 A. I think it's about 2-1/2 to Page 218 Page 220 1 end of your testimony, you identify November 8th, \$3 million. 1 2 2008 as a point in time where everyone agreed that 2 Okay. And in prior years, the zero 3 would be the data set that we would use in this 3 DSE category was very small. I think you pointed 4 proceeding. 4 that out, but also that zero DSE stuff -- the zero 5 5 Were those protocols completed by DSE fees were captured in the total fees that you 6 the time this data set was put in place? 6 show in --7 7 A. Yes. A. Oh, yes. 8 Q. Do your adjusted or modified fee 8 -- in your Exhibit -- your 9 allocation methods -- how far back do they cover 9 Appendix B; is that correct? 10 data I guess is what I'm trying to get at. Do 10 A. That is correct. 11 they cover data from a year ago forward, or do 11 So in the total fees section of 12 they go further back in time? 12 this, which is the left half, there was already 13 No. We recalculated fees gen for 13 a -- an area to capture the minimum fees? everything in the database -- well, I should -- I 14 14 I -- yes. would have to check my notes, but I know we went 15 15 Are you talking about the -- the back to at least 1995 and forward. So -16 16 fees paid by systems with a DSE total between zero 17 So all data that covers the time 17 and one or all minimum fees? 18 periods covered by this proceeding, from 2000 to 18 Q. I'm talking about all minimum fees. 19 2003, has the adjusted protocols? 19 A. Okay. 20 That is correct. A. 20 Yes. They didn't show up as a 21 And these adjustments to these Q. 21 separate line item in this report necessarily, but 22 protocols, do they modify the basic concept of 22 the total fees generated column did include the

ł	Page 221		Page 223
1	local fees gen "local" meaning we didn't	1	A. I do. I think it like I
1 2	allocate to the distant or for the zero	2	mentioned before, I think it it's more
3	distant let me back up.	3	consistent it's consistent, it's treating every
	For the systems that had zero	4	system and every station consistently on a DSE
4	distant stations, those fees would show up in the	5	basis. And I do think that is an improvement.
5	total column total fees generated column, but	6	Q. Okay. Thank you.
6	not in the distant fees generated column.	7	I'd like to go to your exhibits for
7	Minimum fees from systems with a DSE	8	a moment and first look at your exhibit that's now
8		9	designated SP Exhibit 7.
9	between zero and one showed up in the distant	10	MR. COSENTINO: And, Your Honors, I
10	column because our protocol, before we modified	11	thought you would have the exhibits that came with
11	it, allocated the entire minimum fee to whatever	12	the testimony. So I'm not sure how to help you
12	distant stations were being reported.	13	follow along with my questions.
13	In that case, if we had a distant	14	I don't have another copy to give
14	network or a distant educational station, they		you, so I'm just going to ask her the questions
15	paid with a DSE value of .25, and that was the	15 16	and hope you can follow along. I'll try to be as
16	total system's DSE value, and they paid \$10,000	l	detailed as we can.
17	under the old protocol, we would have allocated	17	BY MR, COSENTINO:
18	the entire minimum fee to that to that distant	18	The state of the s
19	station.	19	Q. Ms. Martin, I would like you to turn
20	So it wasn't it wasn't	20	to the first page of Exhibit 7, which is marked,
21	consistent it wasn't the DSE approach anymore.	21	in the upper left-hand, MAA200.
22	But those were being allocated as	22	I think you said that that is your
	Page 222		Page 224
1	distant fees, and that's one of the main reasons	1	SIS ID?
. 2	that we needed to modify the protocols so it was	2	A. That is correct.
3	consistently allocating royalties on a DSE basis.	3	 Q. Okay. And I'd like to understand
4	Q. Okay. So in terms of what your	4	this exhibit a little better.
5	modification accomplished, the major thing was to	5	The account column, what does that
6	move this portion of minimum fees from the distant	6	tell us?
_			
7	to a special minimum fee category?	7	A. That's the accounting period.
7 8	A. That's correct.	7 8	A. That's the accounting period.Q. Okay. And this report starts in
	^		A. That's the accounting period.
8	A. That's correct.	8	A. That's the accounting period.Q. Okay. And this report starts in
8 9	A. That's correct.Q. And identify it as a separate thing;	8 9	 A. That's the accounting period. Q. Okay. And this report starts in 1987, but you have data that's older than that,
8 9 10 11	A. That's correct. Q. And identify it as a separate thing; is that correct? A. Right.	8 9 10	A. That's the accounting period. Q. Okay. And this report starts in 1987, but you have data that's older than that, right?
8 9 10 11 12	A. That's correct. Q. And identify it as a separate thing; is that correct? A. Right. Q. Okay. Now, one of the issues that	8 9 10 11	A. That's the accounting period. Q. Okay. And this report starts in 1987, but you have data that's older than that, right? A. I do.
8 9 10 11 12 13	A. That's correct. Q. And identify it as a separate thing; is that correct? A. Right. Q. Okay. Now, one of the issues that comes up on Page 6 of your testimony at the bottom	8 9 10 11 12	A. That's the accounting period. Q. Okay. And this report starts in 1987, but you have data that's older than that, right? A. I do. Q. Okay. And then what does the next
8 9 10 11 12 13	A. That's correct. Q. And identify it as a separate thing; is that correct? A. Right. Q. Okay. Now, one of the issues that comes up on Page 6 of your testimony at the bottom is the comment you talked about earlier about the	8 9 10 11 12 13	A. That's the accounting period. Q. Okay. And this report starts in 1987, but you have data that's older than that, right? A. I do. Q. Okay. And then what does the next column tells us? A. It's the owner name, the cable
8 9 10 11 12 13 14 15	A. That's correct. Q. And identify it as a separate thing; is that correct? A. Right. Q. Okay. Now, one of the issues that comes up on Page 6 of your testimony at the bottom is the comment you talked about earlier about the Canadian Claimants criticizing your methodology.	8 9 10 11 12 13 14	A. That's the accounting period. Q. Okay. And this report starts in 1987, but you have data that's older than that, right? A. I do. Q. Okay. And then what does the next column tells us? A. It's the owner name, the cable system owner, as filed as reported that period.
8 9 10 11 12 13 14 15	A. That's correct. Q. And identify it as a separate thing; is that correct? A. Right. Q. Okay. Now, one of the issues that comes up on Page 6 of your testimony at the bottom is the comment you talked about earlier about the Canadian Claimants criticizing your methodology. I do note that on Page 7, you go on	8 9 10 11 12 13 14 15 16	A. That's the accounting period. Q. Okay. And this report starts in 1987, but you have data that's older than that, right? A. I do. Q. Okay. And then what does the next column tells us? A. It's the owner name, the cable system owner, as filed as reported that period. Q. Okay. And as we look down this
8 9 10 11 12 13 14 15 16	A. That's correct. Q. And identify it as a separate thing; is that correct? A. Right. Q. Okay. Now, one of the issues that comes up on Page 6 of your testimony at the bottom is the comment you talked about earlier about the Canadian Claimants criticizing your methodology. I do note that on Page 7, you go on to say, in response to that criticism, And in the	8 9 10 11 12 13 14 15 16	A. That's the accounting period. Q. Okay. And this report starts in 1987, but you have data that's older than that, right? A. I do. Q. Okay. And then what does the next column tells us? A. It's the owner name, the cable system owner, as filed as reported that period. Q. Okay. And as we look down this column, the first entry is New England Cable, and
8 9 10 11 12 13 14 15 16 17	A. That's correct. Q. And identify it as a separate thing; is that correct? A. Right. Q. Okay. Now, one of the issues that comes up on Page 6 of your testimony at the bottom is the comment you talked about earlier about the Canadian Claimants criticizing your methodology. I do note that on Page 7, you go on to say, in response to that criticism, And in the interest of improving our protocols for allocating	8 9 10 11 12 13 14 15 16 17	A. That's the accounting period. Q. Okay. And this report starts in 1987, but you have data that's older than that, right? A. I do. Q. Okay. And then what does the next column tells us? A. It's the owner name, the cable system owner, as filed as reported that period. Q. Okay. And as we look down this column, the first entry is New England Cable, and the next entry, about nine or 10 years later, is
8 9 10 11 12 13 14 15 16 17 18	A. That's correct. Q. And identify it as a separate thing; is that correct? A. Right. Q. Okay. Now, one of the issues that comes up on Page 6 of your testimony at the bottom is the comment you talked about earlier about the Canadian Claimants criticizing your methodology. I do note that on Page 7, you go on to say, in response to that criticism, And in the interest of improving our protocols for allocating the minimum fee, I and others worked to change	8 9 10 11 12 13 14 15 16 17 18 19	A. That's the accounting period. Q. Okay. And this report starts in 1987, but you have data that's older than that, right? A. I do. Q. Okay. And then what does the next column tells us? A. It's the owner name, the cable system owner, as filed as reported that period. Q. Okay. And as we look down this column, the first entry is New England Cable, and the next entry, about nine or 10 years later, is Frontier?
8 9 10 11 12 13 14 15 16 17 18 19 20	A. That's correct. Q. And identify it as a separate thing; is that correct? A. Right. Q. Okay. Now, one of the issues that comes up on Page 6 of your testimony at the bottom is the comment you talked about earlier about the Canadian Claimants criticizing your methodology. I do note that on Page 7, you go on to say, in response to that criticism, And in the interest of improving our protocols for allocating the minimum fee, I and others worked to change them.	8 9 10 11 12 13 14 15 16 17 18 19 20	A. That's the accounting period. Q. Okay. And this report starts in 1987, but you have data that's older than that, right? A. I do. Q. Okay. And then what does the next column tells us? A. It's the owner name, the cable system owner, as filed as reported that period. Q. Okay. And as we look down this column, the first entry is New England Cable, and the next entry, about nine or 10 years later, is Frontier? A. Frontier Vision.
8 9 10 11 12 13 14 15 16 17 18	A. That's correct. Q. And identify it as a separate thing; is that correct? A. Right. Q. Okay. Now, one of the issues that comes up on Page 6 of your testimony at the bottom is the comment you talked about earlier about the Canadian Claimants criticizing your methodology. I do note that on Page 7, you go on to say, in response to that criticism, And in the interest of improving our protocols for allocating the minimum fee, I and others worked to change	8 9 10 11 12 13 14 15 16 17 18 19	A. That's the accounting period. Q. Okay. And this report starts in 1987, but you have data that's older than that, right? A. I do. Q. Okay. And then what does the next column tells us? A. It's the owner name, the cable system owner, as filed as reported that period. Q. Okay. And as we look down this column, the first entry is New England Cable, and the next entry, about nine or 10 years later, is Frontier?

1	Page 225		Page 227
1	Q. Okay. What does that mean? Do you	1	What we do is we list all
2	know?	2	horizontally it's a matrix. It's a grid, And
3	A. That's when the owner changed.	3	what we do is we list, horizontally, the
4	Where it's blank, it means that the owner name	4	television stations reported by that by this
5	the owner for this cable system was New England	5	cable system.
6	Cable up until you see another printed owner name.	6	And then each row is the basis of
7	That's when the ownership changed or changed their	7	carriage for each of those reported stations. So
8	name in that period.	8	under CKSH and then right below CKSH is their
9	Q. Okay. So it might represent a	9	station type or affiliation, independent, network,
10	change of ownership or just an ownership name	10	educational station and so forth.
11	change?	11	And below that, there are a series
12	A. That's correct.	12	of Ds and Ls. And if it's blank, it wasn't
13	Q. Okay. And then the next column,	13	carried in that period.
14	headed rate, what is that?	14	So basically, you can see,
15	A. That's the monthly rate charged the	15	historically, the reporting behavior of a
16	basic subscribers, the service to first set	16	particular station for each system over time.
17	subscribers, as I mentioned.	17	Q. Okay. Now so if we look at this
18	Q. The next column, titled Subs?	18	
19	A. Subscribers, this is from this is	19	first column, CKSH, and we look at the entry for
20	the subscribers as reported in Space E.	20	'87-1, we have a D. What does that tell us?
21	Q. Okay. These are not subscriber	21	STORY COLUMNIA COLUMN
22	instances?	22	A. That means that this system, MAA200,
	Page 226		Page 228
1	A. That is correct.	1	Q. All right. And then we can follow
2	Q. Okay. The next column is gross	2	that down for a while.
3	receipts. I think you've described that already.	3	Does that tell us that it was
4	And the next column is royalty.	4	carried on a distant basis each of those
5	What is that column?	5	accounting periods?
6	A. Royalty is the the amount of	6	A. That is correct.
7	royalty paid by that system for that period.	7	Q. All right. Then we get to a gap,
8	Q. Okay. And the next three columns,	8	which looks like it's about 2004-1. There's a
1 0	royalty base, royalty 3.75 and royalty syndex,	9	
9		1	space there.
	they simply break down the royalties in these	10	space there. Do you see that?
9 10 11	they simply break down the royalties in these categories; is that correct?		•
9	they simply break down the royalties in these	10	Do you see that?
9 10 11	they simply break down the royalties in these categories; is that correct? A. That's correct. The royalty column is the total royalty, and the other three columns,	10 11	Do you see that? A. Yes, I do.
9 10 11 12	they simply break down the royalties in these categories; is that correct? A. That's correct. The royalty column	10 11 12	Do you see that? A. Yes, I do. Q. And what does that tell us?
9 10 11 12 13	they simply break down the royalties in these categories; is that correct? A. That's correct. The royalty column is the total royalty, and the other three columns,	10 11 12 13	Do you see that? A. Yes, I do. Q. And what does that tell us? A. It it shows that during 2004-1
9 10 11 12 13 14	they simply break down the royalties in these categories; is that correct? A. That's correct. The royalty column is the total royalty, and the other three columns, roy base for the basic fund, roy 3.75 for the 3.75	10 11 12 13 14	Do you see that? A. Yes, I do. Q. And what does that tell us? A. It it shows that during 2004-1 and 2004-2, they do not report CKSH as distant for
9 10 11 12 13 14 15	they simply break down the royalties in these categories; is that correct? A. That's correct. The royalty column is the total royalty, and the other three columns, roy base for the basic fund, roy 3.75 for the 3.75 paid, and roy syndex for the syndicated	10 11 12 13 14 15	Do you see that? A. Yes, I do. Q. And what does that tell us? A. It it shows that during 2004-1 and 2004-2, they do not report CKSH as distant for those two periods.
9 10 11 12 13 14 15	they simply break down the royalties in these categories; is that correct? A. That's correct. The royalty column is the total royalty, and the other three columns, roy base for the basic fund, roy 3.75 for the 3.75 paid, and roy syndex for the syndicated exclusivity fee paid.	10 11 12 13 14 15 16	Do you see that? A. Yes, I do. Q. And what does that tell us? A. It it shows that during 2004-1 and 2004-2, they do not report CKSH as distant for those two periods. Q. Okay. And then they seem to start carrying it again in 2005-1?
9 10 11 12 13 14 15 16	they simply break down the royalties in these categories; is that correct? A. That's correct. The royalty column is the total royalty, and the other three columns, roy base for the basic fund, roy 3.75 for the 3.75 paid, and roy syndex for the syndicated exclusivity fee paid. Q. Okay. And then I'd like you to	10 11 12 13 14 15 16 17	Do you see that? A. Yes, I do. Q. And what does that tell us? A. It it shows that during 2004-1 and 2004-2, they do not report CKSH as distant for those two periods. Q. Okay. And then they seem to start carrying it again in 2005-1?
9 10 11 12 13 14 15 16 17 18	they simply break down the royalties in these categories; is that correct? A. That's correct. The royalty column is the total royalty, and the other three columns, roy base for the basic fund, roy 3.75 for the 3.75 paid, and roy syndex for the syndicated exclusivity fee paid. Q. Okay. And then I'd like you to describe the next set of columns here, which have	10 11 12 13 14 15 16 17	Do you see that? A. Yes, I do. Q. And what does that tell us? A. It it shows that during 2004-1 and 2004-2, they do not report CKSH as distant for those two periods. Q. Okay. And then they seem to start carrying it again in 2005-1? A. That is correct, all the way through 2007-2, which is, at the time of this period at
9 10 11 12 13 14 15 16 17 18	they simply break down the royalties in these categories; is that correct? A. That's correct. The royalty column is the total royalty, and the other three columns, roy base for the basic fund, roy 3.75 for the 3.75 paid, and roy syndex for the syndicated exclusivity fee paid. Q. Okay. And then I'd like you to describe the next set of columns here, which have a series of letters up at the top and letters and	10 11 12 13 14 15 16 17 18	Do you see that? A. Yes, I do. Q. And what does that tell us? A. It it shows that during 2004-1 and 2004-2, they do not report CKSH as distant for those two periods. Q. Okay. And then they seem to start carrying it again in 2005-1? A. That is correct, all the way through
9 10 11 12 13 14 15 16 17 18 19 20	they simply break down the royalties in these categories; is that correct? A. That's correct. The royalty column is the total royalty, and the other three columns, roy base for the basic fund, roy 3.75 for the 3.75 paid, and roy syndex for the syndicated exclusivity fee paid. Q. Okay. And then I'd like you to describe the next set of columns here, which have a series of letters up at the top and letters and columns going down. It might be easier if you	10 11 12 13 14 15 16 17 18 19	Do you see that? A. Yes, I do. Q. And what does that tell us? A. It it shows that during 2004-1 and 2004-2, they do not report CKSH as distant for those two periods. Q. Okay. And then they seem to start carrying it again in 2005-1? A. That is correct, all the way through 2007-2, which is, at the time of this period at the time of this report, was the most recent data

	Page 229		Page 231		
,			threshold of gross receipts, there's a certain		
1	column next to CKSH, we see DWBZ. A. Yes.	1 2	amount of gross receipts, it is required to fill		
2		3	out the statement of account form appropriate for		
3		4	that gross receipts amount. And these are all		
4	A. When a station is preceded, in this case, with a D any time in the CD index, it	5	over the threshold of Form 3 for the for the		
5	starts with a D, it means it's the digital WBZ	6	Form 3 form.		
6		7	Q. Okay. I'd like you to take a look		
7. 8	digital. And you can see that in 1987, it	8	at the one marked MAG100, which is about two pages		
9	wasn't carried, because digital didn't exist then.	9	in.		
	But if you look down to 2006-1, you can see that	10	A. Yeah.		
10	that digital station is reported as local with an	11	Q. Do you see that?		
11	L. That's the first that's when this system	12	A. Yes, I do.		
12		13	Q. Okay. Now, if I look across, CKSH		
13	added DWBZ or a digital version a digital	14	is there as a signal that's carried in 1987. It		
14	WBZ digital	15	appears to not have been carried in 1987-2; is		
15	Q. Okay.	16	that correct?		
16	A to the carriage.	17			
17	Q. And if we go over a little further	18	1		
18	here, we can get to W it looks like BPX.				
19	A. Yes.	19 20	while. It looks like it's dropped again for an		
20	Q. Okay. And that has an L.		accounting period in 1992-1. And then it's		
21	What does that tell us?	21	carried and I want you to go down to about		
22	A. That it's carried on a local basis.	22	2002-2, and there's an X.		
	Page 230		Page 232		
1	Q. And so were and so it was carried	1	A. Yes.		
2	on a local basis basically continuously throughout	2	Q. Can you explain what that is,		
3	this period; is that correct?	3	please?		
4	A. That's correct.	4	A. Yes. An X in the basis when		
5	Q. And then we can see as we look	5	we when we talk about the basis of carriage,		
6	across here, we can see a pattern of carriage	6	when when there is an X, it means that that		
7	where signals were added. Like later, WMFP was	7	particular television station was carried on a		
8	added at some point; is that correct?	8	distant basis to only a portion of a cable		
9	A. That is correct.	9	systems' subscribers.		
10	Q. Okay. Now, this does not tell us	10	Q. Okay. And then let me ask you to		
11	what form the system is; is that correct?	11	look over at the WPIX column. That's a distant		
12	A. No, it doesn't	12	signal.		
13	Q. Okay.	13	A. Okay.		
14	A but the fact that I mean, just	14	Q. Do you see it?		
15	looking at the data, I can tell you it's a Form 3.	15	A. Yes.		
16	But it doesn't actually say that on the on the	16	Q. And it stops in about 1997-1.		
17	report.	17	Does that look right?		
	Q. Okay. How can you tell that it's a	18	A. Yes, that looks right.		
		19	Q. And this doesn't tell us why it was		
18 19	Form 37				
19	Form 3? A Well it you can tell it by	1			
19 20	A. Well, it you can tell it by	20	dropped, right?		
19		1			

1	Page 233		Page 235
1	protocols, going back to where WPIX is dropped,	1	A. Yes.
2	would WPIX receive any royalties for the year in	2	Q. Okay. Now, let me find one more
3	which it is not present on this form?	3	here actually, I have two more. I want to look
4	A. No, it does not.	4	at Ohio B620, OHB620.
5	Q. Okay. So if a cable system drops a	5	Can you find that one, please?
6	station, do your fee allocation methods allocate	6	A. Okay.
7	any royalties to them?	7	Q. All right. And here, this is a
8	A. No.	8	system that tracks two Canadian distant signals,
9	Q. Okay. If they add it later, again,	9	CBET and CBMT?
10	for the year in which it's added, do your fee	10	A. Correct.
11	allocation methods allocate royalties to it?	11	Q. And it looks like it carries CBET
12	A. Yes. So if I well, if I if I	12	
13	understand the question correctly, you're saying	13	from 1987 through 1999-1; is that correct? A. Yes.
14	that if if a cable system adds a distant	14	1
15	station, would our protocol allocate fees		Q. Okay. And then it dropped CBET and
16	generated to that distant station? The answer is	15 16	switched to carrying CBMT; is that correct?
17			A. Yes.
18	yes.	17	Q. And then, a few years later, it
19	Q. Okay. So as cable systems add and	18	dropped CBMT and switched back to CBET.
20	drop and these forms show us that they do, correct?	19	Is that how to read this?
10.750 0000		20	A. That's what the data says, yes.
21	A. (No audible response.)	21	Q. Now, this form itself does not tell
22	Q as they add and drop, do your fee	22 us why they chose one signal over another or wh	
	Page 234		Page 236
1	allocation protocols reflect the additions and	1	they switched and went back; is that correct?
2	drops by allocating or not allocating royalties to	2	A. No.
3	those systems to those signals?	3	Q. And is that information on the
4	A. Yeah, we only allocate to reported	4	statement of account?
5	distant stations.	5	A. No.
6	Q. Okay. So if we look at the	6	Q. I'd like to go on this form, go
7	royalties that are paid for Canadian distant	7	up a little bit to the period of time it looks
8	signals in these reports of yours, every time a	8	like 1990-1 where CBET turns from distant D to
9	signal is added, presumably, the amount of	9	local L.
10	royalties goes up in the category of Canadian	10	Do you see that?
11	distant signals?	11	A. (No audible response.)
12	A. As long as it's over the minimum fee	12	Q. Does this form tell us why that
13	threshold, yes.	13	happened?
14	If they add a station and if they	14	A. No.
15	add a network station and it's not subject to the	15	Q. Does it have anything to do with the
16	3.75 fee, the royalty amount would be the same.	16	size of the system?
17	Q. Okay. But when they add a Canadian	17	A. No. It looks like it was
18	signal, does it does the Canadian category go	18	approved the threshold was it could be. It
1 70	up?	19	may have dropped from a Form 3 to a Form 2. I'm
19		1	
	A. Yes, it does.	20	trying to remember. I think it was 292,000 at
19	A. Yes, it does.Q. If they drop a Canadian signal, does	20	trying to remember. I think it was 292,000 at that point. So it could have dropped to a Form 2.

-	Page 237		Page 239
1	to a Form 2 system?	1	Can you tell us what that is?
		2	A. I'm sorry. Ask that question again.
2		3	Q. Sure.
3		4	Under OHB620, there's something in
4	A which would be which would explain why it's an L and not a D.	5	parentheses.
5		6	Can you read that one?
6	Q. And then, later, in 1992, it looks like the royalties go up a lot. It's a little	7	A. Oh, OH yes, OHF400.
7	hard for me to read the number.	8	Q. OHF400?
8		9	A. Yeah. What happens is that's a
9	A. Yeah, they do. They go up definitely over the Form 3 threshold again.	10	cross that's a cable data cross-reference.
10		11	What happens sometimes is systems will merge or a
11	Q. Okay. So at that point, they switch to a Form 3 and they reported the signal as	12	cable owner will acquire another cable system
12	distant again; is that correct?	13	that's adjacent to their system to their other
13		14	system, and they now combine the two and file a
14	A. Correct. Q. Okay. In the Form 3 data that we	15	consolidated statement of account.
15	Q. Okay. In the Form 3 data that we use, the carriage data that you report, that	16	I think under especially if
16	your Appendix B, would CBET be included would	17	they're contiguous, they have to file under one
17	the royalty paid for CBET be included during the	18	statement of account.
18	period when the system was a Form 2?	19	Q. Okay. So in this particular case,
19	A. No.	20	the data stops at 2004-2?
20	Q. Okay. So if the system changes its	21	A. Correct.
21	form, your protocols also reflect how much	22	Q. And based on this cross-reference,
			Page 240
	Page 238		
1	royalties are paid by not allocating royalties to	1	there's an assumption here that this system merged
2	the local signals?	2	with another system?
3	A. Right. Well, Exhibit B is form	3	A. Yeah. Where where the filing
4	specific. This Exhibit B is only for Form 3s. So	4	data stops, it gives you the reference that this
5	if it switched to a Form 2 or if the gross	5	system is now part of OH400.
6	receipts fell below that Form 3 threshold, by	6	Q. All right. Thank you.
7	definition, it would not be included in in the	7	Okay. Give me one second,
8	station summaries for Form 3 systems.	8	Ms. Martin.
9	Q. Okay. And Form 3 systems do make up	9	(Pause.)
10	the bulk of the royalties; is that correct?	10	BY MR. COSENTINO:
11	A. Yes, they do.	11	Q. I just have a quick question for you
12	Q. Do you have an estimate during this	12	about Exhibit SP 8.
13	period of time?	13	With Mr. Olaniran, you went through
14	A. I think they're about 97 percent,	14	what the columns are on this, but can you clarify
15	96 96 percent	15	for what me what is included, what set of data you
16	Q. Of all royalties?	16	looked at to generate this entire report or what
17	A of all royalties.	17	the criteria were for systems that appear on this
18	Q. Okay. Thank you.	18	report?
19	Another question on this is this	19	A. Right. Systems I believe this
20	might be a bad example because it's hard to read,	20	was systems that carried let me see here. Let
21	but under OHB620, there's something in	21	me just look at it for a minute.
22	parentheses.	22	(Pause.)

	Page 241		Page 243
1	THE WITNESS: Okay. Form 3, cable	1	Janice de Freitas is the Canadian witness, and
2	systems between 1998-1 and 2003-2 that carried a	2	she's not here. She'll be over she wasn't
3	Canadian station on a distant basis.	3	prepared to be here this afternoon. She was
4	BY MR. COSENTINO:	4	expected to be starting first thing in the
5	Q. And did you list every signal that	5	morning.
6	was carried by those systems or every distant	6	CHIEF JUDGE SLEDGE: Anything else
7	signal, or what was because I see there are	7	to be presented this afternoon?
8	some non-Canadian signals in this.	8	We'll recess until 9:30 in the
9	A. Yes. It it also it did	9	morning.
10	include other distant stations that were being	10	(Whereupon, at 4:18 p.m., the
11	reported, apparently, it looks like.	11	hearing was adjourned, to reconvene on Friday,
12	Q. Do you know if there were any	12	June 12, 2009, at 9:30 a.m.)
13	criteria on those other than that they were	13	
14	distant or how they were selected?	14	* 1
15	A. I don't I don't remember. I	15	
16	think it was essentially for all the distant	16	
17	carriage for any system that the Canadians listed	17	
18	as a distant station. That's my recollection.	18	
19	Q. Okay.	19	
20	(Pause.)	20	
21	MR. COSENTINO: Ms. Martin, I have	21	
22	no other questions for you. Thank you.	22	
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1	CHIEF JUDGE SLEDGE: Any redirect?	1	CERTIFICATE OF CERTIFIED COURT REPORTER
2	MR. OLANIRAN: No redirect,	2	I, CINDY L. SEBO, Certified Court
3	Your Honor.	3	Reporter, do hereby certify that the testimony
4	CHIEF JUDGE SLEDGE: Any questions	4	that appears in the foregoing transcript is the
5 .	from the Bench?	5	testimony of said witnesses, were taken by me in
6	JUDGE WISNIEWSKI: Ms. Martin, is it	6	shorthand and thereafter reduced to computerized
7	fair to say that what you're attempting to do with	7	transcription by me or under my direction; that
8	your methodology here is to match particular	8	said transcript is a true record of the testimony
9	distant signals to particular royalties using the	9	given by said witnesses; do hereby certify that
10	DSE as a bridge?	10	the foregoing transcript is a true and correct
11	THE WITNESS: Yes, that is the	11	record of the statements of counsel; that I am
12	mechanism that we that the tool that we use.	12	neither counsel for, related to, nor am employed
13	It's it's the only consistently available piece	13	by any of the parties to the action; and further,
14	of information to allocate the royalties paid in	14	that I am not a relative or employee of any
15	back to the distant stations reported.	15	attorney or counsel employed by the parties
16	JUDGE WISNIEWSKI: Thank you.	16	thereto, nor financially or otherwise interested
17	(Pause.)	17	in the outcome of the action.
18	CHIEF JUDGE SLEDGE: All right.	18	
19	Thank you, ma'am.	19	
1 - 2		20	
20	Do you want to begin with	1 20	
20	Do you want to begin with Janice de Freitas?	21	Cindy L. Sebo

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- 1 with.
- 2 I want to clarify on the record that
- 3 the parties in this proceeding are adopting that
- 4 framework by stipulation, and that is the
- 5 framework under which we are operating here as a
- 6 result of the stipulation, not as a result of any
- 7 determination by the Judges.
- 8 MR. GARRETT: Yes, Your Honors. If
- 9 I understand your questions correctly, we have
- 10 adopted the Phase I-Phase II framework. We have
- 11 reached a settlement on most, but not all, of the
- 12 Phase I issues. We have not addressed the
- 13 Phase II issues.
- 14 It is possible that within the
- 15 Phase I categories, there may be, down the road,
- 16 Phase II disputes. Our settlement does not
- 17 address that. It simply addresses the issue of --
- 18 of Phase I.
- 19 CHIEF JUDGE SLEDGE: And implicit in
- 20 that statement is the stipulation that the parties
- 21 are adopting the categories of Phase I that have
- 22 never been determined by any regulatory group, but

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- 1 have been informally adopted by the parties in
- 2 these distribution proceedings. And those
- 3 categories are what you're relying on in your
- 4 Phase I proceedings?
- 5 MR. GARRETT: Your Honor, I believe
- 6 the answer to that is yes as well.
- 7 And I will just say, by way of
- 8 history, there was a point, I believe it was in
- 9 the 1983 litigated proceeding, where all the
- 10 parties had agreed upon the definitions of the
- 11 categories.
- 12 I believe that the Copyright Royalty
- 13 Tribunal in that case had accepted that as the --
- 14 as the definition of the various categories, and
- 15 we have used it consistently since then.
- 16 CHIEF JUDGE SLEDGE: And "accepted"
- 17 is an important word, not made any finding, not
- 18 adopted it, but accepted it I think is an
- 19 important concept there.
- 20 MR. GARRETT: Yes, Your Honor. I
- 21 think that's right. That is an issue that -- that
- 22 the Judges can certainly look at if they so

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- value the programming on our signal, yes.
- 2 We rely on their actions for how
- 3 they value -- whether or not they valued us enough
- 4 to carry us, because that's -- that's actual
- 5 behavior.
- JUDGE ROBERTS: We'll hear that.
- 7 All right.
- 8 CHIEF JUDGE SLEDGE: Let me get that
- 9 preliminary matter simply addressed with
- 10 Mr. Garrett concluded.
- Is it stipulated in this proceeding
- 12 by the Canadian Claimants that the framework of
- 13 using Phase I and Phase II is the proper framework
- 14 for this proceeding?
- MR. SATTERFIELD: Yes, from the
- 16 standpoint that this is a Phase -- this is the
- 17 Phase I proceeding.
- 18 CHIEF JUDGE SLEDGE: Well, it's
- 19 been -- you call it a Phase I proceeding, but
- 20 you're -- in reaching that conclusion, you're
- 21 adopting that framework of using Phase I and
- 22 Phase II for distributions?

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1	MR. SATTERFIELD: Correct. From the
2.	standpoint that the other groups have represented
3	that they have the authority to to settle
4	amongst themselves and to enter into a proceeding
5	with us.
6	CHIEF JUDGE SLEDGE: All right. And
7	you implicitly, by making that statement, are
8	adopting the categories that the parties have
9	historically adopted for Phase I?
10	MR. SATTERFIELD: For this
11	proceeding, yes.
12	CHIEF JUDGE SLEDGE: Thank you, sir.
13	MR. SATTERFIELD: Thank you.
14	CHIEF JUDGE SLEDGE: All right.
15	Ms. Kessler?
16	Good morning.
17	MR. OLANIRAN: Good morning,
18	Your Honor. My name is Greg Olaniran. I'm
19	counsel for Program Suppliers, and we are a member
20	of the Settling Parties.
21	CHIEF JUDGE SLEDGE: Spell your last
22	name.

EXHIBIT NUMBER 203

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JOHN I. STEWART, JR. (202) 624-2685

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Marybeth Peters, Register U.S. Copyright Office James Madison Memorial Building 101 Independence Avenue, S.E. Room 403 Washington, D.C. 20540 GENERAL COUNSELL OF COPYRIGHT

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Re:

1990-1992 Cable Royalty Distribution Proceeding

Docket No. 94-3 CARP-90-92CD

Dear Ms. Peters:

Enclosed for filing on behalf of all Phase I parties are an original and five copies of a "Stipulation of the Parties on the Issues of Program Categorization and Scope of Claims" in the above-captioned proceeding.

Should you have any questions, please feel free to contact me.

Very truly yours,

John I. Stewart, Jr.

Enclosures

cc: Service List

Before the COPYRIGHT ARBITRATION ROYALTY PANEL LIBRARY OF CONGRESS Washington, D.C. 20024

In the Matter of:)	
1990-1992 Cable Royalty Distribution Proceeding)	Docket No. 94-3, CARP CD 90-92

STIPULATION OF THE PARTIES ON THE ISSUES OF PROGRAM CATEGORIZATION AND SCOPE OF CLAIMS

The undersigned parties, representing all Phase I parties to the 1990-1992 cable royalty funds, file this stipulation with respect to an issue they believe has been raised by the Panel in questions to various witnesses testifying on behalf of the Devotional Claimants and others. The issue concerns the extent to which Phase I claims are being prosecuted by fewer than all of the claimants whose programs are included within the Phase I program category.

Since the first cable royalty distribution, covering 1978, the Copyright Royalty Tribunal divided its royalty distribution cases into Phase I and Phase II proceedings. In Phase I, the Tribunal allocated the entire royalty fund among broadly defined Phase I program categories. In Phase II, to the extent necessary, the Tribunal resolved disputes among different claimants or groups of claimants within a single Phase I category as to the internal division of the category's Phase I allocation.

The Phase I categories themselves developed over the course of the first five years of Tribunal proceedings. In response to requests by various parties for

rulings on close or disputed questions about particular programs, the Tribunal refined the category definitions through declaratory rulings and rulings published as part of its final determinations. See, e.g., 1984 Cable Royalty Distribution

Proceeding, 52 Fed. Reg. 8408, 8416 (Mar. 17, 1987); Advisory Opinion, Docket No. CRT 85-4 84 CD (May 16, 1986). For the 1990-1992 proceeding, the parties stipulate that the following Phase I category definitions, based on these prior Tribunal rulings, should apply:

Phase I Program Category Definitions

"Program Suppliers." Syndicated series, specials and movies, other than Devotional Claimants programs as defined below. Syndicated series and specials are defined as including (1) programs licensed to and broadcast by at least one U.S. commercial television station during the calendar year in question, (2) programs produced by or for a broadcast station that are broadcast by two or more U.S. television stations during the calendar year in question, and (3) programs produced by or for a U.S. commercial television station that are comprised predominantly of syndicated elements, such as music video shows, cartoon shows, "PM Magazine," and locally hosted movie shows.

"<u>Joint Sports</u>." Live telecasts of professional and college team sports broadcast by U.S. and Canadian television stations, except for programs coming within the Canadian Claimants category as defined below.

"Commercial Television." Programs produced by or for a U.S. commercial television station and broadcast only by that one station during the calendar year in question and not coming within the exception described in subpart 3) of the "Program Suppliers" definition.

"Public Broadcasting." All programs broadcast on U.S. noncommercial educational television stations.

"Devotional Claimants." Syndicated programs of a primarily religious theme, not limited to those produced by or for religious institutions.

"<u>Canadian Claimants</u>." All programs broadcast on Canadian television stations, except (1) live telecasts of Major League Baseball, National Hockey League, and U.S. college team sports, and (2) other programs owned by U.S. copyright owners.

These categories are intended to cover all <u>non-network</u> television programs on all stations retransmitted as distant signals by U.S. cable systems during 1990-1992, on a mutually exclusive basis. The six categories are represented in the Phase I proceedings, respectively, by the undersigned parties. Some of those categories are principally represented by trade associations or other pre-existing entities, while others are represented by ad hoc groups of claimants within the category which have joined together for the purpose of the Phase I hearing. In either case, the relationships between the claimants and the Phase I representatives are a matter of private agreement and are not at issue in this Phase I proceeding. In all cases, the Phase I representatives are seeking a Phase I royalty allocation for all programs within the category.

The final distribution of royalties to individual claimants whose programs are within each category will follow either a settlement among all claimants within the category or the resolution of any disputes through a separate Phase II proceeding. The extent to which the particular Phase I party actually represents the ultimate interests of each and every claimant within the category has historically been addressed, if necessary, in Phase II.

A related issue is the extent to which timely claims were filed with the Copyright Office for all programs contained within each Phase I category. If the owner of a program that fits within one of the Phase I categories fails to file a claim, it might be argued that the Phase I allocation to the category should

somehow be proportionally diminished. This so-called "unclaimed funds" issue, however, was resolved by the Tribunal in the course of its 1978 proceeding. The Tribunal determined that, for Phase I purposes, it should treat each category as if claims had been filed for all included programs. 1978 Cable Royalty Distribution Determination, 45 Fed. Reg. 63026, 63042 (Sept. 23, 1980).

The parties stipulate that the Panel should apply the same approach in this proceeding as the Tribunal did in the past, and should allocate all royalties among the six Phase I categories on the basis of all retransmitted programs coming within the respective definitions of those categories.

The parties would be pleased to discuss any aspect of this Stipulation with the members of the Panel at the Panel's convenience.

Respectfully submitted,

PROGRAM SUPPLIERS

Dennis Lane

John M. Collins

John E. McCaffrey

Morrison & Hecker, LLP

Suite 800

1150 Eighteenth Street, N.W.

Washington, D.C. 20036

JOINT SPORTS CLAIMANTS

By:

Robert Alan Garrett David P. Gersch Kathleen A. Behan Peter G. Neiman

Arnold & Porter

555 Twelfth Street, N.W. Washington, D.C. 20004-1202

NATIONAL ASSOCIATION OF BROADCASTERS

John I. Stewart, Jr. Jacqueline E. Hand Jessica R. Herrera

Crowell & Moring

1001 Pennsylvania Avenue, N.W. Washington, D.C. 20004-2595

PUBLIC BROADCASTING SERVICE

Woods

By:

Timothy C. Hester Michele J. Woods

Covington & Burling

P.O. Box 7566

1201 Pennsylvania Avenue, N.W. Washington, D.C. 20044-7566

DEVOTIONAL CLAIMANTS

By: Canponelli George R. Grange, II

George R. Grange, II
Richard M. Campanelli
Jane Allison Austin
Gammon & Grange, P.C.

Seventh Floor 8280 Greensboro Drive McLean, VA 22102-3807

By

Clifford M. Harrington Barry H. Gottfried Heidi Atassi Gaffney

Fisher, Wayland, Cooper, Leader &

Zaragoza, LLP

Suite 400

2001 Pennsylvania Avenue, N.W. Washington, D.C. 20006-1851

By:

John H. Midlen, Jr.

John H. Midlen, Jr., Chartered

3238 Prospect Street, N.W.

Washington, D.C. 20007-3214

CANADIAN CLAIMANTS

By:

L. Kendall Satterfield Victor J. Cosentino

Finkelstein, Thompson & Loughran

Suite 304

2828 Pennsylvania Avenue, N.W.

Washington, D.C. 20007

SERVICE LIST

Clifford M. Harrington
*Barry H. Gottfried
Fisher, Wayland, Cooper, Leader
& Zaragoza, LLP
2001 Pennsylvania Avenue, N.W., Ste. 400
Washington, D.C. 20006-1851

*Dennis Lane Morrison & Hecker 1150 18th Street, N.W., Suite 800 Washington, D.C. 20036-3815

*L. Kendall Satterfield Finkelstein, Thompson & Loughran 2828 Pennsylvania Avenue, N.W. Washington, D.C. 20007

Benjamin F. P. Ivins
National Association of Broadcasters

National Association of Broadcasters 1771 N Street, N.W. Washington, D.C. 20036

John H. Midlen, Jr. Law Offices of John H. Midlen, Jr. 3238 Prospect Street, N.W. Washington, D.C. 20007-3214

Thomas J. Ostertag General Counsel Office of the Commissioner of Baseball 350 Park Avenue, 17th Floor New York, NY 10022

Judith Jurin Semo Squire, Sanders & Dempsey 1201 Pennsylvania Avenue, N.W. Washington,D.C. 20004

Arnold P. Lutzker Keith A. Barritt Fish & Richardson, P.C. 601 13th Street, N.W. Washington, D.C 20005 *Robert Alan Garrett Arnold & Porter 555 Twelfth Street, N.W. Washington, D.C. 20004-1202

*Timothy Hester Michele J. Woods Covington & Burling 1201 Pennsylvania Avenue, N.W. P. O. Box 7566 Washington, D.C. 20044-7566

George R. Grange, II Richard M. Campanelli Gammon & Grange, PC 8280 Greensboro Drive, 7th Floor McLean, VA 22102-3807

Philip R. Hochberg Baraff, Koerner, Olender & Hochberg Three Bethesda Metro Ctr., Ste. 640 Bethesda, MD 20814-5330

Paula A. Jameson Gary P. Poon Public Broadcasting Service 1320 Braddock Place Alexandria, VA 22314

Erica Redler Canadian Broadcasting Corp. P.O. Box 8478 Ottawa, Ontario K1G 3J5

1239943

EXHIBIT NUMBER 204

Before the COPYRIGHT ROYALTY JUDGES Washington, D.C.

In the Matter of)	N .
Distribution of the 2000, 2001, 2002 and 2003 Cable Royalty Funds)	Docket No. 2008-2 CRB CD 2000-2003 (Phase II)

STIPULATION BETWEEN PHASE I REPRESENTATIVES OF THE JOINT SPORTS CATEGORY AND CANADIAN CLAIMANTS CATEGORY

The undersigned Phase I representatives of Canadian Claimants and Joint Sports Claimants (collectively, "Phase I Parties") hereby stipulate and agree to the following:

- In determining the allocation of Phase I funds and litigating the proper allocation of
 Phase I shares among the various claimant groups in Phase I of this proceeding, the Phase
 I Parties relied upon the attached stipulation ("Stipulation") to define the Phase I program
 categories.
- Consistent with that Stipulation, the following programs come within the Phase I
 Canadian Claimants Group category: Canadian Broadcasting Corporation's telecasts of the 2002 World Cup and World Cup Highlights.

Respectfully submitted,

JOINT SPORTS CLAIMANTS

Robert Alan Garrett D.C. Bar No. 239681 Stephen K. Marsh D.C. Bar No. 470365 ARNOLD & PORTER LLP 555 Twelfth Street, N.W. Washington, D.C. 20004-1206 Telephone: (202) 942-5000 Fax: (202) 942-5999

robert.garrett@aporter.com stephen.marsh@aporter.com CANADIAN CLAIMANTS **GROUP**

L. Kendall Satterfield
D.C. Bar No. 393953
FINKELSTEIN THOMPSON LLP

1077 30th Street NW Washington, DC 20007 Telephone: (202) 337-8000 Fax: (202) 337-8090

ksatterfield@finkelsteinthompson.com

September 24, 2012

CROWELL & MORING

1001 PENNSYLVANIA AVENUE, N.W. WASHINGTON, D.C. 20004-2595

(202) 624-2500 CABLE: CROMOR

FACSIMILE (RAPICOMI: 202-628-61;6 W. U. I. (INTERNATIONAL) 64344 W. U. (DOMESTIC) 89-2446

JOHN I. STEWART, JR. (202) 624-2685

February 23, 1996

SUITE 1ECO
2010 MAIN STREET
IRVINE, CALIFORNIA 92714-7217
(714) 263-8400
FACSIMILE (714) 263-8414

DENNING HOUSE
90 CHANCERY LANE
LONDON WC2A IED
4471-413-0011

FACSIMILE 44-7 1-413-0333

BY HAND DELIVERY

Marybeth Peters, Register U.S. Copyright Office James Madison Memorial Building 101 Independence Avenue, S.E. Room 403 Washington, D.C. 20540 GENERAL COUNSEL OF COPYRIGHT

FEB 23 1996

RECEIVED

Re:

1990-1992 Cable Royalty Distribution Proceeding

Docket No. 94-3 CARP-90-92CD

Dear Ms. Peters:

Enclosed for filing on behalf of all Phase I parties are an original and five copies of a "Stipulation of the Parties on the Issues of Program Categorization and Scope of Claims" in the above-captioned proceeding.

Should you have any questions, please feel free to contact me.

Very truly yours,

John I. Stewart, Jr.

