

**Before the**  
**COPYRIGHT ROYALTY JUDGES**

**The Library of Congress**  
**Washington, D.C.**

<b>In the Matter of</b>	)	<b>Docket No. 15-CRB-0010-CA-S</b>
	)	
<b>37 C.F.R. Part 387</b>	)	<b>(Sports Rule Proceeding)</b>
	)	
<b>Adjustment of Royalty Rates for</b>	)	
<b>Cable Statutory Retransmission License</b>	)	
	)	

**SUR-REPLY COMMENTS OF MAJOR LEAGUE SOCCER, L.L.C.**

Pursuant to the Notice published at 82 Fed. Reg. 44368 (September 22, 2017) (“Notice”), Major League Soccer, L.L.C. (“MLS”) submits its sur-reply comments in the above-referenced Copyright Royalty Board (“CRB”) proceeding related to proposed regulations to require covered cable systems to pay a separate per-telecast royalty (a Sports Surcharge) in addition to other royalties that cable systems must pay under Section 111 of the Copyright Act.

MLS’s Sur-Reply Comments respond to the Reply Comments<sup>1</sup> of the Participating Parties<sup>2</sup> and to the Supplemental Reply Comments<sup>3</sup> of the JSC<sup>4</sup> by stating why entities not expressly addressed in the proposal appear to be bound by its rates and terms and are otherwise

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<sup>1</sup> See Reply Comments of the Participating Parties, *In re* Adjustment of Cable Statutory License Royalty Rates, Docket No. 15-CRB-0010-CA-S (Sports Rule Proceeding), filed Oct. 23, 2017 (“Reply Comments”).

<sup>2</sup> The Participating Parties include the Joint Sports Claimants (“JSC”), NCTA—The Internet & Television Association and American Cable Association (collectively, the “Participating Parties”).

<sup>3</sup> See Supplemental Reply Comments of the Joints Sports Claimants, *In re* Adjustment of Cable Statutory License Royalty Rates, Docket No. 15-CRB-0010-CA-S (Sports Rule Proceeding), filed Oct. 23, 2017 (“Supplemental Reply Comments”).

<sup>4</sup> The JSC are comprised of Office of the Commissioner of Baseball, the National Basketball Association, the National Football League, the National Hockey League, the National Collegiate Athletic Association and the Women’s National Basketball Association. For many years, a coalition of certain (but not all) professional and collegiate sports leagues meeting the JSC category definition has acted as a *de facto* category representative for the JSC category (the “JSC Members”).

affected by the proposed rules. MLS's Sur-Reply Comments are separated into three parts addressing both of the Reply Comments' and Supplemental Reply Comments' issues raised by subject. The first part responds to the Participating Parties' suggestion that MLS is not harmed by the proposed rates and rules. The second part responds to the Participating Parties' Reply Comments by explaining how adopting the proposed rule without modification is contrary to the Copyright Act, as it would harm eligible professional sports leagues. The third part responds to inaccuracies raised by the JSC in its Supplemental Reply Comments. MLS seeks adoption of rates and rules applied equitably to all similarly-situated, eligible professional sports leagues.

## **ARGUMENT**

### **I. MLS is Harmed by the Participating Parties' Proposed Rates and Rules.**

#### **A. MLS is a Nonparticipant Harmed by the Proposed Rates and Rules.**

The Participating Parties state that MLS and other sports organizations chose not to participate in this proceeding. Instead, a deal was brokered excluding them. MLS did not participate as an individual participant in this proceeding because MLS thought the JSC would represent its interests. MLS understood that by the Copyright Royalty Judges' ("Judges") orders that it was covered under the JSC definition.<sup>5</sup> That definition was also provided to MLS by JSC-affiliate counsel<sup>6</sup> years before the commencement of this proceeding.

Well known to JSC, MLS settled 2004-2007 royalty disputes amicably with JSC by negotiated confidential agreement in 2010. MLS has always considered itself part of the JSC category, but when its name was omitted in the new rules, it learned quickly that the neither the

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<sup>5</sup> See, e.g., *In Re Distribution of 2000-03 Cable Royalty Funds*, Order on Motion by Joint Sports Claimants for Section 801(C) Ruling Or, In the Alternative, A Paper Proceeding in the Phase I Sports Category, Docket No. 2008-02 CRB CD 2000-03 (Phase II) (May 17, 2013).

