

**Before the
COPYRIGHT ROYALTY JUDGES
The Library of Congress**

**In re
DISTRIBUTION OF CABLE
ROYALTY FUNDS**

)
)
) **CONSOLIDATED PROCEEDING**
) **NO. 14-CRB-0010-CD**
) **(2010-13)**
)
)

**In re
DISTRIBUTION OF SATELLITE
ROYALTY FUNDS**

)
)
) **CONSOLIDATED PROCEEDING**
) **NO. 14-CRB-0011-SD**
) **(2010-13)**
)
)

**SETTLING DEVOTIONAL CLAIMANTS’ REPLY IN SUPPORT OF MOTION TO
QUASH DISCOVERY REQUESTS OF MULTIGROUP CLAIMANTS, IN PART, AND
OPPOSITION TO MULTIGROUP CLAIMANTS’ MOTION TO COMPEL
PRODUCTION OF DOCUMENTS BY THE SETTLING DEVOTIONAL CLAIMANTS**

The Settling Devotional Claimants (“SDC”) reply in support of their motion to quash Multigroup Claimants’ discovery requests, and also hereby oppose Multigroup Claimants’ motion to compel, which covers substantially the same subject matter as the SDC’s motion to quash.

A. The SDC’s Filing of Their Motion to Quash Was Proper.

Multigroup Claimants allege without foundation that the SDC “strategically scheduled” their motion to quash “to fall during the timeframe during which MC would be reviewing the production of documents by the SDC and other parties” Multigroup Claimants’ Motion to Compel at 2 n. 2. That is not true. The SDC filed their motion to quash at the first opportunity out of an abundance of caution because language in prior orders of the Judges has implied that

the party resisting production, rather than the party seeking production, has the burden of bringing a motion before the Judges. *See* Order on IPG Motions for Modification, Distribution of 2004-2009 Cable Royalty Funds, etc., Docket No. 2012-6 CRB CD (2004-09) (Phase II) (Apr. 9, 2015).¹ The SDC consented to Multigroup Claimants' motion to stay, and would have consented to the stay prior to the filing of Multigroup Claimants' motion to stay if Multigroup Claimants had asked. *See* SDC's Response to Multigroup Claimants' Emergency Motion to Stay Motion to Quash Discovery Requests (Apr. 12, 2016). The SDC have no desire to create issues where there are none. Unlike Multigroup Claimants' predecessor, IPG, the SDC have never sought to use scheduling as a weapon in these proceedings.

B. Multigroup Claimants' Discovery Requests, Largely Copied From the SDC's Discovery Requests to Multigroup Claimants, Are Not Oriented or Tailored to Any Material Issue in Controversy That Multigroup Claimants Have Properly Raised and Preserved.

Multigroup Claimants correctly acknowledge that their discovery requests to the SDC largely "mirrored" the SDC's discovery requests to Multigroup Claimants. Multigroup Claimants' Motion to Compel at 3. Multigroup Claimants also do not deny that their misappropriation of the SDC's work as their own was a violation of the SDC's copyright in their discovery requests to Multigroup Claimants (*see* Multigroup Claimants' Opposition to Motion to Quash, at 2 n. 2) - a matter that should be of no small concern to Judges whose principal responsibility lies in protecting copyright interests and enforcing provisions of the Copyright Act.

¹ The SDC take no position as to whether this should or should not be the procedure used, or whether they have correctly interpreted the Judges' intent. For whatever it is worth, the SDC note that the practice in U.S. district courts is that a party that makes a good faith objection to a document production request, stated with specificity and adequately stating the scope of

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Multigroup Claimants' wholesale use of the SDC's document requests is precisely the problem. Instead of tailoring their document production requests to the documents that they need to support their case, Multigroup Claimants instead propounded discovery requests purely for the inappropriate purpose of retaliation against the SDC's proper requests. Multigroup Claimants' motion to compel and their opposition to the SDC's motion to quash are just Multigroup Claimants' version of the old playground trope, "I am rubber, you are glue."

In short, the SDC stand in a different position than Multigroup Claimants in multiple respects that are material to the discovery requests:

1. *Multigroup Claimants' Failure to Give Notice of Controversies and to Engage in Good Faith Negotiations to Resolve Controversies.*

Unlike Multigroup Claimants, the SDC attempted to engage in good faith negotiations, as required by the Judges' order that "[a]ll participants shall participate in good faith settlement negotiations aimed at resolving controversies regarding ultimate distribution of the royalty funds for the years at issue in this proceeding." Notice of Participant Groups, Commencement of Voluntary Negotiation Period (Allocation), and Scheduling Order (Nov. 25, 2015). The Multigroup Claimants failed to respond during the voluntary negotiation period to multiple requests by the SDC's counsel to engage in good faith negotiations. *See* SDC Motion to Quash at 4. Multigroup Claimants should be precluded from conducting discovery on controversies that they did not seek in good faith to resolve.