Enclosures

cc: Service List

Before the COPYRIGHT ARBITRATION ROYALTY PANEL LIBRARY OF CONGRESS Washington, D.C. 20024

)	
In the Matter of:	.)	
1990-1992 Cable Royalty)	Docket No. 94-3, CARP CD 90-92
Distribution Proceeding)	

STIPULATION OF THE PARTIES ON THE ISSUES OF PROGRAM CATEGORIZATION AND SCOPE OF CLAIMS

The undersigned parties, representing all Phase I parties to the 1990-1992 cable royalty funds, file this stipulation with respect to an issue they believe has been raised by the Panel in questions to various witnesses testifying on behalf of the Devotional Claimants and others. The issue concerns the extent to which Phase I claims are being prosecuted by fewer than all of the claimants whose programs are included within the Phase I program category.

Since the first cable royalty distribution, covering 1978, the Copyright Royalty Tribunal divided its royalty distribution cases into Phase I and Phase II proceedings. In Phase I, the Tribunal allocated the entire royalty fund among broadly defined Phase I program categories. In Phase II, to the extent necessary, the Tribunal resolved disputes among different claimants or groups of claimants within a single Phase I category as to the internal division of the category's Phase I allocation.

The Phase I categories themselves developed over the course of the first five years of Tribunal proceedings. In response to requests by various parties for

rulings on close or disputed questions about particular programs, the Tribunal refined the category definitions through declaratory rulings and rulings published as part of its final determinations. See, e.g., 1984 Cable Royalty Distribution Proceeding, 52 Fed. Reg. 8408, 8416 (Mar. 17, 1987); Advisory Opinion, Docket No. CRT 85-4 84 CD (May 16, 1986). For the 1990-1992 proceeding, the parties stipulate that the following Phase I category definitions, based on these prior Tribunal rulings, should apply:

Phase I Program Category Definitions

"Program Suppliers." Syndicated series, specials and movies, other than Devotional Claimants programs as defined below. Syndicated series and specials are defined as including (1) programs licensed to and broadcast by at least one U.S. commercial television station during the calendar year in question, (2) programs produced by or for a broadcast station that are broadcast by two or more U.S. television stations during the calendar year in question, and (3) programs produced by or for a U.S. commercial television station that are comprised predominantly of syndicated elements, such as music video shows, cartoon shows, "PM Magazine," and locally hosted movie shows.

"<u>Joint Sports</u>." Live telecasts of professional and college team sports broadcast by U.S. and Canadian television stations, except for programs coming within the Canadian Claimants category as defined below.

"Commercial Television." Programs produced by or for a U.S. commercial television station and broadcast only by that one station during the calendar year in question and not coming within the exception described in subpart 3) of the "Program Suppliers" definition.

"Public Broadcasting." All programs broadcast on U.S. noncommercial educational television stations.

"Devotional Claimants." Syndicated programs of a primarily religious theme, not limited to those produced by or for religious institutions.

"<u>Canadian Claimants</u>." All programs broadcast on Canadian television stations, except (1) live telecasts of Major League Baseball, National Hockey League, and U.S. college team sports, and (2) other programs owned by U.S. copyright owners.

These categories are intended to cover all <u>non-network</u> television programs on all stations retransmitted as distant signals by U.S. cable systems during 1990-1992, on a mutually exclusive basis. The six categories are represented in the Phase I proceedings, respectively, by the undersigned parties. Some of those categories are principally represented by trade associations or other pre-existing entities, while others are represented by ad hoc groups of claimants within the category which have joined together for the purpose of the Phase I hearing. In either case, the relationships between the claimants and the Phase I representatives are a matter of private agreement and are not at issue in this Phase I proceeding. In all cases, the Phase I representatives are seeking a Phase I royalty allocation for all programs within the category.

The final distribution of royalties to individual claimants whose programs are within each category will follow either a settlement among all claimants within the category or the resolution of any disputes through a separate Phase II proceeding. The extent to which the particular Phase I party actually represents the ultimate interests of each and every claimant within the category has historically been addressed, if necessary, in Phase II.

A related issue is the extent to which timely claims were filed with the Copyright Office for all programs contained within each Phase I category. If the owner of a program that fits within one of the Phase I categories fails to file a claim, it might be argued that the Phase I allocation to the category should

somehow be proportionally diminished. This so-called "unclaimed funds" issue, however, was resolved by the Tribunal in the course of its 1978 proceeding. The Tribunal determined that, for Phase I purposes, it should treat each category as if claims had been filed for all included programs. 1978 Cable Royalty Distribution Determination, 45 Fed. Reg. 63026, 63042 (Sept. 23, 1980).

The parties stipulate that the Panel should apply the same approach in this proceeding as the Tribunal did in the past, and should allocate all royalties among the six Phase I categories on the basis of all retransmitted programs coming within the respective definitions of those categories.

The parties would be pleased to discuss any aspect of this Stipulation with the members of the Panel at the Panel's convenience.

Respectfully submitted,

PROGRAM SUPPLIERS

Dennis Lane

John M. Collins

John E. McCaffrey

Morrison & Hecker, LLP

Suite 800

1150 Eighteenth Street, N.W.

Washington, D.C. 20036

JOINT SPORTS CLAIMANTS

By:

Robert Alan Garrett David P. Gersch Kathleen A. Behan Peter G. Neiman

Arnold & Porter

555 Twelfth Street, N.W. Washington, D.C. 20004-1202

NATIONAL ASSOCIATION OF BROADCASTERS

John I. Stewart, Jr.

Jacqueline E. Hand

Jessica R. Herrera

Crowell & Moring

1001 Pennsylvania Avenue, N.W. Washington, D.C. 20004-2595

PUBLIC BROADCASTING SERVICE

P.171

Timothy C. Hester Michele J. Woods

Covington & Burling

P.O. Box 7566

1201 Pennsylvania Avenue, N.W.

Washington, D.C. 20044-7566

DEVOTIONAL CLAIMANTS

George R. Grange, II Richard M. Campanelli Jane Allison Austin

Gammon & Grange, P.C.

Seventh Floor

8280 Greensboro Drive McLean, VA 22102-3807

By:

Clifford M. Harrington Barry H. Gottfried Heidi Atassi Gaffney

Fisher, Wayland, Cooper, Leader &

Zaragoza, LLP

Suite 400

2001 Pennsylvania Avenue, N.W. Washington, D.C. 20006-1851

John H. Midlen, Jr.

John H. Midlen, Jr., Chartered 3238 Prospect Street, N.W.

Washington, D.C. 20007-3214

CANADIAN CLAIMANTS

L. Kendall Satterfield

Victor J. Cosentino

Finkelstein, Thompson & Loughran

Suite 304

2828 Pennsylvania Avenue, N.W.

Washington, D.C. 20007

February 23, 1996

SERVICE LIST

Clifford M. Harrington
*Barry H. Gottfried
Fisher, Wayland, Cooper, Leader
& Zaragoza, LLP
2001 Pennsylvania Avenue, N.W., Ste. 400
Washington, D.C. 20006-1851

a Avenue, N.W., Ste. 400 20006-1851 field *Robert A

*L. Kendall Satterfield Finkelstein, Thompson & Loughran 2828 Pennsylvania Avenue, N.W. Washington, D.C. 20007

Benjamin F. P. Ivins National Association of Broadcasters 1771 N Street, N.W. Washington, D.C. 20036

John H. Midlen, Jr. Law Offices of John H. Midlen, Jr. 3238 Prospect Street, N.W. Washington, D.C. 20007-3214

Thomas J. Ostertag General Counsel Office of the Commissioner of Baseball 350 Park Avenue, 17th Floor New York, NY 10022

Judith Jurin Semo Squire, Sanders & Dempsey 1201 Pennsylvania Avenue, N.W. Washington,D.C. 20004

Arnold P. Lutzker Keith A. Barritt Fish & Richardson, P.C. 601 13th Street, N.W. Washington, D.C 20005 *Dennis Lane Morrison & Hecker 1150 18th Street, N.W., Suite 800 Washington, D.C. 20036-3815

*Robert Alan Garrett Arnold & Porter 555 Twelfth Street, N.W. Washington, D.C. 20004-1202

*Timothy Hester Michele J. Woods Covington & Burling 1201 Pennsylvania Avenue, N.W. P. O. Box 7566 Washington, D.C. 20044-7566

George R. Grange, II Richard M. Campanelli Gammon & Grange, PC 8280 Greensboro Drive, 7th Floor McLean, VA 22102-3807

Philip R. Hochberg Baraff, Koerner, Olender & Hochberg Three Bethesda Metro Ctr., Ste. 640 Bethesda, MD 20814-5330

Paula A. Jameson Gary P. Poon Public Broadcasting Service 1320 Braddock Place Alexandria, VA 22314

Erica Redler Canadian Broadcasting Corp. P.O. Box 8478 Ottawa, Ontario K1G 3J5

1239943

EXHIBIT NUMBER 205

Before the COPYRIGHT ROYALTY JUDGES Washington, D.C.

In the Matter of)	
	j j	Docket No. 2008-2 CRB CD 2000-2003
Distribution of the 2000, 2001, 2002)	(Phase II)
and 2003 Cable Royalty Funds).	
4)	9

STIPULATION BETWEEN PHASE I REPRESENTATIVES OF THE JOINT SPORTS CATEGORY AND PROGRAM SUPPLIER CATEGORY

The undersigned Phase I representatives of Program Suppliers and Joint Sports Claimants (collectively, "Phase I Parties") hereby stipulate and agree to the following:

- In determining the allocation of Phase I funds and litigating the proper allocation of
 Phase I shares among the various claimant groups in Phase I of this proceeding, the Phase
 I Parties relied upon the attached stipulation ("Stipulation") to define the Phase I programcategories.
- 2. MPAA-represented Program Suppliers represented the "Program Suppliers" program category, as that term is defined in the Stipulation, during the Phase I proceedings. Joint Sports Claimants represented the "Joint Sports" program category, as that term is defined in the Stipulation.
- 3. Independent Producers Group ("IPG") is claiming for a program titled "UNCF Celebrity Golf and Tennis Tournament" in the Joint Sports category. Written Direct Testimony of Raul Galaz, Exhibit IPG-2 at 2. Our understanding is that this program is a telecast of a charity golf and tennis tournament. If that understanding is correct, to the extent that this

program is eligible for compensation under Section 111 of the Copyright Act, the program belongs in the Program Supplier category, not the Joint Sports category, under the Stipulation.

4. Likewise, IPG is claiming for programs titled "U.S. Olympic Trials" in the Joint Sports category. *Id.* Our understanding is that these programs are telecasts of U.S. Olympic Trial events (e.g., swimming, track and field). If that understanding is correct, to the extent these programs are eligible for compensation under Section 111 of the Copyright Act, the programs also belong in the Program Supplier category, not the Joint Sports category, under the Stipulation.

Respectfully submitted,

JOINT SPORTS CLAIMANTS

Robert Alan Garrett

D.C. Bar No. 239681 Stephen K. Marsh

D.C. Bar No. 470365

ARNOLD & PORTER LLP

555 Twelfth Street, N.W.

Washington, D.C. 20004-1206

Telephone: (202) 942-5000

Fax: (202) 942-5999

robert.garrett@aporter.com

stephen.marsh@aporter.com

PROGRAM SUPPLIERS

Gregory O. Olaniran

D.C. Bar No. 455784 Lucy Holmes Plovnick

D.C. Bar No. 488752

MITCHELL SILBERBERG &

KNUPP LLP

1818 N Street, NW, 8th Floor

Washington, DC 20036

Telephone: (202) 355-7917

Fax: (202) 355-7887

goo@msk.com

lhp@msk.com

September 24, 2012

CROWELL & MORING

1001 PENNSYLVANIA AVENUE, N.W. WASHINGTON, D.C. 20004-2595 (202) 624-2500 CABLE: CROMOR

PACSIMILE (RAPICOM): 202-626-8116 W. U. I. HNTERNATIONAL) 64344

JOHN I. STEWART, JR. (202) 624-2685

W. U. (DOMESTIC) 89-2445

SUITE IZDO 2010 MAIN STREET E. CALIFORNIA 92714-7217 (714) 263-8400 ACSIMILE (714) 263-8414

DENNING HOUSE BO CHANCERY LANE LONDON WOZA IED 44-71-413-0011 FACSIMILE 44-71-413-0333

February 23, 2996

BY HAND DELIVERY

Marybeth Peters, Register U.S. Copyright Office
James Madison Memorial Building 101 Independence Avenue, S.E. Room 403 Washington, D.C. 20540

GENERAL COUNSEL OF COPYRIGHT

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HEUS TERROL BRIDE

1990-1992 Cable Royalty Distribution Proceeding Docket No. 94-3 CARP-90-92CD

Dear Ms. Peters:

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Should you have any questions, please feel free to contact me.

stanitosky vysa Very truly yours,

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John I. Stewart, Jr.

Service List cc:

Before the COPYRIGHT ARBITRATION ROYALTY PANEL LIBRARY OF CONGRESS Washington, D.C. 20024

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In the Matter of:	į į			
1990-1992 Cable Royalty Distribution Proceeding)	Docket No. 94	1-3, CARP	CD 90-92
)			

STIPULATION OF THE PARTIES ON THE ISSUES OF PROGRAM CATEGORIZATION AND SCOPE OF CLAIMS

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The parties stipulate that the Panel should apply the same approach in this proceeding as the Tribunal did in the past, and should allocate all royalties among the six Phase I categories on the basis of all retransmitted programs coming within the respective definitions of those categories.

The parties would be pleased to discuss any aspect of this Stipulation with the members of the Panel at the Panel's convenience.

Respectfully submitted,

PROGRAM SUPPLIERS

Bv:

Dennis Lane John M. Collins

John E. McCaffrey Morrison & Hecker, LLP

2......

Suite 800

1150 Eighteenth Street, N.W.

Washington, D.C. 20036

JOINT SPORTS CLAIMANTS

Robert Alan Garrett David P. Gersch Kathleen A. Behan Peter G. Neiman

Arnold & Porter 555 Twelfth Street, N.W.

Washington, D.C. 20004-1202

NATIONAL ASSOCIATION OF BROADCASTERS

John I. Stewart, Jr. Jacqueline E. Hand

Jessica R. Herrera

Crowell & Moring 1001 Pennsylvania Avenue, N.W. Washington, D.C. 20004-2595

PUBLIC BROADCASTING SERVICE

Timothy C. Hester Michele J. Woods

Covington & Burling

P.O. Box 7566

1201 Pennsylvania Avenue, N.W. Washington, D.C. 20044-7566

DEVOTIONAL CLAIMANTS

Bw.

George R. Grange, II
Richard M. Campanelli
Jane Allison Austin
Gammon & Grange, P.C.
Seventh Floor
8280 Greensboro Drive
McLean, VA 22102-3807

Bv:

Clifford M. Harrington Barry H. Gottfried Heidi Atassi Gaffney Fisher, Wayland, Cooper, Leader &

Zaragoza, LLP Suite 400 2001 Pennsylvania Avenue, N.W.

Washington, D.C. 20006-1851

By:

John H. Midlen, Jr.

John H. Midlen, Jr., Chartered 3238 Prospect Street, N.W. Washington, D.C. 20007-3214

CANADIAN CLAIMANTS

Bv.

L. Kendall Satterfield

Victor J. Cosentino

Finkelstein, Thompson & Loughran

Suite 304

2828 Pennsylvania Avenue, N.W.

Washington, D.C. 20007

February 23, 1996

SERVICE LIST

Clifford M. Harrington
*Barry H. Gottfried
Fisher, Wayland, Cooper, Leader
& Zaragoza, LLP
2001 Pennsylvania Avenue, N.W., Ste. 400
Washington, D.C. 20006-1851

*Dennis Lane Morrison & Hecker 1150 18th Street, N.W., Suite 800 Washington, D.C. 20036-3815

*L. Kendall Satterfield Finkelstein, Thompson & Loughran 2828 Pennsylvania Avenue, N.W. Washington, D.C. 20007 *Robert Alan Garrett Arnold & Porter 555 Twelfth Street, N.W. Washington, D.C. 20004-1202

Benjamin F. P. Ivins National Association of Broadcasters 1771 N Street, N.W. Washington, D.C. 20036 *Timothy Hester Michele J. Woods Covington & Burling 1201 Pennsylvania Avenue, N.W. P. O. Box 7566 Washington, D.C. 20044-7566

John H. Midlen, Jr. Law Offices of John H. Midlen, Jr. 3238 Prospect Street, N.W. Washington, D.C. 20007-3214 George R. Grange, II Richard M. Campanelli Gammon & Grange, PC 8280 Greensboro Drive, 7th Floor McLean, VA 22102-3807

Thomas J. Ostertag General Counsel Office of the Commissioner of Baseball 350 Park Avenue, 17th Floor New York, NY 10022 Philip R. Hochberg Baraff, Koerner, Olender & Hochberg Three Bethesda Metro Ctr., Ste. 640 Bethesda, MD 20814-5330

Judith Jurin Semo Squire, Sanders & Dempsey 1201 Pennsylvania Avenue, N.W. Washington, D.C. 20004 Paula A. Jameson Gary P. Poon Public Broadcasting Service 1320 Braddock Place Alexandria, VA 22314

Arnold P. Lutzker Keith A. Barritt Fish & Richardson, P.C. 601 13th Street, N.W. Washington, D.C 20005 Erica Redler Canadian Broadcasting Corp. P.O. Box 8478 Ottawa, Ontario K1G 3J5

1239943

EXHIBIT NUMBER 206

Stephen K. Marsh Stephen.Marsh@aporter.com

+1 202.942.5232 +1 202.942.5999 Fax

555 Twelfth Street, NW Washington, DC 20004-1206

JUNE 6, 2012 VIA E-MAIL AND FEDERAL EXPRESS

Brian D. Boydston, Esq. PICK & BOYDSTON, LLP 10786 Le Conte Ave. Los Angeles, California 90024

Re: Docket No. 2008-2 CRB CD 2000-2003

Distribution of 2000, 2001, 2002 and 2003 Cable Royalty Funds Initial Discovery Requests of the Joint Sports Claimants

Counsel:

Pursuant to Rule 351.6 of the Rules of the Copyright Royalty Judges ("Judges") and the Judges' Order dated January 11, 2012, the Office of the Commissioner of Baseball, the National Basketball Association, the National Football League, the National Hockey League, the National Collegiate Athletic Association, and the Women's National Basketball Association ("Joint Sports Claimants" or "JSC") hereby submit the following requests for nonprivileged underlying documents related to the written exhibits and testimony contained in the "Direct Case of Independent Producers Group," filed May 30, 2012. The materials sought in this letter constitute the JSC's initial discovery requests and may be supplemented as authorized by the rules of the Copyright Royalty Judges.

In accordance with the Copyright Royalty Judges' January 11, 2012 Order, we expect to receive your responses to these requests no later than 5:00 PM EDT on June 14, 2012.

INSTRUCTIONS

Please repeat each of the requests below in your response. Please provide a separate written response to each request. If you object to any request, state the basis for each objection in sufficient detail so as to permit adjudication of the validity of the objection, and produce any documents responsive to a portion of the request that is not objectionable. If you claim a document is "privileged," please state every fact supporting your claim of privilege.

The term "underlying" has the same meaning as in 37 C.F.R. § 351.6, and includes, without limitation, all documents upon which the witness relied in making his or her statement and all documents which verify bottom-line numbers. The term

"document" means and includes all materials that fall within the description of the term "document" contained in Rule 34 of the Federal Rules of Civil Procedure and means the original and all duplicates of a writing or recording, as those terms are defined by Rule 1001 of the Federal Rules of Evidence, including, without limitation, all written, recorded, graphic or photographic matter, however produced or reproduced, of every kind and description in your actual or constructive possession, custody, care or control pertaining in any manner to the subject matter indicated. The term "document" also refers to electronic records in whatever form, including but not limited to electronic mail, electronic databases (e.g., Microsoft Excel, Microsoft Access, or similar programs), electronic documents (e.g., Microsoft Word or WordPerfect), or any other kind of electronic record that contains underlying information as defined herein.

The term "this Proceeding" refers to the proceeding referenced above. The term "correspondence" means any communication, in whatever form, including but not limited to letters, emails, or instant messages.

Where a request is made in particular following a general request, it shall be deemed to be without limitation as to the scope of the general request.

TESTIMONY OF RAUL C. GALAZ

Please provide all nonprivileged underlying documents related to the following statements contained in the "Testimony of Raul C. Galaz" and the Exhibits that Mr. Galaz is sponsoring:

- 1. On page 8, Mr. Galaz states: "IPG indicated [in its Notice of its Intent to Participate] its representation of 288 producers and distributors." In footnote 3 on page 8, Mr. Galaz states that Exhibit IPG-1 lists the "producers and distributors whose programming is represented by IPG" either directly or through the Worldwide Subsidy Group LLC (California) ("WSG") which "has merged with IPG." Exhibit IPG-1 identifies 136 entities as "IPG-represented claimants 2000-2003 Cable Distribution proceedings (Phase II)," including three entities categorized as "Sports," *i.e.*, Federation Internationale de Football Association, United States Olympic Committee and United Negro College Fund (collectively "IPG Sports Claimants."). Please provide all documents underlying the foregoing statements and Exhibit IPG-1 insofar as they relate to the IPG Sports Claimants, including without limitation:
 - a. All representation agreements between IPG and each IPG Sports Claimant, i.e., all documents in which an IPG Sports Claimant has authorized IPG to represent that claimant.
 - b. All representation agreements between WSG and each IPG Sports Claimant, i.e., all documents in which an IPG Sports Claimant authorized WSG to

represent that claimant.

- c. All correspondence between IPG and each IPG Sports Claimant concerning IPG's representation of that claimant.
- d. All correspondence between WSG and each IPG Sports Claimant concerning IPG's representation of that claimant.
- e. All documents on which Mr. Galaz relies to support the assertion that each of the IPG Sports Claimants has authorized IPG to represent it in this Proceeding.
- 2. On page 10, Mr. Galaz states that: "IPG has identified 1,345 programs, (the "Programs) and 567,586 broadcasts within its catalogue that have been broadcast on stations generating substantial cable retransmission royalties during the 2000-2003 calendar year." In footnote 6 on page 10, Mr. Galaz states that Exhibit IPG-2 "lists ... the programs represented by IPG, and the Phase II categories in which they apply." Exhibit IPG-2 identifies four "IPG-Sports programming titles, i.e., Copa FIFA, U.S. Olympic Trials, UNCF Celebrity Golf and Tennis Tournament, World Cup Soccer, and World Cup Soccer Highlights" ("IPG Sports Programs"). Please produce all documents underlying the foregoing statements insofar as they relate to the IPG Sports Programs including, without limitation:
 - a. All documents identifying each of the broadcasts of the IPG Sports Programs, including without limitation, the stations that broadcast those Programs and the dates and times of those broadcasts.
 - b. All documents reflecting the royalties generated by each of the stations broadcasting the IPG Sports Programs during each of the years 2000-03.
- 3. On page 10, Mr. Galaz states: "Each of the programs is either owned or controlled by entities that have assigned IPG the right to collect cable retransmission royalties attributable to their programming." Please produce all documents underlying that statement insofar as it concerns the IPG Sports Programs, including without limitation all documents on which Mr. Galaz relies in asserting that the IPG Sports Claimants own or control the IPG Sports Programs.
- 4. In footnote 6, on Page 10, Mr. Galaz states that Exhibit IPG-3 contains "data related to the number of broadcasts and programs claimed in any respective program category." Exhibit IPG-3 includes various data for the Phase I category "Sports." Please produce all documents underlying Exhibit IPG-3, including without limitation:
 - a. All documents used to prepare Exhibit IPG-3.
 - b. All underlying data, source material and documents sufficient to identify:

- i. the titles of the two programs listed under the "IPG Claimant per Claimant" column in the "Sports" category row;
- the 73 broadcasts listed under the "IPG Claimant per Claimant" column in the "Sports" category row and any methods used to calculate same;
- iii. the titles of the three programs listed under the "IPG Claimant per research" column in the "Sports" category row and any underlying research or source material supporting same;
- iv. the 271 broadcasts listed under the "IPG Claimant per Research" column in the "Sports" category row and any methods used to calculate same.
- c. All underlying data, source material, and methodologies used in the identification and calculation of the 29,192 broadcasts listed under the "Aggregate" column of the "Sports" category row, including but not limited to the stations on which such broadcasts aired, the dates and times when such broadcasts occurred, and the titles of the broadcasted programs.
- d. All underlying data, source material and methodologies used in the identification and calculation of the 27 programs listed under the "Aggregate" column of the "Sports" category row, including the program titles for each of the 27 listed programs.
- e. All underlying data, source material and methodologies used in the calculation of the 1.18% of broadcasts listed under the "IPG Claimants % of Aggregate" column in the "Sports" category row.
- 5. On page 10, Mr. Galaz states that: "IPG's identification of claimed broadcasts and programs falls into two categories (i) program titles for which the copyright owner identified the program either as part of the contracting documents, as part of IPG's prior representation, or in recent correspondence with IPG relating to these proceedings, or (ii) program titles identified through IPG's research of publicly available information." Please produce all documents underlying the above-referenced statements including, without limitation, all underlying documents reflecting:
 - a. the referenced contracting documents for all IPG Sports Programs.
 - b. any documents in which a copyright owner identified an IPG Sports Program as part of IPG's prior representation.
 - c. recent correspondence in which a program owner identified one of the IPG

Sports Programs.

- d. any publicly available information upon which IPG relied to determine that an IPG Sports Program was owned or controlled by an entity represented by IPG.
- 6. On page 13, Mr. Galaz states: "IPG has data that reflects the compulsory license fees that have been generated by retransmitted stations, the number of distant households that received the retransmitted broadcasts, programming data reflecting the length of the broadcast, and data that reflects the viewership within particular time period calculated." Please produce all documents underlying the foregoing statements, including the above-referenced data.
- 7. On pages 15-16, Mr. Galaz states that IPG obtained "data from Cable Data Corporation relating to the most significantly retransmitted stations during 2000 and 2001" and "acquired from TV Data Corporation all of the broadcast data for the 200 most retransmitted stations." Please produce all documents underlying the foregoing statements, including the above-referenced data.
- 8. On page 16, Mr. Galaz states that "IPG obtained the updated and complete data from Cable Data Corporation of all retransmitted stations." Please produce all documents underlying the foregoing statements, including the above-referenced data.
- 9. On pages 16-17, Mr. Galaz states: "The stations surveyed as part of the IPG station survey accounted for 89-93% of the aggregate number of households receiving retransmitted commercial signals in any given year during 2000-2003...." Please produce all documents underlying the foregoing statements, including, without limitation, all documents reflecting the source of such data and all underlying source materials and methodologies used in calculating same.
- 10. On pages 16-17, Mr. Galaz states: "The stations surveyed as part of the IPG station survey accounted for . . . 94-96% of the distant cable retransmission fees generated in any given year during 2000-2003." Please produce all documents underlying the foregoing statements, including, without limitation, all documents reflecting the source of such data and all underlying source materials and methodologies used in calculating same.
- 11. On page 17, footnote 11, Mr. Galaz states that Exhibit IPG-5 reflects the "IPG Station Survey' data sheet." Please produce all documents underlying the foregoing statements, including, without limitation, all documents reflecting the source of such data and all underlying source materials and methodologies used in calculating same.
- 12. On page 17, footnote 11, Mr. Galaz states: "Notwithstanding, many of the stations were retransmitted to a *de minimus* [sic] number of distant households and,

consequently, generated insignificant retransmission royalty fees." In your production, please include all underlying documents in support of that statement, including without limitation any documents that identify the referenced stations that "were retransmitted to a *de minimus* [sic] number of distant households and, consequently, generated insignificant retransmission royalty fees," along with the methodology, data, or source material used in determining what qualifies as a "*de minimus*" [sic] number of households and an "insignificant" level of retransmission royalty fees.

- 13. On page 17, Mr. Galaz states: "IPG reviewed the programs broadcast on such stations during their entire 24-hour time frame, for the entirety of the surveyed year. Such data originally consisted of 11,213,962 logged broadcasts, and a significantly greater number of stations than identified above." In your production, please include all underlying documents supporting that statement, including without limitation data from each station, including program titles, dates, and times for each program, along with any underlying data supporting IPG's calculation of the 11,213,962 broadcasts.
- 14. On page 17, footnote 12, Mr. Galaz states: "Where identified, IPG omitted broadcasts that were not retransmitted. Notably there were substantial differences between the programs contained on the WGN Chicago over-the-air feed and WGN satellite feed distributed to cable operators." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. the broadcasts identified as not retransmitted that were omitted by IPG and the underlying data, source materials, and methodologies used in identifying such broadcasts.
 - b. the referenced "substantial differences between the programs contained on the WGN Chicago over-the-air feed and WGN satellite feed distributed to cable operators."
- 15. On page 17, Mr. Galaz states: "After omitting broadcasts of programming not compensable in this proceeding (e.g., network feed programming, PBS feed programming), 8,515,052 royalty generating broadcasts were identified, and 39,969 discrete titles of royalty-generating programming." In your production, please include, all underlying documents supporting that statement, including without limitation
 - a. the omitted broadcasts of programming "not compensable in this proceeding (e.g., network feed programming, PBS feed programming)," as well as the underlying data, source materials, and methodologies used in determining that such broadcasts were "not compensable."
 - b. the identified "8,515,052 royalty generating broadcasts" and "39,969 discrete titles of royalty-generating programming," including, but not limited to,

all program titles, the stations on which those programs appeared, and the time in which the program aired.

- 16. On page 17, Mr. Galaz states: "In all circumstances, IPG sought to confirm with all parties assigning rights to IPG which titles and broadcasts were either owned or controlled by them." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. IPG's efforts to "confirm with all parties assigning rights to IPG which titles and broadcasts were either owned or controlled by them," including all correspondence, communications, or other supporting documents reflecting communications between IPG and IPG Sports Claimants regarding the ownership or control of rights to titles and broadcasts claimed by IPG.
 - b. identification of all IPG Sports Claimants that IPG contacted in an effort to confirm "which titles and broadcasts were either owned or controlled by them."
 - c. identification of all IPG Sports Claimants and the titles of IPG Sports Programs obtained by IPG through this confirmation process.
- 17. On pages 17-18, Mr. Galaz states: "In various other circumstances, IPG determined which titles and broadcasts were owned or controlled based on information within the IPG contracting documents, or previously provided to IPG in the course of IPG's representation." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. copies of the above-referenced "IPG contracting documents" reflecting all "information" from which "IPG determined which titles and broadcasts were owned or controlled" by IPG Sports Claimants.
 - b. copies of all underlying documents reflecting the above-mentioned "information . . . previously provided to IPG in the course of IPG's representation" from which "IPG determined which titles and broadcasts were owned or controlled" by IPG Sports Claimants.
- 18. On page 18, Mr. Galaz states: "In very limited circumstances, IPG's determination as to programs owned or controlled by IPG were based on independent research from publicly available sources." In your production, please include all underlying documents supporting that statement, including without limitation copies of the above-referenced "independent research from publicly available sources" regarding the IPG Sports Programs.
- 19. On page 18, footnote 14, Mr. Galaz states: "Consequently, in the course of these proceedings, IPG has been required to re-educate virtually all of the parties from whom it

acquired rights, and in many circumstances have forfeited claims because of lacking assistance or documentation." In your production, please include all underlying documents supporting that statement, including without limitation:

- a. IPG's attempts to "re-educate" any IPG Sports Claimants," including, but not limited to, all communications, correspondence, or other underlying documents related thereto with respect to IPG Sports Claimants.
- b. identification o any IPG Sports clailmants "IPG has been required to reeducate."
- 20. On page 18, Mr. Galaz states: "IPG thereafter winnowed down the claimed broadcasts in order to exclude any broadcasts that fell outside the rights held by the party, or outside of the rights granted to IPG. Generally, these included either temporal or territorial restrictions (e.g., 2000 broadcasts only, U.S.-originated broadcasts only, etc.)." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. a description of the methodology, data, or source material used by IPG to "winnow[] down the claimed broadcasts in order to exclude any broadcasts that fell outside the rights held by that party, or outside of the rights granted to IPG."
 - b. identification of all the above-referenced excluded broadcasts and the reason for IPG's exclusion of each.
 - c. identification of all the broadcasts excluded due to the above-referenced "temporal" restrictions.
 - d. identification of all the broadcasts excluded due to the above-referenced "territorial restrictions."
- 21. On page 18, Mr. Galaz states: "[O]f the almost 40,000 royalty-generating programs from 2000-2003, IPG determined that 1,345 were owned or controlled by producers and distributors whom had assigned rights to IPG." In your production, please include all underlying documents supporting that statement, including without limitation: all documents reflecting the programming titles of any programs included in the 1,345 above-referenced programs for which IPG claims royalty collection rights.
- 22. On page 19, footnote 15, Mr. Galaz states: "Exhibit IPG-4" contains "the list of 'Station Weight Factors' that were applied, i.e., the 'Average Distant Subscribers' and the 'Total Distant Fees-Gen." In your production, please include all underlying documents

¹ Please confirm that the reference to Exhibit IPG-4 in footnote 15 on page 19 was

Footnote continued on next page

supporting that statement, including without limitation: copies of all underlying data, source materials, or methodologies used in calculating the above mentioned "Station Weight Factors," "Average Distant Subscribers," and "Total Distant Fees-Gen," as well as a description of how such "Station Weight Factors" were applied.

- 23. On page 19, Mr. Galaz states: "The first Station Weight Factor deemed 'SWF Subs' in IPG's data, is based solely on the number of distant cable subscribers that received the broadcast signal." In your production, please include all underlying documents supporting that statement, including without limitation all documents reflecting the "number of distant cable subscribers" that received broadcast signals.
- 24. On page 19, Mr. Galaz states: "The second Station Weight Factor deemed 'SWF Fees' in IPG's data, is based solely on the number of distant retransmission fees generated by the station upon which the broadcast was retransmitted." In your production, please include all underlying documents supporting that statement, including without limitation documents reflecting "the number of distant retransmission fees generated by the station[s] upon which the broadcast[s] w[ere] retransmitted."
- 25. On page 19, Mr. Galaz states: "A third alternative would be a Station Weight Factor based on a multiple of the prior two Station Weight Factors (i.e., 'SWF Subs & Fees'), thereby averaging the relative significance of the number of distant cable subscribers that received the broadcast signal, and the relative significance of fees generated by the station upon which the broadcast was retransmitted." In your production, please include all underlying documents supporting that statement, including without limitation, the referenced "multiple of the prior two Station Weight Factors" used by IPG in its calculation of "SWF Subs & Fees" and all underlying data, source materials and methodologies used in calculating same.
- 26. On page 20, Mr. Galaz states: "the Station Weight Factors were derived from the subscribers and fees that exist for <u>Form 1, Form 2 and Form 3</u> cable systems." In your production, please include all underlying documents supporting that statement, including without limitation, "the subscribers and fees that exist for <u>Form 1, Form 2 and Form 3,</u>" and all documents, data, source material, methodologies, and calculations underlying same.
- 27. On page 20, Mr. Galaz states: "Form 1 and Form 2 cable systems accounted for almost 13% of the aggregate distant cable retransmission subscribers." In your

Footnote continued from previous page intended to apply to Exhibit IPG-5 (i.e., the reference to Exhibit IPG-4 appears to be mistaken). If that footnote was not intended to apply to IPG-5, produce all documents underlying IPG-4, including any underlying source data for the Station Weight Factors cited

production, please include all underlying documents supporting that statement, including without limitation, documents used in the above-referenced calculation.

- 28. On page 20, Mr. Galaz states: "While [Form 1 and Form 2 cable] systems account for a significantly lower percentage of the cable retransmission fees that are generated, a subscribers/fees weighted average of 7.5% exists, resulting in an omission with significant consequences when applied against the relative significance of any surveyed station broadcast and the \$359 Million that is estimated to be the royalty value of the Program Suppliers, Devotional, and Sports Programming categories." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. documents reflecting that the above-referenced Form 1 and Form 2 cable systems' have a "significantly lower percentage of the cable retransmission fees that are generated" and all documents, data, source material, and methodologies used in calculating same.
 - b. all underlying documents, data, source material, and methodologies used in calculating the above-referenced statement that "subscribers/fees weighted average of 7.5%" for Form 1 and Form 2 cable systems.
 - c. all underlying documents, data, source material, and methodologies reflecting IPG's above-referenced application of the Form 1 and Form 2 subscribers/fees weighted average "against the relative significance of any surveyed station broadcast and the \$359 Million that is estimated to be the royalty value of the Program Suppliers, Devotional, and Sports Programming categories."
- 29. On pages 20-21, Mr. Galaz states: "IPG has adjusted the value of each logged broadcast based on the value of the time period of the broadcast. More specifically, IPG utilized a factor (the 'Time Period Weight Factor') which utilizes Nielsen Media Research's assessment of viewership of all persons during half-hour dayparts, in order to weight the relative significance of any given broadcast." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. all documents, data, source material, and methodologies underlying IPG's "adjust[ment] [of] the value of each logged broadcast based on the value of the time period of the broadcast."
 - b. copies of the above-referenced "Nielsen Media Research's assessment of viewership of all persons during half-hour dayparts."
 - c. all documents, data, source material, and methodologies underlying IPG's "utiliz[ation] [of] Nielsen Media Research . . . in order to weight the relative significance of any given broadcast."

- 30. On page 21, Mr. Galaz states: "In the 1997 Phase II proceedings, IPG submitted evidence published by Nielsen Media Research in order to reflect weekly viewing by daypart." In your production, please include all underlying documents supporting that statement, including without limitation the referenced "evidence published by Nielsen Media Research" that was submitted by IPG "[i]n the 1997 Phase II proceedings."
- 31. On page 21, Mr. Galaz states: "In order to remedy this criticism, IPG has taken the Nielsen viewing data submitted by the MPAA in the 1997 Phase II proceedings, analyzed such data in order to determine viewing percentages accorded to *each* half-hour of the day, and applied such percentages to the surveyed broadcasts within IPG's study." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. all underlying documents, data, source material, and methodologies reflecting IPG's above-referenced analysis of "such data in order to determine viewing percentages accorded to *each* half-hour of the day."
 - b. underlying documents reflecting specifically how IPG applies the above-referenced viewing percentages "to the surveyed broadcasts within IPG's study."
 - c. all underlying documents, data, source material, and methodologies reflecting IPG's application of the above-referenced viewing percentages "to the surveyed broadcasts within IPG's study."
 - d. identification of the above-referenced "surveyed broadcasts within IPG's study," and all underlying documents, data, source material, and methodologies related thereto.
- 32. On page 21, Mr. Galaz states: "IPG also confirmed via Nielsen Media Research publications that there have been only trace changes in U.S. daypart viewing, even over the span of decades." In your production, please include all underlying documents supporting that statement, including without limitation, all referenced "Nielsen Media Research publications," other than that included in Exhibit IPG-7, if any, through which IPG confirmed "that there have only been trace changes in U.S. daypart viewing, even over the span of decades."
- 33. On page 23, Mr. Galaz states: "For the Sum Weighted Values attributed to the eleven million broadcasts surveyed by IPG, IPG has identified the Phase I category to which the program broadcast applies. Based on IPG's estimate of what figure applies to the pool for any Phase I category for any particular year, IPG has implemented such figure as a 'Cable Pool Factor'." In your production, please include all underlying documents supporting that statement, including without limitation, all underlying documents, data, source material, and methodologies used to perform these calculations

with respect to IPG Sports Claimants and IPG Sports Programs, including without limitation, all station weight and time period factors, along with any other data, used in IPG's calculations related to the sports category.

- 34. On page 23, Mr. Galaz states: "As a final step, the broadcast Length of all compensable broadcasts appearing in the IPG Survey were applied against the 'Station Weight Factor(s)' and the 'Time Period Weight Factor' to create a Weighted Value for each of eleven million broadcasts." In your production, please include all underlying documents supporting that statement, including without limitation, data, source material, and any methodologies used to perform the above-described calculations with respect to the sports category.
- 35. On page 23, Mr. Galaz states: "After segregating the compensable broadcasts into their respective Phase I categories, IPG thereafter summed the resulting Weighted Values for (i) all broadcasts, and (ii) all IPG-claimed broadcasts. The resulting values are referred to as the 'Sum Weighted Values', and are thereafter applied in a percentage format against the 'Cable Pool Factor'." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. all underlying documents, data, source material, and methodologies reflecting how IPG "summed the resulting Weighted Values" for all broadcasts in the sports category.
 - b. all underlying documents, data, source material, and methodologies reflecting how IPG "summed the resulting Weighted Values" for all IPG Sports Programs.
 - c. all underlying documents, data, source material, and methodologies reflecting how the resulting "Sum Weighted Values" are "applied in a percentage format against the 'Cable Pool Factor."
- 36. On page 26, Mr. Galaz states: "IPG-claimed programs represent no less than 1.18% of the aggregate logged Sports Programming broadcasts appearing in the IPG Survey for which adversarial claims will likely be made." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. all underlying documents, data, source material, and methodologies reflecting IPG's calculation that "IPG-claimed programs represent no less than 1.18% of the aggregate logged Sports Programming broadcasts appearing in the IPG Survey for which adversarial claims will likely be made."
 - b. identification of the programming titles and broadcast data for all "logged Sports Programming broadcasts appearing in the IPG Survey."

- 37. On page 26, Mr. Galaz states: "According to the IPG distribution methodology, for which a definitive dollar value cannot yet be discerned, IPG submits that the Sum Weighted Value for all IPG-claimed programming equals 0.10%, 0.0%, 1.00% and 0.0005% of the aggregate Sum Weighted Value of broadcasts falling in the Sports programming category for calendar years 2000-2003, respectively." In your production, please include all underlying documents supporting that statement, including without limitation: all underlying documents, data, source material, and methodologies reflecting how IPG calculated that "the Sum Weighted Value for all IPG-claimed programming equals 0.10%, 0.0%, 1.00% and 0.0005% of the aggregate Sum Weighted Value of broadcasts falling in the Sports programming category for calendar years 2000-2003, respectively."
- 38. All underlying documents used to prepare the following Exhibits, including any source data or methodologies used in preparing this data:
- a. Exhibit IPG-1.
- b. Exhibit IPG-2.
- c. Exhibit IPG-3.
- d. Exhibit IPG-4.
- e. Exhibit IPG-5.
- f. Exhibit IPG-6.
- g. Exhibit IPG-9.
- h. Exhibit IPG-10, including, all documents, source data, and other methodologies used with respect to the sports category, including without limitation:
 - i. identification of the meaning of "wvs" as used in the "Sum Weighted Values - IPG and Aggregate" table.
 - ii. identification of the meaning of "wvf" as used in the "Sum Weighted Values IPG and Aggregate" table.
 - iii. identification of the meaning of "% of IPG" as used in the "Sum Weighted Values IPG and Aggregate" table.
 - iv. identification of the meaning of "Sum Weighted Value Aggregate" as used in the "Sum Weighted Values IPG and Aggregate" table.

- v. identification of the meaning of "IPG Claimants % of Aggregate" as used in the "Sum Weighted Values IPG and Aggregate" table.
- vi. identification of the meaning of "wvs&f" as used in the "Sum Weighted Values IPG and Aggregate" table.
- vii. identification of the meaning of "Cable Pool Factor" as used in the "Sum Weighted Values IPG and Aggregate" table.
- viii. identification of the meaning of "\$\$ Value of IPG Claim" as used in the "Sum Weighted Values IPG and Aggregate" table.
- 39. Pursuant to 37 C.F.R. § 351.4, please provide a copy of Raul Galaz's curriculum vitae or résumé describing and listing Mr. Galaz's "background and qualifications." See 37 C.F.R. § 351.4.
- 40. Please provide all information required by Rule 351.10(e) of the Judges' Rules, including without limitation confidence intervals and all estimation techniques utilized in the testimony of Raul Galaz.

Respectfully submitted,

JOINT SPORTS CLAIMANTS

/s/ Stephen Marsh

Robert Alan Garrett
DC Bar No. 239681
Stephen K. Marsh
DC Bar No. 470765
Tara L. Williamson
DC Bar No. 1003484
ARNOLD & PORTER LLP
555 Twelfth Street, NW
Washington, DC 20004-1206
Telephone: (202) 942-5000
Fax: (202) 942-5999
robert.garrett@aporter.com
stephen.marsh@aporter.com

Counsel for the Office of the Commissioner of Baseball

June 6, 2012

EXHIBIT NUMBER 207

Before the COPYRIGHT ROYALTY JUDGES Washington, D.C.

In the Matter of)	
Distribution of 2000, 2001, 2002 And 2003 Cable Royalty Funds)	Docket No. 2008-2 CRB CD 2000-2003 (Phase II)

INDEPENDENT PRODUCERS GROUP RESPONSES TO DOCUMENT REQUESTS OF JOINT SPORTS CLAIMANTS

On behalf of Independent Producers Group ("IPG"), the following are the responses to the discovery requests propounded by the Joint Sports Claimants ("JSC"), dated June 6, 2012.

General Objections

IPG will respond to the requests to the best of its ability; however, with respect to each of the requests, IPG states the following General Objections:

- 1) IPG objects to these requests to the extent that they are vague, ambiguous, or otherwise not susceptible to a response, and to the extent that they are overly broad, unduly burdensome, and seek the disclosure of documents and information not reasonably calculated to lead to the discovery of evidence admissible in this proceeding.
- 2) IPG objects to these requests to the extent they call for the disclosure of information that is confidential to IPG and/or third parties. Any information identified as "confidential" shall be subject to a General Protective Order proposed to the Copyright Royalty Judges for this proceeding.
- 3) IPG objects to these requests to the extent that they seek disclosure of documents and information that is not subject to discovery pursuant to the regulations applicable to the Copyright Royalty Board, set forth at 37 C.F.R. Section 301.1,et seq.
- 4) IPG objects to these requests to the extent that the definitions and instructions purport to

- impose obligations beyond those imposed by the regulations of the Copyright Royalty Board.
- 5) IPG objects to these requests to the extent that they seek the disclosure of information and documents protected from disclosure by the attorney-client privilege and/or the work product doctrine.
- 6) IPG objects to these requests to the extent that they seek the disclosure of information and documents not within IPG's possession, custody, or control.
- 7) IPG objects to these requests to the extent that they seek the disclosure of information unrelated to these Phase II proceedings, or to the Phase II category in which the propounding party is involved.
- 8) IPG objects to these requests to the extent that they seek information in a form or format not regularly kept in the normal course of business.
- 9) IPG objects to these requests to the extent that they request the preparation of documents that do not exist.
- 10) IPG objects to these requests to the extent that they request the production of documents already included and produced as part of the Direct Case of IPG.

