

Before the  
COPYRIGHT ROYALTY JUDGES  
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In the Matter of	)	
	)	
Distribution of the 2000-2003	)	Docket No. 2008-2
Cable Royalty Funds	)	CRB CD 2000-2003 (Phase II)
	)	

**SETTLING DEVOTIONAL CLAIMANTS’ MOTION FOR LEAVE TO REPLY TO  
MPA’S SUPPLEMENTAL RESPONSE TO ORDER DIRECTING RECALCULATION  
OF ROYALTY ALLOCATIONS IN THE DEVOTIONAL CATEGORY AND SEEKING  
ADDITIONAL GUIDANCE**

The Settling Devotional Claimants (“SDC”) move for leave to reply to the Supplemental Response to Order Directing Recalculation of Royalty Allocations in the Devotional Category and Seeking Additional Guidance (“Supplemental Response”) filed by the Motion Picture Association, Inc. (“MPA”) on October 9, 2020.

In its Supplemental Response, MPA contends that “a full accounting of all 2000-2003 cable amounts previously distributed to all of the Allocation Phase categories is not warranted ...” *Id.* at 6 n. 8. Nevertheless, in spite of having received and accepted its final distributions more than four years ago without making any timely objection, MPA now urges the Judges to “distribute an additional \$1,083,560.34 from the 2000 cable royalty fund to the Program Suppliers category (divided between MPA and IPG pursuant to the 2000 cable Phase II shares for the Program Suppliers category determined by the Judges), and to require a repayment from the Program Suppliers category to recover the excess amounts that were distributed to the Program Suppliers category for 2001-2003 cable.” *Id.* at 5.

For the reasons more completely set forth in the SDC’s proposed reply attached to this motion, MPA has not established that any discrepancies in the cable royalty funds remaining for

final distribution in the Devotional category are attributable to the Program Suppliers category. The “reconciliation” attached to MPA’s Supplemental Response is not calculated on the basis of the Phase I parties’ confidential settlement shares and is based on assumptions that the SDC lack sufficient information to confirm. The SDC, on the other hand, have conducted a reconciliation based on the Licensing Division’s methodology for apportioning funds to IPG in the Program Suppliers category showing that MPA has already received millions of dollars more than it is entitled to for the four cable royalty years at issue in this case.

For the foregoing reasons, the SDC request leave to file their reply, attached.

October 15, 2020

Respectfully submitted,

**SETTLING DEVOTIONAL CLAIMANTS**

*/s/ Matthew J. MacLean*

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<b>Distribution of the 2000-2003 Cable Royalty Funds</b>	)	<b>Docket No. 2008-2 CRB CD 2000-2003 (Phase II)</b>
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**SETTLING DEVOTIONAL CLAIMANTS’ REPLY TO MPA’S SUPPLEMENTAL  
RESPONSE TO ORDER DIRECTING RECALCULATION OF ROYALTY  
ALLOCATIONS IN THE DEVOTIONAL CATEGORY AND SEEKING ADDITIONAL  
GUIDANCE**

The SDC agree with MPA that the Licensing Division’s calculations contained in the Restricted Appendix to the Judges’ Order of May 1, 2020, do not reflect the final balance that would have been anticipated from the Allocation Phase settlement percentage shares of the 2000-2003 cable royalty funds for the Devotional category that the Phase I parties disclosed to the Judges on August 14, 2015. *See Joint Response of the Phase I Parties to IPG’s Motion for Final Distribution of 2000, 2001, 2002, and 2003 Cable Royalty Funds in the Program Suppliers Category* (Aug. 14, 2015) at 2 (Restricted) (“Joint Response”).

The SDC likewise agree with MPA that the final distributions made in the Program Suppliers category on April 14, 2016, do not appear to have been calculated using the “Percentage Allocations of Reserve Funds Available for Distribution” set forth on page 3 of the Joint Response. As the SDC brought to the Judges’ attention in the SDC’s Notice in Response to Judges’ Order Directing Parties to Review Calculations of Apportionment of Interest (May 8, 2020), an application of the “Percentage Allocations of Reserve Funds Available for Distribution” set forth on page 3 of the Joint Response leads to results that differ from the actual amounts finally distributed in the Program Suppliers category.