<sup>6</sup> See Email from Tom Ostertag, (former General Counsel to Major League Baseball), Re: JSC Category Definition, Dec. 23, 2013, attached as Exhibit A.

Participating Parties, nor the JSC Members considered MLS's interests in this rate proceeding. When the Judges published a Notice<sup>7</sup> in the Federal Register requesting comments from parties affected by the agreement, and MLS realized immediately it and other eligible professional sports leagues would be harmed, it advised JSC Counsel and filed comments.

MLS maintains its contention that, as a category representative, JSC is required to represent the interests of MLS and other eligible professional sports leagues. JSC holds itself out as the category representative before the Judges, and has done so for three decades.

Supplemental Reply at 1. JSC "share with those having valid claims the royalties allocated to the category." *Id.* at 2. JSC agrees with MLS that the sports programming category encompasses a range of live team sports programming. *Id.* at fn 3. MLS contends that if the category encompasses that range, then it should also represent the interests of all eligible copyright holders within it.

The rate definition of eligible professional sports leagues proposed by the JSC is unfair to excluded parties because JSC serves as a category representative for MLS and other leagues, yet apparently chose not to represent their interests with regard to the Sports Surcharge rate. MLS had a reasonable belief its category representative would represent its interests. The Participating Parties state MLS failed to file a petition to participate in the proceeding. This is correct—MLS did not file a separate petition to participate in this proceeding because it believed its interests were represented by JSC, its category representative.

Contrary to the Participating Parties' suggestion, MLS did not choose to ignore a settlement in this proceeding until it was announced. Despite serving as a category representative, JSC never advised MLS of the settlement or its terms prior to submitting it to the

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<sup>7</sup> See 82 Fed. Reg. 24611 (May 30, 2017).

Judges. MLS's first and only notice of the settlement occurred when the Judges published their May 30, 2017 Notice in the Federal Register seeking comments.

MLS contends that the November 23, 2015 Rate Adjustment Petition filed by the self-selected JSC Members should benefit all JSC-eligible entities.<sup>8</sup> Unless the JSC Members act as category representatives and provide MLS and others a portion of the Sports Surcharge royalties, then MLS and all other eligible leagues shall be harmed financially and bound by the rate. MLS qualifies to be a Joint Sports Claimant by definition,<sup>9</sup> but the JSC Members excluded MLS and others from proposed rule 37 C.F.R. § 387.2(e)(4). MLS and others should be entitled to receive their fair share of royalties, and be included in the above-noted rule.

#### **B. MLS Will Be Bound by Exclusionary Proposed Rules.**

JSC argues that MLS is not *bound* by the Proposed Rules.<sup>10</sup> To support their argument, the Participating Parties cite one clause of the legal definition of the word “bind”, but the second clause is more applicable to MLS and other leagues’ predicament. The definition’s more relevant part reads “to affect one in a constraining or compulsory manner with a contract or judgement.”<sup>11</sup> In this proceeding, the excluded leagues are bound by the rules because they are constrained from benefiting from the new rate adjustment. The rules exclude and harm MLS and

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<sup>8</sup> MLS remains qualified to be a participant based on its programming and as a copyright holder eligible to enjoy the benefits afforded to all entities that fall under the JSC definition. *See In the Matter of the 1990-1992 Cable Royalty Distribution Proceeding*, Docket No. 94-3, CARP CD 90-92; and *see In Re Distribution of 2000-03 Cable Royalty Funds*, Order on Motion by Joint Sports Claimants for Section 801(C) Ruling Or, In the Alternative, A Paper Proceeding in the Phase I Sports Category, Docket No. 2008-02 CRB CD 2000-03 (Phase II) (May 17, 2013).

<sup>9</sup> *See* Notice of Participant Groups, Commencement of Voluntary Negotiation Period (Allocation), and Scheduling Order, Consolidated Proceeding No. 14-CRB-0010-CD (2010-13), *In re Distribution of Cable Royalty Funds*, Exhibit A (Nov. 25, 2015); *See also* 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).