RESPONSES TO DOCUMENT REQUESTS

Testimony Of Raul Galaz

- 1. On page 8, Mr. Galaz states: "IPG indicated [in its Notice of its Intent to Participate] its representation of 288 producers and distributors." In footnote 3 on page 8, Mr. Galaz states that Exhibit IPG-1 lists the "producers and distributors whose programming is represented by IPG" either directly or through the Worldwide Subsidy Group LLC (California) ("WSG") which "has merged with IPG." Exhibit IPG-1 identifies 136 entities as "IPG-represented claimants 2000-2003 Cable Distribution proceedings (Phase II)," including three entities categorized as "Sports," i.e., Federation Internationale de Football Association, United States Olympic Committee and United Negro College Fund (collectively "IPG Sports Claimants."). Please provide all documents underlying the foregoing statements and Exhibit IPG-1 insofar as they relate to the IPG Sports Claimants, including without limitation:
 - a. All representation agreements between IPG and each IPG Sports Claimant, i.e., all documents in which an IPG Sports Claimant has authorized IPG to represent that

claimant.

- b. All representation agreements between WSG and each IPG Sports Claimant, i.e., all documents in which an IPG Sports Claimant authorized WSG to represent that claimant.
- c. All correspondence between IPG and each IPG Sports Claimant concerning IPG's representation of that claimant.
- d. All correspondence between WSG and each IPG Sports Claimant concerning IPG's representation of that claimant.
- e. All documents on which Mr. Galaz relies to support the assertion that each of the IPG Sports Claimants has authorized IPG to represent it in this Proceeding.

Response to Request 1: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

- 2. On page 10, Mr. Galaz states that: "IPG has identified 1,345 programs, (the "Programs) and 567,586 broadcasts within its catalogue that have been broadcast on stations generating substantial cable retransmission royalties during the 2000-2003 calendar year." In footnote 6 on page 10, Mr. Galaz states that Exhibit IPG-2 "lists ... the programs represented by IPG, and the Phase II categories in which they apply." Exhibit IPG-2 identifies four "IPG-Sports programming titles, i.e., Copa FIFA, U.S. Olympic Trials, UObjection, the document request is not calculated to lead to the discovery of admissible evidence. F Celebrity Golf and Tennis Tournament, World Cup Soccer, and World Cup Soccer Highlights" ("IPG Sports Programs"). Please produce all documents underlying the foregoing statements insofar as they relate to the IPG Sports Programs including, without limitation:
 - a. All documents identifying each of the broadcasts of the IPG Sports Programs, including without limitation, the stations that broadcast those Programs and the dates and times of those broadcasts.
 - b. All documents reflecting the royalties generated by each of the stations broadcasting the IPG Sports Programs during each of the years 2000-03.

<u>Response to Request 2</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

3. On page 10, Mr. Galaz states: "Each of the programs is either owned or controlled by entities that have assigned IPG the right to collect cable retransmission royalties attributable to their programming." Please produce all documents underlying that statement insofar as it concerns the IPG Sports Programs, including without limitation all documents on which Mr. Galaz relies in

asserting that the IPG Sports Claimants own or control the IPG Sports Programs.

<u>Response to Request 3</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

- 4. In footnote 6, on Page 10, Mr. Galaz states that Exhibit IPG-3 contains "data related to the number of broadcasts and programs claimed in any respective program category." Exhibit IPG-3 includes various data for the Phase I category "Sports." Please produce all documents underlying Exhibit IPG-3, including without limitation:
 - a. All documents used to prepare Exhibit IPG-3.
 - b. All underlying data, source material and documents sufficient to identify:
 - i. the titles of the two programs listed under the "IPG Claimant per Claimant" column in the "Sports" category row;
 - ii. the 73 broadcasts listed under the "IPG Claimant per Claimant" column in the "Sports" category row and any methods used to calculate same;
 - iii. the titles of the three programs listed under the "IPG Claimant per research" column in the "Sports" category row and any underlying research or source material supporting same;
 - iv. the 271 broadcasts listed under the "IPG Claimant per Research" column in the "Sports" category row and any methods used to calculate same.
 - c. All underlying data, source material, and methodologies used in the identification and calculation of the 29,192 broadcasts listed under the "Aggregate" column of the "Sports" category row, including but not limited to the stations on which such broadcasts aired, the dates and times when such broadcasts occurred, and the titles of the broadcasted programs.
 - d. All underlying data, source material and methodologies used in the identification and calculation of the 27 programs listed under the "Aggregate" column of the "Sports" category row, including the program titles for each of the 27 listed programs.
 - e. All underlying data, source material and methodologies used in the calculation of the 1.18% of broadcasts listed under the "IPG Claimants % of Aggregate" column in the "Sports" category row.

Response to Request 4: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the

Judges, IPG does not object to this request.

- 5. On page 10, Mr. Galaz states that: "IPG's identification of claimed broadcasts and programs falls into two categories (i) program titles for which the copyright owner identified the program either as part of the contracting documents, as part of IPG's prior representation, or in recent correspondence with IPG relating to these proceedings, or (ii) program titles identified through IPG's research of publicly available information." Please produce all documents underlying the above-referenced statements including, without limitation, all underlying documents reflecting:
 - a. the referenced contracting documents for all IPG Sports Programs.
 - b. any documents in which a copyright owner identified an IPG Sports Program as part of IPG's prior representation.
 - c. recent correspondence in which a program owner identified one of the IPG Sports Programs.
 - d. any publicly available information upon which IPG relied to determine that an IPG Sports Program was owned or controlled by an entity represented by IPG.

Response to Request 5: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request, as regards item a. Except as set forth in the General Objections stated above, IPG does not object to this request, as regards all other items.

6. On page 13, Mr. Galaz states: "IPG has data that reflects the compulsory license fees that have been generated by retransmitted stations, the number of distant households that received the retransmitted broadcasts, programming data reflecting the length of the broadcast, and data that reflects the viewership within particular time period calculated." Please produce all documents underlying the foregoing statements, including the above-referenced data.

<u>Response to Request 6</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

7. On pages 15-16, Mr. Galaz states that IPG obtained "data from Cable Data Corporation relating to the most significantly retransmitted stations during 2000 and 2001" and "acquired from TV Data Corporation all of the broadcast data for the 200 most retransmitted stations." Please produce all documents underlying the foregoing statements, including the above-referenced data.

<u>Response to Request 7</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

8. On page 16, Mr. Galaz states that "IPG obtained the updated and complete data from Cable Data Corporation of all retransmitted stations." Please produce all documents underlying the foregoing statements, including the above-referenced data.

<u>Response to Request 8</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

9. On pages 16-17, Mr. Galaz states: "The stations surveyed as part of the IPG station survey accounted for 89-93% of the aggregate number of households receiving retransmitted commercial signals in any given year during 2000-2003...." Please produce all documents underlying the foregoing statements, including, without limitation, all documents reflecting the source of such data and all underlying source materials and methodologies used in calculating same.

<u>Response to Request 9</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

10. On pages 16-17, Mr. Galaz states: "The stations surveyed as part of the IPG station survey accounted for . . . 94-96% of the distant cable retransmission fees generated in any given year during 2000-2003." Please produce all documents underlying the foregoing statements, including, without limitation, all documents reflecting the source of such data and all underlying source materials and methodologies used in calculating same.

<u>Response to Request 10</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

11. On page 17, footnote 11, Mr. Galaz states that Exhibit IPG-5 reflects the "IPG Station Survey' data sheet." Please produce all documents underlying the foregoing statements, including, without limitation, all documents reflecting the source of such data and all underlying source materials and methodologies used in calculating same.

Response to Request 11: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the

Judges, IPG does not object to this request.

12. On page 17, footnote 11, Mr. Galaz states: "Notwithstanding, many of the stations were retransmitted to a de minimus [sic] number of distant households and, consequently, generated insignificant retransmission royalty fees." In your production, please include all underlying documents in support of that statement, including without limitation any documents that identify the referenced stations that "were retransmitted to a de minimus [sic] number of distant households and, consequently, generated insignificant retransmission royalty fees," along with the methodology, data, or source material used in determining what qualifies as a "de minimus" [sic] number of households and an "insignificant" level of retransmission royalty fees.

<u>Response to Request 12</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

13. On page 17, Mr. Galaz states: "IPG reviewed the programs broadcast on such stations during their entire 24-hour time frame, for the entirety of the surveyed year. Such data originally consisted of 11,213,962 logged broadcasts, and a significantly greater number of stations than identified above." In your production, please include all underlying documents supporting that statement, including without limitation data from each station, including program titles, dates, and times for each program, along with any underlying data supporting IPG's calculation of the 11,213,962 broadcasts.

<u>Response to Request 13</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

- 14. On page 17, footnote 12, Mr. Galaz states: "Where identified, IPG omitted broadcasts that were not retransmitted. Notably there were substantial differences between the programs contained on the WGN Chicago over-the-air feed and WGN satellite feed distributed to cable operators." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. the broadcasts identified as not retransmitted that were omitted by IPG and the underlying data, source materials, and methodologies used in identifying such broadcasts.
 - b. the referenced "substantial differences between the programs contained on the WGN Chicago over-the-air feed and WGN satellite feed distributed to cable operators."

Response to Request 14: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the

Judges, IPG does not object to this request.

- 15. On page 17, Mr. Galaz states: "After omitting broadcasts of programming not compensable in this proceeding (e.g., network feed programming, PBS feed programming), 8,515,052 royalty generating broadcasts were identified, and 39,969 discrete titles of royalty-generating programming." In your production, please include, all underlying documents supporting that statement, including without limitation
 - a. the omitted broadcasts of programming "not compensable in this proceeding (e.g., network feed programming, PBS feed programming)," as well as the underlying data, source materials, and methodologies used in determining that such broadcasts were "not compensable."
 - b. the identified "8,515,052 royalty generating broadcasts" and "39,969 discrete titles of royalty-generating programming," including, but not limited to, all program titles, the stations on which those programs appeared, and the time in which the program aired.

<u>Response to Request 15</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

- 16. On page 17, Mr. Galaz states: "In all circumstances, IPG sought to confirm with all parties assigning rights to IPG which titles and broadcasts were either owned or controlled by them." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. IPG's efforts to "confirm with all parties assigning rights to IPG which titles and broadcasts were either owned or controlled by them," including all correspondence, communications, or other supporting documents reflecting communications between IPG and IPG Sports Claimants regarding the ownership or control of rights to titles and broadcasts claimed by IPG.
 - b. identification of all IPG Sports Claimants that IPG contacted in an effort to confirm "which titles and broadcasts were either owned or controlled by them."
 - c. identification of all IPG Sports Claimants and the titles of IPG Sports Programs obtained by IPG through this confirmation process.

<u>Response to Request 16</u>: Except as set forth in the General Objections stated above, IPG does not object to this request.

- 17. On pages 17-18, Mr. Galaz states: "In various other circumstances, IPG determined which titles and broadcasts were owned or controlled based on information within the IPG contracting documents, or previously provided to IPG in the course of IPG's representation." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. copies of the above-referenced "IPG contracting documents" reflecting all "information" from which "IPG determined which titles and broadcasts were owned or controlled" by IPG Sports Claimants.
 - b. copies of all underlying documents reflecting the above-mentioned "information . . . previously provided to IPG in the course of IPG's representation" from which "IPG determined which titles and broadcasts were owned or controlled" by IPG Sports Claimants.

Response to Request 17: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

18. On page 18, Mr. Galaz states: "In very limited circumstances, IPG's determination as to programs owned or controlled by IPG were based on independent research from publicly available sources." In your production, please include all underlying documents supporting that statement, including without limitation copies of the above-referenced "independent research from publicly available sources" regarding the IPG Sports Programs.

Response to Request 18: Except as set forth in the General Objections stated above, IPG does not object to this request.

- 19. On page 18, footnote 14, Mr. Galaz states: "Consequently, in the course of these proceedings, IPG has been required to re-educate virtually all of the parties from whom it acquired rights, and in many circumstances have forfeited claims because of lacking assistance or documentation." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. IPG's attempts to "re-educate" any IPG Sports Claimants," including, but not limited to, all communications, correspondence, or other underlying documents related thereto with respect to IPG Sports Claimants.
 - b. identification o any IPG Sports claimants "IPG has been required to re-educate."

<u>Response to Request 19</u>: Except as set forth in the General Objections stated above, IPG does not object to this request.

- 20. On page 18, Mr. Galaz states: "IPG thereafter winnowed down the claimed broadcasts in order to exclude any broadcasts that fell outside the rights held by the party, or outside of the rights granted to IPG. Generally, these included either temporal or territorial restrictions (e.g., 2000 broadcasts only, U.S.-originated broadcasts only, etc.)." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. a description of the methodology, data, or source material used by IPG to "winnow[] down the claimed broadcasts in order to exclude any broadcasts that fell outside the rights held by that party, or outside of the rights granted to IPG."
 - b. identification of all the above-referenced excluded broadcasts and the reason for IPG's exclusion of each.
 - c. identification of all the broadcasts excluded due to the above-referenced "temporal" restrictions.
 - d. identification of all the broadcasts excluded due to the above-referenced "territorial restrictions."

<u>Response to Request 20</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

21. On page 18, Mr. Galaz states: "[O]f the almost 40,000 royalty-generating programs from 2000-2003, IPG determined that 1,345 were owned or controlled by producers and distributors whom had assigned rights to IPG." In your production, please include all underlying documents supporting that statement, including without limitation: all documents reflecting the programming titles of any programs included in the 1,345 above-referenced programs for which IPG claims royalty collection rights.

<u>Response to Request 21</u>: Objection, the document request is not calculated to lead to the discovery of admissible evidence.

22. On page 19, footnote 15, Mr. Galaz states: "Exhibit IPG-4" contains "the list of 'Station Weight Factors' that were applied, i.e., the 'Average Distant Subscribers' and the 'Total Distant Fees-Gen." In your production, please include all underlying documents supporting that

¹ Please confirm that the reference to Exhibit IPG-4 in footnote 15 on page 19 was intended to apply to Exhibit IPG-5 (i.e., the reference to Exhibit IPG-4 appears to be mistaken). If that footnote was not intended to apply to IPG-5, produce all documents underlying IPG-4, including 10

statement, including without limitation: copies of all underlying data, source materials, or methodologies used in calculating the above mentioned "Station Weight Factors," "Average Distant Subscribers," and "Total Distant Fees-Gen," as well as a description of how such "Station Weight Factors" were applied.

<u>Response to Request 22</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

23. On page 19, Mr. Galaz states: "The first Station Weight Factor deemed 'SWF Subs' in IPG's data, is based solely on the number of distant cable subscribers that received the broadcast signal." In your production, please include all underlying documents supporting that statement, including without limitation all documents reflecting the "number of distant cable subscribers" that received broadcast signals.

Response to Request 23: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

24. On page 19, Mr. Galaz states: "The second Station Weight Factor deemed 'SWF Fees' in IPG's data, is based solely on the number of distant retransmission fees generated by the station upon which the broadcast was retransmitted." In your production, please include all underlying documents supporting that statement, including without limitation documents reflecting "the number of distant retransmission fees generated by the station[s] upon which the broadcast[s] w[ere] retransmitted."

Response to Request 24: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

25. On page 19, Mr. Galaz states: "A third alternative would be a Station Weight Factor based on a multiple of the prior two Station Weight Factors (i.e., 'SWF Subs & Fees'), thereby averaging the relative significance of the number of distant cable subscribers that received the broadcast signal, and the relative significance of fees generated by the station upon which the broadcast was retransmitted." In your production, please include all underlying documents supporting that statement, including without limitation, the referenced "multiple of the prior two Station Weight Factors" used by IPG in its calculation of "SWF Subs & Fees" and all underlying data, source materials and methodologies used in calculating same.

Response to Request 25: Except as set forth in the General Objections stated above, IPG does not object to this request. See Exh. IPG-10 to IPG's Direct Case.

26. On page 20, Mr. Galaz states: "the Station Weight Factors were derived from the subscribers and fees that exist for <u>Form 1</u>, <u>Form 2</u> and <u>Form 3</u> cable systems." In your production, please include all underlying documents supporting that statement, including without limitation, "the subscribers and fees that exist for <u>Form 1</u>, <u>Form 2</u> and <u>Form 3</u>," and all documents, data, source material, methodologies, and calculations underlying same.

<u>Response to Request 26</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

27. On page 20, Mr. Galaz states: "Form 1 and Form 2 cable systems accounted for almost 13% of the aggregate distant cable retransmission subscribers." In your production, please include all underlying documents supporting that statement, including without limitation, documents used in the above-referenced calculation.

<u>Response to Request 27</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

- 28. On page 20, Mr. Galaz states: "While [Form 1 and Form 2 cable] systems account for a significantly lower percentage of the cable retransmission fees that are generated, a subscribers/fees weighted average of 7.5% exists, resulting in an omission with significant consequences when applied against the relative significance of any surveyed station broadcast and the \$359 Million that is estimated to be the royalty value of the Program Suppliers, Devotional, and Sports Programming categories." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. documents reflecting that the above-referenced Form 1 and Form 2 cable systems' have a "significantly lower percentage of the cable retransmission fees that are generated" and all documents, data, source material, and methodologies used in calculating same.
 - b. all underlying documents, data, source material, and methodologies used in calculating the above-referenced statement that "subscribers/fees weighted average of 7.5%" for Form 1 and Form 2 cable systems.
 - c. all underlying documents, data, source material, and methodologies reflecting IPG's above-referenced application of the Form 1 and Form 2 subscribers/fees weighted average "against the relative significance of any surveyed station broadcast and the \$359 Million that is estimated to be the royalty value of the Program Suppliers, Devotional, and Sports

Programming categories."

Response to Request 28: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

- 29. On pages 20-21, Mr. Galaz states: "IPG has adjusted the value of each logged broadcast based on the value of the time period of the broadcast. More specifically, IPG utilized a factor (the 'Time Period Weight Factor') which utilizes Nielsen Media Research's assessment of viewership of all persons during half-hour dayparts, in order to weight the relative significance of any given broadcast." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. all documents, data, source material, and methodologies underlying IPG's "adjust[ment] [of] the value of each logged broadcast based on the value of the time period of the broadcast."
 - b. copies of the above-referenced "Nielsen Media Research's assessment of viewership of all persons during half-hour dayparts."
 - c. all documents, data, source material, and methodologies underlying IPG's "utiliz[ation] [of] Nielsen Media Research . . . in order to weight the relative significance of any given broadcast."

<u>Response to Request 29</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

30. On page 21, Mr. Galaz states: "In the 1997 Phase II proceedings, IPG submitted evidence published by Nielsen Media Research in order to reflect weekly viewing by daypart." In your production, please include all underlying documents supporting that statement, including without limitation the referenced "evidence published by Nielsen Media Research" that was submitted by IPG "[i]n the 1997 Phase II proceedings."

Response to Request 30: Objection, the document request is not calculated to lead to the discovery of admissible evidence. Notwithstanding, see Docket No. 2000-2 CARP CD 93-97, 66 Fed. Reg.66433 (2001).

31. On page 21, Mr. Galaz states: "In order to remedy this criticism, IPG has taken the Nielsen viewing data submitted by the MPAA in the 1997 Phase II proceedings, analyzed such data in order to determine viewing percentages accorded to each half-hour of the day, and applied such percentages to the surveyed broadcasts within IPG's study." In your production, please include

all underlying documents supporting that statement, including without limitation:

- a. all underlying documents, data, source material, and methodologies reflecting IPG's above-referenced analysis of "such data in order to determine viewing percentages accorded to each half-hour of the day."
- b. underlying documents reflecting specifically how IPG applies the above-referenced viewing percentages "to the surveyed broadcasts within IPG's study."
- c. all underlying documents, data, source material, and methodologies reflecting IPG's application of the above-referenced viewing percentages "to the surveyed broadcasts within IPG's study."
- d. identification of the above-referenced "surveyed broadcasts within IPG's study," and all underlying documents, data, source material, and methodologies related thereto.

<u>Response to Request 31</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

32. On page 21, Mr. Galaz states: "IPG also confirmed via Nielsen Media Research publications that there have been only trace changes in U.S. daypart viewing, even over the span of decades." In your production, please include all underlying documents supporting that statement, including without limitation, all referenced "Nielsen Media Research publications," other than that included in Exhibit IPG-7, if any, through which IPG confirmed "that there have only been trace changes in U.S. daypart viewing, even over the span of decades."

Response to Request 32: Except as set forth in the General Objections stated above, IPG does not object to this request.

33. On page 23, Mr. Galaz states: "For the Sum Weighted Values attributed to the eleven million broadcasts surveyed by IPG, IPG has identified the Phase I category to which the program broadcast applies. Based on IPG's estimate of what figure applies to the pool for any Phase I category for any particular year, IPG has implemented such figure as a 'Cable Pool Factor'." In your production, please include all underlying documents supporting that statement, including without limitation, all underlying documents, data, source material, and methodologies used to perform these calculations with respect to IPG Sports Claimants and IPG Sports Programs, including without limitation, all station weight and time period factors, along with any other data, used in IPG's calculations related to the sports category.

Response to Request 33: Except as set forth in the General Objections stated above, IPG does not object to this request. See Docket No. 2007-3 CRB CD 2004-2005, 75 Fed. Reg.57063 (2010). See Exh. IPG-9, IPG-10 to IPG's Direct Case.

34. On page 23, Mr. Galaz states: "As a final step, the broadcast Length of all compensable broadcasts appearing in the IPG Survey were applied against the 'Station Weight Factor(s)' and the 'Time Period Weight Factor' to create a Weighted Value for each of eleven million broadcasts." In your production, please include all underlying documents supporting that statement, including without limitation, data, source material, and any methodologies used to perform the above-described calculations with respect to the sports category.

Response to Request 34: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

- 35. On page 23, Mr. Galaz states: "After segregating the compensable broadcasts into their respective Phase I categories, IPG thereafter summed the resulting Weighted Values for (i) all broadcasts, and (ii) all IPG-claimed broadcasts. The resulting values are referred to as the 'Sum Weighted Values', and are thereafter applied in a percentage format against the 'Cable Pool Factor'." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. all underlying documents, data, source material, and methodologies reflecting how IPG "summed the resulting Weighted Values" for all broadcasts in the sports category.
 - b. all underlying documents, data, source material, and methodologies reflecting how IPG "summed the resulting Weighted Values" for all IPG Sports Programs.
 - c. all underlying documents, data, source material, and methodologies reflecting how the resulting "Sum Weighted Values" are "applied in a percentage format against the 'Cable Pool Factor."

Response to Request 35: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request. See also Exh. IPG-10 to IPG's Direct Case.

- 36. On page 26, Mr. Galaz states: "IPG-claimed programs represent no less than 1.18% of the aggregate logged Sports Programming broadcasts appearing in the IPG Survey for which adversarial claims will likely be made." In your production, please include all underlying documents supporting that statement, including without limitation:
 - a. all underlying documents, data, source material, and methodologies reflecting IPG's calculation that "IPG-claimed programs represent no less than 1.18% of the aggregate

logged Sports Programming broadcasts appearing in the IPG Survey for which adversarial claims will likely be made."

b. identification of the programming titles and broadcast data for all "logged Sports Programming broadcasts appearing in the IPG Survey."

Response to Request 36: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

37. On page 26, Mr. Galaz states: "According to the IPG distribution methodology, for which a definitive dollar value cannot yet be discerned, IPG submits that the Sum Weighted Value for all IPG-claimed programming equals 0.10%, 0.0%, 1.00% and 0.0005% of the aggregate Sum Weighted Value of broadcasts falling in the Sports programming category for calendar years 2000-2003, respectively." In your production, please include all underlying documents supporting that statement, including without limitation: all underlying documents, data, source material, and methodologies reflecting how IPG calculated that "the Sum Weighted Value for all IPG-claimed programming equals 0.10%, 0.0%, 1.00% and 0.0005% of the aggregate Sum Weighted Value of broadcasts falling in the Sports programming category for calendar years 2000-2003, respectively."

<u>Response to Request 37</u>: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request.

- 38. All underlying documents used to prepare the following Exhibits, including any source data or methodologies used in preparing this data:
 - a. Exhibit IPG-1.
 - b. Exhibit IPG-2.
 - c. Exhibit IPG-3.
 - d. Exhibit IPG-4.
 - e. Exhibit IPG-5.
 - f. Exhibit IPG-6.
 - g. Exhibit IPG-9.

- h. Exhibit IPG-10, including, all documents, source data, and other methodologies used with respect to the sports category, including without limitation:
 - i. identification of the meaning of "wvs" as used in the "Sum Weighted Values IPG and Aggregate" table.
 - ii. identification of the meaning of "wvf" as used in the "Sum Weighted Values IPG and Aggregate" table.
 - iii. identification of the meaning of "% of IPG" as used in the "Sum Weighted Values IPG and Aggregate" table.
 - iv. identification of the meaning of "Sum Weighted Value Aggregate" as used in the "Sum Weighted Values IPG and Aggregate" table.
 - v. identification of the meaning of "IPG Claimants % of Aggregate" as used in the "Sum Weighted Values IPG and Aggregate" table.
 - vi. identification of the meaning of "wvs&f" as used in the "Sum Weighted Values IPG and Aggregate" table.
 - vii. identification of the meaning of "Cable Pool Factor" as used in the "Sum Weighted Values IPG and Aggregate" table.
 - viii. identification of the meaning of "\$\$ Value of IPG Claim" as used in the "Sum Weighted Values IPG and Aggregate" table.

Response to Request 38: Subject to the terms of a Protective Order prohibiting the dissemination of documents and information to parties other than IPG, JSC, and the Judges, IPG does not object to this request, as regards Exhs. IPG-1, IPG-3, IPG-4, IPG-5, IPG-6, IPG-10. Except as set forth in the General Objections stated above, IPG does not object to this request, as regards IPG-2, IPG-9. See Docket No. 2007-3 CRB CD 2004-2005, 75 Fed. Reg.57063 (2010).

39. Pursuant to 37 C.F.R. § 351.4, please provide a copy of Raul Galaz's curriculum vitae or résumé describing and listing Mr. Galaz's "background and qualifications." See 37 C.F.R. § 351.4.

<u>Response to Request 39</u>: Except as set forth in the General Objections stated above, IPG does not object to this request.

40. Please provide all information required by Rule 351.10(e) of the Judges' Rules, including without limitation confidence intervals and all estimation techniques utilized in the testimony of Raul Galaz.

Response to Request 40: Except as set forth in the General Objections stated above, IPG does not object to this request.

IPG DOCUMENTS TO BE PRODUCED

Documents produced in hard copy:

- 1. Organizational filings for Worldwide Subsidy Group LLC (Texas)
- 2. Agreement of Assignment and Transfer of Assets of Worldwide Subsidy Group LLC (California)*
- 3. MPAA distribution methodology agreements from 1997 cable distribution proceedings
- 4. 2000-2003 claims for cable retransmission royalties filed with U.S. Copyright Office
- 5. Representation agreements between various parties and either Worldwide Subsidy Group LLC (California) or Worldwide Subsidy Group LLC (Texas)*
- 6. Represented Programs identified within contracting documents
- 7. IPG-represented programs previously provided to IPG
- 8. Account statements from AGICOA and CCC for IPG-represented programs
- 9. Catalogue research
- 10. Response to Request for 2000-2003 Title Identification #1
- 11. Response to Request for 2000-2003 Title Identification #2
- 12. Broadcast Verifications
- 13. Email correspondence (form) to IPG-represented parties
- 14. Correspondence between IPG and Cable Data Corporation
- 15. Correspondence between IPG and TV Data (cka Tribune Media Services)

Documents produced in electronic format:

- 21. Data received from Cable Data Corporation*
- 22. IPG Stations Surveyed 2000-2003*
- 23. Data received from Tribune Media Services*
 - 23a. Data received 2001
 - 23b. Data received 2002
 - 23c. Data received 2011
- 24. Data received from Tribune Media Services re: WGNA*
- 25. Titles 2000-2003 25k full
- 26. Titles 2000-2003 50k full
- 27. Omitted
- 28. Omitted
- 29. Claimant Broadcast files
- 30. Omitted
- 31. 2000-2003 Titles Royalty Generating
- 32. 2000-2003 Titles Royalty Generating w Distributor Information Sports Programming
- 33. MPAA Produced Nielsen Data (Second) (102 stations)*
- 34. Time Period Weight Factor Calculation
- 35. IPG integrated database Sports Programming*

*to be produced under proposed Protective Order

Respectfully submitted,

Dated: June 14, 2012

Brian D. Boydston, Esq.
California State Bar No. 155614

PICK & BOYDSTON, LLP 10786 Le Conte Ave. Los Angeles, California 90024 Telephone: (213) 624-1996 Facsimile: (213) 624-9073 Email: brianb@ix.netcom.com

Attorneys for Independent Producers Group

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June, 2012, a copy of the foregoing was sent by overnight mail to the parties listed on the attached Service List.

/s/	
Brian D.	Boydston

JOINT SPORTS CLAIMANTS:

Robert Alan Garret, Esq. Stephen K. Marsh Marco Palmieri ARNOLD & PORTER LLP 555 Twelfth Street, NW Washington, D.C. 20004-1206

EXHIBIT NUMBER 208

Stephen K. Marsh Stephen.Marsh@aporter.com

+1 202.942.5232 +1 202.942.5999 Fax

555 Twelfth Street, NW Washington, DC 20004-1206

June 28, 2012

VIA EMAIL AND FEDERAL EXPRESS

Brian D. Boydston, Esq. PICK & BOYDSTON, LLP 10786 Le Conte Ave. Los Angeles, California 90024

Re:

Docket No. 2008-2 CRB CD 2000-2003

Distribution of 2000, 2001, 2002 and 2003 Cable Royalty Funds Follow-up Discovery Requests of the Joint Sports Claimants

Dear Brian:

In connection with the Direct Case of Independent Producers Group ("IPG") filed in the above-referenced proceeding, and as contemplated by the Order of the Copyright Royalty Judges dated January 11, 2012, the Joint Sports Claimants ("JSC") hereby submit follow-up discovery requests ("Follow-up Requests"). JSC reserves the right to supplement these requests in the event that JSC receives discovery materials that should have been produced in response to its initial discovery requests, which were served on IPG on June 6, 2012. JSC also reserves the right to supplement these requests to account for the fact that IPG failed to associate documents in its production with JSC's specific discovery requests. Any future discovery production by IPG should specifically link responsive documents with JSC's document requests. These document requests are continuing in nature and IPG is requested to supplement its responses and produce additional documents to the fullest extent contemplated by the rules and procedures of the Copyright Royalty Judges.

In accordance with the parties' interim discovery agreement, we expect to receive your responses to these requests by July 5, 2012.

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FOLLOW-UP REQUESTS

Instructions:

These requests should be answered in accordance with the instructions and definitions that accompanied the Joint Sports Claimants' Initial Discovery Requests dated June 6, 2012 ("JSC's Initial Discovery Requests") which are hereby incorporated by reference. The Follow-up Requests are numbered sequentially, continuing from the final numbered request in JSC's Initial Requests. Also, please note that as used herein, "JSC's Initial Discovery Request Nos." refers to JSC's Initial Discovery Requests.

In response to JSC's Initial Discovery Requests, the Independent Producers Group produced a substantial amount of electronic documents ("IPG's Initial Document Production"), some of which had to be substantially reformatted at considerable time and expense of JSC in order to be useable. Furthermore, IPG's Initial Document Production was made without any indication of the JSC Initial Discovery Requests to which such documents were purportedly responsive. As requested in our prior correspondence, please identify for all documents produced in response to both JSC's Initial Discovery Requests and Follow-up Requests the specific request(s) to which such document(s) are responsive.

Lastly, IPG listed "Omitted" three times in its list of "Documents produced in electronic format" (IPG Initial Document Production Items 27, 28, and 30). These items have yet to be identified or produced by IPG. In each instance in which IPG has "Omitted" or objected to the production of requested underlying documents, please identify the responsive documents and state your basis for any claimed objection(s) and for omitting such documents from your production. Moreover, if you believe you have already provided the documents, please state with particularity where in your document production such documents may be found. In each Follow-up Request, if no responsive document exists, please state so clearly.

Definitions:

In addition to the definitions set forth in the above Instructions and incorporated herein from JSC's Initial Discovery Requests, the below listed terms are defined as follows:

A. As used herein, "IPG" means Independent Producers Group, including but not limited to Worldwide Subsidy Group, LLC; WSG-Texas; WSG-California; Artist Collections Group, LLC or any divisions, departments, parents, predecessors, successors,

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subsidiaries, affiliates, and other organizational or operating units, and present or former officers, directors, employees, or agents.

- B. As used herein, "IPG Sports Claimants" refers to the 136 entities identified in Exhibit IPG-1 as "IPG-represented claimants 2000-2003 Cable Distribution proceedings (Phase II)," including three entities categorized as "Sports," *i.e.*, Federation Internationale de Football Association, United States Olympic Committee and United Negro College Fund.
- C. As used herein, "IPG Sports Programs" refers to the four claimed IPG-Sports programming titles, Copa FIFA, U.S. Olympic Trials, UNCF Celebrity Golf and Tennis Tournament, World Cup Soccer, and World Cup Soccer Highlights identified in Exhibit IPG-2.

Requests:

- 41. In Mr. Galaz's testimony, he states that IPG represents a number of producers and distributors of programming," including producers and distributors referenced in Exhibit IPG-1. In JSC's Initial Discovery Request Nos. 1(a) and 1(b), JSC asked IPG to produce documents underlying this statement, including "[a]ll representation agreements between IPG [or WSG] and each IPG Sports Claimant, i.e., all documents in which an IPG Sports Claimant authorized IPG [or WSG] to represent that claimant." In IPG's Initial Document Production, IPG included the following representation agreements:
 - An unsigned proposed representation agreement between WSG and Federation Internationale de Football Association ("FIFA"), bates stamped IPG 2002-2005.
 - A signed representation agreement between WSG and the United Negro College Fund listing a date of November 30, 1998, bates stamped IPG 2006-2007.
 - A signed representation agreement between WSG and the United States Olympic Committee listing a date of July 25, 2000, bates stamped IPG 2008-2014.

Please confirm that these agreements are responsive to JSC's Initial Discovery Request Nos. 1(a) and 1(b). Also, please confirm that IPG has no other representation agreements, signed or unsigned, upon which IPG relies for its claim that it "represents"

Brian Boydston June 28, 2012 Page 4

any IPG Sports Claimant referenced in Exhibit IPG-1. If other such agreements exist, please produce those agreements.

- 42. With respect to the proposed representation agreement between WSG and FIFA, IPG 2001-2005, please produce any and all correspondence related to this unsigned proposal, including but not limited to any correspondence in which IPG, WSG, and/or Artist Collections Group transmitted this unsigned proposal to FIFA, and any and all correspondence from FIFA regarding its acceptance of the terms outlined in this proposal. If a proposal was attached to an email, please denote that fact or otherwise provide the documents in a form in which attachments to any correspondence can be readily associated with that correspondence.
- 43. In Mr. Galaz's testimony, he states that IPG "represents a number of producers and distributors of programming," including producers and distributors referenced in Exhibit IPG-1. In JSC's Initial Discovery Request Nos. 1(c) and 1(d), JSC asked IPG to produce documents underlying this statement, including "[a]ll correspondence between IPG [or WSG] and each IPG Sports Claimant concerning IPG's [or WSG's] representation of that claimant." In IPG's Initial Document Production, IPG included the following correspondence:
 - An email from Martinka Bühler to "moshita@bigplanet.com," dated July 31, 2001, bates stamped IPG 2001.
 - An email from Keller Maser to Denise Vernon, dated January 10, 2012, bates stamped IPG 2019.
 - An email from "worldwidesg@aol.com" to Kelly Maser, dated January 10,
 2012, bates stamped IPG 2019 (part of the same thread as the previous email).
 - An email from Keller Maser to Denise Vernon, dated May 17, 2012, bates stamped IPG 2021.
 - An email from "worldwidesg@aol.com" to Kelly Maser, dated May 11, 2012, bates stamped IPG 2019 (part of the same thread as the previous email)
 - An email from Desiree Boykin to "worldwidesg@aol.com," dated May 16, 2012, bates stamped IPG 2022.

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> An email from "worldwidesg@aol.com" to Desiree Boykin, dated May 11, 2012, bates stamped IPG 2022 (part of the same thread as the previous email)

Please confirm that these documents are responsive to JSC's Initial Discovery Request Nos. 1(c) and 1(d). Also, please confirm that IPG [or WSG] has no other documents upon which IPG relies for its claim that it "represents" any IPG Sports Claimant referenced in Exhibit IPG-1. If other such documents exist, please produce such correspondence.

- 44. With respect to the email from Martinka Bühler to "moshita@bigplanet.com," dated July 31, 2001 and bates stamped IPG 2001, the email specifically refers to a "fax sent to Roger Feiner on 22 July 2001" concerning the above-referenced matter [Copyright Collectives]." Please produce the fax sent to Mr. Feiner on 22 July 2001. Please provide a copy of the referenced fax, along with any other correspondence from WSG or IPG to FIFA concerning IPG's or WSG's proposed representation of FIFA.
- 45. With respect to the unsigned proposed representation agreement between WSG and Federation Internationale de Football Association ("FIFA"), bates stamped IPG 2002-2005, the proposed agreement states that the "Principal [FIFA] will promptly inform WSG of additional Programs owned and/or distributed by Principal." The proposed agreement also provides that the Principal [FIFA]:

shall provide WSG pertinent information regarding the Programs that will assist in the application for and collection of Distribution Proceeds, including the number of episodes produced (if applicable), the director(s), writer(s) and actor(s) for the Program, a list of each territory for which each Program is being distributed and the identity of the local distributor. Upon further request by WSG, Principal [FIFA] shall provide WSG any and all documents relating to the distribution of Programs in a territory.

IPG 2002, ¶ 3. In IPG's Initial Production, it did not provide any correspondence or other documents from FIFA in which FIFA informed IPG of "Programs" owned and/or distributed by FIFA. Such information plainly falls within JSC's Initial Discovery Request No. 3, in which JSC requested all documents underlying Mr. Galaz's statement on page 10 of his testimony that "Each of the programs [within IPG's catalogue] is either

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owned or controlled by entities that have assigned IPG the right to collect cable retransmission royalties attributable to their programming." Please confirm that no such documents exist. If such documents do exist, please produce all such documents, including but not limited to any correspondence between IPG or WSG and FIFA in which FIFA made representations about Programs it owned or distributed.

- 46. On page 10 of his testimony, Mr. Galaz states that "IPG has identified 1,345 programs, (the "Programs") and 567,586 broadcasts within its catalogue that have been broadcast on stations generating substantial cable retransmission royalties during the 2000-2003 calendar year. In JSC's Initial Discovery Request No.2, JSC asked IPG to produce documents underlying this statement, including but not limited to "[a]ll documents identifying each of the broadcasts of the IPG Sports Programs" during 2000-2003. In its Initial Production, IPG produced the following:
 - Item No. 23a, TV Data from 2000 for various broadcast stations
 - Item No. 23b, TV Data from 2001 for various broadcast stations
 - Item No. 23c, Tribune Data of various broadcast stations for years 2000-2003 (unformatted)
 - Item No. 24, TV Data for WGN for 2000-2003
 - Item No. 29, a set of spreadsheets that lists broadcasts of programs claimed by the United States Olympic Committee, the United Negro College Fund, and FIFA
 - Item No. 32, a spreadsheet listing royalty-generating Sports programs
 - Item No. 35, a spreadsheet listing IPG Database Sports Programming

Please confirm which of these documents are responsive to JSC's Initial Discovery Request No.2. Also, please confirm that IPG has no other documents responsive to JSC's Initial Discovery Request No. 2 regarding the broadcasts of IPG Sports Programs during 2000-2003. If other such documents exist, please produce those documents.

47. On page 17 of his testimony, Mr. Galaz testifies that "IPG reviewed the programs broadcast on such stations during their entire 24-hour time frame, for the

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entirety of the survey year. Such data originally consisted of 11,213,962 logged broadcasts." In JSC's Initial Discovery Request No.2, JSC asked IPG to produce documents underlying this statement. Please confirm whether Items 23a, 23b, and 23c in IPG's Initial Production are responsive to this request. Also, please confirm whether any other documents are responsive to this request. If there are other documents responsive to this request that have not been produced, please produce those documents.

- 48. On page 17, footnote 12 of his testimony, Mr. Galaz describes IPG's omission of broadcasts not retransmitted and specifically references the differences in programs contained on WGN Chicago and "WGN satellite feed" [WGNA]. In JSC's Initial Discovery Request No.14, JSC asked IPG to produce documents underlying this statement. In IPG's Initial Production, it produced Item 23a (TV Data listings for 2000 received in 2001), Item 23b (TV Data listings for 2001 received in 2002), and Item 23c (Tribune data received in 2011 for years 2000-03), along with Item 24 (TV Data listings for WGNA). Please confirm that these items are the only documents underlying the statement referenced above on page 17, footnote 12. If there are other documents responsive to this request that have not been produced—including, for instance, a spreadsheet or other document in which compensable programs were separated from noncompensable programs on WGNA—please produce those documents.
- 49. On page 17 of his testimony, Mr. Galaz states that he omitted broadcasts of non-compensable programming from his computation, including "network feed programming" and "PBS programming." Mr. Galaz explains therein that after eliminating this programming, he identified "8,515,052 royalty generating broadcasts." In JSC's Initial Discovery Request No.15, JSC asked IPG to produce documents underlying this statement. In IPG's Initial Production, it produced Items 23a, 23b, and 24 (described in JSC Follow Up Request No. 8). Please confirm that these are the only documents produced that are responsive to this request. Please produce additional documents, including but not limited to spreadsheets or other documents, that reflect IPG's compilation of non-compensable programming used to generate the specific number of compensable broadcasts.
- 50. On page 17 of his testimony, Mr. Galaz testifies that "[i]n all circumstances, IPG sought to confirm with all parties assigning rights to IPG which titles and broadcasts were either owned or controlled by them." In JSC's Initial Discovery Request No.16, JSC asked IPG to produce documents underlying this statement. In IPG's Initial Production, it produced hard copy documents, including IPG 0097 to 0104, which consists of five templates of correspondence that IPG presumably sent to putative claimants. Please produce the actual correspondence, including attachments, sent to each

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of the IPG Sports Claimants in connection with IPG's claimed effort to confirm that those parties owned or controlled the rights to certain programming, including correspondence that differs in any way from the templates sent to other IPG claimants (IPG 0097-0104).

- (a) In IPG's Initial Production, presumably in response to JSC Request No. 16 (identified above), IPG provided templates of correspondence transmitted to claimants regarding their ownership or control of broadcasts. IPG 0097 states that "we need all represented claimants to review the attached Excel spreadsheet, which contains a list of the 2000-2003 royalty generating programs, and identify which programs were owned or controlled during the 2000-2003 calendar years." Please produce all documents, including correspondence and attachments, submitted by an IPG Sports Claimant in which an a program was identified in response to this request or any of the other requests appearing in IPG 0097-0104. If already produced, please identify the specific spreadsheet attached to the transmission of these requests or any responses thereto.
- (b) In IPG's Initial Production, it produced IPG 0101, a hard copy template of correspondence presumably transmitted to various parties that IPG claims to represent. That document notes that the initial spreadsheet forwarded by IPG was defective, in part because a "database upon which [IPG] relied may have mischaracterized the means by which certain programming had been delivered." Please provide a copy of the original database that "mischaracterized" the means by which programs were delivered and which was sent to one of the IPG Sports Claimants.
- (c) In IPG's Initial Production, and presumably in response to JSC's Initial Request No. 16, IPG produced email correspondence from the U.S. Olympic Committee ("USOC") and UNCF regarding programs potentially controlled or owned by those entities. See IPG 2021-2022. Please produce the attachments referenced, and if already produced, please identify which documents produced are responsive to this request. Also, please produce the second page of the emails for both IPG 2019, 2021 and IPG 2022, all of which purport to be emails from the USOC or UNCF complying with IPG's request.
- 51. On pages 17-18 of his testimony, Mr. Galaz testifies that "[i]n various circumstances, IPG determined which titles and broadcasts were owned or controlled based on information within the IPG contracting documents, or previously provided to IPG in the course of IPG's representation." In IPG's Initial Production, IPG produced two signed representation agreements and one unsigned proposed agreement. See Item No. 5 (IPG 2002-2005, IPG 2006-2007, and IPG 2008-2014). None of these agreements

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reference any specific programs. Please confirm that IPG is not producing any contracting documents underlying its claim regarding ownership or control of IPG Sports Programs. If such documents do exist, please produce them.

