

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
(Phase II)

WRITTEN REBUTTAL STATEMENT
OF THE
MPAA-REPRESENTED PROGRAM SUPPLIERS

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May 15, 2013

*Attorneys for MPAA-Represented
Program Suppliers*

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

In the Matter of)
)
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_____)

Docket No. 2008-2 CRB CD 2000-2003
(Phase II)

**WRITTEN REBUTTAL STATEMENT OF
MPAA-REPRESENTED PROGRAM SUPPLIERS**

The Motion Picture Association of America, Inc. (“MPAA”), its member companies and other producers and/or syndicators of syndicated movies, series and specials broadcast by television stations who have agreed to representation by MPAA (“MPAA-represented Program Suppliers”),¹ in accordance with the April 16, 2013 Order of the Copyright Royalty Judges (“Judges”), hereby submit their Written Rebuttal Statement in the captioned matter. MPAA is submitting this introductory memorandum in order to summarize the rebuttal evidence they will present in this proceeding.

I. INTRODUCTION

MPAA’s Written Rebuttal Statement focuses on the direct testimony offered by Independent Producers Group (“IPG”) in this proceeding. First, MPAA will present evidence regarding the existing Phase I category definitions, their importance in these

¹ A listing of MPAA-represented Program Suppliers was submitted with the written direct testimony of Marsha Kessler, which was filed on May 30, 2012.

proceedings, and IPG's long-standing awareness of and adherence to these category definitions. Second, MPAA will offer evidence regarding additional entities that were listed as "IPG-represented claimants" in the written direct testimony of Raul C. Galaz that have notified the Judges that IPG is not authorized to represent their interests in this proceeding. Third, MPAA will offer testimony demonstrating that Mr. Galaz's methodology is flawed, both conceptually and in its application, and that it is not a reliable methodology for determining the relative market value of the programming at issue in this proceeding.

II. REBUTTAL TESTIMONY SUBMITTED BY MPAA-REPRESENTED PROGRAM SUPPLIERS

MPAA will present the following rebuttal witnesses, each of whom submitted written direct testimony on behalf of MPAA in connection with this proceeding, and each of whom will sponsor his or her rebuttal testimony and accompanying appendices and/or attachments:

Marsha E. Kessler, now retired, was Vice-President, Retransmission Royalty Distribution, of MPAA until August 2010. Ms. Kessler will provide testimony regarding the existing Phase I categories, the ongoing importance of those categories in these proceedings, and IPG's prior knowledge of Copyright Royalty Tribunal ("CRT") precedent establishing the categories in the context of the last Phase II royalty distribution proceeding in which IPG participated. Ms. Kessler will further describe her efforts to contact MPAA-represented Program Suppliers who were listed as "IPG-

represented claimants” in IPG’s Written Direct Statement and the resulting notices that were filed with the Judges clarifying IPG’s lack of authority to represent certain entities.

Jonda K. Martin is the President and Owner of Cable Data Corporation (“CDC”), which collects and computerizes the data contained in the cable operator statements of account (“SOAs”) on file with the Copyright Office. Ms. Martin will explain that, contrary to Mr. Galaz’s written direct testimony in this proceeding, IPG only ordered data for larger, Form 3 cable systems from CDC. Ms. Martin will further confirm that she never supplied IPG with data for smaller Form 1 and Form 2 cable systems at any time.

Jeffrey S. Gray, Ph.D., is a Principal of Deloitte Financial Advisory Services LLP, where he leads the Economic & Statistical Consulting Practice nationally. Dr. Gray will explain the numerous flaws in IPG’s proffered distribution methodology, which render it unreliable, both conceptually and in its application. Dr. Gray will further provide the Judges with an update to the royalty shares reported in his amended written direct testimony to account for certain IPG claimants who were dismissed by the Judges on March 21, 2013, and also for additional claimants who, subsequent to the issuance of the March 21 Order, have asserted that IPG lacks authority to represent their interests in this proceeding.

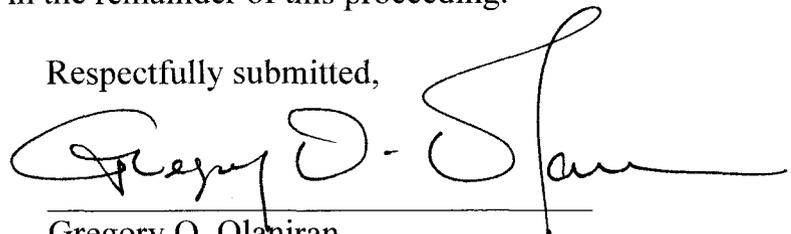
III. MPAA-REPRESENTED PROGRAM SUPPLIERS' PHASE II CLAIMS

Based on MPAA's evidence in this proceeding and the record before the Judges, MPAA-represented Program Suppliers are entitled to the following percentages of the Program Suppliers' share of the 2000-2003 cable royalties:

<u>Royalty Year</u>	<u>MPAA Claimed Share Of PS Fund (%)</u>
2000	98.93%
2001	99.72%
2002	99.69%
2003	99.80%

MPAA reserves the right to amend its proposed share of the foregoing royalty funds based on additional evidence proffered in the remainder of this proceeding.

Respectfully submitted,



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*Attorneys for
MPAA-Represented Program Suppliers*

May 15, 2013

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

Rebuttal Testimony of

Marsha E. Kessler

May 15, 2013

REBUTTAL TESTIMONY OF MARSHA E. KESSLER

My name is Marsha E. Kessler. Prior to my retirement in August 2010, I served as Vice-President, Retransmission Royalty Distribution, at Motion Picture Association of America (“MPAA”), a position I held, under various titles, for about 28 years. You may find details of my background and experience in my direct testimony in this proceeding, which was submitted to the Copyright Royalty Judges (“Judges”) on May 30, 2012.

I. PURPOSE OF TESTIMONY

The purpose of my rebuttal testimony is two-fold. First, I describe the Phase I programming categories that the Phase I Parties have relied on since the early days of the Copyright Royalty Tribunal (“CRT”), and which I applied consistently throughout my tenure at MPAA in order to determine the correct categorization of programming for MPAA’s special Nielsen Studies commissioned in connection with Phase I royalty proceedings since the early 1980s. These Phase I categories are mutually exclusive, and they have formed the basis for the distribution of hundreds of millions of dollars of Section 111 royalties over the course of the last thirty years.

Second, I explain the results of an investigation Jane Saunders of MPAA and I conducted from March to May, 2013, in which we contacted certain MPAA-represented entities whose names also appeared in Exhibit IPG-1 to the Written

Direct Testimony of Raul C. Galaz, which was filed on May 30, 2012 and later amended on August 20, 2012. As explained later in my testimony, the MPAA-represented claimants we contacted uniformly reported that they had either (1) terminated their representation agreements with IPG many years ago, or (2) understood that such agreements had long-since expired pursuant to their own terms. All of the MPAA-represented claimants we contacted confirmed that MPAA is their designated Phase II representative in this proceeding for some or all of the 2000 to 2003 cable royalty years.

II. THE PHASE I CATEGORIES

Since the first cable royalty distribution proceeding covering the 1978 royalty year, the CRT, and then later the Copyright Arbitration Royalty Panels (“CARP”), divided their royalty distribution cases into Phase I and Phase II proceedings. In Phase I, the CRT or the CARP allocated the entire royalty fund among broadly defined Phase I program categories. In Phase II, to the extent necessary, the CRT or the 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 few years of CRT 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 CRT refined the category definitions

through declaratory rulings and rulings published as a 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).

Attached to my testimony as Addendum A is a copy of the May 16, 1986 CRT Advisory Opinion cited above. I am aware of this CRT Advisory Opinion not only because I was tasked with applying the Phase I categories as a routine part of my job while I was working at MPAA, but also because IPG introduced the document as a cross-examination exhibit during the 1997 Cable Phase II Proceeding as IPG Exhibit 12x. I testified during the 1997 Cable Phase II Proceeding as a witness for MPAA, and was cross-examined by IPG's counsel during the hearing concerning IPG Exhibit 12x. Based on this experience, I can say with confidence that IPG was well aware of the contents of the CRT Advisory Opinion long before the Judges commenced this current Phase II proceeding.

The eight Phase I categories that were established during the CRT period are attached to my testimony as Addendum B. These categories are mutually-exclusive and they are intended to cover all non-network television programming (plus the music that is performed during those programs) on stations retransmitted as distant signals by U.S. cable systems. During my tenure at MPAA, I advised both Nielsen and Tribune Media Services regarding the process of assigning individual television programs to one (and only one) of the designated categories.

MPAA's Nielsen Studies have long been an important piece of evidence underlying the CRT, CARP, and the Judges' Phase I distribution orders, having been introduced in every litigated Phase I distribution proceeding since the early 1980s. I am also aware that virtually every participant in a Phase I proceeding has relied on these program categories for (1) presentation of evidence, and (2) partial and final distribution of royalties.

III. MPAA-REPRESENTED CLAIMANTS APPEARING IN EXHIBIT IPG-1

At MPAA's request, I reviewed Mr. Galaz's written direct testimony in this proceeding. During my review, I discovered that certain entities listed on Exhibit IPG-1 as "IPG-represented Claimants" in the Program Suppliers category are actually MPAA-represented Program Suppliers for some or all of the 2000 through 2003 royalty years. Some of these "overlapping" claimants were dismissed from IPG's case by the Judges in their March 21, 2013 Memorandum Opinion and Order Following Preliminary Hearing On Validity Of Claims.¹

Starting in March 2013, Jane Saunders of MPAA and I began contacting the remaining overlapping claimants to ask them to clarify whether IPG or MPAA is their authorized Phase II representative for purposes of this proceeding.

Between January and May 2013, we had telephone calls with authorized representatives of the following entities, all of whom appear on Exhibit IPG-1:

¹ The overlapping claimants that were dismissed pursuant to the March 21 Order are the twelve entities identified in that Order as represented by Fintage Publishing and Collection, B.V., as well as O. Atlas Enterprises, Sandra Carter Productions, Scholastic Entertainment, Inc., and Ward Productions.

BBC Worldwide

DreamWorks LLC

Litton Syndications, Inc.

Marty Stouffer Productions, Ltd.

Martha Stewart Living Omnimedia

Reel Funds International

Remodeling Today d/b/a Today's Homeowner

Television Syndication Company (TVS)

United States Olympic Committee

Urban Latino TV LLC (cka American Latino)

Venevision International

During my telephone conversations with authorized representatives of these entities, I learned that the majority of them had previously terminated their representation agreements with IPG. Following these telephone calls, authorized representatives for nine of the eleven entities listed above took it upon themselves to make filings with the Copyright Royalty Board notifying the Judges that they had previously terminated their relationships with IPG and confirming that MPAA, and not IPG, is their authorized Phase II representative for some or all of the 2000-2003 cable royalty years. Some of these filings were accompanied by copies of correspondence with IPG that I understand was never produced to

MPAA in discovery in this proceeding. Certified copies of these filings are attached to my testimony as Addendum C.

The two remaining entities listed above that are not covered by the filings in Addendum C are the United States Olympic Committee (“USOC”) and Martha Stewart Living Omnimedia (“MSLO”). I discuss each of these overlapping claimants below.

USOC informed me that they terminated their representation agreement with IPG on January 22, 2003. Attached hereto as Addendum D is a copy of the USOC termination letter which I received directly from USOC. I understand that IPG never produced a copy of the USOC termination letter to MPAA in discovery in this proceeding.

MSLO reviewed its records and informed me that its representation agreement with IPG is limited to the 2000 royalty year and does not apply to any later royalty years. Starting with royalty year 2001, MSLO confirmed that MPAA is its authorized Phase II representative.

IV. ADDITIONAL TERMINATION CORRESPONDENCE

In the course of my conversations with the overlapping claimants discussed above, one other Exhibit IPG-1 entity who previously notified the Judges that it had terminated its relationship with IPG was brought to my attention. On June 7, 2007, Farm Journal Electronic Media notified the Judges that IPG was not authorized to assert claims on its behalf for the 2001, 2002, and

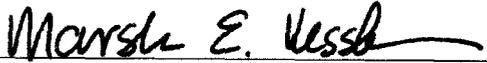
2003 royalty years. A certified copy of this correspondence is attached to my testimony as Addendum E.

Thank you for the opportunity to present the information in this testimony. I hope it will be helpful in the Judges' deliberations.

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 May 15, 2013



Marsha E. Kessler

KESSLER REBUTTAL TESTIMONY
ADDENDUM A

196- 12X



1111 20th Street, N.W.
 Suite 450
 Washington, D.C. 20036
 (202) 653-5175

In the Matter of }
 }
 1984 Cable Royalty }
 Distribution Proceeding }

Docket No. CRT 85-4 84CD

ADVISORY OPINION

On April 18, 1986, the Program Suppliers moved for declaratory rulings regarding program categorization in their 1984 Nielsen Special Study of distant viewing. The Program Suppliers asked: (a) Whether programs produced or originated uniquely for a single group of commonly-owned stations and not licensed to or broadcast by any other station should be included in the "Local" category; (b) whether the "Other" category should continue to include all telethons, coverage of political events, and parades, as well as "filler," "rain delay," "to be announced," and foreign language programs on non-specialty stations; (c) should the Tribunal determine telethons, coverage of political events, and parades are not to be included in "Other," what criteria are to be used to classify these programs, as they are rarely, if ever, listed in the BIB Book, ROSP, or SPA; and (d) whether individual programs on foreign-language specialty stations are to be classified separately. The Program Suppliers also listed their definitional instructions to Nielsen in the appendix to their motion.

The Tribunal received comments from the Joint Sports Claimants, NAB, Multimedia, and reply comments from the Program Suppliers. In addition to commenting, NAB proposed that the Tribunal institute a general rulemaking to define all program types used by the Tribunal in Phase I proceedings.