<sup>10</sup> *See* Reply Comments at fn 4.

<sup>11</sup> *Bind*, Black’s Law Dictionary Free Online Dictionary (2<sup>nd</sup> Edition, 2017).

other entitled parties by denying them benefits afforded to other identified parties with programming in the JSC category.

The Judges' Notice states the Copyright Act ("Act") directs the Judges to provide "an opportunity to comment to nonparticipants who would be bound." 82 Fed. Reg. 44368 (Sept. 22, 2017). Clearly, the Act provides nonparticipants like MLS, who will be bound by and harmed by the proposed Sports Surcharge rate, an opportunity to comment on the proposed regulations to seek equitable relief from the Judges, so that they can address that harm in promulgating their regulations. Whether one is a Participating Party or not, all eligible professional sports leagues will be bound by this rate proceeding and some will be constrained by it. As MLS explained in its Reply Comments, promulgation of this proposed rate violates the Copyright Act by treating similarly situated eligible professional sports leagues differently. Accordingly, the Judges should modify the proposed regulation to treat all eligible professional sports leagues consistently.

## **II. Adopting The Proposed Rules Without Modification Violates The Copyright Act And Would Harm Eligible Professional Sports Leagues.**

Participating Parties argue that it is clear that the Judges have the authority to adopt the Proposed Rules without modification. MLS counters that the Judges must not allow such promulgation to proceed to the detriment of other eligible and similarly-situated copyright owners.

The Participating Parties argue that Section 801(b)(2)(C) does *not* require the Judges to adopt a surcharge that applies to all copyright owners whose telecasts may have been eligible for blackout protection under the former FCC Sports Rule.<sup>12</sup> That argument fails. The statute does

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<sup>12</sup> Reply Comments at fn 5.

not require the Judges to adopt a rate for the Sports Surcharge that discriminates against qualified eligible professional sports leagues simply because the Participating Parties proposed it. The Section 111 license was created to compensate all eligible copyright owners for the carriage of distant broadcast signals by cable systems, not a certain subset of eligible claimants. Section 801(b)(2)(C) of the Act states that any rate adopted in this proceeding “shall apply only to the affected television broadcast signal carried on those systems affect by the change”<sup>13</sup> in the FCC Sports Rule. The proposed rules affect MLS’s television broadcast signals, and as a result harms them by excluding them from the surcharge.

The Participating Parties cite legislative history of Section 801(b)(2)(C) from the 1976 Copyright Act<sup>14</sup> stating that the Judges may adopt different “royalty schedules for particular classes of cable systems”<sup>15</sup> analogizing incorrectly that requiring different royalty schedules for different telecasts is consistent with that legislative history. It is not. Cable system classes are not analogous to qualified sports telecasts. As cable systems in the same classes are treated similarly, eligible telecasts in the same programming class should be treated equally by the Judges in rate proceedings. Copyright surcharge rates should be adopted for an entire class of qualified copyright owners, not only for the benefit of particular named parties. Moreover, MLS need not demonstrate that it took advantage of the repealed FCC Sports Rule and its protections in its Comments. The former FCC sports-broadcast rules and current copyright law apply to all eligible professional sports league’s broadcasts—including MLS. *See Report and Order in Doc. No. 19417*, 54 F.C.C.2d 265 (1975); *repealed*, 79 Fed. Reg. 63547 (Oct. 24, 2014). Accordingly, MLS and other affected professional sports leagues should all be eligible to receive royalties as qualified parties under the new Sports Surcharge.

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<sup>13</sup> 17 U.S.C. § 801(b)(2)(C).

<sup>14</sup> Reply Comments at fn 5.

<sup>15</sup> H.R. Rep. No. 94-1476 at 177 (1976).

Similarly, the Participating Parties identify the three existing Section 111 royalty funds, and state that while all copyright owners are eligible to receive royalties from the Basic Fund, not all copyright owners are eligible to receive royalties from the 3.75 Fund or the Syndex Fund.<sup>16</sup> However, that is because not all copyright owners' programming qualifies for the 3.75 or Syndex Funds. Here, MLS's (and all eligible professional sports events') programming is the same as the JSC Members' and should be treated as such by the Judges in this rate proceeding.