- 52. On pages 17-18 of his testimony, Mr. Galaz testifies that "[i]n various circumstances, IPG determined which titles and broadcasts were owned or controlled based on information within the IPG contracting documents, or previously provided to IPG in the course of IPG's representation."
- (a) In IPG's Initial Production, IPG produced two signed representation agreements and one unsigned proposed agreement. See Item No. 5 (IPG 2002-2005, IPG 2006-2007, and IPG 2008-2014). None of these agreements reference any specific programs. Please confirm that IPG is not producing any contracting documents underlying its claim regarding ownership or control of IPG Sports Programs. If such documents do exist, please produce them.
- (b) Other than IPG 2019-2021, IPG has not produced any documents that suggest that an IPG-represented claimant has provided information about its ownership or control of programs to IPG in the course of IPG's representation of that party. Please confirm that with respect to IPG Sports Claimants, IPG Documents 2019-2021 represent the only documents underlying Mr. Galaz's claim that on some occasions, IPG determined ownership or control of programs through information provided to IPG in the course of its representation. If such documents do exist, please produce them.
- 53. On page 18 of his testimony, Mr. Galaz states that "[i]n very limited circumstances, IPG's determination as to programs owned or controlled by IPG were based on independent research from publicly available sources." IPG has not produced any public research regarding ownership or control of programs by any of the IPG Sports Claimants. Please confirm that no such documents exist. If such documents do exist, please produce them.
- 54. On page 20 of his testimony, Mr. Galaz discusses how IPG "winnowed down the claimed broadcasts" to exclude broadcasts that fell outside the rights of IPG-represented parties. Please produce the data from which this "winnowed down" information was derived.
- 55. On page 23 of his testimony, Mr. Galaz states: "For the Sum Weighted Values attributed to the eleven million broadcasts surveyed by IPG, IPG has identified the Phase I category to which the program broadcast applies." In JSC's Initial Discovery

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Request No. 33, JSC asked IPG to produce, without limitation, all documents underlying this statement. IPG, however, has not produced all documents reflecting its categorization of programming, and given the fact that disputes exist regarding the categorization of certain programs, JSC asks that IPG produce all documents underlying IPG's categorization of Phase I programs, including without limitation those documents that reflect IPG's allocation of programs to the Program Suppliers category, the Commercial Television category and the Canadian category.

- 56. Pursuant to 37 C.F.R. § 351.4, JSC's Initial Discovery Request No. 39 asked IPG to "provide a copy of Raul Galaz's curriculum vitae or résumé describing and listing Mr. Galaz's 'background and qualifications.'" See 37 C.F.R. § 351.4. IPG, however, has not produced any documents regarding Mr. Galaz's "background and qualifications." Please confirm that IPG is not producing any documents describing or listing Mr. Galaz's background and qualifications. If such documents do exist, please produce them. If no responsive document exists, please state so clearly.
- 57. Pursuant to Rule 351.10(e) of the Judges' Rules, JSC's Initial Discovery Request No. 40 asked IPG to "provide all information required by Rule 351.10(e) of the Judges' Rules, including without limitation confidence intervals and all estimation techniques utilized in the testimony of Raul Galaz." IPG, however, has not produced any such documents. Please confirm that IPG is not producing any documents underlying the information required by Rule 351.10(e), including, without limitation, confidence intervals and all estimation techniques used in the testimony of Raul Galaz. If such documents do exist, please produce them. If no responsive document exists, please state so clearly.
- 58. With respect to Exhibit 3, referenced in the testimony of Mr. Galaz, please provide documents that support IPG's categorization of IPG Sports Programs, including but not limited to:
- (a) Underlying computations used to calculate the "Aggregate" number of Sports broadcasts in Exhibit 3 for "Sports," including worksheets or other manipulations of existing databases used to create this Exhibit.
- (b) Documents that identify which IPG Sports Claimants fall in the category of "IPG Per Claimant" or "IPG per IPG research."
- 59. With respect to Exhibit 6, IPG provides time period weight calculations. Please provide a description of the acronyms used in this Exhibit. Please provide

Brian Boydston June 28, 2012 Page 11

documents that reflect the underlying computations that led to the creation of these numbers, including worksheets or other manipulations of existing electronic databases upon which IPG relied in presenting the specific numbers in Exhibit 6.

- 60. With respect to Exhibit 10, IPG provides various figures for "Sports" for 2000, 2001, 2002, and 2003. Please provide a description of the acronyms used in this Exhibit. For each set of numbers, please provide documents that reflect the underlying computations that led to the creation of these numbers for the Sports category, including worksheets or other manipulations of existing electronic databases upon which IPG relied in presenting the specific numbers in Exhibit 10.
- 61. With respect to Exhibit 9, IPG provides "Cable Pool Factor" totals for "Sports" for 2000, 2001, 2002, and 2003. For each set of numbers, please provide documents that reflect the underlying computations that led to the creation of these numbers for the Sports category, including worksheets or other manipulations of existing electronic databases upon which IPG relied in presenting the specific numbers in Exhibit 9.
- 62. With respect to Items 23a, 23b, 23c, 24, and 35 included in IPG's Initial Production, please explain the meaning of each column heading and each of the alphanumeric codes used in those columns. Please also provide all underlying documents explaining the various codes included in each of the spreadsheets produced by IPG, including how they are determined, what they mean, and how they are applied. Your requested explanation should include (but not be limited to) explanations for the following:
- (a) The letters B, F, L, S, T, U, X, etc. listed under the column entitled "origination_code." Please explain what information is included in that column and what each of the listed letters mean.
- (b) The various numbers from 1-14 listed in the column entitled "program_type." Please explain what information is included in that column and what the listed numbers mean.

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June 28, 2012

Respectfully submitted,

JOINT SPORTS CLAIMANTS

/s/ Tara L. Williamson

Robert Alan Garrett
DC Bar No. 239681
Stephen K. Marsh
DC Bar No. 470765
Tara L. Williamson
DC Bar No. 1003484
ARNOLD & PORTER LLP
555 Twelfth Street, NW
Washington, DC 20004-1206
Telephone: (202) 942-5000
Fax: (202) 942-5999
robert.garrett@aporter.com
stephen.marsh@aporter.com

Counsel for the Office of the Commissioner of Baseball

EXHIBIT NUMBER 209

Before the COPYRIGHT ROYALTY JUDGES Washington, D.C.

• •		
In the Matter of) '	
)	
Distribution of 2000, 2001, 2002)	Docket No. 2008-2 CRB CD 2000-2003
And 2003 Cable Royalty Funds)	(Phase II)
)	

INDEPENDENT PRODUCERS GROUP RESPONSES TO FOLLOW-UP DOCUMENT REQUESTS OF JOINT SPORTS CLAIMANTS

On behalf of Independent Producers Group ("IPG"), the following are the responses to the discovery requests propounded by the Joint Sports Claimants ("JSC"), dated June 25, 2012.

General Objections

IPG will respond to the requests to the best of its ability; however, with respect to each of the requests, IPG states the following General Objections:

- 1) IPG objects to these requests to the extent that they are vague, ambiguous, or otherwise not susceptible to a response, and to the extent that they are overly broad, unduly burdensome, and seek the disclosure of documents and information not reasonably calculated to lead to the discovery of evidence admissible in this proceeding.
- 2) IPG objects to these requests to the extent they call for the disclosure of information that is confidential to IPG and/or third parties. Any information identified as "confidential" shall be subject to a General Protective Order proposed to the Copyright Royalty Judges for this proceeding.
- 3) IPG objects to these requests to the extent that they seek disclosure of documents and information that is not subject to discovery pursuant to the regulations applicable to the Copyright Royalty Board, set forth at 37 C.F.R. Section 301.1,et seq.
- 4) IPG objects to these requests to the extent that the definitions and instructions purport to

impose obligations beyond those imposed by the regulations of the Copyright Royalty Board.

- 5) IPG objects to these requests to the extent that they seek the disclosure of information and documents protected from disclosure by the attorney-client privilege and/or the work product doctrine.
- 6) IPG objects to these requests to the extent that they seek the disclosure of information and documents not within IPG's possession, custody, or control.
- 7) IPG objects to these requests to the extent that they seek the disclosure of information unrelated to these Phase II proceedings, or to the Phase II category in which the propounding party is involved.
- 8) IPG objects to these requests to the extent that they seek information in a form or format not regularly kept in the normal course of business.
- 9) IPG objects to these requests to the extent that they request the preparation of documents that do not exist.
- 10) IPG objects to these requests to the extent that they request the production of documents already included and produced as part of the Direct Case of IPG.
- 11) IPG objects to the instructions to the extent that they call for either responses or the production of documents in a format beyond what is required by the Copyright Royalty Board regulations, or in a format with which the responding party did not cooperate with IPG, e.g., repeating each of the requests.

Comments on Instructions and Definitions

IPG's electronic records produced in response to JSC's initial discovery requests were produced in the identical format maintained by IPG. At no time subsequent to the production, nor prior to JSC's follow-up requests, has JSC indicated to IPG that it had any difficulty accessing such electronic records.

IPG's responses to JSC's initial discovery requests were produced with a list and description by category of all responsive documents, which is not required, and was not an act performed by JSC. All produced documents and electronic records were produced with cover pages or electronic description that clearly indicated to which category the documents and electronic records belonged. Many of JSC's initial documents requests requested redundant documents, and IPG's method of response was considered by IPG to be more helpful than by simply referring to which document request a particular document was responsive.

In JSC's prefatory comments, JSC refers to three items on IPG's responses to the JSC initial requests in which the term "omitted" was inserted, suggesting that there were unproduced documents. This assertion is incorrect. As should be evident from the reference, the referenced items were part of a form that referred to categories of documents for which there were no applicable JSC requests, or no responsive documents.

IPG does not accept JSC's definition of "IPG Sports Claimants" to include entities whose programming is not being sought for compensation in the sports programming Phase II proceedings. As set forth in IPG's General Objections, IPG objects to the requests to the extent that they seek the disclosure of information unrelated to these Phase II proceedings, or to the Phase II category in which the propounding party is involved.

RESPONSES TO DOCUMENT REQUESTS

- 41. <u>IPG Response</u>: JSC mischaracterizes its previous document request #1 as constituting multiple document requests. IPG understood request #1 as requesting the controlling documents relating to the authorization provided to IPG, and would object to any further production pursuant to document request #1 (e.g., "all correspondence...") as overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding, and for purposes of clarification, IPG will provide correspondence relating to the unexecuted agreement between IPG and IPG Sports Claimant Federation Internationale de Football Association, sufficient to interpret the documents already produced.
- 42. IPG Response: See response to Request #41.
- 43. <u>IPG Response</u>: See response to Request #41. For purposes of clarification, and subject to IPG's understanding of the category of documents sought by previous document request #1, IPG produced documents labeled as Item #5. Additional documents cited by JSC were responsive to other JSC document requests. Notwithstanding, IPG will represent that it currently has no intention of relying on any further documents to substantiate its claim to sports programming royalties in these proceedings.
- 44. <u>IPG Response</u>: See response to Request #41.
- 45. <u>IPG Response</u>: See response to Request #41.

- 46. <u>IPG Response</u>: IPG objects on the ground that a portion of JSC's request is an interrogatory, not a document request. Notwithstanding, and subject to IPG's previously-stated general objections, IPG clarifies that the following document categories are responsive to JSC's document request no. 2: 10,12,23a,23b,23c,24,25,29,32,35.
- 47. <u>IPG Response</u>: IPG objects on the ground that a portion of JSC's request is an interrogatory, not a document request. JSC's request misstates JSC's prior document request no. 2, and intends to cite JSC's prior document request no. 13. Notwithstanding, and subject to IPG's previously-stated general objections, IPG clarifies that the following document categories are responsive to JSC's document request no. 13: 23a,23b,23c.
- 48. <u>IPG Response</u>: IPG objects on the ground that a portion of JSC's request is an interrogatory, not a document request. Notwithstanding, and subject to IPG's previously-stated general objections, IPG clarifies that the following document categories are responsive to JSC's document request no. 48: 23a,23b,23c,24,35.
- 49. <u>IPG Response</u>: IPG objects on the ground that a portion of JSC's request is an interrogatory, not a document request. JSC's request misstates JSC's prior document request no. 15. Notwithstanding, and subject to IPG's previously-stated general objections, IPG clarifies that the following document categories are responsive to JSC's document request no. 15: 23a,23b,23c,24,31,35.
- 50. IPG Response: No responsive documents.
- 50a. <u>IPG Response</u>: IPG objects on the ground that a portion of JSC's request is an interrogatory, not a document request. Notwithstanding, and subject to IPG's previously-stated general objections, IPG clarifies that the following document categories are responsive to JSC's document request no. 16: 10,12,29.
- 50b. <u>IPG Response</u>: The following document categories are responsive to JSC's document request no. 50b: 25.
- 50c. <u>IPG Response</u>: The following document categories are responsive to JSC's document request no. 50b: 29. Additional requested documents will be produced.
- 51. <u>IPG Response</u>: See documents produced in response to Request #41.

- 52a. <u>IPG Response</u>: JSC's request #52a is identical to Request #51. See documents produced in response to Request #41.
- 52b. <u>IPG Response</u>: IPG objects on the grounds that any such request is overly broad. IPG's statement was made with regard to the aggregate of Phase II claims, and was not unique to the sports programming category. IPG has already submitted documents reflecting the express representation of certain parties to make claim for specific programs. Notwithstanding, IPG will represent that it currently has no intention of offering documents other than those already produced to JSC for the purpose of establishing the claims to sports programming.
- 53. <u>IPG Response</u>: Additional documents will be produced, and identified as document category 9 records. Also, IPG has relied on numerous web pages appearing at fifa.com.
- 54. <u>IPG Response</u>: Document categories 4,5,9,10,12,13,25,29,32.
- 55. <u>IPG Response</u>: JSC's prior request #33 requested documents underlying phrases in two complete sentences appearing in IPG's written direct statement. Based on JSC's authored text appearing in such request, IPG reasonably understood the request to be seeking information relating to the referenced mathematical calculations, not program categorizations. Notwithstanding, and subject to IPG's general objections, IPG relies on the multiple rulings of the Copyright Royalty Tribunal, Copyright Arbitration Royalty Panel, and Copyright Royalty Board pursuant to which program categorizations are defined for all Phase I categories.
- 56. <u>IPG Response</u>: See IPG's general objections. No responsive documents other than written direct statement.
- 57. <u>IPG Response</u>: No responsive documents. IPG objects on the grounds that the JSC request misstates the contents of 37 C.F.R. Section 351.10(e).
- 58. <u>IPG Response</u>: Subject to IPG's general objections, IPG relies on the multiple rulings of the Copyright Royalty Tribunal, Copyright Arbitration Royalty Panel, and Copyright Royalty Board pursuant to which program categorizations are defined for all Phase I categories. IPG did not rely on "underlying computations . . ." or "documents that identify . . ." in order to "support IPG's categorization of IPG Sports Programs". Notwithstanding, documents that independently "underl[ie] computations . . ." appear in document category 4,5,6,9,10,12,13,23c,24,29,32,35.
- 59. IPG Response: IPG objects on the ground that a portion of JSC's request is an

interrogatory, not a document request. Notwithstanding, responsive documents are within document category 33, and Designated Prior Records produced to JSC.

- 60. <u>IPG Response</u>: IPG objects on the ground that a portion of JSC's request is an interrogatory, not a document request. Notwithstanding, responsive documents are within document category 35. Additionally, and although unclear whether it is being requested, IPG will produce the electronic version of Exhibit 10.
- 61. <u>IPG Response</u>: No responsive documents.

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62. <u>IPG Response</u>: IPG objects on the ground that a portion of JSC's request is an interrogatory, not a document request. IPG will produce additional documents responsive to the request, identified as Item category 16.

IPG DOCUMENTS TO BE PRODUCED

Documents produced in hard copy:

- 1. Organizational filings for Worldwide Subsidy Group LLC (Texas)
- Agreement of Assignment and Transfer of Assets of Worldwide Subsidy Group LLC (California)*
- 3. MPAA distribution methodology agreements from 1997 cable distribution proceedings
- 4. 2000-2003 claims for cable retransmission royalties filed with U.S. Copyright Office
- 5. Representation agreements between various parties and either Worldwide Subsidy Group LLC (California) or Worldwide Subsidy Group LLC (Texas)*
- 6. Represented Programs identified within contracting documents
- 7. IPG-represented programs previously provided to IPG
- 8. Account statements from AGICOA and CCC for IPG-represented programs
- 9. Catalogue research
- 10. Response to Request for 2000-2003 Title Identification #1
- 11. Response to Request for 2000-2003 Title Identification #2
- 12. Broadcast Verifications
- 13. Email correspondence (form) to IPG-represented parties
- 14. Correspondence between IPG and Cable Data Corporation
- 15. Correspondence between IPG and TV Data (cka Tribune Media Services)

16. Tribune broadcast categorizations and codes

Documents produced in electronic format:

- 21. Data received from Cable Data Corporation*
- 22. IPG Stations Surveyed 2000-2003*
- 23. Data received from Tribune Media Services*
 - 23a. Data received 2001
 - 23b. Data received 2002
 - 23c. Data received 2011
- 24. Data received from Tribune Media Services re: WGNA*
- 25. Titles 2000-2003 25k full
- 26. Titles 2000-2003 50k full
- 27. Omitted
- 28. Omitted
- 29. Claimant Broadcast files*
- 30. Omitted
- 31. 2000-2003 Titles Royalty Generating
- 32. 2000-2003 Titles Royalty Generating w Distributor Information Sports Programming
- 33. MPAA Produced Nielsen Data (Second) (102 stations)*
- 34. Time Period Weight Factor Calculation

- 35. IPG integrated database Sports Programming*
- 36. Omitted
- 37. Omitted
- 38. Omitted
- 39. Omitted
- 40. Exh. IPG-10 (REVISED 1)*

*to be produced under proposed Protective Order

Respectfully submitted,

Dated: July 5, 2012

Brian D. Boydston, Esq.
California State Bar No. 155614

PICK & BOYDSTON, LLP 10786 Le Conte Ave. Los Angeles, California 90024 Telephone: (213) 624-1996 Facsimile: (213) 624-9073 Email: brianb@ix.netcom.com

Attorneys for Independent Producers Group

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July, 2012, a copy of the foregoing was sent by email to the parties listed on the attached Service List.

/s/______ Brian D. Boydston

JOINT SPORTS CLAIMANTS:

Robert Alan Garret, Esq. Stephen K. Marsh Marco Palmieri ARNOLD & PORTER LLP 555 Twelfth Street, NW Washington, D.C. 20004-1206

EXHIBIT NUMBER 210

Before the COPYRIGHT ROYALTY JUDGES Washington, D.C.

In the Matter of)	
Distribution of 2000, 2001, 2002 And 2003 Cable Royalty Funds)	Docket No. 2008-2 CRB CD 2000-2003 (Phase II)

INDEPENDENT PRODUCERS GROUP RESPONSES TO DOCUMENT REQUESTS OF JOINT SPORTS CLAIMANTS PURSUANT TO ORDER OF SEPTEMBER 25, 2012

On behalf of Independent Producers Group ("IPG"), the following are the responses to the discovery requests propounded by the Joint Sports Claimants ("JSC"), and ordered pursuant to the Order of September 25, 2012.

General Objections

IPG will respond to the requests to the best of its ability; however, with respect to each of the requests, IPG states the following General Objections:

- 1) IPG objects to these requests to the extent that they are vague, ambiguous, or otherwise not susceptible to a response, and to the extent that they are overly broad, unduly burdensome, and seek the disclosure of documents and information not reasonably calculated to lead to the discovery of evidence admissible in this proceeding.
- 2) IPG objects to these requests to the extent they call for the disclosure of information that is confidential to IPG and/or third parties. Any information identified as "confidential" shall be subject to a General Protective Order proposed to the Copyright Royalty Judges for this proceeding.
- 3) IPG objects to these requests to the extent that they seek disclosure of documents and information that is not subject to discovery pursuant to the regulations applicable to the Copyright Royalty Board, set forth at 37 C.F.R. Section 301.1,et seq.

- 4) IPG objects to these requests to the extent that the definitions and instructions purport to impose obligations beyond those imposed by the regulations of the Copyright Royalty Board.
- 5) IPG objects to these requests to the extent that they seek the disclosure of information and documents protected from disclosure by the attorney-client privilege and/or the work product doctrine.
- 6) IPG objects to these requests to the extent that they seek the disclosure of information and documents not within IPG's possession, custody, or control.
- 7) IPG objects to these requests to the extent that they seek the disclosure of information unrelated to these Phase II proceedings, or to the Phase II category in which the propounding party is involved.
- 8) IPG objects to these requests to the extent that they seek information in a form or format not regularly kept in the normal course of business.
- 9) IPG objects to these requests to the extent that they request the preparation of documents that do not exist.
- 10) IPG objects to these requests to the extent that they request the production of documents already included and produced as part of the Direct Case of IPG.
- 11) IPG objects to the instructions to the extent that they call for either responses or the production of documents in a format beyond what is required by the Copyright Royalty Board regulations, or in a format with which the responding party did not cooperate with IPG, e.g., repeating each of the requests.

Identification of Documents Produced

JSC Request No. 3: 5, 9, 10, 12, 13, 25, 26, 29, 35.

JSC Request No. 4: 21-26, 29, 31-35

JSC Request No. 5a: 5.

. JSC Request No. 14: 23c, 24, 35.

JSC Request No. 15: 23c, 24.

JSC Request No. 16: 9, 10, 12, 13, 25, 26, 29.

JSC Request No. 17: No responsive documents.

JSC Request No. 20: 4, 5, 10, 12, 13, 25, 26, 29, 31, 32, 35.

JSC Request No. 22: 14, 21.

JSC Request No. 23: 14, 21.

JSC Request No. 24: 14, 21.

JSC Request No. 26: 14, 21.

JSC Request No. 27: No responsive documents.

JSC Request No. 28: No responsive documents.

JSC Request No. 29: 33, 34.

JSC Request No. 31: 33, 34, 35.

JSC Request No. 34: 35.

JSC Request No. 36: 32, 35.

JSC Request No. 37: 4, 9, 10, 12, 13, 23c, 24-26, 29, 31-35.

JSC Request No. 38a: 5.

JSC Request No. 38c: 35.

JSC Request No. 38d: 16, 21, 22, 23c.

JSC Request No. 38e: 21.

JSC Request No. 38f: 33, 34.

JSC Request No. 38h: 35.

JSC Request No. 41: Request no. 41 relates to documents underlying Request nos. 1(a) and 1(b).

Subject to IPG's previously-stated general objections, IPG clarifies that the following document categories are responsive to JSC's document request nos. 1(a) and 1(b): Item 5.

JSC Request No. 42: 5.

JSC Request No. 43: Request no. 43 relates to documents underlying Request nos. 1(c) and 1(d). Subject to IPG's previously-stated general objections, IPG clarifies that the following document categories are responsive to JSC's document request nos. 1(c) and 1(d): 5.

JSC Request No. 44: 5.

JSC Request No. 45: 5.

JSC Request No. 50(c): 10, 12, 29.

JSC Request No. 51: 5.

Document Request; Additional Responses

- 1(a). No further responsive documents exist.
- 1(b). Additional documents are being produced as IPG 2085-2156.
- 1(c). Additional documents are being produced as IPG 2085-2156.
- 2(a). IPG has previously produced electronic records identified as "Item 23c - Tribune Media data". At this point IPG is producing the identical file, organized between royalty-generating broadcasts and non-royalty-generating broadcasts, entitled "Item 23c - Tribune Media data (REORGANIZED)".

2(c). IPG-10 is derived exclusively from the electronic record identified as Item 35, "IPG integrated database - Sports Programming", as was already clarified by IPG's production of only Item 35 in response to a request for all documents and records from which IPG-10 was derived. IPG has already produced IPG-10 and Item 35 in their native electronic format. IPG has never retained documents IPG-10 or Item 35 in any format other than was produced by IPG. Further, no electronic record with separately stated "formulas" exists or ever has existed that comports with the description provided in IPG's Direct Statement. Any "formulas" have been simplistic and ephemeral, as applied. As clarified in IPG's Direct Statement, the figures appearing in IPG-10 are either (i) the simple product of addition, i.e., the product of figures appearing in corresponding columns of the electronic record Item 35, or (ii) the product of addition or averaging of figures otherwise appearing in IPG-10. Such "formulas" are therefore described in IPG's Direct Statement, are self-evident from review of any printout of IPG-10, and are contained electronically within the electronic version of IPG-10 that was already produced. That is, no further documents are capable of production because no further responsive documents exist or ever have existed.

Notwithstanding the foregoing, IPG has engaged its computer programmer to write a programming formula to apply to the electronic record appearing under Item 35, such that application will result in the figures reported for sports programming in IPG-10. Specifically, the formula will add the "wvs" and "wvf" figures for each broadcast of an IPG-claimed broadcast and the JSC-claimed broadcasts, on a year-by-year basis, such that JSC's own application of such

electronic formula will yield the results reported by IPG in IPG-10. For purposes of clarification, however, and in order to simplify the electronic formula, the electronic record previously appearing under Item 35, and now produced as "Item 35 - - IPG integrated database – Sports Programming (REVISED 1)" has been modified in order to include additional columns reflected as "datetime" and "royalty_generating". The electronic record constituting the query to be applied against such file will be produced under Item 35, and be entitled "Item 35 - - Summation Query".

2(d). No further responsive documents exist.

IPG DOCUMENTS TO BE PRODUCED.

Documents produced in hard copy:

- 1. Organizational filings for Worldwide Subsidy Group LLC (Texas)
- 2. Agreement of Assignment and Transfer of Assets of Worldwide Subsidy Group LLC (California)*
- 3. MPAA distribution methodology agreements from 1997 cable distribution proceedings
- 4. 2000-2003 claims for cable retransmission royalties filed with U.S. Copyright Office
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- 24. Data received from Tribune Media Services re: WGNA*
- 25. Titles 2000-2003 25k full
- 26. Titles 2000-2003 50k full
- 27. Omitted
- 28. Omitted
- 29. Claimant Broadcast files*
- 30. Omitted
- 31. 2000-2003 Titles Royalty Generating
- 32. 2000-2003 Titles Royalty Generating w Distributor Information Sports Programming
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- 34. Time Period Weight Factor Calculation

- 35. IPG integrated database Sports Programming (REVISED 1)* Summation Query*
- 36. Omitted
- 37. Omitted
- 38. Omitted
- 39. Omitted
- 40. Exh. IPG-10 (REVISED 1)*

*to be produced under proposed Protective Order

Respectfully submitted,

Dated: October 9, 2012

Brian D. Boydston, Esq.
California State Bar No. 155614

PICK & BOYDSTON, LLP 10786 Le Conte Ave. Los Angeles, California 90024 Telephone: (213) 624-1996 Facsimile: (213) 624-9073 Email: brianb@ix.netcom.com

Attorneys for Independent Producers Group

CERTIFICATE OF SERVICE

I hereby certify that on this 9 day of October, 2012, a copy of the foregoing was sent by electronic mail to the parties listed on the attached Service List.

/s/	
 Brian D. Boydston	

JOINT SPORTS CLAIMANTS:

Robert Alan Garret, Esq.
Stephen K. Marsh
Marco Palmieri
ARNOLD & PORTER LLP
555 Twelfth Street, NW
Washington, D.C. 20004-1206

EXHIBIT NUMBER 211

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Page 1

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Page 2

broadcast_records

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Page 3

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Item 29 - United States Olympic Committee

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Item 29 - United States Olympic Committee

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Equestrian Jumping and dressage; women's water polo Gymnastics				rowing	rowing	rowing	Men's road cycling; canoeing; freestyle wrestling	Men's volleyball; sailing; Greco-Roman wrestling				swimming Frack and field events from California State University,		rack and field events from California State University,		frack and field events from California State University,	sacramento Track and field events from California State University,		Track and field events from California State University,	sacramento frack and field events from California State University,	Sacramento Track and field events from California State University.	Sacramento Sacramento France and field events from California State University.		frack and fleld events from California State University,	Sacramento Track and field events from California State University,	Sacramento		one and field events from California State University,		Track and field events from California State University,	Sacrainento Track and field events from California State University,	sacramento Frack and field events from California State University,	Sacramento Track and field events from California State University								
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EXHIBIT NUMBER 213

Item 29 - United Negro College Fund

	Lou Bawks and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from India Arie, Jill Scott and Luther Vandross	Low flawks and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from India Arie, Jill Scott and Luther Vandross	Lou Rawks and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from India Arie, Jill Scott and Luther Vandross	Lou Rawks and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from india Arle, Jill Scott and Luther Vandross	Lou Rawis and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from india Arle, Jill Scott and Luther Vandross	Lov Rawls and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from india Arie, Jill Scott and Luther Vandross	Lot Rawls and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from india Arie, Jill Scott and Luther Vandross	Lou Rawis and Vivica A. Fox host this salvte to the importance of higher education and the achievements of the United Negro College Fund. With performances from India Arie, Jill Scott and Luther Vandross	Lou Rawis and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from India Arie, Jill Scott and Luther Vandross	Lou Rawis and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from india Arie, Jill Scott and Luther Vandross	Lou Rawis and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from India Arie, Jill Scott and Luther Vandross	tou fawis and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from india Arie, Jill Scott and Luther Vandross	Lou Rawks and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from India Arie, Jill Scott and Luther Vandross
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Item 29 - United Negro College Fund

Lou Rawks and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from India Arie, Jill Scott and Luther Vandross	Lou Rawks and Vivica A. Fox host this salute to the importance of higher education and the achievements of the United Negro College Fund. With performances from India Arie, Jill Scott and Luther Vandross	Lou Rawis, Debbie Allen and Star Jones host this salute to the importance of higher education and the achievements of the United Negro College Fund	Lou Rawis, Debbie Allen and Star Jones host this salute to the importance of higher education and the achievements of the United Negro College Fund	Lou Rawis, Debbie Allen and Star Jones host this salute to the importance of higher education and the achievements of the United Negro College Fund	Lou Rawis, Debbie Allen and Star Jones host this salute to the importance of higher education and the achievements of the United Negro College Fund	Lou Rawis, Debbie Allen and Star Jones host this salute to the importance of higher education and the achievements of the United Negro College Fund	Lou Rawls, Debbie Allen and Star Jones host this salute to the importance of higher education and the achievements of the United Negro College Fund	Lou Rawis, Debbie Allen and Star Jones host this salute to the importance of higher education and the achievements of the United Negro College Fund	Lou Rawis, Debbie Allen and Star Jones host this salute to the Importance of higher education and the achievements of the United Negro College Fund	Lou Rawls, Debble Allen and Star Jones host this salute to the importance of higher education and the achievements of the United Negro College Fund	Lou Rawls, Debbie Allen and Star Jones host this salute to the importance of higher education and the achievements of the United Negro College Fund	Lou Rawis, Debbie Allen and Star Jones host this salute to the importance of higher education and the achievements of the United Negro College Fund	Lou Raws, Debbie Allen and Star Jones host this salute to the importance of higher education and the achievements of the United Negro College Fund	Lou Rawls, Debbie Allen and Star Jones host this salute to the importance of higher education and the achievements of the United Negro College Fund Lou Rawls, Debbie Allen and Star Jones host this salute to the importance of higher	education and the achievements of the United Negro College Fund	Lou Rawis, Debie Allen and Star Jones host this salute to the importance of higher education and the achievements of the United Negro College Fund	Lou Rawis, Debbie Allen and Star Jones host this salute to the Importance of higher education and the achievements of the United Negro College Fund	
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Celebrities, professional athletes, and students compete for the spotlight to raise money for the United Negro College Fund

Evening of Stars Continues
Salute to UNCF Sportsball
UNCF Celebrity Galf and
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UNCF Telethon
United Negro College Fund
Evening of Stars

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1500 Sunday WCAU 1200 Sunday WUSA

10602

6947626 8134448 7873120 9579163 4800978

1400 Saturday WJAL 1700 Sunday WRIC 1400 Sunday

72702 10701

Item 29 - United Negro College Fund

Hosted by Maurice Dubois, Pat Battle and Asa Aarons





EXHIBIT NUMBER 214

REDACTED

EXHIBIT NUMBER 215

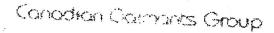
Before the COPYRIGHT ROYALTY BOARD WASHINGTON, D.C. Washington, D.C.

In the Matter of:

Distribution of the 2000-2003 Cable Royalty Funds Docket No.:

2008-2 CRB CD 2000-2003

CANADIAN CLAIMANTS GROUP'S OFFICIAL HEARING EXHIBITS



Counsel for the Canadian Claimants

Of Counsel:

L. Kendall Satterfield
D C Bar No. 393953
Richard M. Volin
D C Bar No. 457292
Finkelstein Thompson LLP
Larson & Gaston, LLP
200 S. Los Robles Ave., Suite 530
Pasadena, CA 91101

L. Kendall Satterfield
D C Bar No. 393953
Richard M. Volin
D C Bar No. 457292
Finkelstein Thompson LLP
1050 30th Street, N.W.
Washington, DC 20007
Tel: 202-337-8000

Tel: 626-795-6001
Fax: 626-795-0016
victor.cosentino@larsonlaw.net

Fax: 202-337-8090
ksatterfield@finkelsteinthompson.com
rvolin@finkelsteinthompson.com

Before the COPYRIGHT ROYALTY JUDGES Washington, D.C.

In the Matter of

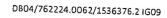
Distribution of the

2000, 2001, 2002, and 2003 Cable Royalty Funds Docket No. 2008-2 CRB CD 2000-2003

INDEX OF CANADIAN CLAIMANTS GROUP'S OFFICIAL HEARING EXHIBITS

MARKED EXHIBIT	DESCRIPTION	ADMITTED	DATE
CDN-1	Direct Testimony of Janice de Freitas, with attached Tabbed Exhibits A – V, filed 2/2/09 (corrected May 28, 2009)	Yes	6/12/09
CDN-2	Direct Testimony of Alison Smith, with attached Tabbed Exhibits A – B, filed 2/2/09.	Yes	6/15/09
CDN-3	Direct Testimony of Stephen Stohn, with attached Tabbed Exhibits A – D, filed 2/2/09.	Yes	6/15/09
CDN-4-A	A report sponsored by Debra J. Ringold, titled "The Value of Canadian Programming to Cable Systems in the United States, 2000-2003", filed 2/2/09 (corrected May 28, 2009).	Yes	6/15/09
CDN-4-B	A report sponsored by Debra J. Ringold, titled "The Longitudinal Value of Canadian Programming to Cable Systems in the United States 1996-2003", filed 2/2/09.	Yes	6/15/09

MARKED	DESCRIPTION	177	
EXHIBIT		ADMITTED	DATE
CDN-5	Designated Testimony and Exhibits from the 1998-1999 Cable Distribution Proceeding: Tab A : Written Direct Testimony of David Bennett with attached Exhibits CDN-4-A, CDN-4-B, CDN-4-C, CDN-4-D; Tab B : Transcript of Direct and Cross Examination of David Bennett in 1998-1999 Cable Distribution Proceeding (Pages 5266-5502); Tab C : Written Rebuttal Testimony of David Bennett with attached Exhibits CDN-1-R-A, CDN-1-R-B, CDN-1-R-C, CDN-1-R-D and CDN-1-R-E; and Tab D : Stipulation of the Canadian Claimants and the Commercial Television Claimants regarding the Rebuttal Testimony of Mr. Bennett	Yes	6/24/09
CDN-6	Article dated 12/13/95 from the Seattle Post-Intelligencer archive titled "TCI Agrees Under Pressure to Phase CBUT Back In." (accessed 8/28/09)	No	9/2/09
CDN-7	Article dated 6/24/99 from the Seattle Post-Intelligencer archive titled "Canadian Broadcasting Corptune in, turn on for summer" (accessed 10/24/02)	No	9/2/09
CDN-8	Printout of spreadsheet produced by Settling Parties with the file name CP0591 (2).xls and titled: "Systems Carrying Canadian Stations with Larger Changes Components of Change Summary"	Yes	9/2/09
CDN-R-1	Rebuttal Testimony of Jonda Martin, filed 7/24/09 (corrected 8/31/09)	Yes	9/1/09
CDN-R-2-A	Rebuttal Testimony of John E. Calfee, PhD, filed 7/24/09 (corrected 8/31/09)	Yes	9/1/09
ODIN-IC-2-A	CDINDEX dated July 18, 2009, filed 7/24/09	Yes	9/1/09



TESTIMONY OF JANICE DE FREITAS (CBC - RIGHTS ADMINISTRATION)

Introduction

I am Manager of Rights Administration for the Canadian Broadcasting Corporation (CBC) at the Head Office in Ottawa. I have worked for the Canadian Broadcasting Corporation since 1980. For the last 15 years, I have served as Chairman of the Canadian Claimants Group (CCG). Before assuming my current position, I spent nine years in CBC's television program distribution department eventually managing the Educational Sales unit. Those responsibilities called for me to be familiar with the English television network's programming, and rights administration.

The Canadian Broadcasting Corporation is Canada's national public broadcaster. It has been a participant in these cable royalty proceedings since their very inception and is the founding member of the Canadian Claimants Group. The CBC, through it Rights Administration Department, continues to manage the Canadian Claimants Group. One of my primary responsibilities for the last 18 years has been supervision and administration of responsibilities related to the U.S. cable retransmission claims of Canadians. Most recently this has included preparing this direct case.

Today, I am appearing in several capacities. First, in my role as Chairman of the CCG, I am here to provide an overview of our claim, to provide background information on our members and to introduce our other witnesses. Second, I am here in my capacity as an employee of the Canadian Broadcasting Corporation. Because most of the Canadian stations retransmitted in the U.S. as distant signals are either CBC English or CBC French network stations, I will provide an overview on both CBC television networks. Finally, I will sponsor cable carriage and royalty data that we have obtained from Cable Data Corporation that reflects the increase in carriage and royalties paid by Form 3 cable systems for the distant retransmission of Canadian television stations.

The Nature of Our Claim

CBC and other Canadian television stations are long-established components of both the over-the-air and cable television markets along the U.S.-Canada border. The composition of the Canadian Claimant Group has changed over the years. In the early royalty proceedings, the CCG was comprised primarily of the CBC, private Canadian broadcasters, their programming affiliates and a few independent production companies. More recently, the members of the CCG are increasingly Canadian film and television production companies (commonly referred to as "program suppliers").

The Phase I claim of the Canadian Claimants Group encompasses the non-U.S. programming shown on all distant Canadian television signals. Our claimant group, however, is conceptually different from the other Phase I claimants who are mainly defined by the similar nature of their programming (e.g., only sports programming or only religious programming, or only broadcasters or only program suppliers). Our group is comprised of broadcasters (both public and private), and Canadian program suppliers. Additionally, our claim applies to Canadian network and local programs of every type and variety: sports, entertainment, children's, news, public affairs, etc.

Our Witnesses

Most of the programming on Canadian signals is Canadian. However we recognize that our signals also contain programming claimed by the Joint Sports Claimants and the American Program Suppliers. Consequently, in preparing our direct case, we have once again focused on demonstrating the relative value of the programming types on Canadian distant signals. To this end, we have conducted four annual surveys of cable operators who carried distant Canadian signals. Professor Debra Ringold, will make a return visit to Washington to present the results of those studies. As Dr. Ringold will testify, the results of the surveys are consistent with past results. The U.S. cable operators that carry distant Canadian signals attribute nearly 60% of the value of the Canadian signals to the Canadian programming on those stations and the remainder to the programming of the Joint Sports Claimants and Program Suppliers.

To provide first hand exposure to Canadian television we will present two witnesses who represent different genres of programs, Alison Smith and Stephen Stohn. Alison Smith is a CBC news correspondent currently based in Washington, D.C. She is a professional journalist who has worked with CBC for over 30 years and served in numerous capacities. She is appearing to provide an overview of the CBC's network news operations. Stephen Stohn is President of Epitome Pictures, one of our CCG program suppliers. Epitome has developed a strong international reputation as a source of exceptional programming. He is appearing to provide the perspective of our program supplier members.

The Canadian Claimants

Canadian Claimants run the gamut from very small production houses to national broadcasters. There is neither time nor space for them all to appear at these proceedings so I am sponsoring certain information that I have collected that identifies and describes them. Attached to my testimony as Exhibit CDN-1-A are lists of Canadian Claimant Group members for 2000 through 2003. Exhibit CDN-1-B contains descriptive company profiles. Canadian programming is popular in the United States and internationally, as is demonstrated by the Canadian members' success licensing their programming in the U.S. and elsewhere. Exhibit CDN-1-C is an informal sample of the numerous Canadian properties licensed to U.S. television services by a selection of our members. I collected this information to demonstrate the demand for Canadian programming in the U.S. cable and broadcasting marketplaces. The exhibit indicates a range of clients in the U.S., with an important market being cable networks. We believe this is important evidence of the appeal of Canadian television programming to U.S. cable operators, since they are the relevant marketplace for both cable network programming and distant signal programming.

I also requested that our members supply information about awards they received for their programs and sample descriptive brochures. Exhibit CDN-1-D reports on some of the international awards won by Canadian Claimants, including an Academy Award and several Emmy Awards. Additional award information is included with the testimony of our other witnesses. Exhibit CDN-1-E (the material is bound separately) is a collection of promotional material (program descriptions) received from our members, with an accompanying index.

Our Distant Signals

The members of the CCG all had programming that was carried on Canadian signals retransmitted in the U.S. by Form 3 cable systems during the

four years from 2000 through 2003. The Canadian signals carried in these years are listed below along with their network affiliations and their broadcast language:

Canadian Signals Carried by Form 3 Systems on a Distant Basis in 2000 through 2003

Signal	A ffiliation	Language
CBAFT	CBC	French
CBAT	CBC	English
CBET	CBC `	English
CBFT	CBC	French
CBLT	CBC	English
CBMT	CBC	English
CBUT	CBC	English
CBWT	CBC	English
CFCF	CTV	English
CFTO	CTV	English
CHCH	CANWEST GLOBAL	English
CHLT	TVA	French
CICC	CTV	English
CIII	CANWEST GLOBAL	English
CIMT	TVA	French
CISA	CANWEST GLOBAL	English
CIVT	CTV	English
CJOH	CTV	English
CKND	CANWEST GLOBAL	English
CKRT	CBC	French
CKSH	CBC	French
CKWS	CBC	English
CKX	CBC	English
CKY	CTV	English
	:	T11811911

Also attached as Exhibit CDN-1-F are maps that illustrate where these distant Canadian signals were retransmitted in the United States. These maps are grouped by network affiliation. They show each Canadian station and the State where it was retransmitted by a Form 3 cable system, as reported on cable systems' Statements of Account during 2000 through 2003.

Exhibit CDN-1-G is made up of two maps that were generated on the U.S. Census Bureau web site and are based on information from the 2000

Census. Entitled "Percent of Persons of French (except Basque) Ancestry: 2000" and "Percent of Persons of French Canadian Ancestry: 2000," they display the concentration of persons by state in the United States who are of French or French Canadian Ancestry. These maps demonstrate that high concentrations of these populations are found in the New England states where all the distant retransmission of French-language Canadian signals occurs.

The Canadian Broadcasting Corporation - Radio Canada

As noted before, the Canadian Broadcasting Corporation is Canada's national public broadcaster, one of its largest and most important cultural institutions. It provides services on television, radio, the internet, satellite radio and digital audio. Our programming is in English and French as well as eight aboriginal languages and nine other languages including Spanish, Russian and Mandarin on RCI, our international radio service.

Due to the focus of these proceedings I am confining my comments to the two free-over-the-air television networks we operate, one in English and one in French. These networks are mandated to provide programming that is predominantly and distinctively Canadian and of the highest quality.

The English Network

The English Television Network is one of the two national television networks operated by CBC. In 2000 through 2003, the English network consisted of thirty-five (35) stations, from coast to coast. Sixteen (16) of these stations were owned and operated by CBC and nineteen (19) were affiliates. Affiliates are privately owned stations that carry a stated number of hours of CBC programming. Page one of Exhibit CDN-1-H is a list of the CBC English Television Network Owned and Affiliated Stations.

Broadcast hours vary across locations, but CBC stations broadcast seven (7) days a week from as early as 6:00 a.m. to as late as 2:30 a.m. Special events such as the Olympics can extend our day considerably due to our sports producers' commitment to live coverage. Together, CBC stations and affiliates reach 99% of the Canadian population.

CBC programs are made in Canada or acquired from other countries. Exhibit CDN-1-I contains English network broadcast schedules for the 2000/2001, 2001/2002, 2002/2003 and 2003/2004 television seasons. The "shaded" blocks indicate that a program was produced in the U.S. or "belongs" to an American claimant group for the purposes of this proceeding. The schedules illustrate that the majority of our programs are Canadian. As a general rule, a large majority of the programming on CBC signals falls within the claim of the Canadian Claimants Group.

CBC programming is by mandate predominantly and distinctively Canadian. A direct consequence of this is a schedule that regularly offers American viewers a unique programming alternative. This includes:

- Original and distinctive drama programs that CBC produces, coproduces, develops or licenses.
- Sports programs not ordinarily available on conventional television in the United States, such as amateur international sport competitions (these often involve American athletes), soccer, curling, show jumping and Canadian football.
- Hockey, tennis, golf, baseball games and events that don't feature American teams or athletes. (CBC sports broadcasts generally include not only the event, but popular commentary segments such as Hockey Night in Canada's "Coaches' Corner" featuring Don Cherry and Ron McLean.)
- Canadian children's programming that is commercial-free and non-violent
- Featured prime-time scheduling of a diverse selection of art and cultural programming, such as ballet, operas, and theatrical performances, not generally seen on U.S. commercial television.
- News and current affairs programs reporting on Canada and the world from a Canadian perspective, that is appreciated not only because of that difference but because it informs Americans of events in Canada that are of interest to many, particularly those living along the Canadian border. (Correspondent Alison Smith will present separate testimony on CBC's news programming.)

In the span of time covered by these proceedings there were numerous special programming events. These included the production and broadcast of:

- The epic Canada: A People's History.
- Memorial documentary and drama programming following the death of former Canadian Prime Minister Pierre Trudeau.
- Over 500 hours of coverage of two Olympics (Sydney, Australia in 2000, and Salt Lake City in 2002); our Olympic coverage has frequently been praised by American viewers who especially liked the significant amount of "live event" rather than tape-delayed coverage, and who appreciate CBC's less theatrical reporting style.
- Special programming relating to CBC's 50th Anniversary.
- The 2002 FIFA World Cup.
- In-depth coverage of the tragic events of September 11, 2001.

Some international awards won by CBC's English Television Network are listed in Exhibit CDN-1-J.