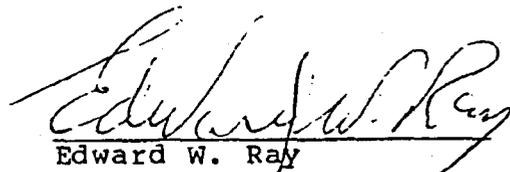
The Tribunal considers that it is sufficient at this time to issue an advisory opinion in areas where it believes have been of most concern to all parties. It is the Tribunal's opinion that:

- a) "Local programs" are programs licensed to/produced by and broadcast by a single broadcast station during the calendar year in question, and not broadcast by any other station.
 (To the extent a syndicator of a program is considered in the "local" category because he/she was able to syndicate to only one station in the calendar year, he/she would be entitled to a settlement or a Phase II proceeding in the local category.)

- b) "Syndicated series and specials" are programs licensed to/produced by and broadcast by two or more broadcast stations during the calendar year in question. (The extent to which stations are commonly-owned or controlled and whether that should diminish the amount of the award are factual questions to be argued in the proceeding.)
- c) Programs characterized by some parties in past proceedings as "minor sports" such as wrestling, high school athletics, coaches shows, etc., come under either the "Local" or "Syndicated Series and Specials" category.
- d) Programs which have been placed in the "Other" category and/or "Specialty Station" category are more properly defined as "Local," "Syndicated Series and Specials," or "Devotional." These include telethons, parades, political events, foreign-language programs, and devotional programs on specialty stations.

Additionally, the Tribunal notes that the description of Devotional Programs listed in the Program Suppliers definitional instruction are at some variance with Tribunal utilization of this category.

- e) "Devotional Programs" are programs of a primarily religious theme. They are not limited to those programs produced for/by religious institutions. The Tribunal notes that several programs produced by local stations and represented by NAB received a settlement from the Devotional Claimants in the 1983 proceeding.


Edward W. Ray
Chairman

Dated: May 16, 1986

KESSLER REBUTTAL TESTIMONY
ADDENDUM B

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.

“Devotional Claimants.” 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.

“National Public Radio.” Public radio broadcast programming.

“Music Claimants.” Musical works performed during the course of programs that are themselves separately represented as parts of the preceding categories.

KESSLER REBUTTAL TESTIMONY
ADDENDUM C

COPYRIGHT ROYALTY JUDGES
The Library of Congress
Washington, D.C.

In re

**Distribution of 2000, 2001, 2002 and 2003
Cable Royalty Funds**

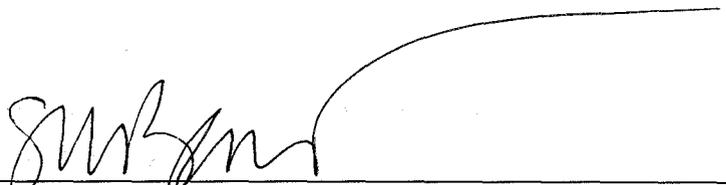
**Docket No. 2008-2 CRB CD 2000-2003
(Phase II)**

**DOCUMENT CERTIFICATION FROM THE
COPYRIGHT ROYALTY BOARD FILES**

I certify that, under my direction, the staff of the Copyright Royalty Board (CRB) has made a reasonable search of available files at the CRB. I certify that the documents attached to this Certification are a true copy of the documents maintained in the office of the CRB. The attached certified documents are:

- Joint Notice Concerning Representation, filed by Urban Latino, TV, LLC
Dated April 17, 2013
- Notice Concerning Representation, filed by Litton Syndications,
Dated April 25, 2013
- Letter from Marty Stouffer of Mary Stouffer Productions, Ltd,
Dated April 26, 2013.

SIGNED this 7 day of May 2013.


Suzanne M. Barnett
Chief Copyright Royalty Judge

**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
(Phase II)**

JOINT NOTICE CONCERNING REPRESENTATION

Urban Latino TV, LLC (“Urban Latino”); Remodeling Today, Inc. d/b/a Today’s Homeowner (“Today’s Homeowner”); and The Television Syndication Company, Inc. (“TVS”) (each a “Claimant,” and collectively, the “Claimants”), hereby give notice through their counsel that Claimants terminated their respective agreements with Worldwide Subsidy Group and/or Independent Producers Group (together, “IPG”) and are no longer represented by IPG. The Claimants further give notice that they have authorized undersigned counsel to represent their interests in cable and satellite statutory license proceedings before the Copyright Royalty Judges (“Judges”). For purposes of the instant 2000-2003 Cable Phase II Proceeding, Claimants have designated the Motion Picture Association of America, Inc. (“MPAA”) as their Phase II representative. Contrary to IPG’s representation to the Judges in the captioned proceeding, IPG is not authorized to represent Claimants.

I. Claimants Terminated Their Representation Agreements With IPG

On May 28, 2003, Urban Latino sent a letter to IPG via certified mail terminating its representation agreement with IPG, effective immediately. *See* Letter to Marian Oshita from Robert G. Rose, dated May 28, 2003 (attached hereto as Exhibit A). Urban Latino also

instructed IPG to cease from filing claims on its behalf and to “assign any claims under that [terminated] agreement that were made on behalf of Artist and Idea Management or Urban Latino TV to Hammerman, PLLC.” *See id.* Urban Latino further instructed IPG to notify all copyright collectives that IPG was no longer authorized to continue to, or to claim, to represent Urban Latino. *See id.*

On March 1, 2004, Today’s Homeowner sent a letter to IPG terminating its representation agreement with IPG, effective immediately. *See* Letter to Marian Oshita from Daniel C. Lipford, dated March 1, 2004 (attached hereto as Exhibit B). Today’s Homeowner instructed IPG to cease from filing claims on its behalf and to “assign any claims under that [terminated] agreement that were made on behalf our [sic] programming to Hammerman, PLLC.” *See id.* Today’s Homeowner further instructed IPG to notify all copyright collectives that IPG was no longer authorized to continue to, or to claim, to represent Today’s Homeowner. *See id.*

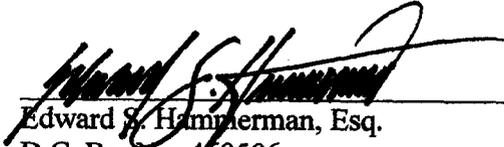
On April 29, 2004, TVS sent a letter to IPG terminating its representation agreement with IPG, effective immediately. *See* Letter to Marian Oshita from Cassie Yde, dated April 29, 2004 (attached hereto as Exhibit C). TVS instructed IPG to cease filing claims on its behalf and to “assign any claims under any agreements that were made on behalf our [sic] programming to Hammerman, PLLC.” *See id.* TVS further instructed IPG to notify all copyright collectives that IPG was no longer authorized to continue to, or to claim, to represent TVS. *See id.*

II. Claimants Have Not Authorized IPG To Represent Their Interests In This Proceeding.

Notwithstanding the attached termination correspondence, Claimants have learned that IPG listed them as “IPG-represented claimants” in Exhibit IPG-1 to its Written Direct Statement in the instant proceeding. Such listing was not authorized by Claimants, and should not be

considered by the Judges. Claimants hereby request that their names be stricken from Exhibit IPG-1, and that any Section 111 royalties due to Claimants be instead assigned to their authorized Phase II representative, MPAA.

Respectfully submitted,

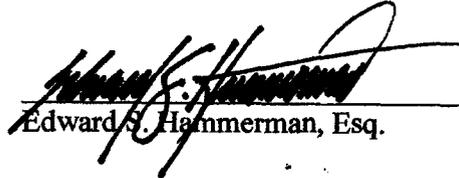


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ted@copyrightroyalties.com

Dated: April 17, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2013, a copy of the foregoing document was sent by Federal Express overnight mail to the parties listed on the attached service list.



Edward S. Hammerman, Esq.

SERVICE LIST

DEVOTIONAL CLAIMANTS

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Washington, D.C. 20037-1128

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Washington, D.C. 20036

Thomas J. Ostertag
OFFICE OF THE COMMISSIONER OF BASEBALL
245 Park Avenue
New York, NY 10167

Exhibit A

ARTIST & IDEA MANAGEMENT

May 28th, 2003

Via Certified Mail
Marian Oshita
Worldwide Subsidy Group d/b/a Independent Producers Group
9903 Santa Monica Blvd., # 655
Beverly Hills, California 90212

Dear Ms. Oshita:

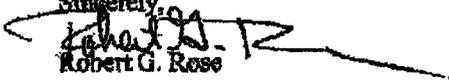
The purpose of this letter is to terminate any agreements by and between Artist and Idea Management, Ltd. and Urban Latino TV, LLC, owner of the television program, "Urban Latino TV," and Worldwide Subsidy Group and/or Independent Producers Group effective immediately.

Neither Worldwide Subsidy Group d/b/a Independent Producers Group, nor Independent Producers Group d/b/a Worldwide Subsidy Group, nor any other agents, affiliates, or assignees of your organization(s) are authorized to claim to represent, to represent, or to file any more documentation for pending or future claims for my company in any domestic or international matters.

You are hereby instructed to assign any claims under that agreement that were made on behalf of Artist and Idea Management or Urban Latino TV to Hammerman, PLLC. You will be compensated fully for any claims in which you have rendered services under the terms of any valid agreement up through television programming year 2001 for cable and satellite retransmission royalty claims filed at the United States Copyright Office.

Please provide me with a detailed status report, copies of, and an accounting for all claims filed on behalf of Artist and Idea Management or Urban Latino TV domestically and internationally by June 15, 2003. That information and all further communications should be directed to our attorney Edward S. Hammerman, Esq., Intermediary Copyright Royalty Services, a division of Hammerman, PLLC, 5335 Wisconsin Avenue, N.W., Suite 440, Washington, D.C. 20015-2052.

Finally, I would appreciate it if you would notify all copyright collectives with whom you have filed royalty claims that you no longer represent my company. Thank you.

Sincerely,

Robert G. Rose

One Astor Place, Suite 5-S • New York, NY 10003 • (212) 253-6153 • (212) 253-7007fax
www.artistandidea.com • Rob@artistandidea.com

AM
terminated

Exhibit B

Today's Homeowner with Danny Lipford

March 1, 2004

Marian Oshita
Worldwide Subsidy Group d/b/a Independent Producers Group
9903 Santa Monica Blvd., # 655
Beverly Hills, California 90212

Dear Ms. Oshita:

The purpose of this letter is to terminate any agreements by and between Remodeling Today, Inc. and/or Danny Lipford, owner of the television program, "Today's Homeowner with Danny Lipford," and Independent Producers Group effective immediately. Neither Worldwide Subsidy Group d/b/a Independent Producers Group, nor any other agents, affiliates, or assignees of your organization(s) are authorized to claim to represent, to represent, or to file any more documentation for pending or future claims for my company in any domestic or international matters.

You are hereby instructed to assign any claims under that agreement that were made on behalf our programming to Hammerman, PLLC. You will be compensated fully for any claims in which you have rendered services under the terms of any valid agreement up through television programming years 2003 for cable and satellite retransmission royalty claims filed at the United States Copyright Office.

Please provide me with a detailed status report, copies of, and an accounting for all claims filed on behalf of "Today's Homeowner with Danny Lipford" domestically and internationally by March 15, 2004. That information and all further communications should be directed to our attorney Edward S. Hammerman, Esq., Intermediary Copyright Royalty Services, a division of Hammerman, PLLC, 5335 Wisconsin Avenue, N.W., Suite 440, Washington, D.C. 20015-2052.

Finally, I would appreciate it if you would notify all copyright collectives with whom you have filed royalty claims that you no longer represent my company. Thank you.

Sincerely,

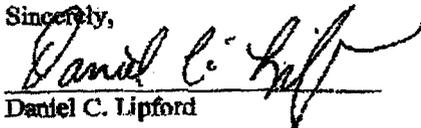

Daniel C. Lipford

Exhibit C



**THE TELEVISION
SYNDICATION
COMPANY, INC.**

April 29, 2004

Marian Oshita
Worldwide Subsidiary Group d/b/a Independent Producers Group
9903 Santa Monica Blvd., # 655
Beverly Hills, California 90212

Dear Ms. Oshita:

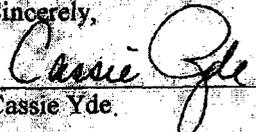
The purpose of this letter is to terminate any agreements by and between The Television Syndication Company, Inc., owner and/or rights holder of the television programs, "Did You Ever Wonder," "Canterbury Cinema Classics," "Healthquest," "Hiking Adventures in America's National Parks," "NewsWatch," "Reel Planet," "Route 66: The Road That Built America," "Waiting for Christmas," "Real Life 101," and any other television programs, and Worldwide Subsidiary Group effective immediately. Neither Worldwide Subsidiary Group d/b/a Independent Producers Group, nor Independent Producers Group d/b/a Worldwide Subsidiary Group, nor any other agents, affiliates, or assignees of your organization(s) are authorized to claim to represent, to represent, or to file any more documentation for pending or future claims for my company in any domestic or international matters.

You are hereby instructed to assign any claims under any agreements that were made on behalf our programming to Hammerman, PLLC. You will be compensated fully for any claims in which you have rendered services under the terms of any valid agreement up through television programming year 2002 for cable and satellite retransmission royalty claims filed at the United States Copyright Office or with collectives in Canada. However, to receive any further compensation, you must provide proof of representation with a fully executed copy of any agreement you claim exists between my Company and your own. You are not authorized to file claims for television programming year 2003.

Please provide me with a detailed status report, copies of, and an accounting for all claims filed on behalf of all programs retransmitted domestically and internationally by May 14, 2004. That information and all further communications should be directed to our attorney Edward S. Hammerman, Esq., Intermediary Copyright Royalty Services, a division of Hammerman, PLLC, 5335 Wisconsin Avenue, N.W., Suite 440, Washington, D.C. 20015-2052.

Finally, I would appreciate it if you would notify all copyright collectives with whom you have filed royalty claims that you no longer represent my company. Thank you.

Sincerely,


Cassie Yde

501 Sabal Lake Drive, Suite 105 ★ Longwood, FL 32779 USA

PHONE: (407) 788-6407 ★ FAX: (407) 788-4397 ★ E-MAIL: TVSGO@prodigy.net ★ WEBSITE: www.TVSCO.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
(Phase II)

NOTICE CONCERNING REPRESENTATION

Litton Syndications, Inc. (hereinafter "LSI"), hereby gives notice through its counsel that LSI terminated its representation agreement with Worldwide Subsidy Group and/or Independent Producers Group (together, "IPG") and is no longer represented by IPG. LSI further gives notice that it has authorized the Motion Picture Association of America, Inc. ("MPAA") to represent its interests in cable and satellite statutory license proceedings before the Copyright Royalty Judges ("Judges"). For purposes of the instant 2000-2003 Cable Phase II Proceeding, LSI has designated MPAA as its Phase II representative. Contrary to IPG's representation to the Judges in the captioned proceeding, IPG is not authorized to represent LSI as to any cable royalty year at issue.