However, it does not follow from this apparent discrepancy that Program Suppliers received too little for cable royalty year 2000, or too much for cable royalty years 2001, 2002, and 2003. MPA's "reconciliation," attached to its Supplemental Response as Exhibit C, assumes without establishing that the "Percentage Allocations of Reserve Funds Available for Distribution" set forth on page 3 of the Joint Response were correctly calculated. In its reconciliation, MPA attempts to apply those amounts instead of the Phase I parties' confidential settlement shares set forth on page 2 of the Joint Response. But the Phase I parties' agreement is reflected in the Phase I parties' confidential settlement shares, not in the "Percentage Allocations of Reserve Funds Available for Distribution," which was provided (perhaps misguidedly) to assist the Judges and the Licensing Division in calculating the amounts to be distributed.

Therefore, although MPA assumes that the "Percentage Allocations of Reserve Funds Available for Distribution" were correct and that the Licensing Division's calculations of final distributions in the Program Suppliers category were incorrect, the reverse is equally possible – and, the SDC submit, even more likely. Attached as Exhibit 1 is a reconciliation prepared by the SDC, applying the same methodology as the Licensing Division applied in the calculation of IPG's share in the Program Suppliers category. This reconciliation shows that rather than being undercompensated, MPA has actually been overpaid for each of the four cable royalty years at issue, including by more than a million dollars for each of 2000 and 2001, which would necessarily mean that some other Phase I party or parties received less than might have been calculated by the settlement percentages.

In short, if the Licensing Division's calculations of final distributions in the Program Suppliers category were correct, then the Program Suppliers category has already received everything to which it is entitled. Therefore, any discrepancies more likely reflect errors in final

distributions to other categories. If the Licensing Division's calculations of final distributions in the Program Suppliers category were incorrect, then it appears likely that MPA was overpaid. Only a proper full accounting can establish the extent and the direction of any error.

Of course, correcting any discrepancies would have been easier if Program Suppliers had been diligent in verifying the amounts of the final distributions that they received and accepted more than four years ago. For this reason, and for the reasons stated more fully in Joint Sports Claimants' Response to Order Granting MPA-Represented Program Suppliers and Joint Sports Claimants Leave to File Supplemental Responses to August 28 Order (Oct. 9, 2020), it would be reasonable and rational for the Judges to conclude that what is done is done, and that parties (including MPA) who accepted their final distributions years ago without complaint have waived their claims and cannot be heard at this late date to make any further demand on amounts remaining.

To be clear, in light of the history that no Phase I party corrected the Licensing Division's computations, and without access to all the calculations that MPA now employs to explain any discrepancy,<sup>1</sup> the SDC are unable to confirm MPA's self-serving conclusion that "there was a net underpayment to Program Suppliers in its final distribution (and a corresponding net over-attribution to the Devotional category across 2000 through 2003)." *MPA Supplemental Response* at 5. Despite such a conclusion in MPA's favor, the SDC's analysis indicates the very opposite – that MPA has likely received millions of dollars in excess of the amounts properly attributable to it. See Exhibit 1, TAB 3 (MPA Allocation With Interest. Column F). Therefore, although it is clear to the SDC that there is an excess amount remaining for cable royalty year 2000 and that

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<sup>1</sup> The SDC requested MPA to provide information to allow confirmation of the amounts that it has been distributed prior to MPA's filing last week, but MPA declined to provide the information requested.

the funds are insufficient to meet the Devotional Category's expectations in cable royalty years 2001, 2002, and 2003, MPA has fallen far short of establishing that any of these discrepancies are attributable to final distributions to the Program Suppliers category, as opposed to final distributions to some other category.

In short, if an error can be conclusively identified in any prior distributions, the SDC favor correcting the error. But if the error cannot be determined without heroic efforts, then the Judges should find that all Phase I parties have waived any claim to any adjustment to the final distributions by accepting those final distributions four or more years ago without raising any timely objection, and the Judges should order final distribution of the remaining funds to the Devotional Category.