I also have a video (DVD) that was produced to launch English Television's then "new" season for the fall of 2002-2003, our 50th Anniversary year. This is available as Exhibit CDN-1-K, with an accompanying log of the programs featured on it. The video shows programming that is representative of the type of programming found on CBC's English Television Network during the period covered by this proceeding.

The French Network

Radio-Canada is the name used by our French Television Network. In 2000-2003 it was composed of eight (8) owned and operated stations and five (5) affiliated stations located across the nation. The network operates entirely in French. The affiliate relationships for French TV are similar in commitment to the English structure. Page two of Exhibit CDN-1-H is a list of the CBC French Television Network's Owned and Affiliated Stations.

The French network (which also celebrated its 50th anniversary in 2002-2003) operates under the same mandate as the English Network: to be predominantly and distinctively Canadian. It broadcasts an equally wide

spectrum of programming, some it produces and others it acquires from the many Quebec based claimant members. There is, of course, the added distinction, and benefit for French speaking Americans, that the programs are created as original French-language productions. Some international awards won by CBC's French Television Network are listed in Exhibit CDN-1-L. Attached as Exhibit CDN-1-M, are French Television Network broadcast schedules for the 2000/2001, 2001/2002, 2002/2003 and 2003/2004 television seasons. Again, the "shaded" blocks indicate where a program is attributable to an American claimant.

Distant Carriage of Canadian Signals by U.S. Cable Systems

The next set of exhibits in my testimony is based on data obtained from Cable Data Corporation (CDC). The data are traditionally referred to as "carriage data" because they are based on the carriage of broadcast signals on a distant basis by U.S. cable systems. CDC compiles this database from the information provided by cable systems when they file their semi-annual Statements of Account with the Copyright Office. The CCG and other claimant groups have relied on this data for distribution proceedings for many years. CDC allocates royalties to particular signals using the information provided in the Statements of Accounts.

Our carriage data exhibits focus only on data from Statements of Accounts filed by "Form 3" cable systems which are the largest cable systems in the U.S. Historically, in these proceedings, the Copyright Royalty Tribunal and Copyright Arbitration Royalty Panels focused only on information about Form 3 distant signals. Form 3 royalties make up the majority of all royalties paid. According to CDC data, over the four years at issue, the Form 3 systems paid about 97% of all royalties paid by U.S. cable systems for the carriage of Distant Signals. In addition, Form 3 systems are the only systems that report carriage information with enough detail to allow a determination of which types of signals and programming are responsible for generating the royalties. We continue this approach so that current carriage and royalty data can be compared to prior years to demonstrate changed circumstances.¹

It should be noted that during the years at issue in these proceedings there was a change in the royalty structure. As shown on the website of the Copyright Office, effective with the 2000-2 accounting period, the amount of semi-annual gross receipts necessary to qualify as a Form 3 system rose from \$292,000 to \$379,600. At the same time, the royalty rates for the base rate fee and the minimum fee were increased. Such changes have occurred several times during the existence of the cable compulsory license.

The data that are presented in these exhibits generally cover 1998 through 2003. The 1998 and 1999 data are presented to establish the foundation from which we show changed circumstances. In some cases, where it is necessary to take a longer term view, we present data going back further. Generally, the data for the years 1999 and earlier are based on CDC data presented by the CCG in the 1998 -1999 Distribution Proceeding. The data for the years 2000 through 2003 was received from Cable Data Corporation in the fall and winter of 2008-2009. Unless otherwise noted, all data in these exhibits is based on the carriage of signals on a distant basis.

Royalties Paid for the Carriage of Canadian Distant Signals

According to CDC data, cable systems have paid increasingly more in royalties for Canadian signals each year since 1998. For example, by 2003, base royalties paid for Canadian distant signals had increased 59% from the average paid for such signals in 1998 and 1999. By contrast, base royalties for all other signal types had increased only 16%. In fact, the amount of royalties paid for Canadian signals grew disproportionately to the growth of the other signal types during the same period.

Exhibit CDN-1-N presents the royalties figures for 1998 through 2003. The five pages of Exhibit CDN-1-N show the allocation of royalty fees derived from the retransmission of distant signals by U.S. cable systems. There is a table for each of the three types of fees: base, 3.75% and Syndicated Exclusivity (Syndex) royalties and one that shows the totals of the three types of royalties. Syndex data is shown in this exhibit simply for the sake of completeness. The CCG does not claim any right to receive a share of Syndex funds.

The tables on the first four pages of this exhibit show the royalties paid each accounting period for Canadian signals and for the combined total for all other types of signals (Educational, Network, Independent, Low Power, and Mexican). They are broken into two sections. At the top are the fees for each accounting period in the last and current proceedings. Included are the averages for the four accounting periods of last proceeding. On the right side, the tables show the percentage change for each accounting period from the average for the last proceeding. Below that are the same data presented on an annual basis (determined by adding the numbers for the two accounting periods in each year). In this and other exhibits, we choose to show relative change of Canadian signal data and relative change of data for all other signal types combined to illustrate that though both generally grew from the time of

the 1998-1999 Distribution Proceeding, the growth of Canadian signals has moved at a much different rate.

The fifth page of Exhibit CDN-1-N looks at certain aspects of the minimum fees paid by cable operators. Form 3 cable systems are required to pay a minimum fee (equal to the cost of retransmitting a distant signal as the first full Distant Signal Equivalent (DSE) on the base royalty fee payment scale.2 If the system carries no distant signals or less than one full DSE of distant signals, the system pays the minimum fee. Page five of the exhibit addresses the amount of minimum fees paid by systems with no distant carriage at all (sometimes called "zero DSE systems"). (This exhibit is not intended to track or document all minimum fees, such as those paid by systems carrying more than zero but less than one DSE of distant signals.) This exhibit shows that starting in 1998-1, the first period of the last proceeding, there was a sudden and very dramatic increase in the number of systems carrying no distant signals but paying the minimum fees. Comparing the period covered by the 1990-1992 Distribution Proceeding to the 1998-1999 Distribution Proceeding, there was a very pronounced change in the payment of these fees while in contrast there was relatively minor change from the period covered by the 1998-1999 Distribution Proceeding to the current period.

Exhibit CDN-1-O is made up of a set of three charts that graphically show the relative growth since the 1998-1999 Distribution Proceeding in distant total, base and 3.75% royalties paid for Canadian signals compared to all other signals types. The percentages are the same as those shown in Exhibit CDN-1-N. The charts illustrate that fees paid for Canadian signals grew much more rapidly than fees paid for all other signals.

Exhibit CDN-1-P is a one page summary of the amount of royalties paid for Canadian signals in 1998 through 2003 for base and 3.75% fees. The tables also show the fees paid for Canadian signals as a percentages of fees paid for all signals. This is calculated by dividing royalties paid for Canadian signals by the royalties paid for all signals. Table 1, below, shows that the percentages of base and 3.75% Royalties paid for Canadian Signals has increased substantially since the last proceeding.

Form 1 and Form 2 systems do not pay this minimum fee.

Canadian A	Table 1: Signal Royalties as Il Distant Signal R	s a Percentage of oyalties
Year	Base Royalties	3.75% Royalties
1998	3.31027%	0.25372%
1999	3.64297%	0.62980%
2000	3.84417%	0.58308%
2001	4.06297%	2.07669%
2002	4.80822%	3.36590%
2003	4.73598%	4.17951%

Exhibit CDN-4-Q, entitled "Total Distant Royalties Paid by Form 3 Systems for Canadians Signals," shows the sum of total distant royalties paid for Canadian distant signals during the years 2000 through 2003, broken out by signal. The exhibit also shows how those royalties compare as a proportion of all distant royalties paid for Canadian signals. Notably, the first four signals of the 24 on the list account for more than 71% of all royalties paid for Canadian signals.³

Subscriber Instances and Instances of Carriage

Another way to examine growth in the carriage of Canadian signals is to look at "Subscriber Instances" and "Instances of Carriage." Subscriber Instances measure the number of cable system subscribers who have access to a distant signal. In contrast, "Instances of Carriage" are the number of times a signal or signal type is carried by a cable system on a distant basis. The number of Instances of Carriage tells nothing about the size of each cable system. Thus, whether a cable system has 2000 subscribers or 2,000,000 subscribers, the system would count as one Instance of Carriage. As cable systems merge and consolidate, the number of Instances of Carriage for signals on those systems may decrease without any effect on the total number of Subscriber Instances.

The royalty numbers in this exhibit need two qualifications: (1) the numbers include a small amount of Syndex royalties which the CCG does not claim but which were attributed to Canadian signals by the cable system operators when they completed their Statements of Account; (2) the sum of these numbers differ from the sum of those reported in Exhibit CDN-1-N by approximately \$68,000 because of the way in which Cable Data Corporation reports the royalties in its database. These two qualifications do not meaningfully affect the exhibit's illustration of the relative share of all royalties paid for each Canadian signal during 2000 through 2003.

Exhibit CDN-1-R, entitled "Subscriber Instances" presents the number of cable television subscribers receiving signals retransmitted on a distant basis by U.S. cable systems. It is important to note that the number of subscribers presented in this table is cumulative. For example, if a cable system has 10,000 subscribers and carries one Canadian and four independent signals on a distant basis in a given accounting period, CDC allocates 10,000 subscribers to Canadian signals for that period and 40,000 to independent signals. While the result is that the total number of Subscriber Instances reported by CDC exceeds the number of people who actually subscribe, the Subscriber Instances as reported by CDC are an accurate depiction of the number of people who can see a particular distant signal in the US and, in the aggregate, present a reasonable basis for comparing the relative reach of each signal type. This exhibit shows that the relative reach of Canadian signals, as measured by the number of Subscriber Instances, has grown at a rate that exceeds the growth of other signal types.

Exhibit CDN-1-S, entitled "Instances of Carriage" presents a table showing the number of times Canadian signals and all other signals were retransmitted on a distant basis by U.S. cable systems during each accounting period beginning in 1998. As can be seen, Canadian signals make up a very small portion of all Instances of Carriage. In fact, Canadian signals consistently make up only about 2% of all Instances of Carriage from 1998 through 2003, even though by 2003, those signals were responsible for 4.7% of base royalties. Though Instances of Carriage of Canadian distant signals have decreased since the last proceeding, they have done so at a smaller rate than the decline in Instances of Carriage of other signal types.

Exhibit CDN-1-T is a set of charts examining the change in growth of Canadian signal carriage by combining information about Subscriber Instances and Instances of Carriage. These charts show that as the absolute number of Instances of Carriage have fallen for Canadian distant signals (i.e., slightly fewer signals are being retransmitted now than in the last proceeding) the number of people with access to Canadian signals, as measured by subscriber instances, has increased. This increase is not just the result of growth in the overall cable market nor simply the result of merger. The charts show that the growth is greater for Canadian signals than other signals types experienced in the same period.

Page 1 of the exhibit compares Instances of Carriage over a 20 year period to the number of Subscriber Instances per Instances of Carriage. The

time period subject to the current proceeding is marked in yellow. The graph on the left, for Canadian signals, shows that while the number of Instances of Carriage decreased over time, the number of Subscriber Instances per Instance of Carriage increased. In fact, the greatest increase has come during the years covered by this proceeding. In contrast, the graph on the right, for all other distant signals, shows that while Instances of Carriage have come down dramatically, the number of Subscriber Instances per Instance of Carriage have changed very modestly in that time, decreasing somewhat in the current period.

Page 2 of the exhibit compares Instances of Carriage to total distant subscriber instances over the same twenty year period. The chart on the left, for "Canadian Signals," shows that even as the Instances of Carriage have decreased, the total number of Subscriber Instances for Canadian distant signals has increased. The graph on the right, for all other distant signals shows that historically the change in Subscriber Instances for non-Canadian distant signals closely tracks the number of Instances of Carriage for those distant signals.

Both exhibits show that the reach of Canadian distant signals grew disproportionately to the movement of all other distant signals.

Fees per Instance of Carriage and per Subscriber Instance

Another way to look at the changed circumstances is to compare the amount of fees paid per Subscriber Instance and per Instance of Carriage for Canadian signals and for all other signal types. In both cases, growth since 1998-1999 has been greater for Canadian signals than for other signal types.

Exhibit CDN-1-U, entitled "Relative Change in Total Fees Paid per Subscriber Instance" graphs the relative change in fees per Subscriber Instance since the 1998-1999 Proceeding for Canadian signals and all other signals. The total distant fees paid per Subscriber Instance can be determined by dividing the fees paid for the signal type each year by the number of Subscriber Instances for that year. This chart shows the relative change in those numbers by year since the last proceeding.

The chart illustrates that while the royalties paid per Subscriber Instances have grown for all signals since the last proceeding, they have grown faster for the Canadian signals than for the other signal types.

Exhibit <u>CDN-1-V</u>, entitled "Relative Change in Total Fees Paid per Instance of Carriage" graphs the relative change in fees per Instance of Carriage since the 1998-1999 Proceeding for Canadian signals and all other signals. This chart shows a relative comparison of the change in what cable system operators pay for each Instance of Carriage.

The chart shows that while the royalties paid per Instance of Carriage have grown for all signals since the last proceeding, they have grown faster for the Canadian signals than for all other signal types.

Conclusion

The quality, quantity, breadth and depth of Canadian programming provide unique enrichment to the lives of Americans living along the Canadian border. They are entertained and informed with a perspective that is decidedly different from that found on American broadcast and cable television programming. To American cable system operators, the carriage of Canadian distant signals is, therefore, an easy way to bring diversity to the channel lineup, enhancing the cable operators' ability to attract and retain subscribers.

The substantial growth of Canadian signal carriage is tangible evidence of the value cable operators place on the Canadian signals. The data track the actual conduct of cable operators who select distant signals to carry and then pay substantial royalties for those signals. The carriage data evidence demonstrates changed circumstances by showing that cable operators have paid a larger percentage of their royalties for Canadian signals in the years 2000-2003 than they paid in the period covered by the 1998-1999 Distribution Proceeding.

Canadian signal carriage growth relative to other signal types, demonstrated by the data reported by cable systems and aggregated by CDC, shows that there is something intrinsically valuable about Canadian signals. As the cable operator survey shows, the cable operators themselves attribute the majority of that value to CCG programming.



1. ACPAV/Corporation de développment et de productions ACPAV Incorporated

2. Air Farce Productions Incorporated

3. Alberta Filmworks Incorporated/Alberta Filmworks Movie One Incorporated/Alberta Filmworks Movie Two Incorporated/ Pindrop Productions Incorporated

4. Alcina Pictures Limited

5. Alliance Atlantis Communications Incorporated

- 6. Amérimage-Spectra Incorporated/Amérimage Québec Incorporated/Amérimage Communications Incorporated/ Sogestalt 2001Incorporated/Les Productions Sogestalt Incorporated/Productions Bleu Blanc Rouge Incorporated/ Equipe Spectra Incorporated
- 7. Breakthrough Films & Television Incorporated
- 8. Cambium Film & Video Productions Limited
- 9. Canadian Broadcasting Corporation (CBC)
- 10. Canamedia Productions Limited
- 11. Carol Reynolds Productions Incorporated
- 12. CHUM Limited
- 13. Cinar Corporation
- 14. CinéGroupe Animation Incorporated
- 15. CinéGroupe Distribution Incorporated
- 16. Cinémaginaire Incorporated/Instant Amoureux Incorporated/Montréal Vu Par Incorporated/Le Confessional Incorporated/Le Pain Incorporated/Production Le Siège Incorporated/Production Le Jour Incorporated/Laura Cadieux Incorporated
- 17. Ciné Qua Non Films
- 18. Cirque du Soleil Images Incorporated
- 19. Cirrus Productions Incorporated/Prouctions Deux Frères, la suite Incorporated
- 20. CKWS Television
- 21. CKY5-TV
- 22. Cochran Entertainment Incorporated
- 23. Cogeco Radio-Television Incorporated (CKSH-TV)
- 24. Communications Claude Heroux Plus
- 25. Craig Broadcast Systems Incorporated (CKX-TV)
- 26. Craig Thompson Productions Incorporated/Cottage Country Television Incorporated
- 27. Credo Entertainment Corporation
- 28. Crescent Entertainment Limited
- 29. Crossroads Christian Communications Incorporated
- 30. CTV Television Incorporated (CFTO/CICC/CIEW/CIVT/CJOH)
- 31. ECP (Entreprises de Création Panacom Incorporated)
- 32. Ego Film Arts
- 33. Ellis Entertainment Corporation
- 34. Emergence Réseaux Incorporated
- 35. Epitome Distribution Incorporated/P.W.T. Distribution Incorporated
- 36. Filmline International Incorporated
- 37. Filmoption International Incorporated
- 38. Fireworks Media Incorporated
- 39. Galafilm Incorporated
- 40. Global Television/Canwest Television Network
- 41. ImX Communications Incorporated/Imagex Limited/IMXNew Waterford Incorporated/ImX Divine Ryans Incorporated/ Glace Bay Pictures Incorporated/ImX Lovdth Incorporated/ImX Writers Block Incorporated/Ordinary Time Productions Limited/ImX Angel Flick Incorporated
- 42. Insight Production Company Limited
- 43. Kensington Communications Incorporated/Exhibit A Productions Incorporated
- 44. Kevin Spencer Incorporated



- 76. Sienna Films / April One Productions / Stand Off
- 77. Société de télédiffusion du Québec
- 78. Sound Venture Productions Ottawa Limited / 1350907 Ontario Limited
- 79. Sovicom Incorporated / Sovimed Incorporated
- 80. Sphère Média Incorporated
- 81. Summerhill Entertainment Incorporated
- 82. Sullivan Entertainment International
- 83. Thunder Bay Electronics Limited (CKPR / CHFD-TV)
- 84. TVA Group Incorporated
- 85. TVA International Distribution Incorporated
- 86. Undersea Treasures Incorporated/NG Adventures Incorporated/Medical Mystery Incorporated/Escape Pictures Incorporated/20th Century Pictures Incorporated/Alton Pictures Inc./Icon Films Inc./Shipwreck Films Incorporated/Cinenova Productions Incorporated
- 87. Vendôme Télévision Incorporated
- 88. Vivaclic Incorporated
- 89. Westwind Pictures Limited



- 1. 1508251 Ontario Incorporated
- 2. Air Farce Productions Incorporated
- 3. Alcina Pictures Limited
- 4. Alliance Atlantis Motion Picture Distribution Incorporated
- 5. Breakthrough Films & Television Incorporated/1162100 Ontario Incorporated/1216935 Ontario Incorporated/1280903 Ontario Incorporated/1330135 Ontario Incorporated/The Friendly Kitchen Company Incorporated/Queen Light Productions Incorporated/Shadow Lake Productions Incorporated/Dragon Tales Productions Incorporated/Dragon Tales Productions(1994) Incorporated/Dragon Tales Productions (1995) Incorporated/Dragon Tales Productions (1997)Incorporated
- 6. Cambium Film & Video Productions Limited/Catalyst Ent./CCI Entertainment Limited
- 7. Canadian Broadcasting Corporation (CBC)
- 8. Canadian Feature Film Productions (The Feature Film Project)
- 9. Canwest Global Broadcasting Incorporated CIII/ CIHF/ CJNT/ CICT/CHCH/CITV/CKRD/CKND /CISA/CHBC/CHEK/CHAN/CKMI/CFSK/CFRE
- 10. Carol Reynolds Productions Incorporated
- 11. Chris Knight Enterprises (The Great Canadian Food Show/Cook Like A Chef Incorporated)
- 12. CHUM Limited
- 13. Cinar Corporation
- 14. CinéGroupe Animation Incorporated
- 15. CinéGroupe Distribution Incorporated
- Cinémaginaire Incorporated
- 17. Cinemavault Releasing Incorporated/ Cinemavault Com. Incorporated/ S Entertainment (1997) Incorporated/S Entertainment Incorporated/SC Entertainment Holdings Incorporated /SC Entertainment International Incorporated/SCE Incorporated
- 18. Cirque du Soleil Images Incorporated/Les Films Lampo di Vita Incorporated/ Créations Musca Incorporated/Productions Conte Incorporated
- 19. CKWS Television
- 20. Cochran Entertainment Incorporated/Pony Productions (Cycle I) Incorporated/Pony Productions (Cycle I) Incorporated
- 21. Cogeco Radio-Television Incorporated (CKSH-TV)
- 22. Craig Broadcast Systems Incorporated (CKX-TV)
- 23. Crossroads Christian Communications Incorporated
- 24. CTV Television Incorporated (CFTO/CICC/CIEW/CIVT/CJOH/ CFCF/CKY)
- 25. Ego Film Arts
- 26. Ellis Entertainment Corporation
- 27. Epitome Distribution Incorporated/P.W.T. Distribution Incorporated
- 28. Filmline International (1999) Incorporated
- 29. Filmoption International Incorporated
- 30. Films Zingaro Incorporated (formerly Productions Sogestalt Incorporated)/ Amérimage-Spectra Incorporated/Sogestalt 2001 Incorporated/Productions Bleu Blanc Rouge Incorporated/Amérimage Québec Incorporated/Amérimage Communications Incorporated/Les Equipe Spectra Incorporated
- 31. Fireworks Media Incorporated
- 32. Galafilm Incorporated
- 33. ImX Communications Incorporated
- 34. Insight Production Company Limited
- 35. Kensington Communications Incorporated
- 36. Kinémage International Incorporated
- 37. King Motion Pictures Corporation
- 38. Lions Gate Films
- 39. Match-TV Incorporated



- 1380099 Ontario Incorporated (c.o.b. as Heroic Film Company) 1.
- ACPAV (Association coopérative de productions audio-visuelles) /Corporation ACPAV 2. Incorporated (Corporation de développement et de production ACPAV Incorporated)
- 3. Air Farce Productions Incorporated
- Alliance Atlantis Motion Picture Distribution Incorporated 4.
- Blomeley Communications Incorporated 5.
- Breakthrough Films and Television Incorporated 6.
- Canadian Broadcasting Corporation (CBC) 7.
- Canadian Feature Film Productions (The Feature Film Project) 8. 9.
- Canwest Global Broadcasting Incorporated(CIII/CIHF/CJNT/CICT/CHCH/CITV/CKRD/CKND/CISA /CHBC/CHEK/CHAN/CKMI/CFSK/CFRE)
- Carol Reynolds Productions Incorporated 10.
- CCI Entertainment Limited/Cambium Film & Video Productions Limited/Catalyst 11. Entertainment Incorporated/CCI Releasing Incorporated/Cambium Releasing Incorporated/Catalyst Distribution Incorporated 12.
- Chris Knight Enterprises/The Great Canadian Food Show Inc./Cook Like A Chef Incorporated 13.
- 14. Cinar Corporation
- 15. CinéGroupe Corporation
- Cinémaginaire Incorporated 16.
- CineNova Productions Incorporated/Lost at Sea Pictures Incorporated/Ocean Ranger 17. Productions Incorporated
- Cirque du Soleil Images Incorporated/Les Films Lampo di Vita Incorporated/ Créations 18. Musca Incorporated/Productions Conte Incorporated/Productions Conte III Incorporated 19.
- 20. (CKX-TV) Craig Media Incorporated
- 21. CKY-5
- Communications Claude Heroux Plus Incorporated 22. 23.
- Cooper Rock Pictures Incorporated
- Crossroads Christian Communications Incorporated 24.
- CTV Television Incorporated (CFTO/CICC/CIVT/CJOH/CFCF/CKY) 25.
- Decode Entertainment Incorporated/Hoobs Productions Incorporated/Decode/Hoobs 26. Productions 2 Incorporated/Decode/Save-Ums Productions Incorporated/Watership Incorporated (formerly Watership Productions Incorporated)/Decode/ Watership 2 Incorporated/Decode/Zack Productions Inc./Decode/ Zack Productions 2 Incorporated 27.
- Dracula Productions Incorporated
- Earth Films Investments Incorporated/Trial By Fire Films Incorporated 28. 29.
- ECP (Entreprises de Création Panacom Incorporated)
- 30. Ego Film Arts
- 31. Ellis Entertainment Corporation
- Epitome Distribution Incorporated/P.W.T. Distribution Incorporated 32.
- Filmline International (1999) Incorporated c/o Darras David 33.
- Films Zingaro Incorporated (formerly Productions Sogestalt Incorporated)/ Amérimage-34. Spectra Incorporated/Sogestalt Télévision Inc.(formerly Sogestalt 2001 Incorporated) 35.
- Fireworks Media Incorporated
- 36. Forum 5/Cineflix
- Galafilm Productions (I) Incorporated/Galafilm Productions (III) Incorporated /Galafilm 37. Productions (IV) Incorporated/Galafilm Productions (VI) Incorporated/Galafilm Productions (VII) Incorporated (Co-Producers Back Alley (Exposed) Incorporated/Galafilm Productions (VIII) Incorporated (Co-Produceurs Création Musca Incorporated)/Galafilm Productions (WW4) Incorporated/Galafilm Productions (2000) Incorporated



- 1. ACPAV et Corporation de développement et de production ACPAV Incorporated
- 2. Air Farce Productions Incorporated
- 3. Anaid Productions Incorporated
- 4. Breakthrough Entertainment Incorporated
- 5. Canadian Broadcasting Corporation (CBC)
- 6. Canadian Feature Film Productions (o/a The Feature Film Project)
- 7. Canwest Global Broadcasting Incorporated(CIII/CIHF/CJNT/CICT/CHCH /CITV/CKRD/CKND/CISA /CHBC/CHEK/CHAN/CKMI/CFSK/CFRE)
- 8. Carol Reynolds Productions Incorporated
- 9. CCI Entertainment Limited/Cambium Film & Video Productions Limited/Catalyst Entertainment Incorporated/CCI Releasing Incorporated/Cambium Releasing Incorporated/Catalyst Distribution Incorporated
- 10. Cineflix Incorporated/Forum 5 Incorporated
- 11. CinéGroupe Corporation/CinéGroupe Animation/CinéGroupe Distribution
- 12. Cinémaginaire Incorporated/Montréal Vu Par Incorporated/Confessionnal Incorporated/Film Nuces Incorporated/Productions 15 Moments Incorporated/Laura Cadieux Incorporated
- 13. Cirque du Soleil Images Incorporated/Les Films Lampo di Vita Incorporated/Créations Musca Incorporated/Productions Conte Incorporated/Productions Conte II Incorporated/Productions Conte III Incorporated
- 14. CKWS Television
- 15. Communications Claude Heroux Plus Incorporated
- 16. Cookie Jar Entertainment Incorporated
- 17. Cooper Rock Pictures Incorporated
- 18. Crescent Entertainment Limited/Marine Life Productions Limited/Warrior Productions Limited/Nightman Productions Incorporated/Crow Productions Incorporated/Monkey House Productions Limited
- 19. Crossroads Christian Communications Incorporated
- 20. CTV Television Incorporated (CFTO/CJOH/CICC(CIEW)/CFCF/CIVT/CKY(CKYB))
- 21. Decode Entertainment Incorporated/Decode/Blobheads Productions Incorporated/ Decode/Save-Ums Productions Incorporated/Hoobs Productions Incorporated/Angela Productions Incorporated
- 22. Ego Film Arts
- 23. Ellis Entertainment Corporation
- 24. Epitome Distribution Incorporated/P.W.T. Distribution Incorporated
- 25. Filmline International (1999) Incorporated c/o Darras David
- 26. Filmoption International
- 27. Films Transit International Incorporated
- 28. Films Zingaro Incorporated (formerly Productions Sogestalt Incorporated)/ Amérimage-Spectra Incorporated/Sogestalt Télévision Incorporated/Sogestalt TV Québec/Productions Bleu Blanc Rouge Incorporated
- 29. Fireworks Media Incorporated
- 30. Force Four Entertainment Incorporated/Force Four Productions Limited
- 31. Galafilm Incorporated/Galafilm Productions (I) Incorporated/Galafilm Productions (III) Incorporated/Galafilm Productions (VII) Incorporated/Galafilm Productions (VIII) Incorporated/Galafilm Productions (X) Incorporated
- 32. IMX Communications Incorporated/Imagex Limited
- 33. Insight Production Company Limited
- 34. Juste pour Rire/Just for Laughs
- 35. Kinémage International Incorporated
- 36. Knight Enterprises/Great Canadian Food Show Incorporated
- 37. Lions Gate Films Corporation



ACPAV

Founded in 1971, ACPAV has launched over 40 feature films and more than 50 television documentaries and series. The team is made up of three producers with more than 20 years of experience.





Air Farce Productions

Independent television production company producing Royal Canadian Air Farce, one of Canada's leading current affairs comedy series. Air Farce has existed on radio, television, books, audio recordings and on stage since 1973.



Alberta Filmworks Incorporated

Headquartered in Calgary, Alberta Formworks is an independent Canadian film and television production company. In its nineteen-year history, the company has produced over one hundred and sixty hours of high quality, prime time dramatic programming. Alberta Filmworks' movies and series have been broadcast and distributed throughout the world, and have garnered over one hundred Canadian and international nominations and awards. Alberta Filmworks has produced and co-produced dramatic programming for Lifetime, USA Network, Court TV, BBC, Showtime, CBC, CTV and Global Television among others.



Alcina Pictures

Alcina Pictures is a Toronto-based film and television production company committed to developing and producing domestic and internationally marketable commercial and arthouse pictures. Part of the Canadian independent community, Alcina prides itself on working with today's new talent and voices of both Canadian and International cinema. Alcina has developed coproduction relationships with companies in Germany, France, Mexico, Ireland and the U.S.



Alliance Films Incorporated/Alliance VivaFilm Incorporated

Alliance Films (previously known as Alliance Atlantis Motion Picture Distribution Incorporated) is a leading distributor of motion pictures in Canada, with motion picture distribution operations in the United Kingdom and Spain. The company distributes filmed entertainment to theatres, on DVD, online and to television broadcasters. Alliance Films holds the Canadian distribution rights to the productions of leading independent studios.

Amérimage-Spectra Incorporated

Producers of the Festival International de Jazz de Montréal Television Programming. Over the past decade the company has carved out an enviable place for itself in international markets, and today is regarded as one of the most important Canadian television and film producers in performing arts. Amérimage Spectra is internationally recognized for its know-how and expertise in large-scale television productions.



Anaid Productions

Anaïd produces award-winning, dynamic, and internationally recognized real-life and dramatic television series.





Carol Reynolds Productions Incorporated

Independent producer of movies of the week and variety specials featuring artists such as Céline Dion and Sarah McLachlin.

CCI Entertainment Limited

Formed in 2002 through the merger of Cambium Entertainment Corporation and Catalyst Entertainment Incorporated, CCI Entertainment is founded on over 30 years of experience in television production and international distribution. During this time, the Toronto-based company has set new standards for excellence, service and integrity in the Canadian entertainment arena. CCI Entertainment's mission is to create great television that entertains, engages minds and hearts; and fuels the imagination.

CHUM Limited

A media company based out of Toronto, Ontario, CHUM operated several independent television and radio stations, as well as specialty networks. It also supplied syndicated programming to Canadian network broadcasters.



Cineflix & Forum 5

Cineflix, a subsidiary company of Forum 5, is an international group of companies producing, acquiring and distributing innovative non-fiction television programming in the factual entertainment, factual and documentary genres for television networks worldwide. Since 2000, Cineflix has grown from a small independent Montréal based producer to one of the world's leading international production and distribution companies with offices in Montréal, Toronto, London and Dublin.

Cinégroupe Corporation/9151-4190 Québec Incorporated

CinéGroupe specializes in forging alliances to finance and produce programming that captures audiences. One of the Company's hallmarks is its ability to work with different partners and clients across North America and around the world. CinéGroupe boasts over 1,000 hours of award winning, world animation & live-action programming.



Ciné Qua Non Média

Ciné Qua Non is a Montreal based company that produces documentaries, performing arts specials and feature films.

Cinémaginaire Incorporated

Cinémaginaire Incorporated is a Montreal company, which produces feature films and documentaries. It was created in 1988 – the realization of a dream for founder Denise Robert and associate Daniel Louis. Known for its talent for innovation, the company has made more than 20 feature films that have garnered international acclaim and numerous awards. These include an Academy Award in 2004 for *The Barbarian Invasions*.



Cookie Jar Entertainment

Cookie Jar (formerly Cinar) is one of the fastest growing most dynamic kids companies in the world today. In just three short years, Cookie Jar has become a leader in entertainment, creating successful, innovative, and immensely popular entertainment and educational content for kids around the world. Cookie Jar brands are valued for their entertainment, educational excellence and engaging content. Well-respected Cookie Jar products and shows like "The Doodlebops," "Hurray For Huckle! (Busytown Mysteries)," "Will & Dewitt," "Caillou," "Gerald McBoing Boing" and "Arthur" allow kids to have fun and learn at the same time.

Cooper Rock Pictures Incorporated

Cooper Rock Pictures Incorporated produces engaging and thought provoking programming for broadcasters worldwide. It specializes in creating stories that reflect a wide range of emotions and circumstance. The company successfully portrays the human-interest side of topics as diverse as sports, health and history.

Craig Thompson Productions

Producers of the television series Cottage Country. Craig Thompson is an accomplished writer, television producer and broadcaster with a love for the outdoors. In the series he and co-host Robin Moir visit weekend getaway sites on oceans, lakes, rivers, and mountainsides across Canada.

Credo Entertainment Corporation

Credo, one of western Canada's largest independent producers of entertainment programming, earned a reputation for excellence by producing award-winning animation, television commercials, sponsored films and drama programs.



Crescent Entertainment

Crescent Entertainment is an award winning, film and television production company based in Vancouver, Canada. Since 1990, company partners Jayme Pfahl, Harold Tichenor, and Gordon Mark have been involved in over forty productions, specializing in the development and production of original feature films, television and documentaries.



Crossroads Christian Communications

Crossroads Christian Communications Incorporated produces a wide variety of Christian ministry programs and carries other programs that also promote positive values and moral decency. It makes creative use of television and other media, together with other activities, which respond to the mission conscience and needs of the constituency.

CTV Television Incorporated

CTV, Canada's largest private broadcaster offers a wide range of quality news, sports, information, and entertainment programming. CTVglobemedia Incorporated is Canada's premier multi-media company, which owns CTV Incorporated and The Globe and Mail. CTV Incorporated also owns radio stations across the country, and leading national specialty channels.



Filmline International

Founded in 1984 and solely owned by Nicolas Clermont since the early 1990's, Filmline International soon became one of the leaders in production and co-production in Canada, producing an impressive slate of features, movies of the week, mini and TV-series. In September 1996, Filmline International became a wholly owned subsidiary of Behaviour Communications Incorporated, a Montreal-based multi-media public company.

Filmoption International

In business for now 30 years, Filmoption International is specialized in television distribution. An importer and exporter of programs its catalogue features titles ranging from feature films, drama series, children's fare as well as all genres of documentaries, series and one-offs.

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Films Transit International

Founded in 1982 by Jan Rofekamp, Films Transit is one of the world's leading international distributors of quality documentaries in two specific genres: Arts & Culture and Society & Politics.



Fireworks Entertainment

Fireworks Entertainment was founded by Jay Firestone in 1996, to produce, distribute and finance television shows and feature films. It produced a diversified range of programming, with the dominant category of production being dramatic series. Some of the company's productions include: Nikita, Robocop, Mutant X, and Relic Hunter.



Force Four Entertainment Incorporated/ Force Four Productions Limited

For over twenty years, Force Four Entertainment has been creating high quality, award-winning television in all genres, from documentary and factual entertainment to scripted dramas and comedy. It has produced more than three hundred hours of television, earning accolades on the national and international stage. These awards include the prestigious Peabody Award for "Significant and Meritorious Achievement in

GAÉA Films Incorporated

GAÉA, (formerly Communications Claude Heroux Plus Incorporated) is an independent production and distribution company initially known for films and television series, including Lance et Compte. It has diversified its production slate, producing documentaries, dramas, magazine and variety programs for domestic television services and clients around the world.



Just For Laughs/Juste pour rire

At Just For Laughs, they take humour seriously. The Just For Laughs Festival has become a world-renowned entertainment landmark, recognized for the quality of its content and the professionalism of its staff. Just For Laughs also produces award-winning TV shows, which have been broadcast in 140 countries and carried by 95 airlines worldwide, an unprecedented success, reaching millions of viewers across the globe. The gags series has become the number 1 comedy show in the world.



Kensington Communications Incorporated

Kensington is a producer and distributor of television, film and new media content.



Kevin Spencer Incorporated (known as Ocnus Productions)

Working in both live action and animation, this Ottawa, Ontario based production company has produced 180 ½ hours of nationally broadcast series television. Beginning with 13 animated shorts, the series *Kevin Spencer* went on to achieve hit and cult status, hailed as both the worst show on television and brilliant social satire.



King Motion Picture Corporation

King Motion Picture Corporation is the creator and producer of the series *This Living World* and founder of This Living World Nature Trust. Its mission, by way of the television series, is to create, develop and distribute quality programs that meet the needs and expectations of its patrons, sponsors, broadcasters and viewers. King's ultimate goal is to foster and promote a respect for public awareness, appreciation and understanding of the natural world and of all living things that share its wonder.

Knight Enterprises

Knight Enterprises is a full service, independent production company. It is a proven performer, delivering internationally successful, high quality and incredibly entertaining lifestyle programming. The company is best known for its incredibly entertaining and mouth watering food television series including - "The Great Canadian Food Show", "Table d'Hote", "Cook Like a Chef" and "Licence to Grill", "Junk Brothers" as well as the latest project "This Food That Wine". Knight Worldwide Media Company is its wholly owned distribution arm.



Lions Gate Studios

Lionsgate is a leading independent producer and distributor of motion pictures, television programming, home entertainment, family entertainment, video-on-demand and digitally delivered content. Its prestigious and prolific library of nearly 12,000 motion picture titles and television episodes is a stable source of recurring revenue and is a foundation for the growth of the Company's core businesses. The Lionsgate brand name is synonymous with original, daring, and quality entertainment in markets around the globe.

Match TV Incorporated

Productions Match TV specializes in the development of television series– from comedies to dramas. It coproduces with independent producers for network broadcasters.



Norflicks Productions Limited

Norflicks has been a successful independent Canadian television production company since its incorporation in 1985. Led by its president and founder, Richard Nielsen, Norflicks earned a reputation for creating high quality, entertaining television. Norflicks met success with feature films, comedy series, as well as war documentaries. The company also made its mark in the world of religious programming and became widely known for making programs that bring Canadian history to life.

Novem Communications Incorporated

Under the direction of Véronique Cloutier, Novem combines four centres of activity: television production, shows, films and publishing. Its versatility and dynamism make this independent company an important contributor actor within the Quebec cultural industry.



Omni Film Productions Limited/Water Street Pictures

For 29 years Vancouver based Omni has produced quality programming with integrity and a passion for storytelling. It is one of Canada's longest established television and film production companies. Omni develops, finances and produces dramatic, factual and lifestyle series, documentaries and children's programming for the domestic and international market. Together with sister companies Water Street Pictures and Water Street Releasing, Omni Film Productions Limited is a complete film and television production and distribution entity with a steadily growing catalogue of exceptional programming.

Paradigm Pictures Corporation

The film, video and multi-media production company Paradigm Pictures Corporation was founded in 1997. The principals are award-winning producers/directors/writers, Marrin

Canell and Ted Remerowski. The Canadian Broadcasting Corporation's premier documentary strand Witness has commissioned a number of documentaries including Security Threat, a portrait of a post-September 11th society; Diet Wars, a look inside the multi-million dollar diet industry; Dying to Win, an expose of drugs in sport, which was nominated for a Monte Carlo Television Award; Lost and Found, a quirky look at Lost and Found departments around the world; Quints & Quads: A New Baby Boom, a look into the growing number of multiple births; No Place to Hide: Big Brother and No Place to Hide: Little Brothers, a

Peace Arch Entertainment Group Incorporated

Peace Arch Entertainment produces and acquires feature films, television and home entertainment content for distribution to worldwide markets. Peace Arch owns one of the largest libraries of top quality independent feature films in the world, featuring more than 2,000 classic and contemporary titles. Peach Arch Television produces and acquires, series, miniseries, movies of the week, lifestyle programming, and documentaries.





Productions Roch Brunette Incorporated (known as PRB Media)

PRB Media is a creative communications company formed in 1990 with a mission to create innovative communications products that capture and change audiences. PRB Media creates compelling and thoughtful television and new media productions that connect with audiences to inspire, entertain and teach.

prbmëdia

Productions Thalie Incorporated

Productions Thalie was founded in 1998. It quickly became a key player in the film and television industry in Quebec City. It draws on the talents of more than 200 artisans in the region as well as relationships with international co-producers to create dramas and documentaries.

Productions Vendome II Incorporated

Vendôme Télévision is a TV production company founded in 1995 by André Dubois. Best known for comedy series, it has also made successful sitcoms and a satirical mini-series. Recent productions include documentaries for public broadcasters and specialty services. Without abandoning comedy, the company is planning further diversification in drama and documentary series.



Productions Vidéofilms Limited

Production house created in 1972 by Robert Ménard, a producer and director with more than 15 feature films and eight television series.

Productions Zone3 Incorporated

Zone3 is a solidly established Quebec company whose creative ideas and skills are focused in three main areas of production: television, live entertainment and recordings. The Zone3 team is a remarkable synergy impressive list of projects.

Protocol Entertainment Incorporated

Protocol Entertainment, Incorporated originally founded in 1993 is one of Canada's most celebrated producers of popular and critically-acclaimed children's entertainment television programming. The company is recognized worldwide for producing high quality, audience and award-winning series for kids and families based on best-selling book properties. The producer of the smash hits Goosebumps™, Animorphs™, Dear America™ and The Saddle Club™ television series, Protocol Entertainment, Incorporated is based in Toronto.

Radical Sheep Production Incorporated

With over 300 episodes of award-winning television and successful licensing programs, Radical Sheep has grown to be one of the most highly acclaimed children's television producers in North America. The creation of enduring characters and stories lies at the heart of Radical's success. Perhaps Radical's greatest achievement is *The Big Comfy Couch*, an award winning series for pre-schoolers. Among its credits, Radical Sheep has also executive produced four seasons of the hilarious and quirky adult comedy series *Puppets Who Kill*.



Sienna Films

Sienna Films is an award-winning independent film and television production company based in Toronto, Canada. The company was started by Julia Sereny, in a room of her house, in 1992. While Ms. Sereny and her business partner Jennifer Kawaja both have backgrounds in documentary filmmaking they have very successfully branched into the world of feature film. Ms. Sereny's New Waterford Girl was shown at The Sundance Festival in Utah, as well as the recent indie hit How She Move.

Soapbox Productions

Soapbox Productions was formed in January 1990 from a partnership of Pat Ferns and Nick Orchard. Both brought to Soapbox an extensive background in drama and TV series production. Nick acquired sole ownership of the company in 1993. The company has expanded significantly in the last few years and diversified its output, branching from drama to comedy, documentary, music, children's and reality series., and recent productions include "O.Com; Cybersex Addiction" for the CBC's Passionate Eye, two "New Beachcombers" MOWs for the CBC, "Shakin' All Over", a 3-part history of Canadian rock for CBC, two seasons of "Head's Up!" a children's series for TVO, a 3-hour history of the comedy group Second City for CBC and "On Screen", six documentaries for CHUM/Bravo.

Société de télédiffusion du Québec

Société de télédiffusion du Québec is a public television station owned by the government of Québec and created by law of the Québec parliament. Its mission is to be an educative and cultural television station that is accessible to the entire population of the province.



Sound Venture Productions

Originally formed in 1980, Sound Venture Productions started as one of the first radio commercial and audio production companies in Ottawa. With a reputation for innovation and creativity, Sound Venture was honoured with prestigious awards from around the world, proving that high quality production was possible in the Ottawa region.



Sovicom Incorporated/ Sovimed Incorporated (now known as Sovimage)

Established in 1992 Sovimage Productions strives to identify trends and current issues in order to develop concepts for drama and documentary series that meet the objectives of television broadcasters.

Sphère Média Incorporated

Headquartered in the Montreal area. Sphère Média Plus is a major player on the television landscape, with over 350 viewing hours produced, broadcast during prime time. Seeking everhigher standards of excellence, and motivated by the desire to surpass its previous achievements in the production field, Sphère Média Plus specializes in the creation of dramatic TV series.



Studio B Productions Incorporated

In 1988, Chris Bartleman and Blair Peters formed Studio B, starting with animated shorts, Sesame Streets shorts, layout and storyboard work. In 2000, they launched the original series "What About" in Canada and Germany. In 2001, Studio B was voted one of KidScreen's "Kids Entertainment Elite". Named one of the 10 most innovative and creative studios in the world by Television Business International Magazine.





TVA Group Incorporated

TVA, founded in 1960 under the name Corporation Télé-Métropole incorporated, is an integrated communications company with operations in broadcasting, the production of audiovisual content, magazine publishing, editing and the merchandising of various products. TVA is the largest private-sector producer and broadcaster of French-language entertainment, news and public affairs programming in North America.



Urban Peasant Productions

The late James Barber was the Urban Peasant – critic, cook, author and effusive host of *The Urban Peasant* cooking show, which championed rustic dishes made with ingredients at hand.

Verseau International Incorporated

Founded in 1973 by Aimée Danis and Guy Fournier Verseau quickly established itself as a producer for television but also made its mark with feature films and dramatic series. The production team is amongst the best in the domain of film and television, guaranteeing productions of the highest quality.

Vivavision Incorporated

Vivavision Incorporated (formerly Vivaclic Incorporated) is a Canadian company that produces quality television and film programming primarily for children and families. A highly accomplished force within the Quebec market since 1989, Vivavision is growing, becoming among the leading national producers within their specialized markets, and expanding into new world-markets through coproductions with international partners.

WestWind Pictures Limited

Westwind Pictures is an independent television production company with programs airing in over 80 countries around the world. The company is currently involved in scripted television series, documentaries, lifestyle programming and feature films. Its diverse product line reflects a commitment to produce imaginative, entertaining, and insightful programming. WestWind Pictures' flagship show, *Little Mosque on the Praine*, features the antics of a small Muslim community in the fictional prairie town of Mercy. The series takes an unabashedly comedic look at the congregation of a rural mosque and their attempt to live in harmony with each other, and with the often skeptical, even downright suspicious residents of their little town.