I. LSI Terminated Its Representation Agreement With IPG.

On August 13, 2002, Peter Sniderman of LSI sent IPG a letter terminating its representation agreement with IPG due to "the unethical practices of one of [IPG's] principals (Raul Galaz)." *See Copy Of Letter to Worldwide Subsidy Group from Peter Sniderman, dated August 13, 2002 (attached hereto as Exhibit A).* Thereafter, on August 17, 2004, LSI sent IPG a second letter informing IPG that LSI was terminating "all relationships with IPG/WSG," due to

IPG's material breach of its contract with LSI. *See* Copy of Letter to Marian Oshita from Peter Sniderman, dated August 17, 2004 (attached hereto as Exhibit B). In this letter, LSI informed IPG that "IPG/WSG no longer represents LSI and its programming in any matter and may no longer hold itself out as doing so." *See id.*¹

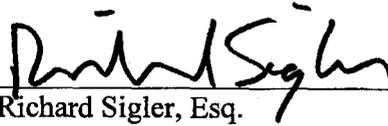
Years later, starting on May 11, 2012, LSI began receiving unsolicited email correspondence from IPG concerning LSI programming for the years 2000-2003. *See* May 2012 Email correspondence from Denise Vernon to LSI (attached hereto as Exhibit C). On May 18, 2012, Mr. Sniderman informed Ms. Vernon that LSI "long ago terminated [its] agreement with WSG for fraud in the inducement fraudulent behavior, and material breach." Mr. Sniderman further informed Ms. Vernon to "cease and desist" her attempts to collect royalties on behalf of LSI. *See id.*

II. LSI Has Not Authorized IPG To Represent Its Interests In This Proceeding.

As the attached correspondence demonstrates, IPG is not authorized to represent LSI in cable or satellite royalty proceedings before the Judges. LSI recently learned that IPG listed LSI as a "IPG-represented claimant" in Exhibit IPG-1 to its Written Direct Statement in the instant proceeding. Such listing was not authorized by LSI, and should not be considered by the Judges. LSI hereby requests that its name be stricken from Exhibit IPG-1, and that any Section 111 royalties due to LSI be assigned instead to LSI's authorized Phase II representative, MPAA.

¹ Both Exhibit A and Exhibit B are Word copies of Mr. Sniderman's correspondence with IPG, retrieved from LSI's electronic files. Mr. Sniderman can verify that he personally sent both letters to IPG via U.S. mail on the dates indicated on the correspondence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Sigler", written over a horizontal line.

Richard Sigler, Esq.

C.A. Bar No. 048673

Attorney At Law

433 N. Camden Dr., Suite 400

Beverly Hills, CA 90210-4408

Telephone: (310) 547-3660

Facsimile: (310) 507-0260

SiglerLaw@aol.com

Dated: April 23, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2013, a copy of the foregoing document was sent by Federal Express overnight mail to the parties listed on the attached service list.


Richard Sigler, Esq.

SERVICE LIST

DEVOTIONAL CLAIMANTS

Clifford M. Harrington
PILLSBURY WINTHROP SHAW
PITTMAN, LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

MPAA-REPRESENTED PROGRAM SUPPLIERS

Gregory O. Olaniran
Lucy Holmes Plovnick
MITCHELL SILBERBERG & KNUPP LLP
1818 N Street NW, 8th Floor
Washington, D.C. 20036

INDEPENDENT PRODUCERS GROUP

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

JOINT SPORTS CLAIMANTS

Robert Alan Garrett
Stephen K. Marsh
James R. Woods
ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

Philip R. Hochberg
LAW OFFICE OF PHILIP R. HOCHBERG
12505 Park Potomac Avenue
6th Floor
Potomac, MD 20854

Ritchie T. Thomas
Iain McPhie
Christine Henter
SQUIRE, SANDERS & DEMPSEY LLP
1200 19th Street N.W.
Washington, D.C. 20036

Thomas J. Ostertag
OFFICE OF THE COMMISSIONER OF BASEBALL
245 Park Avenue
New York, NY 10167

EXHIBIT A

August 13, 2002

Worldwide Subsidy Group
9903 Santa Monica Blvd., Suite 655
Beverly Hills, CA 90212

To Whom It May Concern:

This notice is to inform you that we wish to terminate our agreement with your company immediately due to the unethical practices of one of your principals (Raul Galaz.)

From this point forward, we request that you stop representing our properties in the marketplace.

Sincerely,

Pete Sniderman

EXHIBIT B

August 17, 2004

Marian Oshita
Worldwide Subsidy Group/ IPG
9903 Santa Monica Blvd.
Suite 655
Beverly Hills, CA 90212

Dear Marian:

As you know, the undersigned Litton Syndications, Inc., ("LSI") had previously entered into a Representation Agreement with you ("IPG/WSG") dated as of February 2, 1999, (the "Representation Agreement") which LSI previously terminated for IPG/WSG's breach. Notwithstanding such termination, LSI continued to allow IPG/WSG to pursue a cable/satellite retransmission settlement on LSI's behalf with the MPAA and Copyright Royalty Tribunal in connection with LSI programming for the period of 1998 and 1999.

Our attempts to contact you regarding your progress in this matter have resulted in ignored phone calls and emails. We are now informed you have missed a crucial deadline for filing claims on our behalf and that those claims may now have been lost as a result. Due to this material breach in your duties to LSI and its clients, LSI is hereby terminating all relationships with IPG/WSG, and will now pursue its claims directly with the parties involved. Accordingly, IPG/WSG no longer represents LSI and its programming in any matter and may no longer hold itself out as doing so.

This termination is without waiver of any rights LSI may have on account of your breach, and is not intended to be a complete statement of the facts or LSI's positions on this matter, all of which are expressly reserved.

Very truly yours,

Litton Syndications, Inc.

By:

Peter Sniderman
VP/ Business Affairs

EXHIBIT C

From: worldwidesg@aol.com [mailto:worldwidesg@aol.com]
Sent: Friday, May 18, 2012 12:09 PM
To: Peter Sniderman
Cc: brianb@ix.netcom.com
Subject: Re: Litton Syndications; final broadcast verification

Mr. Sniderman,

I have had an opportunity to review our file on this matter, and your statements are seriously mistaken. Initially, Litton Syndications has never sent notice of termination to WSG, at least as far as we can discern. A few years ago you asserted that termination had occurred "in 2002" in email correspondence with Raul Galaz, then failed to produce any copy of any notice of termination, despite being expressly requested to do so.

Further, your statement that you terminated the agreement with WSG for "fraud in the inducement, fraudulent behavior, and material breach" is new. Nowhere has there ever been such an allegation made against WSG by Litton Syndications, or any party.

Turning to the agreement between WSG and Litton, it expressly provides that termination may only occur pursuant to the specifications of paragraph 8 of the agreement, which has not occurred. Also, you have previously asserted that termination occurred "in 2002". Presuming that you are referring to a "notice of termination", then pursuant to paragraph 2 of the agreement, any notice provided during 2002 would result in the "Term" concluding no earlier than December 31, 2002, and possibly later. Paragraph 4 of the agreement, in turn, establishes that WSG's rights continue indefinitely for royalties attributable to the Term, and that WSG retains the ability to commission any royalties "applicable to the Term, or prior to the Term, irrespective of when such Distribution Proceeds are payable." Paragraph 3 requires Litton Syndications to cooperate with WSG, including by identifying all of its programming.

In sum, it appears as though each and every time that you communicate with WSG, your recollection of events becomes more exaggerated. If you have a notice of termination, then forward it. If you have evidence of "fraud in the inducement, fraudulent behavior, and material breach", or even anything to suggest that you have previously made such an allegation toward WSG, then forward it. Regardless, even based on your asserted timeline, WSG remains entitled, in a worst case scenario, to collect on royalties attributable through calendar year 2002. It is therefore both an obligation and entitlement of WSG to collect these royalties, and Litton's obligation to cooperate in such collection.

WSG will not forego its rights for services it has professionally rendered. If Litton fails to cooperate, Litton will be held accountable per paragraph 9 of the agreement. If Litton interferes with WSG's collections, it will be held accountable for breach of the agreement, and could further be sued for defamation of title and any other appropriate cause of action. If Litton publicly asserts that WSG engaged in "fraud in the inducement, fraudulent behavior, and material breach", I personally assure you that WSG will bring an action against Litton for defamation.

To be certain, I have no patience for a party riding on the coattails of WSG's work, then making false assertions as a means of avoiding its obligations. I trust this clarifies our position, and our expectation of your immediate cooperation, i.e., today, with the data that WSG has forwarded.

Denise Vernon

Worldwide Subsidy Group

Subject: RE: Litton Syndications; final broadcast verification
Date: 5/18/2012 7:12:38 A.M. Pacific Daylight Time
From: peter@litton.tv
To: worldwidesg@aol.com
CC: SiglerLaw@aol.com

We long ago terminated the agreement with WSG for fraud in the inducement, fraudulent behavior, and material breach. We suspect you are well aware of the circumstances leading up to this. In fact, your efforts to collect under this expired contract are hindering our own efforts to collect. Please cease and desist attempting to do so.

Peter Sniderman
Chief Operating Officer
Litton Entertainment

From: worldwidesg@aol.com <worldwidesg@aol.com>
To: Peter Sniderman
Sent: Thu May 17 12:30:07 2012
Subject: Litton Syndications; final broadcast verification

Dear Peter,

we ABSOLUTELY need your response at this time.

Thanks,
Denise

-----Original Message-----

From: worldwidesg <worldwidesg@aol.com>
To: peter <peter@litton.tv>
Sent: Fri, May 11, 2012 8:50 am
Subject: Litton Syndications; final broadcast verification

Dear Sir/Madam,

As the final step in our process of representing your company's claim to 2000-2003 U.S. cable retransmission royalties, we have identified each broadcast of the programs that you previously informed us were owned or controlled by your company. These broadcasts appear in the attached Excel spreadsheet.

In some instances, multiple programs appear with the same title. Nevertheless, the broadcast information oftentimes provides additional information regarding the identity of the program. Consequently, and in order to preserve the integrity of your claim and the claims of all represented producers, it is imperative that your company confirm that the broadcasts appearing on the attached Excel spreadsheet were owned or controlled by your company.

At this point we need you to do two things:

- 1) Immediately forward a reply email confirming your receipt of this email and its attachment. A simple response with the word "Received" will suffice. If we do not receive this reply we will need to continue emailing and calling you until the delivery of the email is confirmed.
- 2) Immediately review the attached list of titles and identify any broadcast of a program that was not owned or controlled by your company. This must be handled in the following manner: in the column immediately next to the program title, headed "**Unclaimed Broadcast**", place an "x" only if the particular broadcast is of a program for which the free tv rights were not owned or controlled by your company at the time of the broadcast.

We are only a few weeks away from the filing of our direct case with the U.S. Copyright Office. Consequently, it is imperative that your company complete this task immediately. Failure to immediately respond could jeopardize your receipt of royalties, and we need your response no later than Tuesday, May 15, earlier if possible. We realize that this is a short time frame, however your cooperation is necessary as we are analyzing over eleven million broadcasts as part of our presentation.

Finally, allow me to remind you that this email contains highly proprietary information. Do not share this information with any third party, as doing so could potentially harm both your claim and the claims of several hundred other represented claimants.

Thank you for your immediate attention to this matter.

Denise Vernon

Worldwide Subsidy Group

Attachment: Litton_Syndications.xls

From: worldwidesg@aol.com [mailto:worldwidesg@aol.com]

Sent: Friday, May 11, 2012 9:50 AM

To: Peter Sniderman

Subject: Litton Syndications; final broadcast verification

Dear Sir/Madam,

As the final step in our process of representing your company's claim to 2000-2003 U.S. cable retransmission royalties, we have identified each broadcast of the programs that you previously informed us were owned or controlled by your company. These broadcasts appear in the attached Excel spreadsheet.

In some instances, multiple programs appear with the same title. Nevertheless, the broadcast information oftentimes provides additional information regarding the identity of the program. Consequently, and in order to preserve the integrity of your claim and the claims of all represented producers, it is imperative that your company confirm that the broadcasts appearing on the attached Excel spreadsheet were owned or controlled by your company.

At this point we need you to do two things:

- 1) Immediately forward a reply email confirming your receipt of this email and its attachment. A simple response with the word "Received" will suffice. If we do not receive this reply we will need to continue emailing and calling you until the delivery of the email is confirmed.

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Finally, allow me to remind you that this email contains highly proprietary information. Do not share this information with any third party, as doing so could potentially harm both your claim and the claims of several hundred other represented claimants.

Thank you for your immediate attention to this matter.

Denise Vernon

Worldwide Subsidy Group

Attachment: Litton_Syndications.xls



MARTY STOUFFER PRODUCTIONS LTD.

April 26, 2013

Copyright Royalty Board
Library Of Congress
James Madison Memorial Building
101 Independence Avenue, SE
Washington, D.C. 20559-6000

RE: Royalty Claims Made By Worldwide Subsidy Group d/b/a Independent Producers Group ("IPG") in Docket No. 2008-2 CRB CD 2000-2003 (Phase II)

To Whom It May Concern,

Through this letter, Marty Stouffer Productions ("MSP") provides notice to the Copyright Royalty Board ("CRB") that MSP terminated its July 17, 2001 representation agreement with IPG in July of 2002 through a certified letter sent to IPG by MSP's outside counsel at the time, Nick McGrath, Esq. Mr. McGrath is now deceased, and MSP does not have access to his files. As a result, MSP is unable to provide the CRB with a copy of MSP's July 2002 termination letter. Notwithstanding this fact, MSP has been able to locate a copy of email correspondence that we sent to Marsha Kessler of the Motion Picture Association of America, Inc. ("MPAA") on July 16, 2002, which makes reference to the earlier termination correspondence. A copy of this email is attached to this letter for your convenience.