Multigroup Claimants allege, without foundation, that certain other participants in these proceedings did not reach out to Multigroup Claimants in an effort to engage in good faith

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documents being produced or withheld, is not required to produce documents absent an order compelling production. *See* Fed. R. Civ. P. 34(b)(2).

negotiations. The SDC have no knowledge or interest in Multigroup Claimants' failures to negotiate in good faith with other participants. Unlike Multigroup Claimants, the SDC engaged in good faith negotiations with every participant (except for Multigroup Claimants), and were successful in resolving or narrowing some controversies. For example, the SDC have now resolved all Distribution Phase controversies with all Devotional category claimants except for Multigroup Claimants. The SDC's success in resolving controversies - both in these proceedings and throughout the last three decades and more - demonstrates the power and effectiveness of good faith negotiations. It also belies Multigroup Claimants' gratuitous contentions that negotiating with the SDC would be futile.²

Also unlike Multigroup Claimants, the SDC filed Notices of Controversy when due on March 7, 2016, in which the SDC expressly raised controversies relating to IPG and Multigroup Claimants' qualifications to represent devotional claimants, the validity of Multigroup Claimants' claims, and whether Multigroup Claimants were pursuing the same programs in multiple claimant categories. Multigroup Claimants, on the other hand, filed no notice of controversy, and neither they nor any other participant has raised any controversy concerning the validity or characterization of the SDC's claims. Multigroup Claimants should be precluded

² Multigroup Claimants allege in a footnote that the SDC have previously rebuffed requests by IPG to have an SDC claimant involved in settlement negotiations. Counsel for the SDC do not presently recall any such requests. At any rate, the SDC have regularly involved Arnold Lutzker as the lead decision-maker in their settlement discussions with IPG and other participants. In addition to being lead counsel for the SDC in Allocation Phase proceedings, Mr. Lutzker is also the trustee of the SDC's distribution fund, responsible for the management and preservation of the fund on the SDC's behalf. He is therefore an appropriate decision-making authority on behalf of the SDC, when negotiating settlement as a group.

It would be impractical for all of the SDC's constituent claimants to be present for every settlement discussion, just as it would be impractical for all of IPG represented claimants to be present for every settlement discussion. The SDC's model for negotiating settlements has been

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from conducting discovery related to foreseeable controversies of which they failed to give the SDC notice.

Multigroup Claimants admit that they failed to file a notice of controversy when it was due on March 7, 2016, claiming that they “misunderstood the significance of the Judges’ order of November 25, 2015” This is no excuse at all. Perhaps if Multigroup Claimants had responded to the SDC’s multiple requests to engage in good faith negotiations in February, 2016, they would have realized that a notice of controversy was due in March, 2016. The bottom line is, they were required to do both, and they failed to do either. The SDC were prejudiced by Multigroup Claimants’ failures, because the SDC were deprived of notice of the controversies that Multigroup Claimants planned to raise and of the opportunity to try to resolve or narrow those controversies.

Multigroup Claimants claim that they believed the “voluntary” negotiation period to be optional. But that is not the way the Judges’ Order reads: “All participants *shall* participate in good faith settlement negotiations aimed at resolving controversies regarding ultimate distribution of the royalty funds for the years at issue in this proceeding.” Notice of Participant Groups, Commencement of Voluntary Negotiation Period (Allocation), and Scheduling Order (Nov. 25, 2015) (emphasis added). Agency use of the “mandatory ‘shall’ ... normally creates an obligation impervious to judicial discretion.” *Rhea Lana, Inc. v. Dep’t of Labor*, ___ F.3d ___, 2016 U.S. App. LEXIS 10093, at *16 (D.C. Cir. June 3, 2016) (quoting *Shapiro v. McManus*, 136 S. Ct. 450, 454 (2015)).

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highly effective with regard to other participants, especially Devotional category claimants, except for Multigroup Claimants and their predecessor, IPG.