CANADIAN CLAIMANT GROUP MEMBERS SELECTION OF PROPERTIES LICENSED TO U.S. TV SERVICES WITHIN THE YEARS 2000-2003

GLAIMANT: NAME	PRODUCTION	CLIENT NAME	a tri Cia
			SILON
Alcina Pictures	Beso Nocturno (Night Kiss)	Sundance Channel	H G
			A 2000
Anaid Productions Inc.	Mentors - Seasons 1, 2, 3	Discovery	Cable TV
Breakthrough Entertainment	Kenny vs. Spenny	GSN (Game Show Network)	Cable TV
Gookie Jar (Cinar)	Address Unknown		
Gookie Jar (Cinar)	Adventures of Paddington	Odyssey, A Hallmark and Henson Network	TV - Basic, TV - Free, TV - Pay
Cookie Jar (Glnar)	Alan & Naomi	Columbia Tiffee II	TV - Basic, TV - Free, TV - Pay
Cookie Jar (Ginar)	Alan & Naomi	Odverson A Walliam Live of the	TV. Free, TV. Pay, Video
Cookie Jar (Cinar)	Animal Crackers	Coysody, in natitional region network	IV - Basic, TV - Free, TV - Pay
Cookie Jar (Ginar)	Animal Grackers	Date Desertational Calculation College	IV - Basic, TV - Free, TV - Pay
Cookie Jar (Cinar)	Best Bad Thing (The)	Octa Broadcasing LLC	TV - Free
Cookie Jar (Cinar)	Boniour Timothy	Energy Madia Office States, LLC	TV - Basic, TV - Free, TV - Pay
Gookie Jar (Cinar)	Breaking Free		IV - Basic, TV - Free, TV - Pay
Cookie Jar (Cinar)	Bunch of Munsch (A)	Univision Notwork	IV - Basic, TV - Free, TV - Pay
Cookie Jar (Cinar)	Busy World of Richard Scarry	MTV Networks	IV-Free, IV-Pay
Cookle Jar (Cinar)	City Mouse and the Country Mouse (The)	HBO (Home Box Office)	IV - Basic, IV - Free
Cookie Jar (Cinar)	Coyote Summer	Focore Media Com	TV - Basic, TV - Free, TV - Pay
Cookie Jar (Cinar)	Covote Summer	Odvesou A Lallmark and Hannel	IV - Basic, TV - Free, TV - Pay
Cookie Jar (Cinar)	Emily of New Moon	Cuyssey, A naminal k and Henson Network	IV - Basic, TV - Free, TV - Pay
Cookie Jar (Ginar)	Ghosts of Dickens' Past	Command Cold	IV - Basic, TV - Free, TV - Pay
Gookie Jar (Ginar)	Just Like Dad	Cinon Office of ales, LLC	IV - Basic, IV - Free, TV - Pay
Cookie Jar (Cinar)	pr C 031 1921	Cistiey Channel	TV - Basic, TV - Free, TV - Pay
Cookie Jar (Cinar)	X 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	Odyssey, A Hallmark and Henson Network	TV - Basic, TV - Free, TV - Pay
Cookie Jar (Cinar)	Xavia	Encore Media Corp	TV - Basic, TV - Free, TV - Pay
Cookie Jar (Cinar)	Legend of White Fang (The)	Lown media United States, LLC	TV - Basic, TV - Free, TV - Pay
Cookie Jar (Cinar)	Little Lulu Show (The)	HBO (Home Box Office)	TV Free
		O () O () O () O () O () O ()	IV - Basic, IV - Pay



CANADIAN CLAIMANT GROUP MEMBERS SELECTION OF PROPERTIES LICENSED TO U.S. TV SERVICES WITHIN THE YEARS 2000-2003

CLAIMANT NAME	NOTOTIONA		
	NOT DO TO	CLIENT NAME	RIGHTS
Cirque du Soleil Inc.	In the Heart of Drallon		
Cirque du Soleil Inc.	The Making of an Angel	Bravo	Cable & Satellite
Cirque du Soleil Inc.	Nouvelle Experience	0,90	Cable & Satellite
Cirque du Soleil Inc.	Run Before You Fly	0,500	Cable & Satellite
Cirque du Soleil Inc.	Saltimbanco	Bravo	Cable & Satellite
Cirque du soleil Inc.	Varekai	Bravo	Cable & Satellite
CTV Globlemedia Inc.	Comer Gas	WGN.	Free TV
Decode Entertainment	Undergrads	Comedy Central	
Decode Entertainment Decode Entertainment	The Zack Files	Disney Channel	Cable IV
Decode Entertainment	Girl Stuff Boy Stuff	ABC Family The N (Noccio)	Cable TV
Decode Entertainment Decode Entertainment	Radio Free Roscoe	The N (Noggin)	Cable TV
Decode Enlertainment	Kralt Brothers' Be the Creature	Discovery Kids National Geographic Change	Cable TV
i i			Cable 1V
Ellis Entertainment Corp. Ellis Entertainment Corp. Ellis Entertainment Corp.	Profiles Of Nature Specials (ix) Profiles Of Nature Specials (X) Profiles Of Nature Specials (Xi)	Discovery Channel Discovery Channel Discovery Channel	Standard & Non-Standard TV rights Standard & Non-Standard TV rights
Ellis Entertainment Corp.	The Baby Human (Sr.1) Beastly Countdown	Discovery Health US	Standard & Non-Standard TV rights
Ellis Entertainment Corp. Ellis Entertainment Corp.	Mother Nature Ii Wild Sites	Animal Planet/TLC · Travel U.S	Standard & Non-Standard TV rights Standard & Non-Standard TV rights Cable TV
Kensington Communications Inc.	Separate Lives	Discovery Communications	
Kensington Communications Inc.	Exhibit A: Secrets of Forensic Science (S.I-V) The Sacred Balance (Eps. 1 - 4)	Discovery Communications PBS	Non-Standard TV
Lions Gate	Hope Island		(bnonc)
Llons Gate	Higher Ground	rax and Snowcase Fox Family Channel	Cable TV
Minds Eye Entertainment Ltd. Minds Eye Entertainment Ltd	Celebrity Gravesites	The Travel Channel	Cable TV, non-theatrical home video
		The Travel Channel PBS	Cable TV, non-theatrical, home video
Minds Eye Entertainment Ltd. Minds Eye Entertainment Ltd.	Incredible Story Studio Just Cause		Cable TV
		Paxson Enledainment	Ali media



Canadian Claimant Members 2000-2004 International Awards

Alliance Atlantis Communications Incorporated

Hitler: The Rise Of Evil

2003

Emmy Awards

Outstanding Art Direction for a Miniseries, Movie or a Special Outstanding Sound Editing for a Miniseries, Movie or a Special

2004

American Society of Cinematographers

Outstanding Achievement in Cinematography in Movies of the Week/Mini-Series'/Pilot for Network or Basic Broadcast TV

Cinémaginaire incorporated

The Barbarian Invasions

2004

Academy Awards

2003

Best Foreign Language Film

Cannes Film Festival

Best Actress (Marie-Josee Croze)

2004

Cannes Film Festival

Best Screenplay (Denys Arcand)

CinéGroupe Corporation / 9151-4190 Québec Incorporated

Sagwa, The Chinese Simese Cat

2001

Emmy Award

Daytime Emmy Award for Individual Achievement in Animation

for Outstanding Background Artist

2001

Chicago Int'l Film Festival

2002

Houston Film Festival

Silver Award for Outstanding Children's Series

Silver Award for Children's Animated Series

Tripping The Rift

2004

Pulcinella Award, Cartoons

on The Bay Festival (Italia)

Best TV Series for Teenagers and Adults of the Year

Best Program of the Year

Jim Button 2000

TV-Spielfilm Magazine

Award for Best Animation Series



Canadian Claimant Members 2000-2004 International Awards

Radio Free Roscoe

2004

The New York Festivals

2004

The Parents' Choice Foundation

Silver Medal Winner, Teen Programs

Recommended, Ages 9-17

The Save-ums!

2003

The Parents' Choice Foundation

Recommended, Ages 2-6

What About Mimi?

2001

Pulcinella Cartoons on the Bay

(Italy)

Best TV Series for Children

The Zack Files

2002

29th Daytime Emmy

2004

The Alliance for Children &

Television

Winner, Outstanding Achievement In Sound Mixing

Award of Excellence, All Genres Category, Ages 9-12

Dracula Productions Incorporated

Dracula: Pages from a Virgin's Diary

2002

International Emmy Award

2002

Arts Programming

Sitges International Film Festival

(Spain)

2002

Best Film, Fantastic competition

Prague Int'l Television Festival

Grand Prix

Ellis Entertainment Corporation

Profiles of Nature Specials (IX) - Frogs: Leaping Wizards

2000

U.S. Int'l. Film & Video Festival

2000

Certificate for Creative Excellence: Nature & Wildlife

Columbus Int'l. Film & Video Festival

2001

Honourable Mention

Japan Wildfile Film Festival

Finalist

Profiles of Nature Specials (IX) - Polar Bears: Life on the Field of Bones

Columbus Int'l. Film & Video Festival

2001

Bronze Plaque

TVFestival, The Chicago Int'l.

Television Competition

Silver Hugo, Documentary: Science/Nature



Canadian Claimant Members 2000-2004 International Awards

Fireworks Distribution/Global Television

Gene Roddenberry's Andromeda I-V 2003

Chicago International Film Festival

Silver Plaque

Special Achievement in Direction

For episode "A Heart for Falsehood Framed"

2004

Chicago International Film Festival

Gold Plaque

Best Dramatic Series

For episode "Double or Nothingness"

Best Dramatic Series

For episode "Machinery of The Mind"

Special Achievement in Direction For episode "Double or Nothingness"

2001

Worldfest Houston

Gold Award

For episode "The Banks of The Lethe"

2002

Worldfest Houston

Gold Award TV Series-Dramatic

For episode "A Heart For Falsehood Framed"

2004

Worldfest Houston

Platinum Award

For episode "Double or Nothingness" For episode "Machinery of The Mind"

Kensington Communications Incorporated

The Sacred Balance

2003

Paris Festival Int'l

Prix science & societe

2004

Houston Worldfest

Platinum Award, Ecology/Environment/Conservation

Knight Enterprises Incorporated

The Great Canadian Food Show

2000

James Beard Awards

Best Television Food Journalism .

2001

James Beard Awards

Best Television Food Journalism

Cook Like A Chef

2002

James Beard Awards

Best Television Cooking Show or Special

2004

Gourmand World Cookbook Awards

Best English Cookbook Tied to a Television Program

EXHIBIT NUMBER 216

Rebuttal Testimony of Marsha E. Kessler CORRECTED JANUARY 15, 2010 AND FEBRUARY 2, 2010

My name is Marsha E. Kessler and I am Vice-President,
Retransmission Royalty Distribution at Motion Picture Association of
America ("MPAA"). I provided direct testimony in this proceeding on
behalf of Program Suppliers concerning how Section 111 works and my role
in the development of 2004 and 2005 Nielsen Viewing Studies and the 2004
and 2005 Cable Subscriber Surveys.¹

I. Purpose of Testimony

In his direct testimony, Mr. James Trautman of Bortz Media & Sports Group "acknowledge[d] the potential for certain 'fringe' programming to be interpreted as belonging to one category when for the purposes of these proceedings it may belong in another." In light of that statement, for these rebuttal proceedings, counsel asked me to review sports programs aired on stations distantly-retransmitted by cable operator respondents to Settling Parties' 2004 and 2005 Bortz surveys.

My testimony examines sports programming that was on the air in 2004 and 2005, the periods addressed in the Bortz surveys. In particular, with respect to stations distantly-retransmitted by respondents to the 2004 and 2005 Bortz surveys, I quantify the following: (1) all sports available on those stations; (2) the amount of compensable and non-compensable sports

¹ PS Exhibit 5.

² SP Exhibit 2 at 30; Tr. at 83:15-21, 107:14-22-108-1-5 (Trautman).

programming broadcast on those stations; (3) the distribution of compensable programming among several Phase I claimant groups; and (4) the availability of JSC sports programming in comparison to all sports programming available on those stations.

II. The Analysis

The process consisted of (1) identifying the commercial stations ("Bortz stations") distantly-retransmitted by cable operators included in the Bortz 2004 and 2005 surveys; (2) isolating all sports programs on those stations; (3) calculating the percentage of sports programs that were and were not compensable under the cable statutory license; and (4) allocating the broadcast time (in minutes) among the Phase I claimant groups to which each program belonged.

The following is the process by which I calculated these results:

a. Identification of the Bortz Stations

In the direct phase of these proceedings, the Settling Parties provided in discovery the distant stations retransmitted by the cable respondents in the Bortz 2004 and 2005 surveys. A listing of those stations is shown in Appendix A.

b. Definition of "Sports" and "Sports-like" Programming

Next, I defined two types of programs broadcast by the Bortz stations and called the programs "sports" and "sports-like" programming. By "sports" I meant programming considered to be in the JSC category, *i.e.*, live, play-by-play team professional and collegiate sports. By "sports-like," I meant all other programming that one thinks of as sports in the non-statutory license world, *i.e.*, non-JSC programs. Such programs include golf, ice skating, the Olympics, wrestling, boxing, poker, fishing, hunting, bowling, volleyball, bicycle riding, gymnastics, sports talk shows, motorcycle racing, triathlons, tennis, horseracing, diving, high school sports, and the like. In this testimony, I will refer to both categories combined simply as "sports."

c. Identification of Sports Programs

In order to identify sports programs on the air in 2004 and 2005, I referred to a file of television station programs the Settling Parties provided during discovery in the direct phase of these proceedings. It is my understanding that the data were prepared by Tribune Media ("Tribune") and that Tribune categorized each program in the file so that the program could be assigned to one of the Phase I groups in these proceedings.³

³ SP Exhibit 8 at 5.

For each program aired, the Tribune data report multiple data fields, one of which is "prog_type" (Program Type). In order to cull out sports programs, I filtered the data in the "prog_type" field for the following program types, the definitions of which Settling Parties provided in discovery:

PL - Playoff Sports

PS - Pseudo Sports

SE - Sporting Event

SP - Special

SR - Sports Related

TM - Team vs. Team

The SP (Special) group included many programs that clearly did not belong in the sport group like "Dr. Phil Primetime Special: Romance Rescue" and a Billy Graham special, so I reviewed the SP category and deleted all such programs. Additionally, I eliminated programs such as "NBA All-Star Reading Rally" because the focus of the program was on encouraging children to read rather than on sports. The remaining group of programs thus created became my database of sports programs.

d. Compensable and Non-compensable Sports

Under the cable statutory license, programming broadcast on the ABC/CBS/NBC networks is not compensable, so I next determined which of the sports programs on the Bortz stations were not compensable because they were network programs. I did that by sorting the Tribune data

according to the "claim_cat" (claim category) field, which contained various designations for network programming.

The remaining programs were compensable under the statutory license.

e. Allocation of compensable programming among Phase I claimants

Relying on Tribune categorizations in the "claim_cat" field, I sorted each sport program on the Bortz stations according to a Phase I claimant group.

f. Calculations

I based the calculations on minutes per Tribune data, which reported the duration in minutes for each program. For 2004 and 2005, I summed the total minutes for all sports programs. Next, I backed out minutes attributable to network programming. Then, I allocated the remaining compensable minutes to the various Phase I claimants who had sports programming in the database, and calculated the percentage for each category. I expressed the allocations as percentages of compensable sports programming.

III. Results

The results of my calculations are detailed in Appendix B of this testimony. In sum, cable operators retransmitted a plethora of sports programming during 2004 and 2005. In both years, about 60% of such programs were non-compensable for the purposes of this proceeding.

For the remaining 40% of the sports programs that were compensable, approximately two-thirds did not belong in the JSC category, but instead were programs associated either with Program Suppliers or with claimants other than JSC.

In other words, approximately 85% of the sports programs on the Bortz stations either were non-compensable under Section 111 or, if compensable, belonged to a program category other than JSC.

Given that the vast majority of the sports programming shown on the Bortz stations did not fall in the JSC category, it is unclear how such a large majority of the sports programming available can be considered "fringe" to the JSC category, as suggested by Mr. Trautman.

Thank you for this opportunity to provide additional information to the Panel.

CORRECTED APPENDIX A

REBUTTAL TESTIMONY OF
MARSHA KESSLER

CORRECTED

APPENDIX A 2004 BORTZ STATIONS

			OTBOICE	722220212			
CBET	KQED	WAXN	WEEE	WITF	WMVS	WPXI	WUAB
CBLT	KREN	WBAL	WEKW	WITI	WMVT	WPXP	WUPA
CBMT	KRWG	WBAY	WENH	WITN	WNAB	WPXV	WUPN
CFTO	KSAT	WBDC	WETK	WIUP	WNBC	WQED	WUSA
CHTV	KSAX	WBGN	WEUX	WIWB	WNCT	WQEX	WUTF
CIII	KSDK	WBGU	WEWB	WIXT	WNDS	WQLN .	WUTR
· CKSH·	KSPR	WBKB	WEYI	WJAC	WNDU	WQOW.	WUVP
KABB	KTCA	WBKP	WFAA	WJAL '	WNED	WRC	WUXP
KAET	KTCI	WBNS	WFFF	WJBK	WNEG	WRGB	HAVW
KAJB	KTEL	WBOY	WFLX	WJET	WNEM	WRIC	WVBK
KARE	KTNC	WBQC	WFQX	WJLA	WNEP	WSAW: :	.WVBT ,
KATV	KTVD	WBRE	WFRU	MMW	WNET	WSAZ :	,WVTA
KAWB	KTVK	WBTV	WFSB/	WJRT	WNEU	WSB .	WVNY
KCAL.	KTVU	WBZ	WFSBDT	WJW	UMMW	WSBK	WVTV
KCCO	KTXA	WBZL	WFTC	WJZ ·	VMMV	WSBT ·	WWBT
KCEB	KUHT	WCAU	WFUM	WJZY	WNPA	WSEE	WWDP
KCEN	KUID	WCAX	WFXP	WKAR	WNPB	WSKG .	WW1
KCET	KUSA	WCCB	WFXS	WKBD	WNPT .	WSKY	WWOR
KCNC '	KVIA	WCEU	WFXT	WKBT	WNYA	WSMH	WWPX
KGOP	KVRR	WCFE	WFXV	WKMJ	WNYT	WSMV	wwsi
KCRG	KWBM	WCFN	WGBA	WKRN .	WNYW	WSOC .	`wwtv
KCSO	KWGN	WCGV	WGBHLP	WKTV	WOAI	WSPA	WWWB
KDEB	KWTX	WCHS	WGCL	WKYT	WOUB	WSYX	WXEL
· KDKA	KWWL	WCIA	WGME	WLAJ	WOWK	WTAE	WXIA
KENS	KXAS	WCML	WGN	WLEX	WPBN	WTBS .	WXII .
KERA	KXTX	WCMV	WGNT	WLNS	WPBS	WTCE	WXXA
KGAN	KYTV	WCNY	WGPX	WLRN	WPBT	WTCN	WXYZ
KLRN .	KYTX	WCTI	WGTV	WLTV	WPBY	WTEN .	WYBE
KMGH	KYW	WCVB	WHAG	WLÜK	WPCB	WTMJ	WYDN
KMIZ	W3IBP	WCWB	WHDH	WLVI	WPDE	WTRF	WYDO
KMSP	W5OBE	WDBJ	WHNT	WLX!	WPGH	WITG	MYOU .
KMWB	WAAY	WDCA	WHP	WLYH	WPHL	WTVF .	WYPX
KNLJ	WACY	WDCQ	WHRO	WMAR	WPIX	WTVI .	WZPX
KNME	WAFF	WDIV	WHTM WHYY/	WMCN	WPMT	WTVP	WZTV
KNXT	WAGA	WDJT	WHYYDT	WMFQ	WPNE	WTVQ	WZZM
KNXV	WAMI	WDRL	MICU	WMHT	WPSG	WTVS	
KOLR	WAND	WDSE	WICZ	WMLW .	WPSX	WTVZ	400
KPIX	WAQP	WDTA	WIS	WMPB	WPTO ·	WTWB	
	WATC	WDWB	WISFLP	WMUR	WPVI	WTXF	
KPLR		WEDH	WISN	WMVR	WPXD	WTXFWTXFD	Т
KPXM .	WATL	445511					

Source: Joint Sports Claimants Document Production, Bates No. JSC04-05 21203.

APPENDIX A 2005 BORTZ STATIONS

			200	DUKIL	DIZILO	113			
CBET	KIRO	KSTW	WAVE	WDLI	WIAT	WKTV	WNWO	WREX	WTVS
CBMT	KJZZ	KTBY	WAXN	WDRB	WICZ	WLED	WNYO	WRIC	WTWB
CBUT	KLAS	KTCA	WAZE	WDSU	WIFR	WLFG	WNYS	WROC	WTXF
CBWT	KLJB	KTCI	WBAL	WDWB	WIPB	WLIO	WNYW	WSAW	WUAB
CFCF	KLRN	KTEJ	WBAY	WEAO	WIS	WLJT	WOAI	WSAZ	WUHF
CHLT	KLVX	KTFT	WBBJ	WEIQ	WISC	WLKY	WOIO	WSBE	MUNI
CJOH	KMBC	KTHV	WBBM	WELT	WISF	WLMB	WOME	WSBK	WUPA
CKSH	KMIZ	KTNV	WBDC	WENY	WISN	WLMT	WOSU	WSBK/ WSBKDT	WUPN
CKWS	KMOV	KTTC	WBGH	WETA	WITF	WLNS	WOTM	WSBT	WUSA
KABB	KMSP	KTVK	WBGN	WETM	WITI	WLS	WOUB	WSEE	WUTF
KAET	KNLJ	KTVU	WBGT	WEUX	WIUP	WLUK	WOWK	WSFA	WUTR
KAIT	KNTV	KTVX	WBGU	WFDC	WIVB	WLVI/ WLVIDT	WPBN	WSHM	WUTV
KARE	KNXT	KTWO	WBKI	WFLD	WIVT	WLXI	WPBO	WSKG	WUVG
KARK	KNXV	KUAM	WBKP	WFQX	WIWB	WLYH	WPBS	WSKY	WVCY
KATU	KOIN	KUED	WBNG	WFRV	WIXT	WMAE	WPBT	WSMH	WVIA
KATV	KOLN	KUSA	WBNS	WFTC	WJAC	WMAQ	WPBY	WSMV	WVIR
KBHK	KOLR	KUTP	WBOY	WFTV	WJAL	WMAR	WPCB	WSOC	WVIZ
KBSI	комо	KVPT	WBPG	WFXS	WJBK	WMAZ	WPDE	WSPA	WVPT
KBTC	KOMU	KVTJ	WBQC	WFXV	WJEB	WMC	WPGA	WSPX	WVTB
KBYU	KOPB	KWU	WBRC	WGAL	WJJA	WMFE	WPGH	WSRE	WVTV
KCAL	KPDX	KWBM	WBTV	WGBA	WJKT	WMHT	WPHL	WSTM	WWBT
KCET	KPIX	KWBP	WBUW	WGBO	WJLA	WMLW	WPIX	WSYT	WWCP
KCNC	KPLR	KWDK	WBZ	WGCL	WJMN	WMPB	WPNE	WSYX	WWJ
KCPT	KPNZ	KWGN	WCAU	WGGB	WJRT	WMQF	WPSD	WTAE	WWL
KCRA	KPTV	KWKB	WCCB	WGGN	WJTV	WMSN	WPSG	WTAJ	YMWY
KCRG	KPXR	KWQC	WCCO	WGMU	WJW	WMTV	WPSX	WTBS	WWOR
KCTS/ KCTSDT	KQED	KWWF	WCET	WGN	WJZ	WMUR	WPTO	WTFX	ISWW
KDKA	KRMA	KWWL	WCEV/ WCEVDT	WGPX	WJZY	WMVS	WPTY	WTFXWTF	WWWB
KENS	KRWG	KXIT	WCFE	WGRZ	WKAR	WMVT	WPVI	WTGL	WXIA
KETC	KSAT	KYTV	WCGV	WGTE	WKBD	WNBC	WPXD	WTGS	WXIX
KEVN	KSAW	KYW	WCHS	WGTV	WKBT	WNDU	WPXE	MTMJ	WXXI
KFPX	KSCB	W28BC	WCMH	WHA	WKBW	WNED	WPXI	WTRF	WXYZ
KFVS	KSDK	W31BP	WCML	WHAM	WKCF	WNEG	WPXX	WTRV	WZTV
KFXB	KSFX	WABC	WCNC	WHAS	WKMG	WNEM	WQAD	WTSF	
KGAN	KSIN	WABM	WCNY	WHBQ	WKMJ	WNEU	WQED	WITW	
KGO	KSL	WACY	WCVE .	WHCP	WKMU	WNEV	WQEX	WITX	
KGW	KSLA	WALA	WCWB	WHEC	WKNO	WNMU	WQLN	WTVF	
KGWC	KSMQ	WAPK	WDBJ	WHIO	WKOH	WNPA	WQOW	WTVG	
KIIN	KSPR	WAPW	WDCA	WHP	WKOI	WNPB	WQRF	WTVH	
KING	KSTC	WAQP	WDIV	WHTM	WKOW	WNPT	WRC	WTVI	
KIPT	KSTP	WATL	WDJT	WHUT	WKRG	WNVC	WREG	WTVO	
1 543 1								190 10 200	

Source: Joint Sports Claimants Document Production, Bates No. JSC04-05 21203.

CORRECTED APPENDIX B

REBUTTAL TESTIMONY OF

MARSHA KESSLER

APPENDIX B

Total Broadcast Time, Sports Programs Less, ABC/CBS/NBC Net Sports Programs (i.e. Not Compensable) Total Broadcast Time, Compensable Sports Programs

100.0% -60.3% 39.7%

-58.5%

849,906 (497,436) 41.5%

352,470

SHARE

SHARE

MINUTES

100.0%

2005 MINUTES 909,062 (548,447) 360,615.

COMPENSABLE v NON-COMPENSABLE

SPORTS PROGRAMMING

ALLOCATION OF COMPENSABLE SPORTS PROGRAMMING AMONG PHASE I

	5.7%	8.5%	49.8%	36.0%	100.0%
カーハー	20,729	30,582	179,660	129,644	360,615
CLAIMANIO	7.0%	10.3%	46.2%	36.5%	100.0%
	24,756	36,258	162,725	128,731	352,470

Total Broadcast Time, Sports Programs, Canadian Claimants
Total Broadcast Time, Sports Programs, Commercial TV Claimants
Total Broadcast Time, Sports Programs, Program Suppliers
Total Broadcast Time, Sports Programs, JSC

Total Broadcast Time, Network Sports Programs (i.e. Not Compensable)
Total Broadcast Time, Sports Programs, Canadian Claimants
Total Broadcast Time, Sports Programs, Commercial TV Claimants
Total Broadcast Time, Sports Programs, Program Suppliers
Total Broadcast Time, Non-JSC Sports

Share Of Total Broadcast Time, Non-Compensable, Non-JSC Sports

NON-COMPENSABLE, NON-JSC SPORTS	548,447	20,729	30,582	179,660	779,418	85.7%
NON-COMPENS	497,436	24,756	36,258	162,725	721,175	84.9%

DECLARATION OF MARSHA E. KESSLER

I declare under penalty of perjury that the foregoing rebuttal testimony is true and correct and of my personal knowledge.

Executed on February 1, 2010.

Marsha E. Kessler

EXHIBIT NUMBER 217

	CONFID	ENTI	.AL
	Page 3238		Page 3240
1	Mr. Mansell and then Dr. Ford.	1	in this proceeding?
2	CHIEF JUDGE SLEDGE: Well, we'll consider	2	A. I did.
3	that after Ms. Kessler testifies.	3	MR. LANE: At this time, Your Honor, I would
4	MR: LANE: Okay. And needless to say;	4	like to pass out to the judges and to the witness a
5	Dr. Ford who has to go back to Birmingham he has a	5	document that's been marked as Program Suppliers
6	7:00 plane, and all of us told him, if you wait till	6	Exhibit 13.
7	7:00, you're not getting out of here. So if we could	7	BY MR. LANE:
8	finish by 12:30, he would catch a 3:00 plane back to	8	Q. Can you identify what this document is,
9	Birmingham. That will be very helpful.	9	Ms. Kessler?
10	CHIEF JUDGE SLEDGE: See if there's any	10	A. This is rebuttal testimony of Marsha E.
11	planes leaving.	11	Kessler, corrected January 15, 2010 and February 2nd,
12	MR. LANE: Program Suppliers at this time	12	2010.
13	would sorry. One other procedural matter, Your	13	MR. LANE: And before I begin questioning,
14	Honor. I'll pass out to the judges what we've marked	14	Chief Judge, I'd just like to note for the record
15	as Program Suppliers Exhibit 12, and this is the	15	that and this will become apparent that because
16	rebuttal testimony of Dr. Gruen. And based on the	16	of gracious cooperation from principally Mr. Marsh but
17	judges' orders, this is one of the testimonies that	17	I'm sure some of the other attorneys for Settling
18	the parties had agreed that Dr. Gruen would not have	18	Parties, we were able to work out a corrected version
19	to appear live. I might add that this testimony was	19	of the appendix - what will be appendix B as part of
20	prepared in response to questions from Judge Roberts	20	this testimony, and I think save all of us a lot of
21	during the direct examination, and the testimony	21	cross-examination. So I just would like to note that
22	relates entirely to that.	22	we appreciate the cooperation in working that out.
	Page 3239		Page 3241
1	So based on the parties' agreement that	1	CHIEF JUDGE SLEDGE: Thank you.
2	Dr. Gruen would not have to appear live, we would move	2	BY MR. LANE:
3	at this time for the admission of Program Suppliers	3	Q. Now, do you have any edits or corrections to
4	Exhibit 12.	4	Program Suppliers Exhibit 13?
5	CHIEF JUDGE SLEDGE: Any objection to	5	A. I can tell you the corrections between this
6	Exhibit 12?	6	one and the last version.
7.	Without objection, it's added,	7	Q. If you would, please.
8	(Program Suppliers Exhibit Number 12 was	- 8	A. Okay. On page 4 included the category PL,
9	received into evidence.)	9	playoff sports. On page 6, in the third paragraph,
10	MR. LANE: Program Suppliers would call	10	the percentage is now 85 percent. In the appendix A,
11	Marsha E. Kessler to the stand.	11	second page, WZTV is now included, and it's noted that
12	WHEREUPON,	12	WZTV is in both years, 2004 and 2005. And, finally,
13	MARSHA KESSLER,	13	appendix B has completely new numbers.
14	was called as a rebuttal witness and, having been	14	Q. And that's based on the corrections that were
15	first duly sworn by the chief judge, was examined and	15	provided to us by the Settling Parties?
16	testified as follows:	16	A. That's correct.
17	DIRECT EXAMINATION	17	Q. And with those corrections, sitting here
18	BY MR. LANE:	18	today, do you adopt this Program Suppliers Exhibit 13
19	Q. Would you please state your name for the	19	as true and correct?
20	record.	20	A. I do.
21 22	A. Marsha E. Kessler. Q. And did you provide written direct testimony	21	MR. LANE: I would move for admission of Program Suppliers Exhibit 13.

3 4 5 6 7	Page 3242 CHIEF JUDGE SLEDGE: Any objection to Exhibit 13? Without objection, it's admitted. (Program Suppliers Exhibit Number 13 was received into evidence.)	1 2 3	Page 3244 compensable under section 111 and which were not. And then, finally, of those programs that are compensable under 111, I allocated them amongst the phase 1
2 3 4 5 6 7	Exhibit 13? Without objection, it's admitted. (Program Suppliers Exhibit Number 13 was	2 3	then, finally, of those programs that are compensable under 111, I allocated them amongst the phase 1
2 : 3 4 5 : 6 7	Exhibit 13? Without objection, it's admitted. (Program Suppliers Exhibit Number 13 was	3	under 111, I allocated them amongst the phase 1
3 4 5 6 7	(Program Suppliers Exhibit Number 13 was		
4 5 6 7	(Program Suppliers Exhibit Number 13 was	4	
5. 6 7			claimant groups.
6 7	received into evidence.)	5	Q. And how did you identify the stations that
7	BY MR. LANE:	6	were carried on the Bortz respondent cable systems?
	Q. Could you tell us what the purpose of your	7	A. That information was provided to us in
8 :	rebuttal testimony is, please.	8	discovery during phase 1 in these proceedings.
9	A. In his direct testimony, Mr. James Trautman	9	Q. And is a list of those stations contained in
	of the Bortz Company acknowledged the potential for	10	appendix A to your testimony?
	certain fringe programming to be interpreted as	11	A. Yes, it is.
	belonging to one category when, for the purposes of	12	Q. And how did you define sports programming for
	these proceedings, it might belong to another.	13	purposes of your analysis?
	Counsel asked me to review sports programming on the	14	A. For purposes of this analysis, I looked at
	air in 2004 and 2005 over the issue of so-called	15	two kinds of sports programming. First of all, I
16 f	fringe programming.	16	looked at the sports programming that is attributable
17	Q. What did you attempt to quantify in this	17.	to JSC under the statutory license, and then I looked
18 a	analysis?	18	at all other sports-like programming, programming such
19	A. My objective was to look at all of the	19	as golf, the Olympics, ice skating, diving
20 p	programming on the air in 2004-2005 and quantify the	20	championships, bicycle races, that sort of thing.
21 a	amount that was not JSC programming during that	21	Q. What source did you use to obtain a list of
	period.	22	the sports programs on the Bortz distant stations?
	Page 3243		Page 3245
1	Q. And what process did you follow to achieve	1	A. During phase 1 of the proceedings, the
1	that?	2	Settling Parties provided us with an Excel spreadsheet
3	CHIEF JUDGE SLEDGE: I'm sorry. You viewed	3	listing programs retransmitted by distantly -
	what?	4	broadcasted by distantly retransmitted stations during
5	THE WITNESS: I'm sorry, sir.	5	2004-2005, and I pulled the data from that
6	CHIEF JUDGE SLEDGE: You viewed what? You	6	spreadsheet.
	viewed you said you viewed	7	Q. Do you know what source the Settling Parties
8	THE WITNESS: Oh, I reviewed	8 .	used to obtain these data?
9	CHIEF JUDGE SLEDGE: Reviewed.	9	A. It's my understanding the data came from
10	THE WITNESS: - the programs on the air	10	Tribune Media.
	during 2004 and 2005 to see the distribution of sports	11	Q. And did Tribune categorize the programs that
	programming between that associated with the Joint	12	were contained in the list that you analyzed?
	Sports program category and all other sports	13	A. Yes, they did.
	programming on the air during 2004, 2005.	14	Q. Were there programs, nonetheless, that you
	BY MR. LANE:	15	had to make a judgment call on?
-	Q. What process did you follow to carry out this	16	A. There were. Just to back up a little bit,
15	O. What process the you follow to carry out this	1	
15 16		17	there were many program types unrelated to sports
15 16 17 €	evaluation?	17 18	there were many program types unrelated to sports programming in this master database. And using the
15 16 17 6	evaluation? A. First of all, I identified the broadcast		programming in this master database. And using the
15 16 17 18 19	evaluation? A. First of all, I identified the broadcast stations that were distantly retransmitted by the	18	programming in this master database. And using the fields described on page 4 of my testimony, I first
15 16 17 18 19 20	evaluation? A. First of all, I identified the broadcast	18 19	programming in this master database. And using the

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Page 3246

versus team.

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So once I had pulled those data from the larger database, now in response to your question, Mr. Lane, I reviewed the specials because the specials contained programs that were clearly in this sports category, that they also had programs that were clearly not in the sports program -- not in a sporting category. So I needed to pull those out of consideration.

Q. Could you give us an example or two of the latter type of program that were not sports programs?

12 A. Certainly. I think there was a Billy Graham 13 special in there. There was a Dr. Phil special in 14 there. There was also a program that began with the

15 designation "NBA" so there would be an initial 16 temptation to put it in the mix of sports programs,

17 but when I looked more at it, I discovered that it was 18 a program, the focus of which was to encourage

19 children to read, and that didn't really seem like a 20 sports program. So I did not include that show.

21 Q. What was the next step that you took in your 22

process?

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Page 3247

A. Under the statutory license, programming. that's aired on the ABC, CBS and NBC networks is not

3 compensable. So I sought to isolate the 4 non-compensable sports programming. I did that by

relying on the Tribune Media data and their identification of network programs.

Q. So the non-compensable programs were all programs that were on ABC, CBS or NBC?

9 A. That's correct.

> Q. And those were all designated in the Tribune data as network programs?

A. Yes, they were.

Q. So now, once you determined -- so you've taken out the non-compensable programming. And once

you determined the compensable programming, what did

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17 A. I then, based on the quantity of broadcast

minutes, I allocated those programs amongst the

19 phase 1 claimant groups.

20 Q. And what was the source of your information

about which of the claimant groups each of the 21 programs applied to?

Page 3248

1 A. Again, the Tribune Media data had multiple 2 fields of data, one of which was the duration of each 3

program and the other of which was a designation indicating the claimant group to which the program

4 5 corresponded. So relying on the Tribune Media data, I

6 sorted to each individual claimant group and then 7 summed the minutes.

Q. And did you also rely on corrections provided to you by Sports of some of the program designations?

A. Yes. There were a few programs in the database that Sports advised us had been incorrectly categorized and needed to be updated, and I took their information and adjusted my numbers accordingly.

> CHIEF JUDGE SLEDGE: Who is Sports? THE WITNESS: Joint Sports Claimants. BY MR. LANE:

Q. After you sorted the programs into categories, what was your next step?

A. The next step is -- let's go to appendix B because that's where it all came together. What I did, based on the duration column of data, was -- the

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first step was to sum all of the sports minutes for

Page 3249

1 each of the years 2004 and 2005. So, for 2004, there 2 were roughly 850,000 minutes; for 2005, 909,000 3 minutes.

4 Then the next thing I did after that was I 5 subtracted the non-compensable sports. Again, these 6 were the sports that were aired on ABC, CBS or NBC 7 network programming. And as you can see, they account

8 for roughly 60 percent of sports that were on the air

9 in each of the years. So in the case of this exercise 10 for 2004, I had 850,000 hours. I subtracted the

11 network time of 497,000 minutes - I'm sorry - with

12 352,000 minutes left. The same exercise for 2005.

And then I went to the middle page of appendix B whereby I allocated those compensable minutes amongst the phase 1 claimant groups.

16 Q. And were all the data about minutes also 17 contained in the Tribune data information that you had?

18 19 A. Yes, that's correct.

20 Q. Okay. So now if we could just go back to

21 appendix B, and could you just pick up - I think you

explained the top third of the page. Could you just

	2000		Page 3252
	Page 3250		,
1	explain the middle third and the bottom third for us,	1	Q. And that's where Mr. Trautman, quote,
2	please.	2	acknowledged the potential for certain fringe
3	A. Yes. To recap, the top third of the page	3	programming to be interpreted as belonging to one
· 4	separates compensable time from - compensable sports	4	category when, for purposes of these proceedings, it
5	from non-compensable sports. The middle part of the	5	may belong to another, correct?
6	page takes the compensable sports and allocates them	6	MR. LANE: In another.
7	amongst the phase 1 claimant groups.	7	BY MR. GARRETT:
8	So of the - for 2004, just to stay with that	8	Q. Is that correct?
9	year - of the 352,470 minutes of compensable sports,	9	A. Yes.
10	I calculated a percentage for each group so that, of	10	Q. Thank you. And you also cite down at the
11	the sports on the air in 2004, 7 percent were	11	bottom in footnote 2 his oral transcript testimony.
12	associated with Canadian claimants, 10 percent	12	Do you see that?
13	associated with commercial television, 46 percent with	13	A. Correct.
14	the Program Suppliers Group and 36, 37 percent	14	Q. And if I look at page 108 which you reference
15	associated with the Joint Sports Claimants.	15	there, he says and I'm quoting programs that are
16	Q. And what's shown in the bottom third of	16	the subject of miscategorization tend to be at the
17	appendix B?	17	fringes and tend not to be things that drive
18	A. The bottom third of appendix B defines all	18	substantial value in our survey.
19	non-sports non-JSC non-JSC programming. In	19	You're here to rebut that as well?
20	other words, of all the sports that were on the air in	20	A. Yes.
21	2004 and 2005, in 2004 well, in both years, it's	21	Q. Now, if I turn to appendix B where you
22	right around 85 percent of all sports that was on the	22	present the results of your study do you have that
	Page 3251		Page 3253
1	air during those two years is non-JSC sports.	1	1.0 1.0
		1 -	before you, Ms. Kessler?
		2	before you, Ms. Kessler? A. I do.
2	Q. Thank you.	ı	
2 3	Q. Thank you. MR. LANE: Those are all the questions I	2	A. I do.
2 3 4	Q. Thank you. MR. LANE: Those are all the questions I have, Your Honor.	2	A. I do. Q. Am I correct that you have not attempted to
2 3 4 5	Q. Thank you. MR. LANE: Those are all the questions I have, Your Honor. CHIEF JUDGE SLEDGE: Cross-examination?	2 3 4	A. I do. Q. Am I correct that you have not attempted to weight any of the minutes that are in that appendix B
2 3 4 5 6	Q. Thank you. MR. LANE: Those are all the questions I have, Your Honor. CHIEF JUDGE SLEDGE: Cross-examination? CROSS-EXAMINATION	2 3 4 5	A. I do. Q. Am I correct that you have not attempted to weight any of the minutes that are in that appendix B by the amount of distant carriage?
2 3 4 5 6 7	Q. Thank you. MR. LANE: Those are all the questions I have, Your Honor. CHIEF JUDGE SLEDGE: Cross-examination? CROSS-EXAMINATION BY MR. GARRETT:	2 3 4 5 6	 A. I do. Q. Am I correct that you have not attempted to weight any of the minutes that are in that appendix B by the amount of distant carriage? A. That's correct.
2 3 4 5 6 7 8	Q. Thank you. MR. LANE: Those are all the questions I have, Your Honor. CHIEF JUDGE SLEDGE: Cross-examination? CROSS-EXAMINATION BY MR. GARRETT: Q. Good afternoon, Ms. Kessler. Bob Garrett	2 3 4 5 6 7	 A. I do. Q. Am I correct that you have not attempted to weight any of the minutes that are in that appendix B by the amount of distant carriage? A. That's correct. Q. So that one minute on WGN, for example, would
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2 3 4 5 6 7 8 9 10 11 12 13	Q. Thank you. MR. LANE: Those are all the questions I have, Your Honor. CHIEF JUDGE SLEDGE: Cross-examination? CROSS-EXAMINATION BY MR. GARRETT: Q. Good afternoon, Ms. Kessler. Bob Garrett with the Joint Sports Claimants. I thought I got rid of you at the last proceeding here. A. I thought it was both our swan songs, but apparently not. Q. Well, welcome back. (Discussion held off the record.)	2 3 4 5 6 7 8 9 10 11 12 13	 A. I do. Q. Am I correct that you have not attempted to weight any of the minutes that are in that appendix B by the amount of distant carriage? A. That's correct. Q. So that one minute on WGN, for example, would be given the same weight as one minute on WAAA, correct? A. Well, there were no weights. So nothing was weighted. Q. So one minute is the same true regardless of
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q. Thank you. MR. LANE: Those are all the questions I have, Your Honor. CHIEF JUDGE SLEDGE: Cross-examination? CROSS-EXAMINATION BY MR. GARRETT: Q. Good afternoon, Ms. Kessler. Bob Garrett with the Joint Sports Claimants. I thought I got rid of you at the last proceeding here. A. I thought it was both our swan songs, but apparently not. Q. Well, welcome back. (Discussion held off the record.) BY MR. GARRETT: Q. You're here to rebut one of the statements made by James Trautman of the Joint Sports Claimants,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A. I do. Q. Am I correct that you have not attempted to weight any of the minutes that are in that appendix B by the amount of distant carriage? A. That's correct. Q. So that one minute on WGN, for example, would be given the same weight as one minute on WAAA, correct? A. Well, there were no weights. So nothing was weighted. Q. So one minute is the same true regardless of whether it's on a station that is carried by 900 cable systems or one cable system? A. Correct. Q. And WGN had some approximately 3,000 minutes of JSC compensable programming, correct?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. Thank you. MR. LANE: Those are all the questions I have, Your Honor. CHIEF JUDGE SLEDGE: Cross-examination? CROSS-EXAMINATION BY MR. GARRETT: Q. Good afternoon, Ms. Kessler. Bob Garrett with the Joint Sports Claimants. I thought I got rid of you at the last proceeding here. A. I thought it was both our swan songs, but apparently not. Q. Well, welcome back. (Discussion held off the record.) BY MR. GARRETT: Q. You're here to rebut one of the statements made by James Trautman of the Joint Sports Claimants, correct?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. I do. Q. Am I correct that you have not attempted to weight any of the minutes that are in that appendix B by the amount of distant carriage? A. That's correct. Q. So that one minute on WGN, for example, would be given the same weight as one minute on WAAA, correct? A. Well, there were no weights. So nothing was weighted. Q. So one minute is the same true regardless of whether it's on a station that is carried by 900 cable systems or one cable system? A. Correct. Q. And WGN had some approximately 3,000 minutes of JSC compensable programming, correct? A. I don't know.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q. Thank you. MR. LANE: Those are all the questions I have, Your Honor. CHIEF JUDGE SLEDGE: Cross-examination? CROSS-EXAMINATION BY MR. GARRETT: Q. Good afternoon, Ms. Kessler. Bob Garrett with the Joint Sports Claimants. I thought I got rid of you at the last proceeding here. A. I thought it was both our swan songs, but apparently not. Q. Well, welcome back. (Discussion held off the record.) BY MR. GARRETT: Q. You're here to rebut one of the statements made by James Trautman of the Joint Sports Claimants, correct? A. That's correct.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. I do. Q. Am I correct that you have not attempted to weight any of the minutes that are in that appendix B by the amount of distant carriage? A. That's correct. Q. So that one minute on WGN, for example, would be given the same weight as one minute on WAAA, correct? A. Well, there were no weights. So nothing was weighted. Q. So one minute is the same true regardless of whether it's on a station that is carried by 900 cable systems or one cable system? A. Correct. Q. And WGN had some approximately 3,000 minutes of JSC compensable programming, correct? A. I don't know. Q. Assume that's the case. Assume that there's
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. Thank you. MR. LANE: Those are all the questions I have, Your Honor. CHIEF JUDGE SLEDGE: Cross-examination? CROSS-EXAMINATION BY MR. GARRETT: Q. Good afternoon, Ms. Kessler. Bob Garrett with the Joint Sports Claimants. I thought I got rid of you at the last proceeding here. A. I thought it was both our swan songs, but apparently not. Q. Well, welcome back. (Discussion held off the record.) BY MR. GARRETT: Q. You're here to rebut one of the statements made by James Trautman of the Joint Sports Claimants, correct? A. That's correct. Q. And you quote his statement on page 1 of your	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. I do. Q. Am I correct that you have not attempted to weight any of the minutes that are in that appendix B by the amount of distant carriage? A. That's correct. Q. So that one minute on WGN, for example, would be given the same weight as one minute on WAAA, correct? A. Well, there were no weights. So nothing was weighted. Q. So one minute is the same true regardless of whether it's on a station that is carried by 900 cable systems or one cable system? A. Correct. Q. And WGN had some approximately 3,000 minutes of JSC compensable programming, correct? A. I don't know. Q. Assume that's the case. Assume that there's another and you're aware that there has been
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. Thank you. MR. LANE: Those are all the questions I have, Your Honor. CHIEF JUDGE SLEDGE: Cross-examination? CROSS-EXAMINATION BY MR. GARRETT: Q. Good afternoon, Ms. Kessler. Bob Garrett with the Joint Sports Claimants. I thought I got rid of you at the last proceeding here. A. I thought it was both our swan songs, but apparently not. Q. Well, welcome back. (Discussion held off the record.) BY MR. GARRETT: Q. You're here to rebut one of the statements made by James Trautman of the Joint Sports Claimants, correct? A. That's correct.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. I do. Q. Am I correct that you have not attempted to weight any of the minutes that are in that appendix B by the amount of distant carriage? A. That's correct. Q. So that one minute on WGN, for example, would be given the same weight as one minute on WAAA, correct? A. Well, there were no weights. So nothing was weighted. Q. So one minute is the same true regardless of whether it's on a station that is carried by 900 cable systems or one cable system? A. Correct. Q. And WGN had some approximately 3,000 minutes of JSC compensable programming, correct? A. I don't know. Q. Assume that's the case. Assume that there's