Please consider this letter formal notice from MSP that MSP has terminated its relationship with IPG. As a result, IPG is not authorized to represent MSP in cable or satellite royalty proceedings before the CRB. To the extent that IPG has included MSP on its list of represented claimants in the ongoing 2000-2003 Cable Phase II Proceeding, please be advised that such listing was not authorized by MSP, and should be disregarded. For purposes of the ongoing 2000-2003 Cable Phase II Proceeding, MSP has designated MPAA as its Phase II representative.

Sincerely,

Marty Stouffer, President
Marty Stouffer Productions, Ltd.
Enclosure.

Cc: Brian D. Boydston
Pick & Boydston LLP
10786 Le Conte Ave.
Los Angeles, CA 90024

Gregory O. Olaniran
Lucy Holmes Plovnick
Mitchell Silberberg & Knupp LLP
1818 N Street NW, 8th Floor
Washington, D.C. 20036

Clifford M. Harrington
Pillsbury Winthrop Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

Robert Alan Garrett
Stephen K. Marsh
James R. Woods
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

Philip R. Hochberg
Law Office Of Philip R. Hochberg
12505 Park Potomac Avenue
6th Floor
Potomac, MD 20854

Ritchie T. Thomas
Iain McPhie
Christine Henter
Squire, Sanders & Dempsey LLP
1200 19th Street N.W.
Washington, D.C. 20036

Thomas J. Ostertag
Office Of The Commissioner Of Baseball
245 Park Avenue
New York, NY 10167

COPYRIGHT ROYALTY JUDGES
The Library of Congress
Washington, D.C.

In re

**Distribution of 2000, 2001, 2002 and 2003
Cable Royalty Funds**

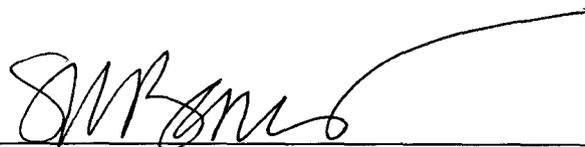
**Docket No. 2008-2 CRB CD 2000-2003
(Phase II)**

**DOCUMENT CERTIFICATION FROM THE
COPYRIGHT ROYALTY BOARD FILES**

I certify that, under my direction, the staff of the Copyright Royalty Board (CRB) has made a reasonable search of available files at the CRB. I certify that the document attached to this Certification is a true copy of the document that is maintained in the office of the CRB. The attached certified document is:

Notice Concerning Representation filed by DreamWorks, LLC, a subsidiary of Paramount Pictures, Docket No. 2008-2 CRB CD 2000-2003 (Phase II); (May 7, 2013).

SIGNED this 9 day of May 2013.



**Suzanne M. Barnett
Chief Copyright Royalty Judge**

Paramount Pictures

5555 Melrose Avenue
Hollywood, CA 90038-3197
323-956-5000

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
(Phase II)**

NOTICE CONCERNING REPRESENTATION

DreamWorks, LLC, now known as DW Studios LLC, a subsidiary of Paramount Pictures, (hereinafter "DW"), hereby gives notice that DW terminated its representation agreement with Worldwide Subsidy Group and/or Independent Producers Group (together, "IPG") and is no longer represented by IPG. DW further gives notice that it has authorized the Motion Picture Association of America, Inc. ("MPAA") to represent its interests in cable and satellite statutory license proceedings before the Copyright Royalty Judges ("Judges"). For purposes of the instant 2000-2003 Cable Phase II Proceeding, DW has designated MPAA as its Phase II representative. Contrary to IPG's representation to the Judges in the captioned proceeding, IPG is not authorized to represent DW.

I. DW Terminated Its Representation Agreement With IPG.

On July 16, 2002, Margaret E.G. Wilson of DW sent IPG a letter terminating its representation agreement with IPG. *See* Letter to Worldwide Subsidy Group from Margaret E.G. Wilson, dated July 16, 2002 (attached hereto as Exhibit A). This letter notified IPG that "effective immediately" DW would begin collecting all "Distribution Proceeds (as defined in the [terminated] Agreement) on its own behalf, and remit WSG's commission, as applicable, to WSG." *See id.* Despite receipt of DW's termination



Paramount Pictures

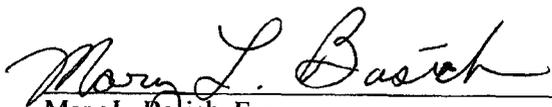
5555 Melrose Avenue
Hollywood, CA 90038-3197
323-956-5000

letter, IPG has continued to hold itself out as DW's agent without DW's consent or authorization. *See, e.g.,* Email from Bryan Boydston to Mary Basich, dated October 16, 2009 (attached hereto as Exhibit B); Email from Raul Galaz to Mary Basich and Jean McBride, dated June 12, 2009 (attached hereto as Exhibit C).

II. DW Has Not Authorized IPG To Represent Its Interests In This Proceeding.

IPG is not authorized to represent DW in cable or satellite royalty proceedings before the Judges. DW recently learned that IPG listed DW as a "IPG-represented claimant" in Exhibit IPG-1 to its Written Direct Statement in the instant proceeding. Such listing was not authorized by DW, and should not be considered by the Judges. DW hereby requests that its name be stricken from Exhibit IPG-1, and that any Section 111 royalties due to DW be assigned instead to DW's authorized Phase II representative, MPAA.

Respectfully submitted,



Mary L. Basich, Esq.
C.A. Bar No. 110887
EVP, Business/Legal Affairs, Worldwide Television
Distribution
Paramount Pictures
5555 Melrose Ave.
Los Angeles, CA 90038
Telephone: 323-956-7737
Facsimile: 323-862-6376
Mary_Basich@Paramount.com

Dated: May 3, 2013



Paramount Pictures

5555 Melrose Avenue
Hollywood, CA 90038-3197
323-956-5000

EXHIBIT A

Termination Letter from Margaret E.G. Wilson of DW to
Worldwide Subsidy Group and/or
Independent Producers Group (together, "IPG"), dated July 16, 2002



A VIACOM COMPANY

14200 00 10:02 FAX 0022005200

AGICOM

DREAMWORKS

AGICOM

Via Facsimile (310) 446-9978 and U.S. Mail

July 16, 2002

Ms. Marian Oshita
Worldwide Subsidiary Group
9903 Santa Monica Blvd.
Suite 655
Beverly Hills, California 90212

Dear Marian:

Re: Worldwide Subsidiary Group

This will confirm our telephone call today in which DreamWorks terminated the agreement between DreamWorks LLC ("DreamWorks") and Worldwide Subsidiary Group ("WSG") dated as of May 12, 1999 (the "Agreement"). The effective date of termination shall be December 31, 2002.

This will also confirm that effective immediately, DreamWorks shall collect Distribution Proceeds (as defined in the Agreement) on its own behalf, and remit WSG's commission, as applicable, to WSG. WSG shall notify any third parties, which are authorized by WSG to collect monies on DreamWorks's behalf, including, without limitation, Pintage, to cease such activity. Of course, if any Distribution Proceeds are received by WSG or any third party acting on WSG's behalf, including without limitation, Pintage, then WSG or such third party shall remit to DreamWorks 100% of such Distribution Proceeds, less WSG's commission on such amount.

Should your understanding differ in any respect, please contact me immediately.

Very truly yours,

Margaret B.C. Wilson
MARGARET B.C. WILSON

MEGW/cn

cc: Wendy Ferran
Julie Jenkins
Anne Maloney

SERVICE DES REGISTRES
R 13 AVR. 2005
AGICOM

Paramount Pictures

5555 Melrose Avenue
Hollywood, CA 90038-3197
323-956-5000

EXHIBIT B

Email from Bryan Boydston to Mary Basich,
dated October 16, 2009



A VIACOM COMPANY

Basich, Mary - Paramount

From: brianb@ix.netcom.com
Sent: Monday, November 02, 2009 10:48 AM
To: Basich, Mary - Paramount
Cc: worldwideSG@aol.com
Subject: RE: Worldwide Subsidy Group

Ms. Basich,

There are several matters that I should clarify.

First, WSG has never purported to be an "agent" of DreamWorks. Rather, DreamWorks "assigned" rights to WSG. Your statement that royalties were "unquestionably" due directly to DreamWorks following termination is inaccurate, and runs directly contrary to the WSG/DreamWorks agreement. Rather, DreamWorks and Paramount unilaterally deemed that it would collect the royalties that were the subject matter of the agreement, without consultation or agreement with WSG. Nonetheless, WSG acceded, but DreamWorks then never accounted for any of the royalties that it received, as it had agreed it would do.

Second, WSG has never once been contacted by Dreamworks or its successors-in-interest and been instructed to cease and desist any activity, nor informed that it has interfered with DreamWorks' receipt of monies. If you can provide any examples of these "repeated" requests, so that we can be assured that this is not mere lawyery puffing, then please provide correspondence establishing the same and my client will investigate. In fact, the only exception to WSG's knowledge of WSG creating conflicting claims with DreamWorks are two instances from a relatively modest source of royalty income, Screenrights, which royalties were ultimately paid over to DreamWorks anyway and then not accounted to WSG.

Finally, WSG is obligated to account upon the receipt of royalties. It has received no royalties relating to the DreamWorks catalogue for the obvious reason that they have been collected by DreamWorks and its successors-in-interest. This has already been communicated to you and your colleagues.

At this time, please explain whether or not it is the intention of DreamWorks and Paramount to make the accounting to WSG to which it was entitled.

Brian Boydston

-----Original Message-----

>From: "Basich, Mary - Paramount" <Mary_Basich@Paramount.com>
>Sent: Oct 30, 2009 3:07 PM
>To: brianb@ix.netcom.com
>Subject: RE: Worldwide Subsidy Group

>
>
>

>Dear Mr. Boydston:

>
>As you may know, DreamWorks L.L.C, now known as DW Studios L.L.C.,
>("DW") terminated its representation agreement with Worldwide Subsidy
>Group (WSG) by letter dated July 16, 2002. You may not know that
>notwithstanding such termination, WSG continued to register purportedly
>as DW's agent, for purposes of applying for and collection of royalties
>unquestionably due directly to DW, without DW's authorization or
>knowledge. Moreover, WSG's interference with DW's right to receive

>payment for its properties has resulted in delayed payments and/or lack
>of payments of amounts owed to DW, as it appears that amounts have been
>withheld by various collecting societies due to WSG's unauthorized
>claims. Further, despite our repeated requests, WSG has failed to
>provide DW with any accounting and/or payments for the monies collected
>on DW's behalf.

>
>Accordingly, WSG is in breach of the representation agreement for,
>among other reasons, its failure to account to DW, its breach of
>contractual and fiduciary obligations to DW, and its unauthorized
>registrations with certain collection societies. Nonetheless, in an
>attempt to amicably resolve this matter, DW reiterates its willingness
>to acknowledge and remit any properly earned commissions, from amounts
>received by DW, to WSG upon receipt of a full and complete worldwide
>accounting from WSG of all amounts it has received (authorized or
>unauthorized) in connection with the exploitation of any DW motion pictures and the payment
of such
>amounts to DW.

>
>This email is not a complete statement of DW's position in this matter,
>and DW hereby reserves all of its rights and remedies related thereto.

>
>
>Mary Basich

>
>
>
>-----Original Message-----
>From: brianb@ix.netcom.com [mailto:brianb@ix.netcom.com]
>Sent: Friday, October 16, 2009 10:10 AM
>To: Basich, Mary - Paramount
>Cc: worldwideSG@aol.com
>Subject: Worldwide Subsidy Group

>
>Dear Ms. Basich,

>
>This office is counsel to Worldwide Subsidy Group ("WSG"). As you are
>aware, WSG agreed to allow royalties for various DreamWorks properties
>dating back to
>2002 and earlier, including, but not limited to "Galaxy Quest", to be
>paid from Screenrights to Paramount subject to Paramount's agreement to
>pay over 20% of such royalties to WSG.

>
>To date, no such amounts have been paid to WSG and Paramount has not
>made any accounting of such collections to WSG. This is despite the
>fact that Screenrights distributed royalties for "Galaxy Quest" over a
>year ago.

>Since
>then, Screenrights has distributed additional amounts for DreamWorks
>properties "Shrek" and "Chicken Run", but WSG has received no money or
>accounting from Paramount regarding those properties either.

>
>Under the circumstances, simply saying "we will account to you when we
>get some money" is unacceptable. As we are informed that such money
>has been paid to Paramount, WSG cannot simply accede to such an
>explanation. In short, if Paramount will not satisfactorily explain
>the status of these royalties, account for them and pay them, WSG is

>left with little choice but to seek redress in court.

>

>Please communicate with me as soon as possible to avoid a lawsuit.

>

>Brian D. Boydston, Esq.

>Pick & Boydston, LLC

>617 S. Olive St., Suite 400

>Los Angeles, CA 90014

>

>(213)624-1996

>(213)624-9073 fax

>

>

>

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>sender by replying to this email and then delete this message from your system.

Paramount Pictures

5555 Melrose Avenue
Hollywood, CA 90038-3197
323-956-5000

EXHIBIT C

Email from Raul Galaz to Mary Basich and
Jean McBride, dated June 12, 2009



A VIACOM COMPANY

From: worldwidesg@aol.com [<mailto:worldwidesg@aol.com>]
Sent: Friday, June 12, 2009 7:33 AM
To: Basich, Mary - Paramount; McBride, Jean - Paramount
Cc: brianb@lx.netcom.com
Subject: WSG/DreamWorks accounting; "Galaxy Quest"

Dear Ms. Basich and Ms. McBride,

Almost one year ago a conflicting claim was before Screenrights relating to the works "Galaxy Quest" and "Saving Private Ryan". The dispute, as you may recall, centered around which party, WSG or Paramount (as the successor-in-interest to DreamWorks) was entitled to collect on the royalties generated by Screenrights for such programs, and remit the other party's share to the other.

At such time, Paramount submitted a letter dated July 16, 2002, pursuant to which DreamWorks terminated its agreement with WSG. DreamWorks asserted that the Term of the agreement was "terminated as of December 31, 2002" (inaccurate) and that DreamWorks will prospectively collect all royalties applicable to the agreement and remit them to WSG. A copy of the letter is attached hereto.