### **III. JSC Asserted Inaccurate Facts and Raised Inaccurate Concerns About MLS's Ability to Document Its Claims' Validity.**

JSC claims in its Supplemental Reply Comments<sup>17</sup> that MLS withdrew its claims in the Joint Sports Claimants category in the 2010-13 Cable and Satellite royalty distribution proceeding ("2010-13 Proceeding") shortly after the Judges compelled MLS to comply with discovery requests concerning the validity of MLS's claims. This argument is misleading for several reasons. First, although JSC does not mention it, the JSC Members never raised any challenges to MLS's claims or data provided to them in the 2010-13 Proceeding, either formally or informally. Second, as the JSC Members should be aware, MLS's withdrawal of its sports category claims in the 2010-13 Proceeding was strictly an economic decision due to the antagonistic actions of Multigroup Claimants ("MGC"). MGC's aggressive conduct increased MLS's legal expenses to the point of diminishing returns for the royalties MLS hoped to recoup based on its limited number of over-the-air live team sports telecasts during 2010-2013. During the summer of 2016, during such discovery MLS approached the JSC Members and sought to join their coalition in the 2010-13 Proceeding, but for reasons unknown to MLS, and in contrast

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<sup>16</sup> Reply Comments at fn 6.

<sup>17</sup> Supplemental Reply Comments at 2-3.

to other program category representatives,<sup>18</sup> JSC did not yet admit MLS as a JSC Member with regard to its live team sports programming at that time.<sup>19</sup> MLS found itself in an untenable economic position related to the potential royalties it would collect related to the legal expenses it would incur and chose to withdraw its claims in the 2010-13 Proceeding as to the sports category. Recently (and more than a year after discovery), MCG's claims in the 2010-13 Proceeding were dismissed from the JSC category. *In re* Distribution of Cable Royalty Funds, Consolidated Proceeding No. 14-CRB-0010-CD (2010-2013); *In re* Distribution of Satellite Royalty Funds, Consolidated Proceeding No. 14-CRB-0011-SD (2010-2013), *Ruling and Order Regarding Objections to Cable and Satellite Claims* (Oct. 23, 2017). Unfortunately, MLS was not in an economic position to incur the additional legal expenses necessary to maintain its sports programming claims in the 2010-13 Proceeding until MGC's sports category claims were dismissed.

The JSC Members maintain a self-interested position in this proceeding. It is true that MLS counsel notified JSC's counsel that it would be commenting in the proceeding prior to filing MLS's initial comments. Conversely, JSC never notified MLS—even as its category representative—of its intent to propose a definition to the Judges that would allocate Sports Surcharge royalties only to particular named JSC Members. MLS was on notice of JSC's position and its decision to exclude MLS from the proposed regulatory definition for the first time after reading the Federal Register.

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<sup>18</sup> Like many JSC Members, MLS owns the copyright to, and maintains Section 111 (and 119) copyright claims for, both live team sports telecasts that fall in the JSC category and other sports-related programming that falls in the Program Suppliers category such as pre- and post-game shows. MLS continues to maintain its claims for its 2013 cable and satellite Program Suppliers category programming in the 2010-13 Proceeding. *See* Major League Soccer, LLC Withdraw Of Certain Claims Relating To The Distribution Of The 2010-2013 Cable And Satellite Royalty Funds, Docket Nos. 14-CRB-CD-0010 (2010-2013) and 14-CRB-SD-0011 (2010-13) (September 21, 2016).

<sup>19</sup> *See* Reply Comments of MLS, *In re* Adjustment of Cable Statutory License Royalty Rates, Docket No. 15-CRB-0010-CA-S (Sports Rule Proceeding), filed Oct. 23, 2017 Exhibit A, filed Oct. 23, 2017. MLS continues to attempt to formally join the JSC coalition. *See* Exhibit B, attached.