Page 3254 Page 3256 1 half of the form 3 cable systems? 1 Q. Let me try it again, Ms. Kessler. We've got 2 A. I was not present for that. I'm not aware of 2 a total of 352,470 minutes that you've identified as 3 3 compensable sports minutes on the Bortz distant 4 Q. Okay. But you are aware and you do 4 signals, correct? 5 understand that WGN is very widely carried - it was 5 A. Correct. 6 in 2004-2005, correct? 6 Q. And you have identified 46.2 percent of that 7 A. Yes. 7 number as sports that would fall in the Program 8 Q. But you weighted all of the programming, all 8 Suppliers category, correct? 9 of those 3,000 minutes of JSC programming on WGN the 9 A. Yes. Again, relying not on my own analysis, 10 same as 3,000 minutes on any other station? 10 but on the Tribune Media program categorization. A. That's correct. 11 11 Q. And you've identified 36.5 percent as falling 12 Q. And I also take it, Ms. Kessler, that this is 12 within the JSC category, correct? what we would refer to over the years as a tonnage 13 13 A. Correct. 14 analysis, correct? 14 Q. But you're not here saying that the relative 15 A. That's correct. 15 values of that programming are reflected there in that 16 Q. You've not made any attempt to value the 46.2 and 36.5 percent numbers, correct? 16 17 different minutes that are shown here in appendix B, 17 I have not thought about that. 18 correct? 18 Q. Okay. Are you saying also that all 162,725 19 A. That's correct. 19 minutes of that Program Suppliers programming is 20 Q. So that you're not -- for example, if I look 20 programming that one would confuse and consider to be 21 at appendix B here and it shows that, under 21 part of the Joint - of the JSC category? 22 compensable time programming - do you see the second 22 I think many people would. Page 3257 group located there, allocation of compensable 1 1 Q. All 162,725 minutes? 2 programming on phase 1 claimants? 2 A. No, not all of them. 3 A. The 352,000 line? 3 Q. Well, how many of the 162,725 minutes? Q. Yes, ma'am. 4 A. I don't know. A. Yes. 5 Q. Let me just focus on WGN for a moment. As 6 Q. So what you're saying there is the 6 Mr. Lane had indicated earlier, we had agreed upon the programming that you've identified as sports accounts 7 underlying data here for purposes of your appendix B. 8 for about 46.2 percent of those 352,000 minutes, 8 That's your understanding, correct? 9 correct? 9 A. Correct. 10 A. I'm sorry. Say that again. 10 Q. Okay. 11 Q. You are saying here in appendix B that about 11 MR. GARRETT: And I will -- I probably should 12 46.2 percent of that 352,470 minutes of what you call 12 have noted it earlier that, as we made clear in the sports programming in the Program Suppliers category. 13 submission of the corrected testimony to Your Honors, 14 Did I ask a question? 14 we're not by means agreeing to the relevancy or any of 15 A. I don't think so. I'm waiting for the --15 the weight that ought to be attached to that, but 16 Q. I was trying to ask a question. The numbers 16 simply not to waste time here challenging the numbers. 17 get to me here. 17 BY MR. GARRETT: 18 A. Me, too. 18 Q. Now, when I look at the underlying data for 19 CHIEF JUDGE SLEDGE: Maybe we shouldn't stay 19 WGN, for example, I see one program in year 2004 that 20 till 6:30. 20 you have classified as coming within your 162,000 21 MR. GARRETT: 2:15 is looking real good. 21 minutes, and that's the Babe Winkelman Good Fishing BY MR. GARRETT: 22

	Page 3258		Page 3260
1	A. Uh-huh.	1	nature?
2	Q. Is that consistent with your understanding?	2	A. The Babe Winkelman show appears to be the
3	A. Yes.	3	only one.
4.	Q. So if we look at WGN for 2004, the only	4	Q. Okay, Thank you. Now, going back to your
5	program that, again, comes within your 162,000 minutes	5	earlier testimony, would you consider the Babe
6	that was carried by WGN was the Babe Winkelman Good	6	Winkelman show to be one that would have been confused
7	Fishing show?	7	by the Bortz respondents?
8	A. I don't know if that's the only one. I know	8	A. I don't know.
9	that Babe Winkelman was on WGN during that period.	9	CHIEF JUDGE SLEDGE: I'm sorry. I don't
10	Q. Do you think there were other programs on WGN	10	understand your question. You referred to WGN and
11	that fall within the Program Suppliers category that	11	then you moved to confusion, and what's the connection
12	you labeled here as part of your 162,000 minutes?	12	there? The fact that something is not on WGN, how
13	A. I don't know for some reason, I don't	13	does that tie in with whether or not there's
14	recall if it's '04 or '05, but I also believe we have	14	confusion.
15	wrestling programs.	15	MR. GARRETT: I was going back to her earlier
16	Q. On WGN?	16	testimony, Your Honor, a few moments ago about whether
17	A. Uh-huh.	17	and to what extent any of that 162,725 minutes she
18	Q. If I gave you the database that we all had	18	classified as sports programming within the Program
19	agreed to, would that refresh your recollection here?	19	Suppliers category would be programming that would
20	A. It would.	20	likely be confused with the Joint Sports Claimants
21	MR. GARRETT: Your Honor, may I - I guess I	21	category. That was my question.
22	need to first go and get it and then approach the	22	CHIEF JUDGE SLEDGE: She said almost all of
	Page 3259		Page 3261
1	witness, please.	1	it could. And you said, how much? And she said, I
1 2	witness, please. CHIEF JUDGE SLEDGE: Sure.	1 2	it could. And you said, how much? And she said, I don't know.
2	CHIEF JUDGE SLEDGE: Sure.		
2 3	CHIEF JUDGE SLEDGE: Sure. BY MR. GARRETT:	2	don't know.
2 3 4	CHIEF JUDGE SLEDGE: Sure. BY MR. GARRETT: Q. Ms. Kessler, I've handed you a notebook that	2	don't know. MR. GARRETT: And so we went, then, to WGN to
2 3 4 5	CHIEF JUDGE SLEDGE: Sure. BY MR. GARRETT: Q. Ms. Kessler, I've handed you a notebook that contains a spreadsheet. Are you familiar with that?	2 3 4	don't know. MR. GARRETT: And so we went, then, to WGN to see whether or not the Babe Winkelman show was one of
2 3 4 5 6	CHIEF JUDGE SLEDGE: Sure. BY MR. GARRETT: Q. Ms. Kessler, I've handed you a notebook that contains a spreadsheet. Are you familiar with that? A. It looks like the printed version of data	2 3 4 5	don't know. MR. GARRETT: And so we went, then, to WGN to see whether or not the Babe Winkelman show was one of the programs that she thought would come within that
2 3 4 5 6 7	CHIEF JUDGE SLEDGE: Sure. BY MR. GARRETT: Q. Ms. Kessler, I've handed you a notebook that contains a spreadsheet. Are you familiar with that? A. It looks like the printed version of data I've been using for this analysis.	2 3 4 5 6	don't know. MR. GARRETT: And so we went, then, to WGN to see whether or not the Babe Winkelman show was one of the programs that she thought would come within that category of being confused.
2 3 4 5 6 7 8	CHIEF JUDGE SLEDGE: Sure. BY MR. GARRETT: Q. Ms. Kessler, I've handed you a notebook that contains a spreadsheet. Are you familiar with that? A. It looks like the printed version of data I've been using for this analysis. Q. Okay. And if I just direct your attention to	2 3 4 5 6 7	don't know. MR. GARRETT: And so we went, then, to WGN to see whether or not the Babe Winkelman show was one of the programs that she thought would come within that category of being confused. CHIEF JUDGE SLEDGE: Was that your answer to
2 3 4 5 6 7 8 9	CHIEF JUDGE SLEDGE: Sure. BY MR. GARRETT: Q. Ms. Kessler, I've handed you a notebook that contains a spreadsheet. Are you familiar with that? A. It looks like the printed version of data I've been using for this analysis. Q. Okay. And if I just direct your attention to the year 2004 for WGN do you have that there before	2 3 4 5 6 7 8	don't know. MR. GARRETT: And so we went, then, to WGN to see whether or not the Babe Winkelman show was one of the programs that she thought would come within that category of being confused. CHIEF JUDGE SLEDGE: Was that your answer to my question?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	CHIEF JUDGE SLEDGE: Sure. BY MR. GARRETT: Q. Ms. Kessler, I've handed you a notebook that contains a spreadsheet. Are you familiar with that? A. It looks like the printed version of data I've been using for this analysis. Q. Okay. And if I just direct your attention to the year 2004 for WGN do you have that there before you? A. I do. Q. Is there any program other than Babe Winkelman that you classify within your 162,000 minutes? A. This would appear to be the only one. Q. All right. And then if I ask you just to	2 3 4 5 6 7 8 9 10 11 12 13 14	don't know. MR. GARRETT: And so we went, then, to WGN to see whether or not the Babe Winkelman show was one of the programs that she thought would come within that category of being confused. CHIEF JUDGE SLEDGE: Was that your answer to my question? MR. GARRETT: Yes, Your Honor. CHIEF JUDGE SLEDGE: I see no connection between those two lines of questions. MR. GARRETT: That's not a good sign for me, is it? CHIEF JUDGE SLEDGE: No. BY MR. GARRETT:
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	CHIEF JUDGE SLEDGE: Sure. BY MR. GARRETT: Q. Ms. Kessler, I've handed you a notebook that contains a spreadsheet. Are you familiar with that? A. It looks like the printed version of data I've been using for this analysis. Q. Okay. And if I just direct your attention to the year 2004 for WGN do you have that there before you? A. I do. Q. Is there any program other than Babe Winkelman that you classify within your 162,000 minutes? A. This would appear to be the only one. Q. All right. And then if I ask you just to flip down, I tabbed the page to the year 2005, WGN. A. Yes, I see it. Q. And could I ask you to look at that and tell	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	don't know. MR. GARRETT: And so we went, then, to WGN to see whether or not the Babe Winkelman show was one of the programs that she thought would come within that category of being confused. CHIEF JUDGE SLEDGE: Was that your answer to my question? MR. GARRETT: Yes, Your Honor. CHIEF JUDGE SLEDGE: I see no connection between those two lines of questions. MR. GARRETT: That's not a good sign for me, is it? CHIEF JUDGE SLEDGE: No. BY MR. GARRETT: Q. All right. Let me move off of WGN and talk about the programming on some of the other signals. As I understand it, you would put — poker shows would
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	CHIEF JUDGE SLEDGE: Sure. BY MR. GARRETT: Q. Ms. Kessler, I've handed you a notebook that contains a spreadsheet. Are you familiar with that? A. It looks like the printed version of data I've been using for this analysis. Q. Okay. And if I just direct your attention to the year 2004 for WGN do you have that there before you? A. I do. Q. Is there any program other than Babe Winkelman that you classify within your 162,000 minutes? A. This would appear to be the only one. Q. All right. And then if I ask you just to flip down, I tabbed the page to the year 2005, WGN. A. Yes, I see it. Q. And could I ask you to look at that and tell	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	don't know. MR. GARRETT: And so we went, then, to WGN to see whether or not the Babe Winkelman show was one of the programs that she thought would come within that category of being confused. CHIEF JUDGE SLEDGE: Was that your answer to my question? MR. GARRETT: Yes, Your Honor. CHIEF JUDGE SLEDGE: I see no connection between those two lines of questions. MR. GARRETT: That's not a good sign for me, is it? CHIEF JUDGE SLEDGE: No. BY MR. GARRETT: Q. All right. Let me move off of WGN and talk about the programming on some of the other signals. As I understand it, you would put — poker shows would be classified within your 168,000 minutes, correct?

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	Page 3262		Page 3264
1.	A. Correct.	1	A. Correct, if they were non-network.
2	Q. Highlight shows would go there?	2	Q. Non-network. And would it be fair to say
3	A. I didn't do the categorization. I put I	3	that something less than 1 percent a fraction of
. 4	used the categorization that was done by Tribune	4	l percent of the hours represented here would have
5	Media. If they had the highlight whatever they	5	been compensable golf programs?
6	did, I did, absent those few lines of data that you	6	A. I've not done a calculation for that.
7	guys helped us correct.	7	Q. And you also classified tennis programs
8	Q. Incidentally, on Tribune Media, you indicate	8	within your category, correct?
9	in your testimony here that they had certain	9	A. Actually, I want to go backwards – back. If
10	categories of programming on page 4 of your testimony?	10	they were non-network events, yes, I categorized them
11	A. Yes.	11	using the Tribune Media data. But I wouldn't have put
12	Q. And one was TM for team versus team, correct?	12	a network event into a Program Suppliers or any other
13	A. Correct.	13	category.
14	Q. And one was PL, for playoff sports?	14	Q. I understand. I'm actually just — and my
15	A. Correct.	15	question was not clear, but I'm trying to focus here
16	Q. Is that the case, Ms. Kessler, that all of	16	just on your in appendix B your allocation of
17	the programming that you labeled here in appendix B as	17	compensable programming among phase 1 claimants. Do
18	within the Joint Sports Claimants bucket is either	18	you have that before you?
19	classified by Tribune Media as TM or PL?	19	A. I do.
20	A. I don't know.	20	Q. And referencing back to the 168,000 minutes
21	Q. Are you aware of any programming from - that	21	that you put in the Program Suppliers bucket do you
22	Tribune classified as team versus team or PL that was	22	see that?
······································	Page 3263		Page 3265
1	in your 168,000 minutes?	1	A. I do.
2	A. I don't know the answer. This was a data	2	
3	sorting exercise, and other than looking at the	3	MR. LANE: Your Honor, it's 162,000 minutes, just so the record is clear. It's not 168.
4	specials to make sure I didn't have anything in there	4	MR. GARRETT: That's right. Your Honor, I
5	that wasn't appropriate, and the few shows that you	5	have the old inflated version.
6	guys called to our attention to, I didn't look at	6	MR. LANE: The pre-corrected version.
7	individual entries.	7	MR. GARRETT: 162,000 is correct, Your Honor.
8	Q. Would it surprise you to learn that there was	8	BY MR. GARRETT:
9	no strike that.	9	Q. And you had golf programs in that 162,000
10	Tribune Media did not classify any of these	10	minutes?
11	programs I'm sorry, strike that.	11	A. If they were non-network.
12	The categories here on page 4 that you	12	
13	identify are categories that Tribune Media had	13	Q. And would it surprise you to learn that less
14	developed for purposes other than this proceeding,	14	than 1 percent of that 162,000 minutes consisted of
15	correct?	15	golf programs?
16	A. I don't know why they were developed.	16	A. I have no reaction to that one way or the other.
17	Q. You're not aware that these were categories		. 0. 00000000
18	that they used in the industry for purposes of like TV	17	Q. Would it surprise you to learn that less
19		18	than you put tennis programs within that 162,000
20	guides, electronic program guides sort of thing?	19	minutes, too, correct?
21	A. No, I'm not aware of that.	20	A. I don't know. I have no idea. It was a data
22	Q. Not aware of that, okay. You also classified	21	sorting exercise based on the categorizations by
C L	programs such as golf within your category, correct?	22	Tribune Media. If those programs were non-network

the claimant categories?

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Page 3268 Page 3266 THE WITNESS: Using designations provided by programs and are in there, they're appropriately 1 1 there, but I cannot say that I know personally whether 2 the Tribune Media. 2 3 CHIEF JUDGE SLEDGE: And is it these they're there. 3 4 designations on page 4 or is it the claimant category Q. All right. So we've just got the minutes 4 5 here and we don't know precisely what's in those 5 THE WITNESS: The claimant category 6 6 minutes, correct? A. All of those minutes are minutes associated 7 designations. 7 CHIEF JUDGE SLEDGE: All right. with programs identified by Tribune Media as Program 8 8 THE WITNESS: Let me just give you an 9 9 Suppliers programs. Q. Do you know how many -- well, you identify --10 example. I think this will be clear. Let's just say 10 CHIEF JUDGE SLEDGE: Let me clarify that last that -- let's take team versus team. This is the last 11 11 program type on page 4. And let's just say it was a answer. I'm confused and have been since your 12 12 Major League Baseball game that that particular line testimony began on this point, so it might be good for 13 13 of data represented. One of the columns would say TM, me to get it out of the way. Does the allocation by 14 14 meaning team versus team, and then, going over more Tribune Media standards allocate into the claimant 15 15 columns of data, it would say SPO, meaning Sports. categories or does it allocate into the categories at 16 16 The designation SPO allowed me to sort that particular 17 17 the top of page 4? program into the Sports category. 18 THE WITNESS: It does both, Your Honor. 18 CHIEF JUDGE SLEDGE: And by Sports, you're There are - on the Excel spreadsheet, it goes, I 19 19 referring to Joint Sports Claimants? 20 20 believe, to column AP or AQ. I'm not sure exactly how many columns that is, but each column is a nugget of 21 THE WITNESS: That's correct, sir. 21 22 CHIEF JUDGE SLEDGE: So then there are also data. One of the columns contains program types, some 22 Page 3269 Page 3267 TM categories that were in the Program Suppliers of which are these program types that I've listed on 1 1 2 categories under the Tribune -page 4 and that I used to isolate the sports programs 2 3 THE WITNESS: I don't believe so. I would 3 for my analysis. A different column of data has all of the 4 have to look at the data, but the more likely scenario 4 programs, and it indicates whether each line -- and 5 would be that a TM designation would have been also 5 allocated to the JSC category. There are two 6 each line represents one program. Associated with 6 7 different --7 that, in addition to the programs categorization 8 CHIEF JUDGE SLEDGE: Well, if that's true, according to one of these program types, is also 8 9 then, why isn't all of the data wrong? Because you whether the program is a network program and, if it's 9 10 list on page 3 a great number of team sports that are not, whether it is associated with the Joint Sports 10 claimants, with the Commercial Television Claimants, not in JSC category. 11 11 12 THE WITNESS: Correct. with the Program Suppliers claimants, with the 12 Canadian Claimants. So both pieces of data were CHIEF JUDGE SLEDGE: So how did that conflict 13 13 get resolved? 14 14 there. 15 THE WITNESS: Actually, it wasn't a conflict. I used the first piece of data, the program 15 May I borrow the notebook that you just showed me? type, to identify sports programs and pull them out of 16 16 17 the database. I used the second column of data to May I approach you? 17 CHIEF JUDGE SLEDGE: No, you may not: identify whether it was network versus non-network 18 18 19 THE WITNESS: Okay. I'll give some examples, and, if it was a compensable, meaning non-network, 19 into which group each program belonged. 20 maybe? 20 CHIEF JUDGE SLEDGE: All right. CHIEF JUDGE SLEDGE: You allocated it into 21 21

22

THE WITNESS: Okay. I'm looking at a

i			
	Page 3270		Page 3272
1	broadcast of a program called bowling by a Canadian	1	belonging in the Program Suppliers category, and
2	television station, CBET. The program type for that	2	that's correct.
3	is SE, which is sporting event. The claimant group to	3	CHIEF JUDGE SLEDGE: So the conflict between
4	which Tribune Media assigned it was the Canadian	4	that and being a team versus team is resolved by not
5	Claimants Group. So the first designation, SE,	5	including it in team versus team?
6	identifies it as a sporting - sports program, and the	6	THE WITNESS: Actually, it's resolved by a
7	next column of data identifies it as belonging in the	7	very early CRT ruling that defined the sports
8	Canadian Claimants Group.	8	category.
9	So for that bowling show – because I	9	CHIEF JUDGE SLEDGE: No, there is no CRT
10	filtered for SE as one of my criteria, all of the SE	10	ruling that defines sports category.
11	programs, sporting events, came into the data that I	11	
12	wanted to work with. And then, by virtue of it having	12	THE WITNESS: Okay.
13	been categorized as Canadian, it went into the	13	CHIEF JUDGE SLEDGE: I'll stop you right
14	Canadian bucket.	14	there.
15	CHIEF JUDGE SLEDGE: All right. And in your		THE WITNESS: Okay.
16	example, then, all bowling that was team versus team	15	CHIEF JUDGE SLEDGE: There's never been any
17	was mischaracterized?	16	ruling that defines any categories. That's something
18		17	that the claimants have presented by agreement.
19	THE WITNESS: I'm not saying that. I don't	18	THE WITNESS: I'm not sure where to go from
20	know that any bowling was team versus - I'm not	19	here.
21	saying that bowling is team versus team.	20	CHIEF JUDGE SLEDGE: Okay. Well, from your
22	CHIEF JUDGE SLEDGE: Well, isn't it illogical	21	list, then, all the team sports in Olympics are not
22	to believe that there is not bowling that's team	22	team sports in this
	Page 3271		Page 3273
• 1	versus team?	1	THE WITNESS: I do know where to go
2	THE WITNESS: I don't bowl and I don't know,		
	The wife seems of the seems and I don't know,	2	CHIEF JUDGE SLEDGE: these
3	sir.	2	
3 4	sir. CHIEF JUDGE SLEDGE: All right. I believe		CHIEF JUDGE SLEDGE: - these classifications.
	sir. CHIEF JUDGE SLEDGE: All right. I believe most bowling is a team sport.	3	CHIEF JUDGE SLEDGE: — these classifications. THE WITNESS: That's correct. I'do know
4	sir. CHIEF JUDGE SLEDGE: All right. I believe	3 4	CHIEF JUDGE SLEDGE: — these classifications. THE WITNESS: That's correct. I'do know where to go
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4 5 6 7	sir. CHIEF JUDGE SLEDGE: All right. I believe most bowling is a team sport. THE WITNESS: Okay. CHIEF JUDGE SLEDGE: What about where is NASCAR team sport?	3 4 5 6 7	CHIEF JUDGE SLEDGE: — these classifications. THE WITNESS: That's correct. I do know where to go CHIEF JUDGE SLEDGE: All the team sports in gymnastics is not team sports in this classification. THE WITNESS: That's correct.
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	Page 3274		Page 3276
1	the parties that Program Suppliers represents, he has	1	Television Claimants' witnesses, correct?
2	a finite group of people, of sports organizations,	2	A. I didn't know that. I thought that Tribune
3	that he represents, and MPAA has a group of people	3	had done the entire database.
4	that we represent. An example is NASCAR. I don't	4	Q. So the second group of classifications,
5	think that Mr. Garrett and I would fight over NASCAR,	5 .	putting it into categories here, put it into
6	that we both agree NASCAR belongs in our category. So	6	categories here different than those that Tribune
7	that's not a CRT ruling. That's the way it has broken	7	Media had established for other purposes?
8	down. I don't know if that's helpful or not.	8	CHIEF JUDGE SLEDGE: Well, she said she
9	CHIEF JUDGE SLEDGE: Well, the problem with	9	didn't know.
10	that answer is that Mr. Garrett's group calls itself	10	BY MR. GARRETT:
11	live team sports, and that's what causes the problem.	11	Q. You don't know?
12	THE WITNESS: I agree.	12	A. I don't know. I believed I thought all of
13	CHIEF JUDGE SLEDGE: All right. I think I	13	the work had been done by Tribune.
14	understand now what the Tribune formula does, and I	14	Q. All right. And can you tell us whether there
15	think it's very clear that it does not resolve the	15	is anything within that 128,731 minutes of JSC
16	conflict between actual programming and categories as	16	programming in appendix B that isn't either classified
17	the claimants have organized them. Mr. Garrett.	17	as TM or PL by Tribune Media?
18	BY MR. GARRETT:	18	A. I don't know.
19	Q. Ms. Kessler, let me just go back for a second	19	Q. Can you tell us whether there is anything
20	here to page 4 of your testimony where we have the	20	within the 162,000 minutes in your appendix B that
21	Tribune categories.	21	is the Program Suppliers bucket that is classified
22	A. I have it.	22	as either TM or PL?
22			
	Page 3275		Page 3277
	× ,	1	Page 3277
1	Q. Okay. Now, it is the case, is it not, that		Page 3277 A. I would think there is not, but I don't have
1 2	Q. Okay. Now, it is the case, is it not, that those categories were developed by the Tribune	1	Page 3277 A. I would think there is not, but I don't have the raw data with me and I cannot say why I don't
1 2 3	Q. Okay. Now, it is the case, is it not, that those categories were developed by the Tribune company, or Tribune Media, for purposes wholly	1 2	Page 3277 A. I would think there is not, but I don't have the raw data with me and I cannot say why I don't know the answer without looking at the raw data.
1 2 3 4	Q. Okay. Now, it is the case, is it not, that those categories were developed by the Tribune company, or Tribune Media, for purposes wholly unrelated to these proceedings?	1 2 3	Page 3277 A. I would think there is not, but I don't have the raw data with me and I cannot say why I don't know the answer without looking at the raw data. Q. All right. Is it fair to say that Tribune
1 2 3 4 5	Q. Okay. Now, it is the case, is it not, that those categories were developed by the Tribune company, or Tribune Media, for purposes wholly unrelated to these proceedings? A. I don't know why they I don't know. I	1 2 3 4	Page 3277 A. I would think there is not, but I don't have the raw data with me and I cannot say why I don't know the answer without looking at the raw data. Q. All right. Is it fair to say that Tribune Media, at least for purposes of dealing outside of
1 2 3 4	Q. Okay. Now, it is the case, is it not, that those categories were developed by the Tribune company, or Tribune Media, for purposes wholly unrelated to these proceedings?	1 2 3 4 5	Page 3277 A. I would think there is not, but I don't have the raw data with me and I cannot say why I don't know the answer without looking at the raw data. Q. All right. Is it fair to say that Tribune
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1 2 3 4 5 6 7 8	Q. Okay. Now, it is the case, is it not, that those categories were developed by the Tribune company, or Tribune Media, for purposes wholly unrelated to these proceedings? A. I don't know why they I don't know. I don't know if they were developed for the Settling I don't know. I don't know the answer. Q. You're not aware that they used those	1 2 3 4 5 6	Page 3277 A. I would think there is not, but I don't have the raw data with me and I cannot say why I don't know the answer without looking at the raw data. Q. All right. Is it fair to say that Tribune Media, at least for purposes of dealing outside of these proceedings, has a particular understanding of
1 2 3 4 5 6 7 8	Q. Okay. Now, it is the case, is it not, that those categories were developed by the Tribune company, or Tribune Media, for purposes wholly unrelated to these proceedings? A. I don't know why they I don't know. I don't know if they were developed for the Settling I don't know. I don't know the answer. Q. You're not aware that they used those categories for purposes outside of these proceedings	1 2 3 4 5 6 7 8	Page 3277 A. I would think there is not, but I don't have the raw data with me and I cannot say why I don't know the answer without looking at the raw data. Q. All right. Is it fair to say that Tribune Media, at least for purposes of dealing outside of these proceedings, has a particular understanding of the difference between the TM and PL programming on the one hand and other types of programming that you
1 2 3 4 5 6 7 8	Q. Okay. Now, it is the case, is it not, that those categories were developed by the Tribune company, or Tribune Media, for purposes wholly unrelated to these proceedings? A. I don't know why they I don't know. I don't know if they were developed for the Settling I don't know. I don't know the answer. Q. You're not aware that they used those categories for purposes outside of these proceedings in general industry dealings?	1 2 3 4 5 6 7 8	A. I would think there is not, but I don't have the raw data with me and I cannot say why I don't know the answer without looking at the raw data. Q. All right. Is it fair to say that Tribune Media, at least for purposes of dealing outside of these proceedings, has a particular understanding of the difference between the TM and PL programming on the one hand and other types of programming that you consider to be sports programming? A. I don't know.
1 2 3 4 5 6 7 8 9 10	Q. Okay. Now, it is the case, is it not, that those categories were developed by the Tribune company, or Tribune Media, for purposes wholly unrelated to these proceedings? A. I don't know why they I don't know. I don't know if they were developed for the Settling I don't know. I don't know the answer. Q. You're not aware that they used those categories for purposes outside of these proceedings in general industry dealings? A. I don't have any	1 2 3 4 5 6 7 8 9	A. I would think there is not, but I don't have the raw data with me and I cannot say why I don't know the answer without looking at the raw data. Q. All right. Is it fair to say that Tribune Media, at least for purposes of dealing outside of these proceedings, has a particular understanding of the difference between the TM and PL programming on the one hand and other types of programming that you consider to be sports programming? A. I don't know. MR. GARRETT: I have no further questions,
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10 River? 10 Q. Have you testified previously in distribution 11 A. Since 1992. 11 and rate proceedings involving the compulsory
12 Q. And could you summarize for us your 12 licenses?
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things, reviewing the regulations governing networks, Tribunal and one before the Copyright Arbitration
broadcast affiliates, distant signal policy and the 18 Royalty Panel. So those proceedings were, I think,
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EXHIBIT NUMBER 218

REDACTED

EXHIBIT NUMBER 219

Before the COPYRIGHT ROYALTY JUDGES Washington, D.C.

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In the Matter of:	\(\frac{1}{2}\)	Oupying	
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Distribution of 2004-2005) Docket No. 200	07-3 CRB CD 200)4-2005
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JOINT MOTION OF THE PHASE I PARTIES TO ADOPT STIPULATION AS TO CLAIMANT GROUP CATEGORIZATION AND SCOPE OF CLAIMS

The Program Suppliers, Devotional Claimants, Canadian Claimants Group, and the Settling Parties (Joint Sports Claimants, Commercial Television Claimants, Public Television Claimants, and Music Claimants) (collectively, "Phase I Parties") representing all Phase I parties to the above-captioned 2004-2005 Phase I cable royalty distribution proceeding, request that the Judges issue an Order adopting their stipulation with respect to a threshold issue in this proceeding regarding the scope of the claims covered by the respective Phase I claimant categories:

Since the first cable royalty distribution, covering 1978, the Copyright Royalty Tribunal, and then the CARPs, divided their royalty distribution cases into Phase I and Phase II proceedings. In Phase I, the Tribunal or CARP allocated the entire royalty fund among broadly defined Phase I program categories. In Phase II, to the extent necessary, the Tribunal or CARP resolved disputes among different claimants or groups of claimants within a single Phase I category as to the internal division of the category's Phase I allocation.

The Phase I categories themselves developed over the course of the first five years of Tribunal proceedings. In response to requests by various parties for rulings on close or disputed

questions about which category should be treated as encompassing particular programs, the Tribunal refined the category definitions through declaratory rulings and rulings published as part of its final determinations. See, e.g., 1984 Cable Royalty Distribution Proceeding, 52 Fed. Reg. 8408, 8416 (Mar. 17, 1987); Advisory Opinion, Docket No. CRT 85-4 84 CD (May 16, 1986). For the 2004-2005 proceeding, the parties stipulate that the Phase I claimant category definitions set forth in Exhibit A, which are based on these prior Tribunal rulings, should apply.

These categories are intended to cover all works included within all non-network television programming on all stations retransmitted as distant signals by U.S. cable systems during 2004-2005, on a mutually exclusive basis, plus the music that is performed during those programs. The seven categories are represented in the Phase I proceedings, respectively, by the undersigned parties. Some of those categories are principally represented by trade associations or other pre-existing entities, while others are represented by ad hoc groups of claimants within the category which have joined together for the purpose of the Phase I hearing. In either case, the relationships between the claimants and the Phase I representatives are a matter of private agreement and are not at issue in this Phase I proceeding. In all cases, the Phase I representatives are seeking a Phase I royalty allocation for all programs within the defined category.

The final distribution of royalties to individual claimants whose programs are within each category will follow either a settlement among all claimants within that category or the resolution of any disputes, if necessary, through a separate Phase II proceeding.

A related issue is the extent to which timely claims were filed with the Copyright Office for all programs contained within each Phase I category. If the owner of a program that fits within one of the Phase I categories fails to file a claim, it might be argued that the Phase I

allocation to the category should somehow be proportionally diminished. This so-called "unclaimed funds" issue, however, was resolved by the Tribunal in the course of its 1978 proceeding. The Tribunal determined that, for Phase I purposes, it should treat each category as if claims had been filed for all included programs. 1978 Cable Royalty Distribution

Determination, 45 Fed. Reg. 63026, 63042 (Sept. 23, 1980).

The parties stipulate that the Judges should apply the same approach to the unclaimed funds issue in this proceeding as the Tribunal and the CARPs did in the past, and should allocate all royalties among the Phase I claimant categories on the basis of all retransmitted programs coming within the respective definitions of those categories.

Respectfully submitted

Gregory O. Olaniran
DC Bar No. 455784

Demis Lane DC Bar No. 953992 Lucy Holmes Plovnick DC Bar No. 488752

STINSON MORRISON HECKER LLP

1150 18th Street, NW, Suite 800 Washington, DC 20036

Telephone: (202) 785-9100

Fax: (202) 572-9970 golaniran@stinson.com

lholmesplovnick@stinson.com

JOINT SPORTS CLAIMANTS

Robert Alan Garrett
DC Bar No. 239681
Stephen K. Marsh
DC Bar No. 470765
Brent LaBarge
NY Bar No. 4584199
ARNOLD & PORTER LLP
555 Twelfth Street, NW
Washington, DC 20004-1206
Telephone: (202) 942-5000
Fax: (202) 942-5999
robert.garrett@aporter.com
stephen.marsh@aporter.com
brent.labarge@aporter.com

PUBLIC TELEVISION CLAIMANTS

PUBLIC BROADCASTING SERVICE

Ronald G. Dove, Jr.
DC Bar No. 430533
Lindsey L. Tonsager
DC Bar No. 983925
COVINGTON & BURLING LLP
1201 Pennsylvania Ave., NW
Washington, D.C. 20004-2401
Telephone: (202) 662-5685
Fax: (202) 778-5685
rdove@cov.com
ltonsager@cov.com

COMMERCIAL TELEVISION CLAIMANTS

NATIONAL ASSOCIATION OF BROADCASTERS

John I. Stewart, Jr.
DC Bar No. 913905
Jennifer H. Burdman
DC Bar No. 495555
Ann Mace
DC Bar No. 980845
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595
Telephone: (202) 624-2685
Fax: (202) 628-5116
istewart@crowell.com

Gregory O. Olaniran
DC Bar No. 455784
Dennis Lane
DC Bar No. 953992
Lucy Holmes Plovnick
DC Bar No. 488752
STINSON MORRISON HECKER LLP
1150 18th Street, NW, Suite 800
Washington, DC 20036
Telephone: (202) 785-9100
Fax: (202) 572-9970
golaniran@stinson.com
lholmesplovnick@stinson.com

JOINT SPORTS CLAIMANTS

Robert Alan Garrett
DC Bar No. 239681
Stephen K. Marsh
DC Bar No. 470765
Brent LaBarge
NY Bar No. 4584199
ARNOLD & PORTER LLP
555 Twelfth Street, NW
Washington, DC 20004-1206
Telephone: (202) 942-5000
Fax: (202) 942-5999
robert garrett@aporter.com
stephen.marsh@aporter.com
brent.labarge@aporter.com

PUBLIC TELEVISION CLAIMANTS

PUBLIC BROADCASTING SERVICE

Ronald G. Dove, Jr.
DC Bar No. 430533
Lindsey L. Tonsager
DC Bar No. 983925
COVINGTON & BURLING LLP
1201 Pennsylvania Ave., NW
Washington, D.C. 20004-2401
Telephone: (202) 662-5685
Fax: (202) 778-5685
rdove@cov.com
ltonsager@cov.com

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1001 Pennsylvania Ave., NW
Washington, DC 20004-2595
Telephone: (202) 624-2685
Fax: (202) 628-5116
istewart@crowell.com

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Lucy Holmes Plovnick
DC Bar No. 488752
STINSON MORRISON HECKER LLP
1150 18th Street, NW, Suite 800
Washington, DC 20036
Telephone: (202) 785-9100
Fax: (202) 572-9970
golaniran@stinson.com
lholmesplovnick@stinson.com

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Washington, DC 20004-1206
Telephone: (202) 942-5000
Fax: (202) 942-5999
robert.garrett@aporter.com
stephen.marsh@aporter.com
brent.labarge@aporter.com

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DC Bar No. 430533
Lindsey L. Tonsager
DC Bar No. 983925
COVINGTON & BURLING LLP

1201 Pennsylvania Ave., NW Washington, D.C. 20004-2401 Telephone: (202) 662-5685 Fax: (202) 778-5685 rdove@cov.com

ltonsager@cov.com

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John I. Stewart, Jr.
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Jennifer H. Burdman
DC Bar No. 495555
Ann Mace
DC Bar No. 980845
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595
Telephone: (202) 624-2685
Fax: (202) 628-5116
jstewart@crowell.com

JOINT SPORTS CLAIMANTS

Living was not a tribe. 1976

Gregory O. Olaniran
DC Bar No. 455784
Dennis Lane
DC Bar No. 953992
Lucy Holmes Plovnick
DC Bar No. 488752
STINSON MORRISON HECKER LLP
1150 18th Street, NW, Suite 800
Washington, DC 20036
Telephone: (202) 785-9100
Fax: (202) 572-9970
golaniran@stinson.com
lholmesplovnick@stinson.com

Robert Alan Garrett
DC Bar No. 239681
Stephen K. Marsh
DC Bar No. 470765
Brent LaBarge
NY Bar No. 4584199
ARNOLD & PORTER LLP
555 Twelfth Street, NW
Washington, DC 20004-1206
Telephone: (202) 942-5000
Fax: (202) 942-5999
robert.garrett@aporter.com
stephen.marsh@aporter.com
brent.labarge@aporter.com

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DC Bar No. 430533
Lindsey L. Tonsager
DC Bar No. 983925
COVINGTON & BURLING LLP
1201 Pennsylvania Ave., NW
Washington, D.C. 20004-2401
Telephone: (202) 662-5685
Fax: (202) 778-5685

Telephone: (202) 662 Fax: (202) 778-5685 rdove@cov.com ltonsager@cov.com

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John I. Stewart, Jr.
DC Bar No. 913905
Jennifer H. Burdman
DC Bar No. 495555
Ann Mace
DC Bar No. 980845
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595
Telephone: (202) 624-2685
Fax: (202) 628-5116
jstewart@crowell.com

MUSIC CLAIMANTS

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

Joan M. McGivern
Samuel Mosenkis
N.Y. Bar No. 2628915
ASCAP
One Lincoln Plaza
New York, NY 10023
Telephone: (212) 621-6450

Fax: (212) 787-1381 smosenkis@ascap.com

jlcohen@paulweiss.com

Jay Cohen
NY No. 1712462
Lynn B. Bayard
NY No. 2775179
Jayson L. Cohen
NY No. 4419453
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Fax: (212) 757-3990
jaycohen@paulweiss.com
lbayard@paulweiss.com

BROADCAST MUSIC, INC

Marvin Berenson
N.Y. Bar No. 1048792
Joseph J. DiMona
DC Bar No. 412159
BROADCAST MUSIC, INC.
320 West 57th Street
New York, NY 10019
Telephone: (212)830-2533
Fax: (212) 397-0789
jdimona@bmi.com

Michael J. Remington
DC Bar No. 344127
Jeffrey J. Lopez
DC Bar No. 453052
DRINKER BIDDLE & REATH LLP
1500 K Street, NW -- Suite 1100
Washington, DC 20005
Telephone: (202) 842-8800
Fax: (202) 842-8465
michael.remington@dbr.com
Jeffrey.Lopez@dbr.com

SESAC, INC.

John C. Beiter
TN Bar No. 12564
ZUMWALT, ALMON & HAYES PLLC
1014 16th Avenue South
Nashville, TN 37212
Telephone: (615) 850-2291
Fax: (202) 256-7106
jbeiter@zahlaw.com

MUSIC CLAIMANTS

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

Joan M. McGivern
Samuel Mosenkis
N.Y. Bar No. 2628915
ASCAP
One Lincoln Plaza
New York, NY 10023
Telephone: (212) 621-6450
Fax: (212) 787-1381
smosenkis@ascap.com

Jay Cohen
NY No. 1712462
Lynn B. Bayard
NY No. 2775179
Jayson L. Cohen
NY No. 4419453
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Fax: (212) 757-3990
jaycohen@paulweiss.com
lbayard@paulweiss.com
jlcohen@paulweiss.com

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Telephone: (212)830-2533
Fax: (212) 397-0789
jdimona@bmi.com

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DC Bar No. 344127

Jeffrey J. Lopez
DC Bar No. 453052

DRINKER BIDDLE & REATH LLP
1500 K Street, NW -- Suite 1100

Washington, DC 20005

Telephone: (202) 842-8800

Fax: (202) 842-8465

michael.remington@dbr.com

Jeffrey.Lopez@dbr.com

SESAC, INC.

John C. Beiter
TN Bar No. 12564
ZUMWALT, ALMON & HAYES PLLC
1014 16th Avenue South
Nashville, TN 37212
Telephone: (615) 850-2291
Fax: (202) 256-7106
jbeiter@zahlaw.com

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N.Y. Bar No. 2628915
ASCAP
One Lincoln Plaza
New York, NY 10023
Telephone: (212) 621-6450
Fax: (212) 787-1381
smosenkis@ascap.com

Jay Cohen
NY No. 1712462
Lynn B. Bayard
NY No. 2775179
Jayson L. Cohen
NY No. 4419453
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Fax: (212) 757-3990
jaycohen@paulweiss.com
lbayard@paulweiss.com
jlcohen@paulweiss.com

Marvin Berenson
N.Y. Bar No. 1048792
Joseph J. DiMona
DC Bar No. 412159
BROADCAST MUSIC, INC.
320 West 57th Street
New York, NY 10019
Telephone: (212)830-2533
Fax: (212) 397-0789
jdimona@bmi.com

Michael J. Remington
DC Bar No. 344127
Jeffrey J. Lopez
DC Bar No. 453052
DRINKER BIDDLE & REATH LLP
1500 K Street, NW -- Suite 1100
Washington, DC 20005
Telephone: (202) 842-8800
Fax: (202) 842-8465
michael.remington@dbr.com
Jeffrey.Lopez@dbr.com

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ZUMWALT, ALMON & HAYES PLLC
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Fax: (212) 787-1381
smosenkis@ascap.com

Marvin Berenson
N.Y. Bar No. 1048792
Joseph J. DiMona
DC Bar No. 412159
BROADCAST MUSIC, INC.
320 West 57th Street
New York, NY 10019
Telephone: (212)830-2533
Fax: (212) 397-0789
jdimona@bmi.com

Jay Cohen
NY No. 1712462
Lynn B. Bayard
NY No. 2775179
Jayson L. Cohen
NY No. 4419453
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Fax: (212) 757-3990
jaycohen@paulweiss.com
lbayard@paulweiss.com
jlcohen@paulweiss.com

Michael J. Remington
DC Bar No. 344127
Jeffrey J. Lopez
DC Bar No. 453052
DRINKER BIDDLE & REATH LLP
1500 K Street, NW -- Suite 1100
Washington, DC 20005
Telephone: (202) 842-8800
Fax: (202) 842-8465
michael.remington@dbr.com
Jeffrey.Lopez@dbr.com

_www.