In fact, and in connection with such dispute, by email of June 24, 2008, Mary Basich, Executive Vice-President of Business and Legal Affairs for Paramount Pictures, confirmed that an accounting for such monies would be made to WSG for "Galaxy Quest", but asserted that the international rights to "Saving Private Ryan" were not controlled by DreamWorks during the Term of the WSG agreement.

Notwithstanding, no accounting for the "Galaxy Quest" royalties collected by Paramount has occurred. In fact, no accounting for any royalties collected by either DreamWorks or Paramount has occurred following the July 16, 2002 letter. Although it often takes upwards of ten years to collect the types of royalties that were the subject of the WSG/DreamWorks agreement, the fact that there have been no accountings, including the promised accounting for royalties clearly received within the last year, now leads WSG to suspect that no accountings will be forthcoming.

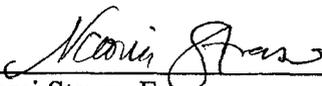
At this time, I would formally request an accounting from Paramount for the Screenrights royalties attributable to "Galaxy Quest", and any other royalties covered by the WSG/DreamWorks agreement. As regards "Saving Private Ryan", I would further request a copy of any distribution agreement between DreamWorks and whichever party Paramount contends was entitled the international rights to such work. If such agreement specifically addresses the collection of any form of royalties covered by the WSG/DreamWorks agreement (e.g., educational institution royalties, retransmission royalties, blank tape levies, etc.), directing our attention to such provisions would be helpful. Any matters relating to participations or other confidential matter can, of course, be redacted.

I look forward to your prompt response. If you have any questions in connection therewith, please feel free to contact me.

Raul Galaz
Worldwide Subsidy Group

CERTIFICATE OF SERVICE

I hereby certify that on this 7 day of May, 2013, a copy of the foregoing document was sent by Federal Express overnight mail to the parties listed on the attached service list.



Naomi Straus, Esq.

SERVICE LIST

DEVOTIONAL CLAIMANTS

Clifford M. Harrington
PILLSBURY WINTHROP SHAW
PITTMAN, LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

MPAA-REPRESENTED PROGRAM SUPPLIERS

Gregory O. Olaniran
Lucy Holmes Plovnick
MITCHELL SILBERBERG & KNUPP LLP
1818 N Street NW, 8th Floor
Washington, D.C. 20036

INDEPENDENT PRODUCERS GROUP

Brian D. Boydston
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10786 Le Conte Ave.
Los Angeles, CA 90024

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Christine Henter
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Thomas J. Ostertag
OFFICE OF THE COMMISSIONER OF BASEBALL
245 Park Avenue
New York, NY 10167

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The Library of Congress
Washington, D.C.

In re

**Distribution of 2000, 2001, 2002 and 2003
Cable Royalty Funds**

**Docket No. 2008-2 CRB CD 2000-2003
(Phase II)**

**DOCUMENT CERTIFICATION FROM THE
COPYRIGHT ROYALTY BOARD FILES**

I certify that, under my direction, the staff of the Copyright Royalty Board (CRB) has made a reasonable search of available files at the CRB. I certify that the document attached to this Certification is a true copy of the document that is maintained in the office of the CRB. The attached certified document is:

Notice Regarding Representation of BBC Worldwide, Venevision International, and Reel Funds, filed by Fintage Publishing and Collections B.V., Docket No. 2008-2 CRB CD 2000-2003 (Phase II); (May 9, 2013).

SIGNED this 13 day of May 2013.



**Suzanne M. Barnett
Chief Copyright Royalty Judge**

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

Received
MAY 09 2013
Copyright Royalty Board

In the Matter of)

Distribution of the 2000, 2001, 2002)
and 2003 Cable Royalty Funds)
_____)

Docket No. 2008-2 CRB CD 2000-2003
(Phase II)

**NOTICE REGARDING REPRESENTATION OF BBC WORLDWIDE, VENEVISION
INTERNATIONAL, AND REEL FUNDS INTERNATIONAL**

Fintage Publishing and Collections B.V. (hereinafter "Fintage"), hereby gives notice through its undersigned counsel that Fintage represents BBC Worldwide ("BBC") and Venevision International ("Venevision") as to the 2000, 2001, and 2002, and 2003 cable royalty years.¹ Fintage also hereby gives notice that it represents Reel Funds International ("Reel") as to the 2002 and 2003 cable royalty years. Fintage further gives notice that it has authorized the Motion Picture Association of America, Inc. ("MPAA") to represent its interests in cable and satellite statutory license proceedings before the Copyright Royalty Judges ("Judges"). For purposes of the instant 2000-2003 Cable Phase II Proceeding, Fintage has designated MPAA as its Phase II representative. Worldwide Subsidy Group and/or Independent Producers Group (together, "IPG") is not authorized to represent BBC, Venevision, or Reel as to the royalty years indicated above.

¹ In September 2002, Fintage notified the Copyright Office that it had terminated its relationship with IPG, and provided a list of entities that Fintage represents. The entities identified herein were not referenced in Fintage's September 2002 filing.

I. IPG Is Not Authorized To Represent Fintage Or Its Clients.

In or about August 2000, Fintage and IPG entered into an agreement whereby they agreed to jointly represent certain clients and to share in the secondary royalties collected on such clients' behalf. Thereafter, a dispute arose between Fintage and IPG regarding their respective rights and obligations under their agreement. The parties proceeded to arbitrate the dispute and entered into a settlement agreement, whereby the parties terminated their relationship. Pursuant thereto, IPG agreed that Fintage would exclusively administer and collect all royalties accruing for certain clients and IPG expressly waived and released any alleged rights or interests to make any claim or collect any monies on such clients' behalf. Notably, IPG agreed that Fintage had the exclusive right to administer and collect all royalties on behalf of EGEDA. BBC and Venevision are both EGEDA clients, and thus were expressly acknowledged by IPG as being exclusive clients of Fintage. Accordingly, IPG is not authorized to represent, or to claim to represent, either entity.

At the time of the arbitration proceeding with IPG, Reel was identified as an IPG-represented entity. However, in May 2003, Reel entered into a written representation agreement directly with Fintage to have Fintage administer and collect royalties on behalf of Reel. This agreement covers cable royalty years 2002 and 2003, and supersedes any alleged prior agreement entered into between Reel and IPG. Thus, IPG is not authorized to administer or collect any royalties on behalf of Reel after royalty year 2001.

II. The Judges Should Not Award Royalties To IPG On Behalf Of BBC, Venevision, And Reel As To The Royalty Years Indicated.

As the above demonstrates, IPG is not authorized to represent BBC or Venevision cable or satellite royalty proceedings before the Judges as to any royalty year. IPG is also not authorized to represent Reel as to royalty years 2002 and 2003. To the extent that IPG listed

BBC, Venevision, or Reel as "IPG-represented claimants" in Exhibit IPG-1 to its Written Direct Statement in the instant proceeding, such listing should be disregarded as to the royalty years identified herein. Fintage hereby requests that any Section 111 royalties due to the Fintage-represented clients addressed herein be assigned instead to Fintage's authorized Phase II representative, MPAA.

Respectfully submitted,



Sonia Y. Lee, Esq.
C.A. Bar No. 191837
Raines Feldman LLP
9720 Wilshire Boulevard, 5th Floor
Beverly Hills, California 90212
Telephone: (310) 440-4100
Fax: (424) 239-2242
slee@raineslaw.com

Dated: May 8, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2013, a copy of the foregoing document was sent by Federal Express overnight mail to the parties listed on the attached service list.



Sonia Y. Lee, Esq.

SERVICE LIST

DEVOTIONAL CLAIMANTS

Clifford M. Harrington
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2300 N Street, N.W.
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1200 19th Street N.W.
Washington, D.C. 20036

Thomas J. Ostertag
OFFICE OF THE COMMISSIONER OF BASEBALL
245 Park Avenue
New York, NY 10167

KESSLER REBUTTAL TESTIMONY
ADDENDUM D



Jeffrey G. Benz
Managing Director of Legal Affairs
General Counsel

January 22, 2003

Mr. Raul Galaz
Worldwide Subsidy Group
19275 Stone Oak Parkway
San Antonio, TX 78258

Re: **Representation Agreement**

Dear Mr. Galaz:

Reference is made to the Reinstatement Agreement between the United States Olympic Committee (the "USOC") and Worldwide Subsidy Group ("WSG"), dated July 25, 2000 (the "Agreement"). The purpose of this letter is to notify WSG that, pursuant to Paragraph 2 of the Agreement, the USOC is exercising its right to terminate the Agreement effective July 25, 2003.

Please provide a full accounting of all claims that have been filed on behalf of the USOC.

Sincerely,

Jeffrey G. Benz

cc: Keith Allo
Greg Downey
Kelly Maynard
Dan Perini

KESSLER REBUTTAL TESTIMONY
ADDENDUM E

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The Library of Congress
Washington, D.C.

In re

**Distribution of 2000, 2001, 2002 and 2003
Cable Royalty Funds**

**Docket No. 2008-2 CRB CD 2000-2003
(Phase II)**

**DOCUMENT CERTIFICATION FROM THE
COPYRIGHT ROYALTY BOARD FILES**

I certify that, under my direction, the staff of the Copyright Royalty Board (CRB) has made a reasonable search of available files at the CRB. I certify that the document attached to this Certification is a true copy of the document maintained in the office of the CRB. The attached certified document is:

- Farm Journal Electronic Media letter from Bob Ford, dated July 1, 2007.

SIGNED this 25 day of April 2013.



**Suzanne M. Barnett
Chief Copyright Royalty Judge**

RECEIVED

OFFICE COPY

JUL 06 2007

Copyright Royalty Board

July 1, 2007

Ms. Gina Giuffreda
Copyright Royalty Board
P.O. Box 70977 Southwest Station
Washington, DC 20024-0977

Dear Ms Giuffreda,

In reference to filing of Cable and/or Satellite Royalty claims on behalf of Farm Journal Electronic Media be it known by this notification that World Wide Subsidy Group d/b/a Independent Producers Group was not granted the authority to file claims on behalf of Farm Journal Electronic Media for the years and file numbers listed below.

2001 Cable #518
2001 Satellite #214
2002 Cable #245
2002 Satellite #625
2003 Cable #269
2003 Satellite #549
2004 Cable #607 or #608
2004 Satellite #311

In the event that World Wide Subsidy Group d/b/a Independent Producers Group has filed a claim for the year 2005, the same notification applies.

Further, Farm Journal Electronic Media has not granted World Wide Subsidy Group d/b/a Independent Producers Group the authority to file claims or in any way represent Farm Journal Electronic Media in matters pertaining to Copyright Royalties in the year 2006 nor in any year going forward. Any questions concerning this matter should be directed to Bob Ford, Director of Distribution, 25 Executive Drive Suite A, Lafayette IN 47905.

Sincerely,



Bob Ford
Director of Distribution
Farm Journal Electronic Media

Cc: Tanya Sandros
Copyright Arbitration Royalty Panel
Copyright Office General Counsel – Information & Reference
P.O Box 70400 Southwest Station
Washington D.C. 20024

Cc: Mr. David O. Carson
General Counsel US Copyright Office
101 Independent Avenue, SE
Washington, DC 20559-6000

Cc Lisa Katona Galaz
World Wide Subsidy Group d/b/a Independent Producers Group
21715 Brazos Bay
San Antonio, TX 78259

Cc: Brian D. Boydston, Esq.
Pick & Boydston, LLP
1000 Wilshire Blvd., Suite 600
Los Angeles, CA 90017-2463

**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
(Phase II)**

**Rebuttal Testimony of
Jonda K. Martin**

May 15, 2013

REBUTTAL TESTIMONY OF JONDA K. MARTIN

My name is Jonda K. Martin. I am the President and Owner of Cable Data Corporation (“CDC”), which is located in Mount Airy, Maryland. I have worked at CDC for over 20 years. Additional information about my background and experience was included in my direct testimony in this proceeding, which was submitted to the Copyright Royalty Judges (“Judges”) on May 30, 2012. My testimony here is limited to the nature of the data CDC provided to Independent Producers Group (“IPG”) in connection with this proceeding.

CDC collects data from cable system statements of account (“SOAs”) that are filed with the Copyright Office (“Office”) on a semi-annual basis. Section 111 of the Copyright Act differentiates cable systems based on the amount of their semi-annual gross receipts,¹ and as a result, different-sized systems file different SOA forms. Smaller systems file SOAs known as “Form 1-2.” Larger systems use the SOA known as “Form 3.” CDC collects SOA data for both types of cable systems.

During the November 13, 2012 Preliminary Hearing, I testified regarding the nature of data reports that CDC provided IPG in connection with this proceeding. I was asked whether the data that CDC provided IPG included data for Forms 1, 2, and 3 cable systems, or if it was limited to only Form 3 cable systems. *See* Tr. at 152:1-18, 176:10-

¹ Different-sized systems pay different statutory fees based on their gross receipts. For example, in the first accounting period of 2000 (*i.e.*, 2000-1), the gross receipts thresholds for the three forms were: Form 1: \$75,800 or less, Form 2: More than \$75,800 and less than \$292,000, Form 3: \$292,000 and more. For 2000-1, the royalty payments were as follows: Form 1 operators paid a *flat fee* of \$28 every 6 months. Form 2 operators paid flat *percentages* of their gross receipts (0.5% up to \$146,000 and 1.0% of their gross receipts in excess of \$146,000 but less than \$292,000). Form 3 operators paid a royalty based on a calculation whose components are the system’s gross receipts and the number and type of distant stations they carried.

22, 177:1-22, 178:1-4 (Martin). During my testimony I reviewed copies of the CDC data reports admitted into evidence by IPG, and concluded, based on my review in the witness stand, that the data appeared to be limited to Form 3 cable systems. *See* Tr. at 184:3-22 (Martin). However, because the data provided to me during the hearing was only an excerpt of a larger report, I was unable to state conclusively whether IPG's data was limited to Form 3 cable systems at that time. *See id.* at 184:19-22 (Martin) (noting that IPG's data "does not look like it includes form 1/2s.").