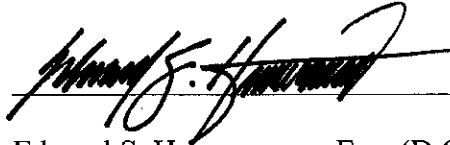
It may appear that MLS acted similarly to JSC in proposing to add only itself to the definition in proposed 37 C.F.R. § 387.2(e)(4), excluding other eligible professional sports leagues. However, there is a distinction between MLS's and the JSC Members' proposals. MLS is not authorized to comment on behalf of other eligible professional sports leagues, but MLS raised the issue before the Judges in order to permit them to determine how to best treat all eligible parties fairly in promulgating CRB regulations. JSC, as a category representative, is authorized to represent and assist all eligible professional sports leagues. If the JSC Members had included all eligible professional sports leagues in its proposal, then MLS would not need to advocate to include itself as a Sports Surcharge beneficiary, or to raise the issue with the Judges to consider other qualified copyright owners. MLS has submitted its comments in this proceeding because the JSC Members disregarded drafting a regulation that would treat all eligible professional sports leagues consistently.

**Conclusion.**

MLS appreciates this opportunity to provide Sur-Reply Comments to the Judges in response to this Notice. For the reasons set forth above, MLS respectfully requests that the Judges include MLS as an eligible professional sports league in rule 37 C.F.R. § 387.2(e)(4), or otherwise modify the proposed regulation so that it would apply to all eligible professional sports leagues.

Respectfully submitted,


**MAJOR LEAGUE SOCCER, L.L.C.**

A handwritten signature in black ink, appearing to read "Edward S. Hammerman", is written over a horizontal line.

November 1, 2017

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*Counsel for Commenting Party*

# **EXHIBIT A**

**From:** Ostertag, Tom Tom.Ostertag@mlb.com   
**Subject:** JSC category definition  
**Date:** December 23, 2013 at 10:10 AM  
**To:** Ted Hammerman ted@copyrightroyalties.com

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TO

Ted,

Good talking to you last week. At your request, I attach an order of the CRB discussing the definition of the JSC category. In this order, only cable was at issue, but the parties have agreed to the same definitions for satellite.

Please let me know if you have any questions.

All the best for a great holiday season!

Tom

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5-17-13 Order  
on Mot...ing.pdf

**CORPYRIGHT ROYALTY BOARD**  
**The Library of Congress**

*In re*

Distribution of 2000 – 03 Cable Royalty Funds

DOCKET NO. 2008-02 CRB  
CD 2000 – 03 (Phase II)

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**ORDER ON MOTION BY JOINT SPORTS CLAIMANTS  
FOR SECTION 801(C) RULING OR, IN THE ALTERNATIVE,  
A PAPER PROCEEDING IN THE PHASE I SPORTS CATEGORY**

On April 5, 2013, the Joint Sports Claimants (JSC) filed a motion (the JSC Motion) for a section 801(c) ruling or, in the alternative, for a paper proceeding, both in connection with the inclusion or exclusion of certain telecasts from the Phase I Sports Category in this action. On April 12, 2013, the Independent Producers Group (IPG) filed its Opposition to the Motion (IPG Opposition). On April 18, 2013, JSC filed a Reply (the JSC Reply) in further support of its Motion. No other papers were filed in connection with the portion of the JSC Motion seeking a section 801(c) ruling.

By its Motion, JSC seeks one of two alternate forms of relief. Specifically, JSC seeks either:

1. An Order ruling that the telecast of the 2000 U.S. Olympic Trials (Olympic Trials Telecast) and the telecast of the 2002 United Negro College Fund Celebrity Golf and Tennis tournament (the Celebrity Tournament ) are compensable (if at all) only in the Phase I “Program Suppliers” category, and that, consequently, any evidence concerning the Olympic Trials Telecast or the Celebrity Tournament Telecast should be submitted solely in connection with the Phase II controversy between IPG and the MPAA-represented Program Suppliers (MPAA)<sup>1</sup>; or, alternatively;
2. If the relief as described in paragraph (1) above is denied, then an Order instructing the parties to conduct a paper proceeding to determine the amount of sports royalties (if any) that should be allocated to IPG for the Olympic Trials Telecast and/or the Celebrity Tournament.<sup>2</sup>

For the reasons set forth below, the Judges grant JSC’s Motion for the relief described in Paragraph (1) above, and therefore deny, without prejudice, as moot, JSC’s Motion for the alternative relief set forth in paragraph (2) above.