John C. Beiter
TN Bar No. 12564

ZUMWALT, ALMON & HAYES PLLC

1014 16th Avenue South Nashville, TN 37212 Telephone: (615) 850-2291

Fax: (202) 256-7106 jbeiter@zahlaw.com

DEVOTIONAL CHAINANTS

Arnold P. Lutzker
DC Bar No. 101816
Carolyn W. Martin
DC Bar No. 359051
Allison L. Rapp
Member Maryland Bar
Jeannette M. Carmadella
DC Bar No. 500586
LUTZKER & LUTZKER, LLP
1233 20th Street, NW, Suite 703
Washington, DC 20036
Telephone: (202) 408-7600
Fax: (202) 408-7677
amie@lutzker.com

October 2, 2009

CANADIAN CLAIMANTS GROUP

L. Kendall Satterfield
DC Bar No. 393953
Richard M. Volin
DC Bar No. 457292
FINKELSTEIN THOMPSON LLP
1050 30th Street NW
Washington, D.C. 20007
Telephone: (202) 337-8000
Fax: (202) 337-8090
ksatterfield@finkelsteinthompson.com

DEVOTIONAL CLAIMANTS

Arnold P. Lutzker
DC Bar No. 101816
Carolyn W. Martin
DC Bar No. 359051
Allison L. Rapp
Member Maryland Bar
Jeannette M. Carmadella
DC Bar No. 500586
LUTZKER & LUTZKER, LLP
1233 20th Street, NW, Suite 703
Washington, DC 20036
Telephone: (202) 408-7600
Fax: (202) 408-7677
arnie@lutzker.com

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CANADIAN CLAIMANTS GROUP

L. Kendall Satterfield

DC Bar No. 393953

Richard M. Volin

DC Bar No. 457292

FINKELSTEIN THOMPSON LLP

1050 30th Street NW

Washington, D.C. 20007

Telephone: (202) 337-8000

Fax: (202) 337-8090

ksatterfield@finkelsteinthompson.com

EXHIBIT A

Phase I Claimant Category Definitions

"Program Suppliers." Syndicated series, specials and movies, other than Devotional Claimants programs as defined below.

Syndicated series and specials are defined as including (1) programs licensed to and broadcast by at least one U.S. commercial television station during the calendar year in question, (2) programs produced by or for a broadcast station that are broadcast by two or more U.S. television stations during the calendar year in question, and (3) programs produced by or for a U.S. commercial television station that are comprised predominantly of syndicated elements, such as music video shows, cartoon shows, "PM Magazine," and locally hosted movie shows.

"Joint Sports Claimants." Live telecasts of professional and college team sports broadcast by U.S. and Canadian television stations, except for programs coming within the Canadian Claimants category as defined below.

"Commercial Television Claimants." Programs produced by or for a U.S. commercial television station and broadcast only by that one station during the calendar year in question and not coming within the exception described in subpart 3) of the "Program Suppliers" definition.

"Public Television Claimants." All programs broadcast on U.S. noncommercial educational television stations.

"<u>Devotional Claimants</u>." Syndicated programs of a primarily religious theme, not limited to those produced by or for religious institutions.

"Canadian Claimants." All programs broadcast on Canadian television stations, except (1) live telecasts of Major League Baseball, National Hockey League, and U.S. college team sports, and (2) other programs owned by U.S. copyright owners.

"Music Claimants." Musical works performed during the course of programs that are themselves separately represented as parts of the preceding categories.

EXHIBIT NUMBER 220

Before the COPYRIGHT OFFICE Washington, D.C.

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FEB 2 2 2006

COPYRIGHT OFFICE PUBLIC OFFICE

In the Matter of)"	Docket Nos.	2001-8 CARP CD 98-99 2002-8 CARP CD 2000
Distribution of the 1998-2002 Cable Royalty Funds and)		2003-2 CARP CD 2001 2004-5 CARP CD 2002
Distribution of the 1999-2000 Satellite Royalty Funds)))	Docket Nos.	2000-7 CARP SD 96-98 2001-5 CARP SD 1999 2001-7 CARP SD 2000 2005-2 CRB SD 2001-2003
	,		2001.2000

RESPONSE OF JOINT SPORTS CLAIMANTS

Pursuant to the Copyright Office Order dated February 8, 2006 ("Order"), 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 (collectively the "Joint Sports Claimants" or "JSC") submit the following response to the Independent Producers Group's ("IPG") "Notification of Sports Claimants" dated February 15, 2006 ("Notification").

On February 14, 2006, IPG also filed what effectively amounts to a petition for reconsideration of the Order which required IPG's Notification. JSC will file a separate opposition to that petition in accordance with 37 C.F.R. § 251.44(g).



The Copyright Office directed IPG to provide JSC with the Notification no later than Wednesday, February 15, 2006. Order at 3. However, JSC did not receive the Notification until Saturday, February 18, 2006 because IPG — contrary to the Office's December 8, 2005 Order and 37 C.F.R. 251.44(g) — sent that Notification to JSC by regular mail rather than by a "means no slower than overnight express mail." JSC is nevertheless responding to the Notification within the timeframe set forth in the Office's Order.

ARGUMENT

The Office Should Distribute All Of The 1998 Cable Sports Royalties, And 98 Percent Of The 1999-2002 Cable Sports Royalties, To JSC.

JSC has joined with other parties in seeking a distribution of all remaining 1998-2002 cable royalties that are not subject to Phase II controversies. In every year but one since 1978, the more than 200 JSC members have received 100 percent of the cable royalties allocated for "sports" programming ("Sports Royalties"). There are no Phase II controversies among the JSC members that would require the withholding of any of the 1998-2002 cable Sports Royalties; consequently, absent any other Phase II claim, JSC should receive all of the 1998-2002 cable Sports Royalties. According to IPG, however, five percent of those royalties should be placed in reserve to accommodate twelve parties that IPG, based upon a "review" of its list of claimants, "believes have a claim compensable in the Sports Programming field" Notification at (unnumbered) p. 2.

As a threshold matter, neither IPG nor any of its claimants has any entitlement to any 1998 cable Sports Royalties. On October 6, 2000, IPG filed a notice of intent to participate in Docket No. 2000-6 CARP CD 98, advising that it had a Phase II claim in the "syndicated programming, sports programming and devotional programming categories." See Exhibit 1. However, on October 10, 2002, IPG filed an "amended" notice that identifies Phase II claims only for syndicated and devotional programming, and not sports programming. See Exhibit 2. Having withdrawn its claim for 1998 cable Sports Royalties more than three years ago, IPG has no right to block the distribution of any of the 1998 cable Sports Royalties to JSC. Furthermore,

² The only time JSC did not receive 100% was when the Copyright Royalty Tribunal awarded the Spanish International Network 0.02% of the 1982 cable Sports Royalties for World Cup Soccer telecasts.

the Office's February 8 Order at page 2 makes clear that: "A claimant who does not appear on the respective lists of claimants identified at the time IPG filed its various notices of intent to participate cannot assert a claim at this time." With the exception of one claimant (Raycom), none of the twelve parties identified in IPG's Notification was identified in either IPG's original or amended notices of intent to participate in the 1998 cable proceeding. See Exhibits 1 and 2.

With regard to the 1999-2002 cable Sports Royalties, IPG's request for a five percent reserve -- which would amount to approximately \$8 million -- is grossly inflated. For several reasons, the Office should not withhold more than two percent of the 1999-2002 cable Sports Royalties, based upon the average shares allocated for Sports Royalties in the 1998-99 cable royalty distribution proceeding.

First, IPG states it "continues to maintain" that a five percent reserve is necessary. Notification at (unnumbered) p. 4. That statement is not true. Prior to filing its Notification, the only time that IPG sought as much as a five percent reserve of the cable Sports Royalties was when IPG filed its notice of intent to participate in the 1999 cable proceeding. See Exhibit 3. IPG subsequently revised its request downward — to two percent — in the 2000 and 2002 cable proceedings; it made no suggestion for an appropriate reserve in the 2001 proceeding. See Exhibits 4-6. Only a few weeks ago, IPG again advised the Office that a two percent reserve of the 2002 cable Sports Royalties would be "sufficient to protect IPG's interests." See Exhibit 7. IPG has not provided any explanation whatsoever, let alone a credible explanation, as to why its claim, which it repeatedly has valued at two percent, should now be valued at five percent. It certainly has not "continue[d] to maintain" that a five percent reserve is necessary.

Second, IPG's claims of five and then two percent of the Sports Royalties reflect a serious misunderstanding of the programming for which such royalties are awarded. Sports Royalties are awarded for only

"Live telecasts of professional and college team sports broadcast by U.S. and Canadian television stations, except for programs coming within the Canadian Claimants category...."

Report of the Copyright Arbitration Royalty Panel in Docket No. 94-3 CARP CD 90-92 at 12 (May 31, 1996). It is difficult to imagine how most of the parties IPG purports to represent as Sports Royalty claimants -- such as TearDrop Golf, Sportworld, Daniel Hernandez Productions, Timberwolf Productions, Fishing University LLC and the US Olympic Committee (Notification at (unnumbered) pp. 2-4) -- could possibly have claims encompassing any programming that come within the above definition. See also 49 Fed. Reg. 3899 (1984) (concluding that Sports Royalties would be distributed in the first instance to sports clubs and not their rightsholders).³

JSC recognizes that the Office did not require IPG to identify any of the teams whose telecasts supposedly fall within IPG's claim for Sports Royalties -- notwithstanding that JSC has already identified all of its teams (and team leagues and conferences) in its royalty claims filed with the Office. Thus, it is not possible to determine at this point whether any of the parties listed by IPG in fact are claiming royalties for programming that comes within the above definition -- let alone determine that these parties are copyright owners entitled to make, and

³ In the last litigated proceeding involving 1998-99 cable royalties, the CARP tied its award of Sports Royalties directly to the results of a survey that asked each cable system respondent to value "live professional and college team sports" broadcast on a non-network basis by the distant signals it carried during the year in question. Thus, the Sports Royalty award encompasses only such "live professional and college team sports."

have authorized IPG to pursue, such claims. But absent some credible representation by IPG that each of the claimants it has listed in its Notification have in fact authorized IPG to seek 1999-2002 cable royalties for "live telecasts of professional and college team sports broadcast by U.S. and Canadian television stations" on a non-network basis, it would be particularly inappropriate for the Office to withhold more than the two percent originally sought by IPG.

Third, JSC has been a party to the cable royalty proceedings since their inception nearly thirty years ago, and it expects to be a party for as long as the Section 111 compulsory license exists. JSC, unlike IPG, also has routinely demonstrated its entitlement to cable royalties, and it has borne all the expense of establishing the share of royalties allocated for sports programming without any assistance from IPG. Under these circumstances, it would be inequitable to withhold from JSC more than the two percent originally claimed by IPG -- JSC has routinely agreed to return with interest any excess amount, should it later be determined that JSC's share of those distributions exceeded JSC's final award.

CONCLUSION

For the reasons set forth above, the Office should distribute all of the 1998 cable Sports Royalties, and 98 percent of the 1999-2002 cable Sports Royalties, to the Joint Sports Claimants, subject to the condition that they agree to pay back with interest any amounts in excess of their final awards.

Respectfully submitted,

JOINT SPORTS CLAIMANTS

Robert Alan Garrett
Michele J. Woods
ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206
202.942.5000 (voice)
202.942.5999 (facsimile)
Counsel for the Office of the
Commissioner of Baseball

Philip R. Hochberg
LAW OFFICES OF PHILIP R. HOCHBERG
11921 Rockville Pike, Suite 300
Rockville, MD 20852
301.230.6572 (voice)
301.230.2891 (facsimile)

Association, National Football League, National Hockey League and Women's National Basketball Association

Counsel for the National Basketball

Ritchie T. Thomas
SQUIRE, SANDERS & DEMPSEY L.L.P.
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202.626.6600 (voice)
202.626.6780 (facsimile)

Counsel for The National Collegiate
Athletic Association

Of Counsel:

Thomas J. Ostertag
Senior Vice President and General Counsel
OFFICE OF THE COMMISSIONER
OF BASEBALL
245 Park Avenue
New York, NY 10167
212.931.7800 (voice)
212.949.5653 (facsimile)

February 22, 2006

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2006, a copy of the foregoing Response of Joint Sports Claimants was sent by first class mail, postage prepaid, to the counsel and parties listed below. Counsel and parties designated with an * were sent the Response via Federal Express. Those designated with a + were sent the Response via e-mail.

Michele J. Woods
Michele J. Woods

Gregory O. Olaniran + Lucy Holmes Plovnick Stinson Morrison Hecker L.L.P. Suite 800 1150 18th Street, N.W. Washington, D.C. 20036-3816

Timothy C. Hester +
Ronald G. Dove, Jr.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401

John I. Stewart, Jr. +
Michael Lazarus
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2959

L. Kendall Satterfield +
Finkelstein, Thompson & Loughran
1050 30th Street, NW
Washington, DC 20007

Michael J. Remington + Jeffrey J. Lopez Drinker Biddle & Reath, LLP 1500 K Street, N.W. Suite 1100 Washington, D.C. 20005-1209 Lisa Katona Galaz* +
Independent Producers Group
21715 Brazos Bay
San Antonio, TX 78259

Paul Greco +
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314

Marsha MacBride, Esq. +
Bart Stringham
National Association of Broadcasters
1771 N. Street, NW
Washington, DC 20036

Marvin L. Berenson + Joseph J. DiMona Broadcast Music, Inc. 320 W. 57th Street New York, NY-10019

Joan M. McGivern + Sam Mosenkis ASCAP One Lincoln Plaza New York, NY 10023 I. Fred Koenigsberg + White & Case LLP 1155 Avenue of the Americas New York, NY 10036-2787

Patrick Collins + SESAC, Inc. 55 Music Square East Nashville, TN 37023

Clifford H. Harrington +
Barry H. Gottfried
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

Marian Oshita Independent Producers Group 9903 Santa Monica Blvd., Suite 655 Beverly Hills, CA 90212

Jonathan McCants + Bird & Loechl, LLC 1150 Monarch Plaza 3414 Peachtree Road, NE Suite 1150 Atlanta, GA 30326-1167

Edward S. Hammerman +
Hammerman, PLLC
5335 Wisconsin Avenue, NW, Suite 440
Washington, DC 20015-2052

Neal A. Jackson +
Gregory A. Lewis
National Public Radio
635 Massachusetts Avenue, N.W.
Washington, DC 20001-3753

John C. Beiter + Loeb & Loeb LLP 45 Music Square West Nashville, TN 37203

George R. Grange, II + Kenneth E. Liu Gammon & Grange, PC Seventh Floor 8280 Greensboro Drive McLean, VA 22102-3807

John H. Midlen, Jr. + Midlen Law Center 7618 Lynn Drive Chevy Chase, MD 20815-6043

Frank Koszorus, Jr. +
Connolly, Rodgers & Scharman
5028 Wisconsin Avenue, NW
Suite 300
Washington, D.C. 20016

Arnold P. Lutzker + Lutzker, Lutzker & Settlemyer 1000 Vermont Avenue, NW Washington, DC 20005

Terry Thompson
S. Kyle Roberts
Chief Operations Officer
John Hagee Ministries
777 North Loop 1604 West
San Antonio, TX 78232

Ernst Jacob Bakker
Fintage Publishing
Stationsweg 322313 AV, Leiden
The Netherlands

James Cannings
Our Own Performance Society
400 2nd Avenue #22C
New York, NY 10010

John W. Zucker ABC, Inc. 77 W. 66th Street, 16th Floor New York, NY 10023

Maren Christensen Executive VP and General Counsel 105 Universal City Plaza Universal City, CA 91688 Howard F. Jaeckel Sanford I. Kryle CBS Broadcasting Inc. 51 W. 52nd Street New York, NY 10019

Gillian M. Lusin NBC 30 Rockefeller Plaza New York, NY 10112





EXHIBIT NUMBER 221

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Before the COPYRIGHT OFFICE Washington, D.C.

FEB 2 4 2006 COPYRIGHT OFFICE PUBLIC OFFICE

In the Matter of

Distribution of the 1998-2002
Cable Royalty Funds and

Distribution of the 1996-2000
Satellite Royalty Funds

Docket Nos. 2001-8 CARP CD 98-99 2002-8 CARP CD 2000 2003-2 CARP CD 2001 2004-5 CARP CD 2002

Docket Nos. 2000-7 CARP SD 96-98 2001-5 CARP SD 1999

2001-7 CARP SD 2000

OPPOSITION OF THE JOINT SPORTS CLAIMANTS TO IPG'S MOTION FOR WITHDRAWAL OF ORDER, MODIFICATION OF ORDER AND/OR EXTENSION OF TIME

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 (collectively, the "Joint Sports Claimants" or "JSC") submit the following opposition to the "Independent Producers Group's Motion for Withdrawal of Order, Modification of Order and/or Extension of Time," filed February 14, 2006 ("IPG Motion").

BACKGROUND

On September 20 and 22, 2005, the Copyright Office ("Office") issued orders in the

above-referenced proceedings requesting comments concerning the status of Phase I and Phase II controversies ("September Orders"). A principal purpose of the September Orders was to assist the Office in determining the amounts of royalties that could be distributed prior to the Office's transferring any remaining controversies in these proceedings to the Copyright Royalty Board.



On the day that responses to the September Orders were originally due (December 1, 2005), JSC received a letter from IPG. IPG claimed that it "retains rights that are compensable in the Sports Programming category" for the 1996-2003 satellite proceedings and the 1998-2002 cable proceedings, and it proposed exchanging "lists of claimed programs." See IPG Motion at Exhibit B. Nothing in the IPG letter, however, provided any indication as to which, if any, parties had authorized IPG to claim Sports Royalties; nor was there any indication in the letter as to which, if any, professional or collegiate team sports were covered by IPG's claim for Sports Royalties.

Royalties.

Royalties.

1

Prior to receiving the IPG letter on December 1, 2005, JSC had not had any communication with IPG concerning the royalties at issue. Accordingly, in an attempt to learn the identity of the claimants and teams supposedly represented by IPG (an obvious prerequisite to determining the amounts that should be withheld from the distributions requested by the parties), JSC immediately called IPG on December 1, 2005. IPG, however, did not return that call — nor did IPG respond to e-mails that JSC sent to IPG on December 1 and 2, 2005 — prior to the date that JSC was required under the September Orders to notify the Office of the nature and extent of any Phase II controversies (December 6, 2005). See Declaration of Philip R. Hochberg attached as Exhibit 1 ("Hochberg Decl."), Attachment A at A-1 — A-2.² In the "Comments of

² IPG's unsubstantiated and unsworn allegations that Ms. Galaz spoke with Mr. Hochberg on December 2, 2005, and was engaged in a "dialogue" with JSC prior to the filing of JSC's Comments (IPG Motion at (unnumbered) pp.1-2) are unequivocally false. There were no conversations between Mr. Hochberg and Ms. Galaz until December 12, 2005, nearly one week after JSC filed its Comments. At no point prior to the filing of JSC's Comments had IPG even responded to Mr. Hochberg's voice and e-mail messages, let [Footnote continued on next page]



As the Copyright Office is aware, the sports share of cable and satellite royalties covers only eligible "live telecasts of professional and college team sports." See Response of Joint Sports Claimants in Docket Nos. 2001-8 CARP CD 98-99 et al. at 4 (filed February 22, 2006) (citing Report of the Copyright Arbitration Royalty Panel in Docket No. 94-3 CARP CD 90-92 at 12 (May 31, 1996).

the Joint Sports Claimants On Phase II Controversies" ("Comments"), filed on December 6, 2005 in response to the September Orders, JSC thus requested the Office to require IPG to identify the claimants and teams that IPG allegedly represented. As JSC explained, that information was necessary so that JSC could determine the nature and extent of any Phase II controversies over Sports Royalties and so that the Office could better determine the amount of those royalties, if any, that should be withheld from distribution.

It was not until January 13, 2006 (more than one month after JSC filed its Comments) that IPG informed JSC it would "start pulling together the information" sought by JSC. However, IPG also said it did not "believe that [its] sports programming claim is significant.... Because it is not likely a significant claim, it isn't a particularly high priority." See e-mail from Lisa Galaz to Philip Hochberg, dated January 13, 2006 (Hochberg Decl., Attachment A at A-7). Thus, IPG refused to provide any assurance that it would disclose to JSC and the Office, in any expeditious way, the information necessary to determine the amount of Sports Royalties that

[[]Footnote continued from preceding page]

alone discussed JSC's request that IPG identify the parties and teams that supposedly had authorized IPG to claim Sports Royalties. See Hochberg Decl., Attachment A at A-1 - A-3.

¹ IPG incorrectly states that "no filings have ever been received from the Joint Sports Claimants." IPG Motion at (unnumbered) p. 1, n. 1. As accurately reflected in the Certificate of Service to the JSC Comments, JSC counsel mailed its Comments to Ms. Galaz of IPG on December 6, 2005. Pursuant to the Office's December 8, 2005 Order, JSC counsel also sent a package containing the Comments to Ms. Galaz and Ms. Oshita of IPG by Federal Express on December 13, 2005. Correspondence from Federal Express stating that these Federal Express packages were received on December 14, 2005 is attached as Exhibits 2 and 3.

should be withheld from the distributions that had been requested by JSC and other Phase I Parties.

In its Order dated February 8, 2006 ("February 8 Order"), the Office directed IPG to provide, by February 15, 2006, a list of its claimants that have authorized IPG to seek a share of the Sports Royalties. The Office, however, decided not to require IPG to provide a list of the teams whose telecasts were part of IPG's claim, concluding that such information "goes beyond ascertaining whether a controversy exists with respect to certain claimants and seeks prematurely factual information concerning the nature of those claims." February 8 Order at 2. The Office directed JSC to notify the Office by February 22, 2005 of the "existence and extent" of any controversy over the Sports Royalties.

On February 14, 2006, IPG filed its Motion, requesting that the Office (1) "withdraw" the February 8 Order; (2) permit IPG to identify at some later time additional parties, beyond those identified on February 15, 2006, who have authorized IPG to claim Sports Royalties; or (3) extend the time for complying with the February 8 Order until March 15, 2006. It also requested that "any Order apply mutually to IPG and the Joint Sports Claimants." IPG Motion at (unnumbered) pp. 3-4.

On February 15, 2006, IPG filed the "Independent Producers Group's Notification of Sports Claimants." In that Notification, IPG stated that it had done no more than "review[] its lists of underlying owners of copyright;" based solely upon that limited review, it "identified which parties it believes have a claim compensable in the Sports Programming field." Notification at (unnumbered) p. 2 (emphasis added). IPG listed twelve parties -- including Fishing University LLC, Sportsworld, TearDrop Golf, Timberwolf Productions, Daniel

Hernandez Productions, U.S. Olympic Committee, ESPN, Federation Internationale de Football Association, Jefferson Pilot Sports, Raycom, Anheuser Busch Companies, Inc. and Venevision International. IPG refused to say that any one of the twelve parties had authorized it to seek Sports Royalties; it would say only that none of these parties had "limited IPG from collecting in the Sports Programming Category." Notification at (unnumbered) p. 2. IPG purported to "reserve[] its right" to identify at some later time other parties (from the hundreds that it had claimed to represent in prior filings) with an entitlement to Sports Royalties once it "becomes aware" of those parties. Notification at (unnumbered) p. 4; see also Motion at (unnumbered) p. 3. For what IPG had previously acknowledged was "not likely a significant claim" (see page 3 supra), IPG requested the Office to withhold five percent — or approximately \$8 million — of the Sports Royalties. Notification at (unnumbered) p. 4.

ARGUMENT

For several reasons, JSC strongly opposes IPG's alternative requests that the Office either "withdraw" its February 8 Order or permit IPG to supplement at some later time its list of parties who are claiming Sports Royalties. JSC does not object to affording IPG until March 15, 2006 to provide a complete and unalterable list of such parties who have confirmed that IPG is authorized to seek Sports Royalties, as long as IPG (1) at the same time provides a complete and unalterable list of the teams whose telecasts are included in those parties' claims to Sports Royalties; and (2) does not delay any further the requested distributions of 1998-2002 cable royalties to JSC. JSC also has no objection to having such an order apply mutually to JSC and IPG since JSC has already provided, in the July claims on file with the Office, the very same type of information that it is requesting IPG to provide.

- "significantly mischaracterized the course of dialogue between IPG and [JSC]" (IPG Motion at (unnumbered) p. 3), IPG is dead wrong. It is IPG, and not JSC, that has seriously misstated the facts concerning the non-existent "dialogue;" all of the factual representations that JSC made in seeking the February 8 Order were and are accurate. See pages 2-3 and note 2 supra. Likewise, IPG's claim that it never received the Comments in which JSC requested the February 8 Order is contrary to fact; JSC served those Comments upon IPG's Ms. Galaz (twice) and Ms. Oshita. See note 3 supra. Furthermore, it was entirely proper for JSC to have requested in its Comments the relief provided, in part, by the February 8 Order. That request was integrally related to the very reason that the Office had, in its September Orders, directed JSC to file such Comments = i.e., to determine the nature and extent of controversies that would require the withholding of any Sports Royalties. In any event, IPG has not demonstrated any prejudice from JSC's having made its request in the Comments that responded to the September Orders rather than in another document.
- 2. IPG makes the remarkable claim that it would be an "extraordinary task" for it to determine, at this time, which if any of its claimants have authorized it to collect Sports Royalties. Motion at (unnumbered) p. 3. The fact is that IPG has had years to make that determination for the 1998-2002 cable royalties and 1999-2000 satellite royalties at issue here; IPG filed claims for those royalties between 2½ to 6½ years ago. IPG should have made that determination long before now -- certainly before it represented to the Office in its various notices to participate that it had claimants who have authorized it to seek Sports Royalties and that the Office should thus withhold from distribution substantial amounts of Sports Royalties.

Equally untenable is IPG's apparent claim that it should be able (1) to provide at this time only a sampling of claimants it "believes," based upon a cursory review of its claimant lists, wish it to pursue Sports Royalties and (2) to supplement this list whenever it becomes aware of other parties with a claim to Sports Royalties. JSC and the Office are entitled to know now, before the Office makes any decision as to the amount of Sports Royalties that should be withheld from distribution, the identity of all IPG parties that are claiming Sports Royalties; absent such information JSC and the Office cannot accurately gauge the nature and extent of the controversy for Sports Royalties and the amounts of Sports Royalties that should be withheld. IPG and the Office certainly know who JSC represents and JSC and the Office should know who IPG represents.

Identifying those of its claimants who seek Sports Royalties is not the Herculean task that IPG posits. It requires only that IPG send a letter or e-mail to its claimants asking whether they have authorized IPG to claim royalties for "live telecasts of professional and collegiate team sports" (see note 1 supra). There is absolutely no legitimate excuse for IPG's having urged the Office in notices filed over the past six years to withhold substantial amounts of royalties without having obtained, at a minimum, such basic information from its own claimants.

3. The Office in its February 8 Order has already directed IPG to provide a comprehensive and immutable list of its claimants that have authorized IPG to seek a share of Sports Royalties. The Office should not retreat from that directive. As noted above, IPG has studiously refrained in its Notification from affirmatively representing that there is a single one of its claimants that has in fact authorized IPG to claim Sports Royalties. And there is absolutely nothing in any of IPG's filings demonstrating that any of the twelve claimants it has identified in its Notification has sought to claim such royalties for the live telecasts of professional and

collegiate team sports. To the extent IPG has provided a list of only those claimants it "believes," but has not actually confirmed, are seeking compensation for telecasts that are in fact eligible for Sports Royalties, IPG should be required to make that confirmation. Absent such a confirmation, there is no proper basis for withholding any royalties to account for imagined and hypothetical controversies with IPG over Sports Royalties -- and certainly no more than the two percent that IPG originally claimed should be withheld. See JSC Response at 3.

As the Office is aware, there is nearly \$1 billion sitting in the various cable and satellite royalty accounts; significant portions of those royalties have been languishing in such accounts earning minimal interest for many years. It is simply inequitable that copyright owners who are legitimately entitled to such royalties, such as JSC, are denied access to any portion of those royalties merely because claimants, such as IPG, do no more than assert a shallow "belief" that some claimants may have some affiliation with some sport — without ever making any simple inquiry as to whether any of its claimants have in fact authorized IPG to pursue such a claim for the live professional and collegiate team sports telecasts that qualify for Sports Royalties.

4. IPG also should be required to identify the specific teams for which its claimants are seeking Sports Royalties. JSC recognizes that the Office previously refused to impose that requirement on the ground that information about team identities "goes beyond ascertaining whether a controversy exists with respect to certain claimants and seeks prematurely factual information concerning the nature of those claims." February 8 Order at 2. With all due respect, JSC strongly believe that that conclusion is wrong. The information sought by JSC goes directly to determining the nature and extent of the controversy with IPG and the amount of Sports Royalties that should be withheld from distribution at this time. In order to assess the nature and extent of any controversy over the Sports Royalties, it is not enough to know that, for example,



Fishing University is one of IPG's "sports claimants." It makes a considerable difference whether Fishing University purports to be claiming for syndicated fishing shows (which are outside the sports category) or for the telecasts of the Florida Marlins or Miami Dolphins. There is no way to determine whether the parties identified by IPG have claims that are within the sports category, rather than some other category, unless IPG identifies the professional or collegiate sports teams whose telecasts are being claimed by those parties.

It should be emphasized that JSC is not seeking the type of information that IPG demanded in its November 28, 2005 letter to JSC, i.e., a list of the literally thousands of programs that fall within the JSC claim. JSC is not asking IPG to identify each program that comes within IPG's alleged sports claim. JSC wishes to know only the identity of the teams whose telecasts are encompassed with in the claims of, for example, Fishing University, Tear Drop Golf and the other claimants identified by IPG. Obviously, JSC does not believe that many, if any, of the IPG-represented parties (who have never before in over twenty years claimed Sports Royalties) have legitimate claims to such Royalties. But absent IPG's identifying the affected teams, JSC cannot properly advise the Office (as required by the September and February 8 Orders) concerning the nature and extent of the controversy with IPG. It can do no more than say, as it has in its Response, that IPG's request for a five percent reserve is grossly inflated.

CONCLUSION

For the reasons set forth above, JSC respectfully requests that the Office deny IPG's Motion. The Office should require IPG, by no later than March 15, 2006 (1) to confirm that each of the parties identified in its Notification has in fact authorized IPG to assert a claim for Sports

Royalties; (2) to identify any other parties that have authorized IPG to assert such a claim; and (3) to identify the teams whose telecasts come within the claims of these parties. The Office also should make clear that IPG may not seek Sports Royalties in these proceedings on behalf of any claimant not identified in IPG's March 15, 2006 filing.

Respectfully submitted,

JOINT SPORTS CLAIMANTS

Michele J. Woods

ARNOLD & PORTER LLP

555 Twelfth Street, N.W.

Washington, D.C. 20004-1206

202.942.5000 (voice)

202.942.5999 (facsimile)

Counsel for the Office of the

Commissioner of Baseball

Philip R. Hochberg

LAW OFFICES OF PHILIP R. HOCHBERG

11921 Rockville Pike, Suite 300

Rockville, MD 20852

301.230.6572 (voice)

301.230.2891 (facsimile)

Counsel for the National Basketball

Association, National Football

League, National Hockey League and

Women's National Basketball Association

Ritchie T. Thomas
SQUIRE, SANDERS & DEMPSEY L.L.P.
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202.626.6600 (voice)
202.626.6780 (facsimile)
Counsel for The National Collegiate
Athletic Association

Of Counsel:

Thomas J. Ostertag
Senior Vice President and General Counsel
OFFICE OF THE COMMISSIONER
OF BASEBALL
245 Park Avenue
New York, NY 10167
212.931.7800 (voice)
212.949.5653 (facsimile)



February 24, 2006

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2006, a copy of the foregoing Opposition of the Joint Sports Claimants was sent by first class mail, postage prepaid, to the counsel and parties listed below. Counsel and parties designated with an * were sent the Opposition via Federal Express. Those designated with a + were sent the Response via e-mail.

Michele J. Woods

Gregory O. Olaniran + Lucy Holmes Plovnick Stinson Morrison Hecker L.L.P. Suite 800 1150 18th Street, N.W. Washington, D.C. 20036-3816

Timothy C. Hester +
Ronald G. Dove, Jr.
Covington & Burling
1201 Pennsylvania Avenue, N.W.

John I. Stewart, Jr. +
Michael Lazarus
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2959

Washington, D.C. 20004-2401

L. Kendall Satterfield +
Finkelstein, Thompson & Loughran
1050 30th Street, NW
Washington, DC 20007

Michael J. Remington +
Jeffrey J. Lopez
Drinker Biddle & Reath, LLP
1500 K Street, N.W.
Suite 1100
Washington, D.C. 20005-1209

Lisa Katona Galaz* +
Independent Producers Group
21715 Brazos Bay
San Antonio, TX 78259

Paul Greco +
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314

Marsha MacBride, Esq. +
Bart Stringham
National Association of Broadcasters
1771 N. Street, NW
Washington, DC 20036

Marvin L. Berenson +
Joseph J. DiMona
Broadcast Music, Inc.
320 W. 57th Street
New York, NY 10019

Joan M. McGivern +
Sam Mosenkis
ASCAP
One Lincoln Plaza
New York, NY 10023

I. Fred Koenigsberg + White & Case LLP 1155 Avenue of the Americas New York, NY 10036-2787

Patrick Collins + SESAC, Inc. 55 Music Square East Nashville, TN 37023

Clifford H. Harrington +
Barry H. Gottfried
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

Marian Oshita +
Independent Producers Group
9903 Santa Monica Blvd., Suite 655
Beverly Hills, CA 90212

Jonathan McCants + Bird & Loechl, LLC 1150 Monarch Plaza 3414 Peachtree Road, NE Suite 1150 Atlanta, GA 30326-1167

Edward S. Hammerman +
Hammerman, PLLC
5335 Wisconsin Avenue, NW, Suite 440
Washington, DC 20015-2052

Neal A. Jackson +
Gregory A. Lewis
National Public Radio
635 Massachusetts Avenue, N.W.
Washington, DC 20001-3753

John C. Beiter + Loeb & Loeb LLP 45 Music Square West Nashville, TN 37203

George R. Grange, II + Kenneth E. Liu Gammon & Grange, PC Seventh Floor 8280 Greensboro Drive McLean, VA 22102-3807

John H. Midlen, Jr. + Midlen Law Center 7618 Lynn Drive Chevy Chase, MD 20815-6043

Frank Koszorus, Jr. + Connolly, Rodgers & Scharman 5028 Wisconsin Avenue, NW Suite 300 Washington, D.C. 20016

Arnold P. Lutzker + Lutzker, Lutzker & Settlemyer 1000 Vermont Avenue, NW Washington, DC 20005

Terry Thompson +
S. Kyle Roberts
Chief Operations Officer
John Hagee Ministries
777 North Loop 1604 West
San Antonio, TX 78232

Ernst Jacob Bakker +
Fintage Publishing
Stationsweg 322313 AV, Leiden
The Netherlands

James Cannings +
Our Own Performance Society
400 2nd Avenue #22C
New York, NY 10010

John W. Zucker + ABC, Inc. 77 W. 66th Street, 16th Floor New York, NY 10023

Maren Christensen +
Executive VP and General Counsel
105 Universal City Plaza
Universal City, CA 91688

Howard F. Jaeckel + Sanford I. Kryle CBS Broadcasting Inc. 51 W. 52nd Street New York, NY 10019

Gillian M. Lusins + NBC 30 Rockefeller Plaza New York, NY 10112

Exhibit 1

Exhibit 1

Before the COPYRIGHT OFFICE LIBARARY OF CONGRESS

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{	Dealest Man	2001 0 CARR CR 00 00
)	Docket Nos.	2001-8 CARP CD 98-99
)		2002-8 CARP CD 2000
)		2003-2 CARP CD 2001
)		2004-5 CARP CD 2002
)		
))	Docket Nos.	2000-7 CARP SD 96-98
)		2001-5 CARP SD 1999
)		2001-7 CARP SD 2000
)		•
)	Docket Nos. Docket Nos. Docket Nos. Docket Nos.

DECLARATION OF PHILIP R. HOCHBERG

- My name is Philip R. Hochberg. I am co-counsel for the Joint Sports Claimants
 ("JSC"), representing specifically the interests of the National Basketball Association, the
 National Football League, the National Hockey League, and the Women's National Basketball
 Association.
- 2. I am responding to statements made in the Independent Producers Group's

 Motion for Withdrawal of Order, Modification of Order and/or Extension of Time ("Motion"),

 filed by the Independent Producers Group ("IPG") with the Copyright Office and dated February

 13, 2006.
- 3. On Thursday, December 1, 2005, I received a letter from IPG, asserting a claim to "Sports Programming" royalties for certain years. The letter was dated November 28, 2005, and was signed by Lisa Katona Galaz. A copy of the letter is included as Exhibit B to IPG's Motion.
- 4. On December 1, I telephoned Ms. Galaz and left a voice mail message. I also e-mailed Ms. Galaz on both December 1, 2005 and December 2, 2005, asking her to contact me.

Declaration of Philip R. Hochberg Page 2

At the time the JSC filed the Comments of the Joint Sports Claimants on Phase II Controversies on Tuesday, December 6, 2005, neither Ms. Galaz nor any other IPG representative had responded to either my December 1, 2005 telephone message or my December 1, 2005 and December 2, 2005 e-mail messages.

- 5. Ms. Galaz finally responded to my messages nearly a week later, on December 12, 2005. We spoke for the very first time on that date. We also exchanged further e-mails on that same date. There were no further communications between me and Ms. Galaz or any other IPG representative until Ms. Galaz and I exchanged e-mails on January 11, 2006 and January 12, 2006.
- 6. Ms. Galaz has attached some but not all of our e-mail correspondence to IPG's Motion. All of the e-mails we exchanged between December 1, 2005 and January 13, 2006 are included in Attachment A to my Declaration.
- 7. Ms. Galaz's statements in the IPG Motion that she spoke with me on December 2, 2005 "and further discussed IPG's proposed exchange of information" (page 2), that there was an attempt to "further the dialogue and potential exchange of information" prior to the December 6, 2005-JSC filing (*ibid.*), and that JSC "significantly mischaracterized the course of dialogue" (*id.* at 3) in its filing are absolutely and unequivocally false.

I declare under penalty of perjury that the foregoing is true and correct to the best of my

knowledge and belief.

Dated: February 24, 2006

Philip R. Hochberg

ATTACHMENT





From: Philip R. Hochberg

Sent: Thursday, December 01, 2005 3:05 PM

To: 'worldwideg@aol.com' Subject: Copyright Claim

Ms. Galaz:

I received a copy of your letter today (although it was sent to an old address). Please note the new contact information below. I tried to reach you by phone, having left a message.

On whose behalf are you claiming a right to cable and satellite royalty participation? As you are aware, I represent a number of sports interests and I would like to know, before supplying program information, on whose behalf you are seeking compensation. This is not a request for claimed programs, but the identity of parties.

Thanking you in advance.

Phil Hochberg

Note my e-mail address: phochberg@srgpe.com. Law Offices of Philip R. Hochberg 11921 Rockville Pike Rockville, MD 20852 (301) 230-6572



"Philip R. Hochberg" <phochberg@srgpe.com>

12/02/2005 10:52 AM

To <worldwideg@aol.com>

CC

Subject RE: Copyright Claim

Ms. Galaz:

I sent this e-mail to you yesterday, as well as calling you, but did not receive the courtesy of a reply to either. Would you please be so kind as to respond as to on whose behalf you are making your claim to royalties in the cable and satellite Sports Programming categories?

hia

From: Philip R. Hochberg

Sents Thursday, December 01, 2005 3:05 PM

To: 'worldwideg@aol.com'
Subject: Copyright Claim

Ms. Galaz:

I received a copy of your letter today (although it was sent to an old address). Please note the new contact information below. I tried to reach you by phone, having left a message.

On whose behalf are you claiming a right to cable and satellite royalty participation? As you are aware, I represent a number of sports interests and I would like to know, before supplying program information, on whose behalf you are seeking compensation. This is not a request for claimed programs, but the identity of parties.

Thanking you in advance.

Phil Hochberg

Note my e-mail address: phochberg@srgpe.com. Law Offices of Philip R. Hochberg 11921 Rockville Pike Rockville, MD 20852 (301) 230-6572 ----Original Message----

From: Philip R. Hochberg <phochberg@srgpe.com>

To: worldwidesg@aol.com

Sent: Mon, 12 Dec 2005 14:39:30 -0500

Subject: FW: Copyright Claim

(301) 230-2891 - fax.

From: Philip R. Hochberg
Sent: Thursday, December 01, 2005 3:05 PM
To: 'worldwideg@aol.com'
Subject: Copyright Claim

Ms. Galaz:

I received a copy of your letter today (although it was sent to an old address). Please note the new contact information below. I tried to reach you by phone, having left a message.

On whose behalf are you claiming a right to cable and satellite royalty participation? As you are aware, I represent a number of sports interests and I would like to know, before supplying program information, on whose behalf you are seeking compensation. This is not a request for claimed programs, but the identity Thanking you in advance.

Phil Hochberg

Note my e-mail address: phochberg@srgpe.com. Law Offices of Philip R. Hochberg 11921 Rockville Pike Rockville, MD 20852 (301) 230-6572 From: worldwidesg@aol.com [mailto:worldwidesg@aol.com]
Sent: Monday, December 12, 2005 10:05 PM
To: Philip R. Hochberg
Subject: Re: Copyright Claim

Thank you for your response. Upon providing the claimant information will you agree to exchange program information? Sorry, but we were already burned once by the MPAA, who agreed to exchange program information then reneged. If there is a confidentiality issue, I have no issue with agreeing to keep such information confidential. Obviously, exchanging program information is the first step for parties to assess the values of their claim (and all others) under their respective methodologies.

From: worldwidesg@aol.com [mailto:worldwidesg@aol.com]
Sent: Wednesday, January 11, 2006 12:17 PM
To: Philip R. Hochberg
Subject: Re: Copyright Claim

Mr. Hochberg, I don't believe I ever heard back from you regarding the various sports claimants agreement to exchange program information as a first step toward negotiating a settlement of claims associated with the sports programming. Have you discussed this matter.

Lisa Katona Galaz

----Original Message----

From: Philip R. Hochberg <phochberg@srgpe.com>

To: worldwidesg@aol.com

Sent: Thu, 12 Jan 2006 15:58:50 -0500

Subject: RE: Copyright Claim

Ms. Galaz:

Sorry, I was out of town yesterday and could not reply to your e-mail.

The first step is actually knowing with whom one is dealing. And as I previously advised you, we need to know on whose behalf, if anyone's, IPG is authorized to represent in a claim for sports royalties. JSC is comprised of the National Basketball Association, the Women's National Basketball Association, the National Football League, the National Hockey League, Major League Baseball, and the National Collegiate Athletic Association.

Would you please identify for us the IPG-represented parties who are asserting a claim for sports royalties and the specific teams or institutions whose telecasts fall within those claims.

Thank you.

Phil Hochberg



From: worldwidesg@aol.com [mailto:worldwidesg@aol.com]
Sent: Friday, January 13, 2006 12:02 PM
To: Philip R. Hochberg
Subject: Re: Copyright Claim

Dear Phil,

on the whole I do not believe that our sports programming claim is significant, and I will start pulling together the information on a proceeding-by-proceeding basis. Because it is not likely a significant claim, it isn't a particularly high priority, so please bear with me. Nonetheless, if there is already agreement amongst the other sports programming claimants as to how to distribute those funds, I do not want to impede the distribution. Have the other sports programming claimants already established an objective basis for distribution within that category, or does everyone just arm-wrestle?

Lisa



"Philip R. Hochberg" <phochberg@srgpe.com>

01/13/2006 03:21 PM

To <worldwidesg@aol.com>

CC

Subject RE: Copyright Claim

Ms. Galaz:

Thank you for your note. Before there is any discussion about any facets of sports royalty distribution, JSC must once again ask on whose behalf (i.e., what organization, league, or team) you are appearing. For some reason, you appear refuctant to make that known. Once it is made known, we would be willing to discuss how we might resolve this.

Thank you.

Phil Hochberg

Exhibit 2



Exhibit 2

Fedilia Chyress Customer Support Domestic Trace 2678 Airways Boulsvard Module 11, 4th Floor Mamphis, TN 36118 U.S. Mail: PO Box 727 Memphia, TN 38164-4843 Telephone 901-369-3600



· February 09,2006

CAROL GEIER/RM 745M (202) 942-5999

Dear CAROL GEIER/RM 745M:

Our records reflect the following delivery information for the shipment with the tracking number 791303765236. The package was released as authorized by the shipper/recipient.

Delivery Information:

Released By: 9999999999999

Delivered to: 21715 BRAZOS BAY

Delivery Date: December 14, 2005

Delivery Time: 10:13 AM

Shipping Information:

Shipment Reference Information: 13172.009

Tracking No: 791303765236

Ship Date: December 13, 2005

Shipper:

M. WOODS ARNOLD & PORTER 555 12TH ST., N.W WASHINGTON, DC 20004

US

Recipient: LISA KATONA GALAZ

INDEPENDENT PRODUCERS

GROUP

21715 BRAZOS BAY SAN ANTONIO, TX 78259

US

Thank you for choosing FedEx Express, We look forward to working with you in the future.

FedEx Worldwide Customer Service 1-800-Go-FedEx (1-800-463-3339) Reference No: R2006020900262555840

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Exhibit 3



Gustomer Support Se Trace 3875 Airways Boulevard Module H, 4th Floor phis, TN 38118

U.S. Mail: PO Son 727 Memphis, TN 38194-4643 Telephone 901-389-3800



February 09,2006

CAROL GEIER (202) 942-5999

Dear CAROL GEIER:

Our records reflect the following delivery information for the shipment with the tracking number 792605176749.

Delivery Information:

Signed For By: A.TEA

Delivered to: 9903 SMB

Delivery Date: December 14, 2005

Delivery Time: 10:00 AM

Shipping Information:

Shipment Reference Information: 13172,009

Tracking No: 792605176749

Ship Date: December 13, 2005

M. WOODS Shipper:

ARNOLD & PORTER

555 12TH ST., N.W

WASHINGTON, DC 20004

US

Recipient: MARIAN OSHITA

INDEPENDENT PRODUCERS 9903 SANTA MONICA BLVD.

SUITE 655

BEVERLY HILLS, CA 90212

US

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EXHIBIT NUMBER 222

REDACTED