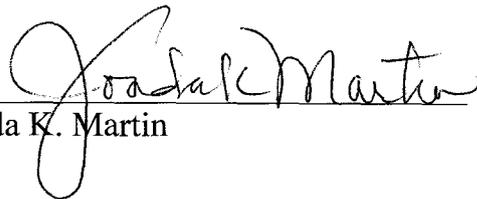
Following my Preliminary Hearing testimony, MPAA asked me to review CDC's records and verify whether the data CDC provided IPG was, in fact, limited to Form 3 cable systems. I have reviewed CDC's records and confirm that all data reports that CDC prepared for IPG were limited to Form 3 cable systems, and did not include any data for Form 1 or Form 2 cable systems.

Thank you for the opportunity to present this information in this proceeding. I hope that it will assist you in your deliberations.

DECLARATION OF JONDA K. MARTIN

I declare under penalty of perjury that the foregoing rebuttal testimony is true and correct, and of my personal knowledge.

Executed on May 15, 2013



Jonda K. Martin

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
(Phase II)

REBUTTAL TESTIMONY OF JEFFREY S. GRAY, Ph.D.

May 15, 2013

I. INTRODUCTION & SUMMARY OF CONCLUSIONS

I, Jeffrey Gray, am a Principal of Deloitte Financial Advisory Services LLP (“Deloitte”). I lead Deloitte’s Economic & Statistical Consulting practice nationally. I provided initial testimony in this proceeding, which was filed on May 30, 2012 and amended on August 20, 2012 (hereinafter “Direct Testimony”).

I understand that at issue in the current Phase II proceeding is how to divide the 2000-2003 Cable Royalties¹ attributable to the Program Suppliers category between claimants represented by Motion Picture Association of America, Inc. (“MPAA”) and claimants represented by Independent Producers Group (“IPG”). In my Direct Testimony, I employed a distribution methodology which calculated the relative market value of claimed MPAA- and IPG-represented programming. In proposing what I believe to be a sound methodological approach to calculating the relative market value of the programming at issue, I relied on my training as an economist and statistician, my prior experience analyzing large databases, and my prior experience estimating the economic value of products including copyrighted material. My background and qualifications are set forth in greater detail in my Direct Testimony.²

¹ These royalties were paid by Cable System Operators (“CSOs”) pursuant to the statutory license set forth in Section 111 of the Copyright Act, 17 U.S.C. § 111.

² In conducting my analyses for this proceeding, I worked with a distinguished team of professionals, including Michel Vanderhart, Ph.D., who has over fifteen years of experience analyzing large complex databases and valuing intellectual property, and Dirk Antonczyk, Ph.D., an econometrician with special expertise building and estimating statistically valid estimation models.

On August 20, 2012, IPG submitted the testimony of Raul C. Galaz (“Galaz Amended Testimony”). In that testimony, Mr. Galaz proposes an alternative distribution methodology which yields a different royalty share allocation between MPAA and IPG (“Galaz Methodology”). Below I explain how the Galaz Methodology is flawed and unreliable both conceptually and in its application. I explain further that I am able to correct some of the flaws in the Galaz Methodology, and each corrected flaw results in a lower royalty share for IPG.

For the reasons set out below, my conclusions regarding calculation of the relative market value of MPAA and IPG programming described and reported in my Direct Testimony are unaltered by Mr. Galaz’s testimony. The only adjustments to the royalty allocation calculations I proposed in my Direct Testimony result from the determination of the Copyright Royalty Judges (“CRJs”) on March 21, 2013 to dismiss certain IPG claims and the rejection of IPG representation by certain copyright owners whom IPG claims to represent in this proceeding.³ Based on my updated analysis, MPAA’s shares of the total Program Suppliers royalty pools are 98.93%, 99.72%, 99.69%, and 99.80% for the years 2000, 2001, 2002, and 2003, respectively. IPG’s shares of the total Program Suppliers royalty pools are 1.07%, 0.28%, 0.31%, and 0.20% for the years 2000, 2001, 2002, and 2003, respectively.

³ The entities listed on Exhibit IPG-1 who gave notice that IPG is not authorized to represent their interests in this proceeding following the March 21 Order are BBC Worldwide, DreamWorks LLC, Farm Journal Electronic Media, Litton Syndications, Inc., Marty Stouffer Productions, Inc., Reel Funds International, Remodeling Today d/b/a Today’s Homeowner, Television Syndication Company, United States Olympic Committee, Urban Latino TV LLC (cka American Latino), and Venevision International. See Written Rebuttal Testimony of Marsha E. Kessler at 5-7.

II. OVERVIEW OF THE IPG-PROPOSED DISTRIBUTION METHODOLOGY

The Galaz Methodology (as described in Mr. Galaz's testimony) proposes that the relative value of a program is the product of three values:

- (i) a numeric weight corresponding to the daypart category in which the retransmission took place. He calls this the "Time Period Weight Factor." As described in his testimony, these numeric weights are supposed to be based on estimated viewership average during the daypart category;⁴
- (ii) the number of distant subscribers of the station that received the retransmitted broadcast (regardless of whether any of those subscribers viewed the broadcast). He calls this the "Station Weight Factor;"⁵ and
- (iii) the length of the program in minutes ("Program Length").

Thus, according to the Galaz Methodology, each program has a relative value defined by the formula: Time Period Weight Factor * Station Weight Factor * Program Length. This measure of a program's relative value is essentially a measure of its *potential* relative viewership as it is the product of an index of the average viewership

⁴ By contrast, in my analysis, I rely on the Nielsen Diary Data, Local Ratings Data, cable operator subscriber data provided by Cable Data Corporation, and multiple regression analysis to determine viewership levels for the program. A fuller description of these various data sets and how I utilized them is contained in my Direct Testimony.

⁵ Mr. Galaz proposes an alternative measure of relative value where the number of distant subscribers of the station is replaced by the amount of distant cable retransmission fees generated by the station that retransmitted the broadcast. As discussed later, due to the extremely high correlation of a station's number of subscribers and fees generated, Mr. Galaz's two proposed measures are essentially redundant.

levels based on what time of day the retransmission took place, the number of households that had access to the retransmission, and the program's length.

Mr. Galaz refers to the sum of his relative value measures as a "Sum Weighted Value" or "SWV."⁶ The ratio of the SWV for all IPG-claimed broadcasts to the SWV for all compensable broadcasts in the Program Suppliers category is the proposed royalty allocation percentage to IPG under the Galaz Methodology. As described below, the Galaz Methodology is a crude approximation of the distribution methodology I described in my Direct Testimony. Moreover, serious flaws in the data relied upon in the Galaz Methodology and execution of the methodology further undermine the reliability of Mr. Galaz's reported findings.

I demonstrate that the Galaz Methodology is flawed both conceptually and in its application. The Galaz Methodology is conceptually flawed because it ignores one of the important elements of a program's market value—its actual viewership. The methodology is flawed in its application because it excludes compensable programs from its calculations and therefore ascribes no value to them, but includes non-compensable programs in its calculations and ascribes value to them. Further, the methodology fails to apply the Time Period Weight Factor in the manner Mr. Galaz describes in his testimony, but instead applies a Time Period Weight Factor based on 1997 data—which Mr. Galaz acknowledges as having "too broad" time periods. Finally,

⁶ Mr. Galaz refers to his SWV using a Station Weight Factor based on the number of distant subscribers of the station as "SWV Subs" and his SWV using a Station Weight Factor based on the amount of distant cable retransmission fees generated by the station that retransmitted the broadcast as "SWV Fees."

even if Mr. Galaz were to correct each of these errors, his royalty share calculation would still be unreliable because of his reliance on a non-random sample.

A. *The Galaz Methodology is conceptually flawed.*

While Mr. Galaz's calculation of a program's relative value is in fact a measure of its potential relative viewership, albeit poorly constructed and executed, his amended testimony contains musings that appear to question the importance of viewership in determining relative market value. Mr. Galaz further muses about whether "relative marketplace value" is even germane to this Phase II proceeding.⁷ I find Mr. Galaz's musings to be both internally inconsistent and unhelpful. I also find the Galaz Methodology's attempted estimation of distant viewership conceptually flawed.

The criterion for dividing the royalty pool among claimants in this proceeding is the "relative market value" of the copyrighted programs.⁸ Relative market value corresponds to the price at which the right to retransmit a program carried on a distantly retransmitted broadcast signal would change hands between a willing buyer (a CSO) and a willing seller (a copyright owner), neither being under any compulsion to buy or to sell.⁹ That is, assuming the compulsory license did not exist, relative market value

⁷ See Galaz Amended Testimony, pp. 11-14.

⁸ See generally 75 Fed. Reg. 57063 (Sept. 17, 2010).

⁹ As noted in my Direct Testimony, this definition is consistent with the definition of *fair market value* established by the U.S. Supreme Court: "The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." *United States v. Cartwright*, 411 U.S. 546, 93 S. Ct. 1713, 1716-17 (1973).

is the price at which the CSO, or its representative, would pay the copyright owner, or the copyright owner's representative, for the right to distantly retransmit the program. As explained by actual Program Suppliers copyright owners, who license their programs routinely, audience size – as measured by viewership – is central when making licensing deals with broadcast stations and cable networks in the world outside the compulsory licensing scheme.¹⁰ Moreover, in order to attract and retain subscribers, CSOs want to carry programming with high viewership, such as syndicated television series that originally attracted a loyal following in their network showing and continue to do so in syndication.¹¹ Therefore, contrary to Mr. Galaz's philosophical questioning of the importance of viewership, from an economist's perspective, the higher the viewership of a program, the more valuable it is to a CSO, because it leads to higher subscriber retention and attraction.

The Galaz Methodology, which ignores estimated actual viewing and ratings during the 2000-2003 period, is an imprecise approach to estimating distant program viewership. Table 1 below presents examples of two pairs of MPAA-represented programs broadcast at the same time of day, on the same station, that had very different levels of actual distant viewing.¹²

¹⁰ See Docket No. 2001-8 CARP CD 98-99, Written Direct Testimony of Babe Winkelman, p.7 (filed December 2, 2002) and Docket No. 2007-3 CRB CD 2004-2005, Written Direct Testimony of Alex Paen, pp. 11-12 (filed June 1, 2009).

¹¹ See Written Direct Testimony of Alex Paen, p. 12.

¹² By "actual distant viewing," I mean Nielsen distant viewing estimates based on the Nielsen Diary Data.

Table 1: Examples showing that factors other than station and time of day impact distant viewing of a program.*

<i>Station</i>	<i>Broadcast Date</i>	<i>Start Time</i>	<i>Program Type</i>	<i>Program</i>	<i>Nielsen Viewing Households</i>
KCAL	11/16/2003	15:00	MOVIE	AMERICAN HISTORY X	2,108
KCAL	4/26/2003	15:00	TALK SHOW	CELEBRITY JUSTICE	765
WPIX	11/25/2003	20:00	MOVIE	NEVER BEEN KISSED	8,635
WPIX	02/19/2003	20:00	NETWORK SERIES	BIRDS OF PREY	18,621

* Nielsen Viewing Households represents the number of households viewing the program distantly as reported in the Nielsen Diary Data and averaged over the quarter hour increments that constitute the full program time.

In the first pair of rows in Table 1, the movie “American History X” aired on the distantly retransmitted station KCAL on November 16, 2003 starting at 3 pm. According to Nielsen Diary Data, 2,108 households viewed the program distantly.¹³ Starting at the same time and also retransmitted on KCAL approximately seven months earlier, on April 26, 2003, the talk show “Celebrity Justice” had 64% fewer distant viewing households, or 765 households. However, the relative popularity of these two programs is ignored under the Galaz Methodology because the methodology applies the same Time Period Weight Factor to both programs.

Similarly, the second pair of rows in Table 1 report the number of distant viewing households for two programs which aired on the distantly retransmitted station WPIX that started at the same time of day, ended at the same time of day, and aired on the same station approximately nine months apart. “Birds of Prey,” at 18,621 viewing households, clearly experienced higher distant viewing than “Never Been Kissed,” at

¹³ Viewership in the Nielsen Diary Data is measured by quarter-hour increments. In Table 1, I present the average of these quarter-hour viewership statistics for each program.

8,635 viewing households (approximately 54% fewer households). But again, the Galaz Methodology makes no distinction between these two programs with vastly different audience levels.

Table 2 below presents additional illustrations of how the Galaz Methodology ignores higher program viewership and, therefore, higher program relative market value. The two pairs of examples contrast IPG-represented programs and MPAA-represented programs broadcast at the same time of day, on the same station, of the same type, and yet with very different levels of distant viewing.

Table 2: Examples showing that factors other than station, time of day, and program type impact distant viewing of a program.*

<i>Date / Time</i>	<i>Station</i>	<i>Program</i>	<i>Program Type</i>	<i>Entity Claiming</i>	<i>Nielsen Viewing Households</i>	<i>Gray Viewing Households</i>	<i>IPG Estimated Relative Value</i>
7/8/2000 16:30	KRON	Animal Adventures	FIRST-RUN SYNDICATION	IPG	740	952	2,358,915
5/21/2000 16:30	KRON	Judge Joe Brown	FIRST-RUN SYNDICATION	MPAA	1,840	1,635	2,358,915
7/30/2001 16:30	WPIX	Dragon Ball Z	CARTOON	IPG	2,898	5,586	63,748,728
2/5/2001 16:30	WPIX	Pokemon	CARTOON	MPAA	10,888	8,228	63,748,728

Notes: "Gray Viewing Households" refers to predicted household distant viewing based on the econometric estimation procedure described in my Direct Testimony. IPG Estimated Relative Value is based on Mr. Galaz's SWF Subs measure. Programs in the two sets of examples also have identical IPG Estimated Relative Value based on Mr. Galaz's SWF Fees measure. Nielsen Viewing Households represents the number of households viewing the program distantly as reported in the Nielsen Diary Data and averaged over the quarter hour increments that constitute the full program time.