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<sup>1</sup> JSC stated in its Motion that it was authorized by MPAA to state that MPAA does not object to the relief requested by JSC. MPAA has not filed any papers in response to the Motion, indicating its concurrence with JSC’s statement in this regard.

<sup>2</sup> After initially opposing a paper proceeding, IPG informed the Judges on April 19, 2013 that it was withdrawing its objections to the portion of JSC’s motion calling for such a proceeding.

#### A. The Substantive Issue

The issue of categorization of claims has arisen in the context of more than one cable distribution proceeding. The categories, created by stipulation of the participants in Phase I of a distribution proceeding decades ago and renewed by stipulation at succeeding proceedings, are not mandated by statute or regulation. The Phase I participants argue that the definitions are known and have been known and that no participant can claim ignorance of the criteria for categorization of claims. JSC takes this position in the present proceeding.

The response to the JSC position, taken by claimants' representatives participating in Phase II of the proceeding only, is that they cannot or should not be bound by stipulations to which they are not a party. IPG takes this position in the present proceeding. IPG relies, in part, on the transcript of a colloquy from a prior proceeding in which the Chief Judge questioned whether parties who were not party to the Phase I stipulation(s) could be bound by those stipulations.

For the reasons stated here, the Judges resolve the question in this proceeding on two separate grounds: procedural and evidentiary.

#### B. The Procedural Issue.

On April 2, 2008, the Judges gave notice of and announced the commencement of a proceeding to determine the Phase I distribution of 2000, 2001, 2002, and 2003 royalties collected under the cable statutory license. 73 FR 18004. In that Notice and Announcement, the Judges directed that "Petitions to Participate must be filed in accordance with section 351.1(b) of the Judge's *[sic]* regulations."

The purpose of the Phase I proceeding is set forth in the regulations: "[A] Phase I proceeding [is] the initial part of a distribution proceeding where royalties are divided among the categories or groups of copyright owners." 37 C.F.R. § 351.1(b)(2)(i)(B).

IPG did not file a Petition to Participate in the Phase I proceeding. If IPG *had* filed a Petition to Participate, it could have proposed definitions of each of the categories to be established in the Phase I proceeding. If the parties could not reach a voluntary agreement regarding those definitions, then a contested proceeding could have been scheduled in which the Judges would have issued a decision setting forth the Phase I definitions which were to be used to allocate royalties for telecasts within the categories in the subsequent Phase II proceeding.

On May 12, 2010, the Judges "announced the *final* Phase I distribution of cable royalty funds for the years 2000, 2001, 2002, and 2003" in this proceeding, Docket No, 2008-2. 75 FR 26798 (*emphasis added*). See also 76 FR 7590 (February 10, 2011) (the Judges' Phase II Notice, which reiterated that the Phase I determination was a *final* determination.)

Accordingly, the Judges now conclude that IPG is collaterally estopped from contesting the definitions established by the final Phase I decision. If IPG, or any *non-Participant in a Phase I proceeding*, could re-open the *final Phase I* categorizations, the Phase I issues would never truly be final, which would defeat the policy of bifurcating distribution proceedings into two distinct and manageable phases.

C. The Evidentiary Issue.

Although IPG cannot now challenge the Phase I definitions, it *can* assert, as a Phase II issue, that its claims as to the Olympic Trials Telecast and/or the Celebrity Tournament constitute the claims of a sports claimant *within the existing Phase I definitions*. (The Judges note, though, that in its Opposition, IPG has not defended its claim that the Celebrity Tournament Telecast is a sports claim, so the Judges deem that argument to have been abandoned and waived.)

The Phase I definition pertinent to the sports category defines sports telecasts as “[l]ive telecasts of *professional and college team sports* broadcast by U.S. and Canadian television stations ....” JSC Reply, at 2. In this regard, the Phase I participants utilized the same substantive definition for “sports claimants” to which the parties had stipulated in a prior proceeding before the Copyright Arbitration Royalty Panel. See In the Matter of 1990-1992 Cable Royalty Distribution Proceeding, Docket No. 94-3, CARP CD 90-92.

JSC and IPG stipulated that the Olympic Trials include team sporting events. The Judges also take judicial notice that Olympic Trials are contests among athletes, as individuals or as teams, to determine whether they will qualify for a national Olympic team. These facts, however, do not put the Olympic Trials into the category of “professional [or] college team sports.” IPG does not (and cannot) dispute that fact, and therefore there is no genuine issue of material fact regarding this issue.