October 15, 2020

Respectfully submitted,

#### **SETTLING DEVOTIONAL CLAIMANTS**

/s/ Matthew J. MacLean  
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**Certificate of Service**

I certify that on October 15, 2020, I caused a copy of the foregoing to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

/s/ Matthew J. MacLean  
Matthew J. MacLean



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	)	
<b>Distribution of the 2000-2003 Cable Royalty Funds</b>	)	<b>Docket No. 2008-2 CRB CD 2000-2003 (Phase II)</b>
	)	

**DECLARATION OF MATTHEW J. MACLEAN IN SUPPORT OF SETTLING  
DEVOTIONAL CLAIMANTS' REPLY TO MPA'S SUPPLEMENTAL RESPONSE TO  
ORDER DIRECTING RECALCULATION OF ROYALTY ALLOCATIONS IN THE  
DEVOTIONAL CATEGORY AND SEEKING ADDITIONAL GUIDANCE**

I, Matthew J. MacLean, hereby state and declare as follows:

1. I am a litigation partner in the law firm Pillsbury Winthrop Shaw Pittman LLP. I represent the Settling Devotional Claimants in this matter.
  
2. Attached hereto as Exhibit 1 is a reconciliation that I prepared showing a calculation of amounts in the Program Suppliers category overpaid to Motion Picture Association, Inc. ("MPA") (together with amounts paid to National Association of Broadcasters under a settlement with MPA) for cable royalty years 2000-2003. The data contained in this reconciliation come principally from six sources:
  - a. Growth in the Copyright Royalty Funds as of June 30, 2015 (attached to MPA's Supplemental Response to Order Directing Recalculation of Royalty Allocation in the Devotional Category and Seeking Additional Guidance);
  
  - b. Joint Response of the Phase I Parties to IPG's Motion for Final Distribution of 2000, 2001, 2002, and 2003 Cable Royalty Funds in the Program Suppliers Category (Aug. 14, 2015) (Restricted);

- c. MPAA Response to Order Directing Accounting of 2000-2003 Cable Royalties Disbursed in the Program Suppliers Category (Dec. 7, 2015) (Restricted);
  - d. Final Order of Distribution (Program Suppliers Category) (Mar. 22, 2016);
  - e. Order Regarding IPG's Motion for Clarification of Order Re Final Distribution for the Program Suppliers' Category (Dec. 23, 2016), Appendix B (Restricted);
  - f. Order Directing Parties to Review Calculations of Apportionment of Accrued Interest (May 1, 2020), Appendix A (Restricted).
3. The interest allocation methodology used is the same interest allocation applied by the Licensing Division in Order Regarding IPG's Motion for Clarification of Order Re Final Distribution for the Program Suppliers' Category (Dec. 23, 2016), Appendix B (Restricted). The calculations were performed by Microsoft Excel, and are true and correct to the best of my knowledge, information, and belief. However, because I cannot independently verify the information contained in the sources referenced above, and because I lack certain information as to how some of the figures in these sources were calculated, the results of these calculations do not constitute a full accounting and should be relied upon only to the extent that the data can be fully verified against original sources to which I do not have access.
4. I requested MPA's counsel to provide me with information sufficient to verify the amounts of the partial and final distributions paid to MPA, but counsel for MPA declined to provide the information requested.
5. The reconciliation is designated as RESTRICTED – Subject to Protective Order in Docket No. 2008-2 CRB CD 2000-2003 (Phase II) because much of the information contained in it comes from sources identified above that were designated as Restricted by the parties filing them. It is my understanding that the sources were designated as Restricted because they contain

or are derived from settlement percentages for various Phase I parties under confidential settlement agreements.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed October 15, 2020, in McLean, Virginia.

          /s/ Matthew J. MacLean            
Matthew J. MacLean

# Proof of Delivery

I hereby certify that on Thursday, October 15, 2020, I provided a true and correct copy of the Settling Devotional Claimants' Motion for Leave to Reply to MPA's Supplemental Response to Order Directing Recalculation of Royalty Allocation in the Devotional Category and Seeking Additional Guidance to the following:

Independent Producers Group (IPG), represented by Brian D Boydston, served via ESERVICE at [brianb@ix.netcom.com](mailto:brianb@ix.netcom.com)

Signed: /s/ Matthew J MacLean