In the first pair of rows, "Animal Adventures" aired on the distantly retransmitted station KRON on July 8, 2000 starting at 4:30 pm. Also starting at 4:30 pm and aired on KRON on May 21, 2000 was "Judge Joe Brown." The Nielsen Viewing Households numbers indicate that almost 2.5 times as many households (1,840 versus 740) viewed

“Judge Joe Brown” as viewed “Animal Adventures,” and the Gray Viewing Households numbers indicate that 1.7 times as many households (1,635 versus 952), viewed “Judge Joe Brown” as viewed “Animal Adventures.” The Galaz Methodology, by contrast, calculates the programs’ relative value to be identical. My approach is more consistent with the viewing of the programs, and thus, the relative market value.

The second pair of rows in Table 2 present another example of how the Galaz Methodology’s approach yields identical program values for shows that have substantially different viewing. The MPAA-represented cartoon, “Pokemon,” which started at 4:30 pm, was viewed distantly by 10,888 and 8,228 households under the Table 2 *Nielsen* and *Gray* viewing household estimates, respectively. The IPG-represented cartoon, “Dragon Ball Z,” that started at the same time on the same station but on a different day, was distantly viewed by only 2,898 and 5,586 households under the same estimates. While the Galaz Methodology determines these two cartoons have equal value, my methodology yields a higher relative market value for the cartoon “Pokemon,” consistent with its viewing level.

There is yet another conceptual problem with the Galaz Methodology’s “IPG Estimated Relative Value” that is evident in Table 2 above. Whereas the IPG-represented cartoon, “Dragon Ball Z,” was viewed distantly by 2,898 households and the MPAA-represented program, “Judge Joe Brown,” was viewed by 1,840 households, or 1.6 times as many households, the Galaz Methodology calculates “Dragon Ball Z” as

having 27 times the relative value of "Judge Joe Brown." In contrast, my methodology finds that "Dragon Ball Z" has only 3.4 times the relative value of "Judge Joe Brown." The discrepancy in the relative market value of these two programs is due to the Galaz Methodology's undue emphasis on the Station Weight Factor. While my methodology considers the number of distant subscribers of the station that aired the program when estimating distant viewing, my methodology also considers other important factors such as program type and the program's local ratings. As a result, my methodology leads to more reasonable and more reliable measures for each program's relative market value.

Thus, while in general I agree with Mr. Galaz that an estimation of viewing is a reliable measure of a program's relative market value, I disagree with his internally inconsistent criticism of distant viewing as a measure of a program's relative market value. It is also my opinion that the Galaz Methodology is flawed conceptually because by using the overly broad Time Period Weight Factors, the methodology ignores important measures of a program's actual viewership.

In addition to this conceptual flaw, there are significant problems with the application of the Galaz Methodology, rendering his results biased and unreliable. I discuss these additional flaws in detail below.

B. Mr. Galaz's application of his methodology is flawed as it relies on a non-random sample.

Each year from 2000 through 2003, CSOs retransmitted between 991 and 1,324 stations on a distant basis. It would be time consuming and costly to analyze viewing of

all retransmissions on those stations to determine the market value of each of the millions of retransmitted programs. It is, however, possible to sample a subset of the stations, analyze the programming and viewership on those sampled stations, and make statistically valid inferences concerning programming and viewership of the programs on all distantly retransmitted stations. However, it is critical that those sampled stations are selected in a random, or probabilistic, manner. Meaning, each station in the relevant population has a known, and positive, chance of being part of the sample. With a random sample, it is possible to estimate the relative total minutes and total viewing of MPAA- and IPG-represented programming for the entire population of stations from which the sample is drawn. That is, with a random sample, we can calculate a confidence interval concerning the true program viewership statistics in the population of stations.¹⁴

If, on the other hand, stations are sampled in a non-random manner, then any calculated statistic (such as total minutes of available programming or actual viewing on those selected stations) cannot be applied in a statistically valid manner to the stations not in the sample. Therefore, with a sample selected non-probabilistically, it is not possible to reach any statistically valid conclusions about the population of stations.

Mr. Galaz's application of his distribution methodology is flawed at the outset because (1) the stations in his sample are less representative of the population than he

¹⁴ The confidence interval measures how confident the statistician is that the calculated sample statistic represents the true population statistic. For example, a 95% confidence interval of +/- 0.1% means we are 95% confident that the true population statistic is within 0.1% of the calculated sample statistic.

claims and (2) his sample stations, selected only from the population of stations retransmitted by Form 3 CSOs, are chosen in a non-random fashion. Mr. Galaz states that he acquired "broadcast data for the 200 most retransmitted commercial stations for the years 2000, 2001, 2002, and 2003," Galaz Amended Testimony, p. 16, and combined them with additional 2000-2001 broadcast data also collected non-randomly. Mr. Galaz claims that his sample of distantly retransmitted stations consisted of 31.32%, 33.14%, 26.92%, and 25.67% of all distantly retransmitted stations in 2000, 2001, 2002, and 2003, respectively (Exhibit IPG-5).

However, it does not appear that the population from which he selected his stations consisted of all distantly retransmitted commercial stations. Mr. Galaz's Exhibit IPG-5 indicates that there were only 712 to 779 distantly retransmitted stations between 2000 and 2003. Yet the distant subscriber data I was provided by Cable Data Corporation, the same source from which Mr. Galaz claims to have received his station data, indicates that there were between 991 to 1,324 stations that distantly retransmitted broadcasts each year between 2000 and 2003. As a result, on average, each year between 2000 and 2003 there were 425 distantly retransmitted stations that Mr. Galaz did not consider for inclusion in the population of stations from which he selected his sample. Therefore, taking into account the stations omitted from Mr. Galaz's study, Mr. Galaz's non-randomly selected sample actually consisted of 21.42%, 17.45%, 15.69%, and 20.18% of all distantly retransmitted stations for 2000, 2001, 2002, and 2003,

respectively, *not* the 31.32%, 33.14%, 26.92%, and 25.67% respective coverage he claims in his testimony.¹⁵

Moreover, because Mr. Galaz did not select stations to analyze in a random manner, he cannot make any statistically valid inferences regarding the relative amount, or the relative market value, of programming aired on retransmitted stations not in his sample. Accordingly, the sample of stations Mr. Galaz analyzes is not representative of the population of distantly retransmitted stations. Furthermore, based on the non-random manner in which Mr. Galaz selected his sample, it is not possible to estimate a confidence interval around the final royalty allocation percentage he calculates. Thus, the non-random nature of the station sample renders the Galaz Methodology calculations unreliable.

Mr. Galaz's criticism that the MPAA methodology has historically reviewed only Form 3 cable systems, Galaz Amended Testimony, p. 20, is entirely misplaced in this proceeding. To the contrary, the sample of stations I rely upon in my analysis is based on a broad and representative sample of stations retransmitted by the different types of cable systems. For example, my stations sample for the 2000 royalty year includes WPXV, which was retransmitted *only* by Form 1 cable systems with a total of 85 subscribers, as well as WPIX and WGN, retransmitted by Form 1, Form 2, and Form 3 cable systems—totaling over 2.5 million and 34.7 million distant subscribers,

¹⁵ Because Mr. Galaz selected the most retransmitted stations, he calculates his sample covered between 89.85% and 92.89% of all distant cable subscribers between 2000 and 2003 (Exhibit IPG-5). However, because Mr. Galaz does not start with *all* retransmitted stations, his actual coverage of all distant cable subscribers is lower.

respectively. Therefore, based solely on the design of the sample of stations analyzed, my conclusions are unbiased and representative whereas Mr. Galaz's are not representative and potentially biased. Moreover, due to the random selection of stations for my analysis, it is possible to calculate confidence intervals about my calculated viewership and royalty allocation percentages, whereas it is not possible to do so from Mr. Galaz's sample of stations.

C. Mr. Galaz excludes compensable program titles from his analysis.

Based on my review of Mr. Galaz's non-representative data, I am able to determine that Mr. Galaz excludes compensable programs from his analysis. By excluding such programs, he gives them no market value in his analysis. Because the sample of stations I draw upon is randomly selected for each year, there is only a partial overlap of stations that are in both Mr. Galaz's sample and mine. The number of overlapping stations for each year is as follows: 2000 – 81 stations; 2001 – 87 stations; 2002 – 82 stations; and 2003 – 77 stations. In each year, using the overlapping stations, I am able to compare the programs in my data set with the programs in Mr. Galaz's data set. The comparison shows that Mr. Galaz excludes compensable programs from his analysis.

Many of the programs excluded in Mr. Galaz's analysis can be explained by slight variations in program titles. For example, while Mr. Galaz identifies "FRESH PRINCE OF BEL-AIR" as compensable to MPAA, he fails to do so for "THE FRESH PRINCE OF BEL-AIR;" while he identifies "SIMPSONS" as compensable to MPAA he fails to do so for "THE

SIMPSONS.” Also, Mr. Galaz fails to identify several foreign titles that tend to be claimed by MPAA. Compensable MPAA-claimed program titles with accents such as “SÁBADO GIGANTE” and “DESPIERTA AMÉRICA,” are in his data as “S?BADO GIGANTE” and “DESPIERTA AM?RICA,” respectively, and are not identified as MPAA-claimed program titles as they should be.

Because my sample only partially overlaps Mr. Galaz’s sample, it is not possible for me to determine the overall number of compensable programs inappropriately excluded from his analysis. Nevertheless, looking only at the programs on those overlapping station samples, I find that correcting only this one problem with the execution of the Galaz Methodology would lower Mr. Galaz’s calculation of IPG’s share of royalties by 7.5% in 2000, 8.4% in 2001, 14.4% in 2002, and 13.9% in 2003. One would expect this problem (of excluding compensable programs) to be present in the non-overlapping stations in IPG’s sample.

D. Mr. Galaz includes programs aired on distantly retransmitted Canadian signals, which are non-compensable.

I understand that programming aired on Canadian stations, which originated from countries outside the United States, are not compensable as Program Suppliers programs and therefore are irrelevant to this proceeding.¹⁶ The country of origin of each program aired on a Canadian station can be identified using monthly station programming logs available from the Canadian Radio-television and

¹⁶ I understand such programs are compensable only in the Canadian Claimants Group category, which is not at issue in this proceeding. See Written Rebuttal Testimony of Marsha E. Kessler at Addendum B (filed May 15, 2013).

Telecommunications Commission (“CRTC”). I used these CRTC logs to determine the country of origin of the programs claimed by IPG which aired on the Canadian stations.¹⁷

I found that Mr. Galaz’s analysis inappropriately considered programming on Canadian signals that are non-compensable in the Program Suppliers category. He does this for both IPG- and MPAA-claimed programs. However, as reported in Table 3 below, his inclusion of non-compensable programming is materially to the advantage of IPG.

Table 3: Comparison of Non-Compensable Programs Attributed to IPG Versus MPAA in the Galaz Methodology.

Year	% of IPG SWV on Canadian Stations that is Non-Compensable Programming (Galaz’s Measure)	% of MPAA SWV on Canadian Stations that is Non-Compensable Programming (Galaz’s Measure)
2000	37.07%	12.48%
2001	44.66%	34.83%
2002	63.49%	11.22%
2003	71.24%	17.82%

In the year 2000, for example, 37.07% of Mr. Galaz’s Sum Weighted Value for IPG-claimed programming on Canadian stations was of non-U.S. origin broadcasts and therefore non-compensable, whereas only 12.48% of Mr. Galaz’s Sum Weighted Value for MPAA-claimed programming on these same stations was of non-U.S. origin broadcasts.

Clearly, the inclusion of these non-compensable programs materially favors IPG, as it inappropriately inflates Mr. Galaz’s calculation of IPG’s royalty share. Correcting only this one issue in the execution of the Galaz’s Methodology would lower his calculation

¹⁷ These CRTC logs also contain the station’s call sign, the title and subtitle of each program transmitted by the station, actual start and end times for the programs, as well as an indicator for the country of origin.

of IPG's share of royalties by 2.7% in 2000, 2.7% in 2001, 5.4% in 2002, and 7.9% in 2003.

E. Mr. Galaz's calculation of IPG's share should exclude claims dismissed by the CRJs.

On March 21, 2013 the CRJs issued a Memorandum Opinion and Order Following Preliminary Hearing on Validity of Claims (the "Order"). In that Order, the CRJs dismissed a number of IPG claims in one or more of the 2000 to 2003 royalty years.

Excluding the IPG-claimed programs based on the CRJ's dismissal would lower the Galaz Methodology's calculation of IPG's share of royalties by 21.5% in 2000, 25.4% in 2001, 24.7% in 2002 and 18.7% in 2003. As described later in my testimony, excluding the IPG-claimed programs based on the CRJ's dismissal also lowers my calculation of IPG's share of viewing (and royalties) by 16.1% in 2000, 17.1% in 2001, 28.9% in 2002, and 25.0% in 2003.¹⁸

F. Galaz makes a false assertion that there is little relationship between cable subscribers and royalty fees generated.

The Galaz Methodology employs a Station Weight Factor, which Mr. Galaz refers to as the number of distant subscribers to a station that received that station. Mr. Galaz proposes an alternative calculation where he redefines his Station Weight Factor to be equal to the amount of distant cable retransmission fees generated by the station that

¹⁸ As shown later in this testimony, while removing dismissed or rejected IPG-claimed programming in my methodology causes a large decrease in IPG viewership share, the percentage point change is small because IPG's viewership share is near zero. For example, in 2003, after taking into account IPG's dismissed claims, although IPG's viewership share decreases from 0.32% to 0.24%, it is actually a 25.0% decrease in IPG's royalty share.

retransmitted the broadcast. In his testimony, Mr. Galaz describes his motivation for calculating a second Station Weight Factor:

On a station-by-station basis, due to the vast discrepancy between the number of cable retransmission subscribers and the amount of fees generated by each of the sampled stations upon which retransmitted broadcasts appeared, IPG utilized two factors (the "Station Weight Factors") in order to weigh the relative significance of any given retransmitted broadcast. (Galaz Testimony, p. 18)

Implicit in Mr. Galaz's statement is that there is little or no relationship between the subscribers receiving a station and the fees generated by that station. Mr. Galaz's statement, at best, is misleading. In fact, there is a significant mathematical relationship between the number of cable subscribers of stations that retransmitted a broadcast and the amount of fees generated by those stations. The mathematical correlation is 0.998 (where 1.000 is a perfect positive correlation). Therefore, 99.6% (or, 0.998 squared) of the variation in the amount of fees generated by a station is explained by variation in the number of subscribers of those stations. Therefore, Mr. Galaz's presentation of a second distribution methodology using his alternative Station Weight Factor is a redundant exercise. His presentation of yet a third calculation averaging these first two redundant calculations is similarly unnecessary.