Accordingly, the Judges find that the Olympic Trials Telecast does not fall within the category of sports claims as defined in the now final Phase I proceeding. (The Judges would reach the same conclusion regarding the Celebrity Tournament Telecast if that argument had not been abandoned by IPG, as noted above.)

This Order does not affect IPG’s Petition in any other respect and, in particular, does not preclude IPG from continuing to seek royalties for the Olympic Trials Telecast or the Celebrity Tournament Telecast from the Program Suppliers category.

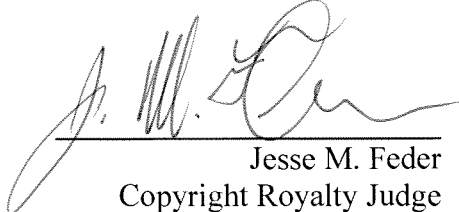
**Conclusion**

For the foregoing reasons, the Judges

GRANT in part JSC’s Motion and ORDER that the claims asserted by IPG regarding the Celebrity Tournament and the Olympic Trials Telecast are compensable in this proceeding, if at all, only from the Program Suppliers category and

DENY in part, as moot, JSC’s Motion regarding paper proceedings.

**IT IS SO ORDERED.**

  
Jesse M. Feder  
Copyright Royalty Judge

May 17, 2013

# **EXHIBIT B**



From: **Ted Hammerman** ted@copyrightroyalties.com  
Subject: MLS/JSC Membership Follow-up  
Date: October 27, 2017 at 2:45 PM  
To: Robert Garrett Robert.Garrett@apks.com, M. Sean Laane sean.laane@aporter.com  
Cc: Philip Hochberg phochberg@shulmanrogers.com



Dear Sean and Bob:

In reviewing the JSC's Supplemental Reply Brief in the Sports Surcharge Proceeding, I saw that someone wrote, "MLS's 'attempts to join JSC on a formal basis' in royalty distribution proceedings were unsuccessful because of JSC's concerns about MLS's ability to document the validity of its claims."

According to Bill Ordower, MLS's General Counsel, he provided the following to me today:

"This is the language we have currently. I have traced this or similar language at least as far back as 1999."

a. Ownership. **All right, title and interest in and to the Team Game Telecasts**, all feeds recorded in connection with the production of such Selected Team Gam (including the Clean Feed and Dirty Feed), and all other accounts and descriptions of, and other information concerning such Selected Team Game and all derivatives of any of the foregoing, including, without limitation, any adaptations, compilations, condensations, translations or other versions of any of the foregoing in whole or in part (collectively, the "Works") shall vest in and remain the sole property of MLS, who shall be deemed the initial author and owner thereof. MLS shall have the sole right to use or re-use, or license the use or re-use of, the Works or any portion thereof for any purpose whatsoever via any and all distribution methods not inconsistent with Broadcaster's rights hereunder. **The aforementioned rights to the Works include, without limitation, the right to receive all royalties paid and/or distributed pursuant to such acts and/or laws with respect to the retransmission of the broadcasts produced hereunder and the right to sue for infringement.** MLS retains the right to use, and grant third parties the right to use, the graphics or other materials included in any Work (including any of Broadcaster's Marks incorporated therein) as part of the use of any Work (or any portion thereof) at no cost, in perpetuity.

Given that the first line states that "All right..to the Team Game Telecasts...shall vest in and remain the sole property of MLS," that covers copyright ownership in my opinion.

Specifically, can you advise me as to what JSC requires to allay its concerns about MLS's ability to documents its claims? Please let me know, and we will attempt to provide it to you.

MLS remains interested in becoming a JSC member for 2014-forward. If MLS becomes a JSC Member, then we can all save resources and eliminate costs such as those related to what's transpired in the Sports Surcharge proceeding. MLS feels that any royalties gained by the JSC from MLS's membership and free-to-air broadcast television growth will offset any minor costs related to JSC's defense MLS' claims. MLS owns its copyright. There should be no issue. I look forward to hearing from you. Have a good weekend.

Ted



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