G. Galaz makes a false assertion regarding his Time Period Weight Factor.

In his testimony, Mr. Galaz suggests that a CSO's decision to retransmit a particular broadcast is based on the CSO's expectation of the relative viewership of that program

(Galaz Testimony, p. 20).¹⁹ Mr. Galaz, in turn, opines that the CSO can reasonably predict this viewership based on when the program airs in the station's lineup. He then states that he weights the "significance of any given broadcast" based upon measures of viewership of all persons during half-hour dayparts (Galaz Testimony, p. 21).

Rather than construct Time Period Weight Factors based on distant viewing patterns throughout the day each year from 2000 to 2003, the Galaz Methodology instead purports to determine viewing percentages for each half-hour interval of the day based on Nielsen viewing data used in the Phase II proceeding concerning distribution of 1997 cable royalties (*see Galaz Amended Testimony, p. 21*). Mr. Galaz defends his reliance on 1997 Nielsen viewing data by citing to a 2011 Nielsen Media Research study (the "Study"), which, according to Mr. Galaz, shows only "trace changes" in daypart viewing (Galaz Amended Testimony, p. 21-22). However, contrary to Mr. Galaz's assertion, the Study does not provide a justification for using the 1997 data for his purposes. First, the Study does not report any information regarding trends in distant viewing over time. Second, the Study specifically shows an appreciable increase in the number of television sets per household and the number of households with cable between 1995 and 2005 – a fact that likely could have had an impact on viewing from 2000 through 2003. Third, the Study actually shows that local tuning (not distant viewing) shifted away from primetime between 1995 and 2005 – so there appears to be a distributional change of

¹⁹ In fact, under Section 111, CSOs retransmit entire stations, and cannot select particular programs to retransmit.

local tuning by daypart.²⁰ And, fourth, it is certainly possible that distant viewing percentages accorded each half-hour varied even more dramatically between 1997 and 2000-2003. However, the Study does not provide information for all of the specific years at issue here to make this observation possible.²¹ Therefore, there is no reason to believe that the Galaz Methodology's purported application of 1997 Nielsen viewing data – on the half-hour basis – to the non-random IPG survey data would yield reliable conclusions.

Moreover, Mr. Galaz acknowledged that in the 1997 Phase II proceeding, the CARP criticized his use of only six daypart categories for the Time Period Weight Factor as too broad (see Galaz Amended Testimony, p. 21). Mr. Galaz then asserts that for this proceeding, he remedied this criticism by calculating a Time Period Weight Factor for each half-hour of the day based on 1997 Nielsen viewing data presented by MPAA (see Galaz Amended Testimony, p. 21). In fact, Mr. Galaz applies no such remedy, as he failed to use any so-called half-hour Time Period Weight Factors in his analysis. Instead of being based on forty-eight Time Period Weight Factors,²² his findings, which I was

²⁰ In 1995 25% of local tuning occurred during primetime; this percentage dropped to 23% by 2005 (see Exhibit IPG-7).

²¹ The Study provides daypart data for every five years starting with 1980. As a result, there is no daypart data provided for 1997, 2001, 2002, or 2003.

²² In his testimony, Mr. Galaz states that he determines "viewing percentages accorded to *each* half-hour of the day, and applied such percentages as described in Exhibit IPG-6.

able to reproduce starting with his intermediate data set,²³ are based on the application of his self-admitted “too broad” six daypart weights: 0.31667, 0.5231, 0.6122, 0.7143, 0.8, and 1.1364. As shown below, the application of his broad Time Period Weight Factors has a material impact on Mr. Galaz’s calculation of the relative value of IPG-claimed programs.

It is possible to calculate Time Period Weight Factors based on the Nielsen viewership data I use in my analysis and multiply these *corrected* Time Period Weight Factors by the number of distant subscribers of the station that received the retransmitted broadcast. This calculation would provide an estimate of the predicted viewership of a broadcast based upon the time of day it was retransmitted and the station that aired the broadcast. However, this would simply be an academic exercise given the unreliability of the Galaz Methodology in general.

As described in my Direct Testimony, unlike the Galaz Methodology, my measure of predicted viewership of a distant broadcast results from an econometric model predicting viewership based on the actual program’s ratings elsewhere, adjusting for station and the time of day (in one-quarter hour increments). Therefore, my measure of program viewership provides a better estimate of a particular program’s viewership than a simple calculation based on the much broader daypart in which the program was

²³ Through the discovery process I understand IPG provided an intermediate dataset named “Item 35.” I am able to reproduce the share allocation percentages reported in Mr. Galaz’s Amended Testimony using the variables Station Weight Factor, Time Period Weight Factor, and Program Length contained in the Item 35 dataset. However, I have been unable to replicate the Item 35 database from several raw data files also produced by IPG that supposedly were used to create the Item 35 dataset. Therefore, I rely upon Mr. Galaz’s Item 35 database to in turn identify flaws in Mr. Galaz’s analysis.

broadcast. Table 4 below highlights differences in my estimation of program viewing and Mr. Galaz's based on his application of the Time Period Weight Factor.

Table 4: Example of My and Mr. Galaz's Estimated Relative Viewing of Retransmitted WGN Broadcasts

<i>Date / Time</i>	<i>Program</i>	<i>Entity Claiming</i>	<i>Nielsen Viewing Households</i>	<i>Gray Viewing Households</i>	<i>IPG's TPWF</i>	<i>IPG Estimated Relative Value</i>
5/12/2001 17:00	Andromeda	MPAA	117,501	102,065	0.612244	1,220,182,908
2/3/2001 10:00	Video Computer Store	IPG	6,754	12,325	0.612244	1,220,182,908
5/6/2001 17:00	Coach	MPAA	117,088	143,757	0.612244	610,091,454
7/14/2001 9:30	As Seen on TV PC	IPG	10,282	14,322	0.612244	610,091,454

Notes: "Gray Viewing Households" refers to predicted household distant viewing based on the econometric estimation procedure described in my Direct Testimony. IPG Estimated Relative Value is based on Mr. Galaz's SWF Subs measure. Programs in the two sets of examples also have identical IPG Estimated Relative Value based on Mr. Galaz's SWF Fees measure. Nielsen Viewing Households represents the number of households distant viewing the program as reported in the Nielsen Diary Data and averaged over the quarter hour increments that constitute the full program time.

The MPAA-claimed program "Andromeda," a one-hour science fiction show, aired on WGN at 5 pm and was viewed by 117,501 distant households on May 12, 2001, according to the Nielsen Diary Data. On February 3, 2001, the one-hour IPG-claimed program "Video Computer Store" aired on WGN at 10:00 am and was viewed by 6,754 distant households. Because both are in time slots that Mr. Galaz assigned a Time Period Weight Factor of 0.612244, and because both aired on a station with the same number of cable subscribers and fees, and because both are 60 minutes in duration, the Galaz Methodology ascribes them the same relative value. In contrast, my estimate of viewing and corresponding estimate of relative market value more closely aligns with the number of households viewing the two programs.

Similarly, the MPAA-claimed program "Coach," a 30 minute situation comedy, aired on WGN at 5 pm and was viewed by 117,088 distant households on May 6, 2001 according to Nielsen Diary Data. On July 14, 2001, the 30 minute IPG-claimed program "As Seen on TV PC" aired on WGN at 9:30 am and was viewed by 10,282 distant households. Again, both programs were in time slots that Mr. Galaz assigned the same Time Period Weight Factor, and both aired on the same station, and both were of the same duration. Therefore, Mr. Galaz calculates the same relative value for both shows, despite the two programs having substantially different distant viewership levels. My estimates of viewing (as discussed in my Direct Testimony) more closely align with the number of households actually viewing the two programs.

Leaving aside the unfixable sampling problem with the Galaz Methodology I described earlier in this testimony, it is possible to calculate the IPG share of each year's royalties based on the approach Mr. Galaz describes in his testimony, but does not follow. To do so, I apply Mr. Galaz's described methodology by using *corrected* Time Period Weight Factors. That is, I follow the Galaz Methodology and calculate the relative value of a program using Mr. Galaz's described formula of Station Weight Factor * Time Period Weight Factor * Program Length. However, I correct Mr. Galaz's Time Period Weight Factor approach following what he describes in his testimony, rather than what he actually did. The *corrected* Time Period Weight Factor is based on actual

viewing percentages each half-hour, calculated from actual Nielsen viewership data for 2000, 2001, 2002, and 2003.

Correcting only Mr. Galaz's faulty application of his Time Period Weight Factor, yet not correcting the other errors in the Galaz Methodology, I find Mr. Galaz's calculated IPG royalty share would be 17.7 percent lower in 2000, 23.8 percent lower in 2001, 17.1 percent lower in 2002, and 16.6 percent lower in 2003. Clearly, Mr. Galaz's over-broad Time Period Weight Factors biases his findings toward a higher calculated royalty allocation for IPG for each year at issue in this proceeding.

IV. Conclusion

IPG's formula for calculating a program's relative market value is a crude, error-ridden, and unreliable approximation of my approach. Mr. Galaz analyzes a non-representative sample of stations retransmitted by Form 3 CSOs, completely disregarding programs on stations retransmitted only by Form 2 and/or Form 1 CSOs. The Galaz Methodology does not consider significant measures of a program's viewership such as the type of program or local ratings of the program. In applying his methodology, Mr. Galaz includes non-compensable programming that should be excluded and removes compensable programming that should be included. And, despite his testimony to the contrary, the Galaz Methodology is based on extremely broad time period weights. Even if one were to set aside the unfixable issue of Mr.

Galaz's sample design, all of the other problems in the application of the Galaz Methodology, when corrected, lower IPG's calculated share.

By contrast, my distribution methodology for calculating a program's relative market value relies on an econometric model of estimating viewership that takes into account program characteristics and popularity that affect the program's predicted relative viewership. My approach analyzes program volume, program viewing and the number of subscribers for a randomly selected set of stations. As a result, my approach provides more reasonable estimates of relative viewership and relative market value of MPAA- and IPG-claimed programming than IPG's approach. My calculations, therefore, continue to provide more reliable measures of program viewership and program relative value.

There is nothing in the analysis and findings presented in Mr. Galaz's testimony that warrants changes to my calculations of relative market value of IPG- and MPAA-claimed programs. The only adjustments to my initial royalty allocation calculations result from the CRJs dismissal of certain IPG claims and the rejection of IPG representation by certain copyright owners IPG claims to represent.²⁴ I updated my earlier calculations to reflect these two adjustments.

²⁴ I understand that in some years MPAA and IPG continue to make claims to represent the same programs. I also understand that MPAA continues to dispute the validity of some programs claimed by IPG in years not claimed by MPAA. For the purposes of my calculations, I assume that each program title claimed by both MPAA-represented Program Suppliers and IPG is a valid MPAA-represented Program Suppliers program. I further assume that any program title claimed by IPG and not claimed by MPAA constitutes a valid IPG-represented program.

Table 6 below reports my calculation of MPAA viewership shares for each royalty year following the methodology described in my Direct Testimony, with different adjustments made to IPG-claimed programming. The first column reports MPAA's share of viewership, and therefore MPAA's share of royalty allocations, applying my methodology as reported in my Direct Testimony. The second column reports MPAA share of royalty allocations each year repeating my original methodology, but removing IPG-claimed programming in those years dismissed by the CRJs.

Table 6: MPAA Viewership Share and Royalty Share of Program Supplier Category Under Alternative Assumptions Regarding IPG-Claimed Programming

Year	MPAA-Programming as Described in my Direct Testimony	Adjusted for CRJ's 3/21/13 Order	Also Adjusted for Claimants Rejecting IPG Representation
2000	98.39%	98.65%	98.93%
2001	99.65%	99.71%	99.72%
2002	99.55%	99.68%	99.69%
2003	99.68%	99.76%	99.80%

The final column reports MPAA's shares of viewership each royalty year, and therefore of royalty allocations, after (1) removing IPG-claimed programming in years dismissed by the CRJs and (2) removing IPG-claimed programming in years claimants denied IPG representation. As reported in this final column, my updated analysis finds MPAA shares of the total Program Suppliers royalty pools of 98.93%, 99.72%, 99.69%, and 99.80% for the years 2000, 2001, 2002, and 2003, respectively.²⁵ MPAA's calculated

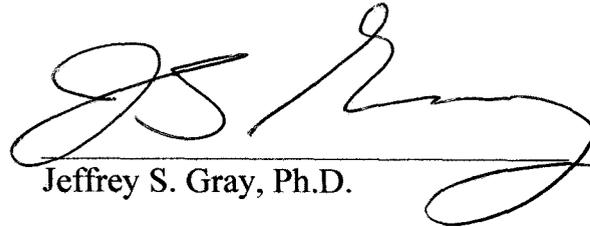
²⁵ The lower and upper bound of the 95 percent confidence intervals for these estimates are [98.84% and 99.03%], [99.69% and 99.75%], [99.64% and 99.74%], and [99.77% and 99.83%], for the years 2000, 2001, 2002, and 2003, respectively.

royalty shares will increase should it be determined that additional IPG-claimed programming was improperly claimed by IPG.

DECLARATION OF JEFFREY S. GRAY, PH.D.

I declare under penalty of perjury that the foregoing rebuttal testimony is true and correct, and of my personal knowledge.

Executed on May 15, 2013



Jeffrey S. Gray, Ph.D.

CERTIFICATE OF SERVICE

I, Lucy Holmes Plovnick, hereby certify that I have caused one copy of the foregoing Written Rebuttal Statement of the MPAA-Represented Program Suppliers to be served by the on May 15, 2013, to the following persons who appear on the "Counsel or Representative" box on the Copyright Royalty Board's official service list for Docket No. 2008-2 CRB CD 2000-2003 (Phase II):

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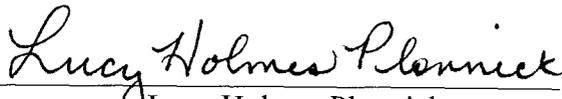
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