Multigroup Claimants similarly assert that they were not required to file notices of controversy because all participants were aware of Multigroup Claimants' participation in the proceedings, and because multiple participants, including the SDC, filed their own notices of controversies anticipating controversies with Multigroup Claimants. But although the SDC anticipated controversies with Multigroup Claimants regarding the validity, categorization, and authority to represent certain of Multigroup Claimants' claims, the SDC had no notice prior to receiving Multigroup Claimants' discovery requests that Multigroup Claimants intended to raise controversies regarding the validity, categorization, and authority to represent the SDC's claims. If the SDC had been aware of Multigroup Claimants' intentions to raise these controversies, then the SDC might have taken a number of steps in response. For example, the SDC might have tried to resolve those controversies with Multigroup Claimants; might have collected more or different information from their constituent claimants in advance of discovery (as Multigroup Claimants did, in some instances, relating to controversies raised by the SDC); might have made different discovery requests of Multigroup Claimants, including requests related to the grounds for Multigroup Claimants' challenges, if any; and might have taken a different position in terms of the procedures they proposed in response to the Judges' Order of November 25, 2015. In short, the SDC were required to make numerous strategic and tactical decisions without the benefit of all of the information that Multigroup Claimants were required to provide if they intended to raise controversies regarding the validity, categorization, and authority to represent the SDC's claims.

As further validation for their failure to file the necessary notices, Multigroup Claimants assert that having reviewed the "aggregate Notices of Controversy" (which obviously including the SDC's), they had "no reason to correct any of the information appearing in the Notices of

Controversy.” Hence, Multigroup Claimants argue “no purpose would have been served by MC submitting an untimely redundant Notice of Controversy.” Multigroup Claimants’ Opposition to SDC Motion to Quash at 4. That self-serving concession, which the SDC submit should be taken at face value, means quite literally that Multigroup Claimants accepted all the controversial assertions set forth in the SDC’s Notices without correction or contest. Accepting the specificity of the SDC’s objections to claims and participation of Multigroup Claimants supports the SDC’s proposal to limit the scope of Multigroup Claimants’ challenges to the SDC set forth in their motion to compel and opposition to the motion to quash.

Because of Multigroup Claimants’ failures to engage in good faith negotiations and to file the requisite notices of controversy, Multigroup Claimants should be precluded from raising or conducting discovery on any foreseeable controversy that they should have raised in a notice of controversy.

2. *Multigroup Claimants’ Requests Relating to the SDC’s “Authority” to Represent Its Constituent Claimants and to File Claims Are Inapplicable to Claimants Who File Their Own Claims.*

Unlike Multigroup Claimants, the SDC do not claim to be agents or assignees of any of their constituent claimants. The SDC, as a group, did not file claims on behalf of any of their constituent claimants. Each of the SDC filed claims on their own behalf, meaning that there can be no issue of authority to file claims.

As is further discussed below, the SDC have produced their currently applicable joint representation agreements and amendments to those agreements, showing that each of the claimants comprising the SDC has agreed to participate as part of the SDC in these proceedings. Beyond those agreements, the SDC have no authority and claim no authority to act on behalf of the individual claimants that comprise the SDC.

Multigroup Claimants argue that the SDC have asserted that they are “immune” from inquiry into their authority. It is not a matter of immunity. The requests related to “authority” are nonsense when directed toward claimants who did not file their claims through agents, as the claimants purportedly represented by Multigroup Claimants did. It is for this reason that the Judges have previously held that “[a]ny party objecting to the validity of any claim represented by joint counsel for the SDC would necessarily have to state a valid objection to the claim per se. The SDC are not joint claimants for the devotional category and are not required to establish authority to represent entities in the claims process.” Memorandum Opinion and Ruling on Validity and Categorization of Claims, Distribution of the 2004-2009 Cable and 1999-2009 Satellite Royalty Funds, Docket Nos. 2012-6 CRB CD 2004-2009 and 2012-7 CRB SD 1999-2009 (Phase II) (Mar. 13, 2015), at 6.

3. *There is No Genuine Controversy Regarding the Categorization of the SDC's Programs, and No Demonstrated Need for Discovery of Exemplars and Other Information Related to Categorization.*

Unlike Multigroup Claimants, all of the SDC are religious ministries who have claimed their programs only in the Devotional category -- they are the quintessential Devotional claimants. Unlike Multigroup Claimants, the SDC raised specific reasons to challenge the categorization of certain programs that Multigroup Claimants, and IPG before them, claimed in multiple categories. The SDC withdrew their requests for discovery relating to these programs after Multigroup Claimants clarified that they are no longer claiming the programs in the Devotional category.

It would be extraordinarily burdensome for the SDC to be required to produce exemplars of all of its claimed programs - 216 titles (some of which are multiple titles for the same programs) claimed by 31 different claimants. No participant in these proceedings has ever been

required to produce exemplars or other categorization information relating to all of its programs. Indeed no participant has ever been required to produce any exemplars or other information about the categorization of its programs in the absence of a particularized basis for questioning the categorization of an individual claimant's programs. *See* Amended Joint Omnibus Order on Discovery Motions, Distribution of the 2004-2009 Cable and 1999-2009 Satellite Royalty Funds, Docket Nos. 2012-6 CRB CD 2004-2009 and 2012-7 CRB SD 1999-2009 (Phase II) (Jul. 30, 2014), at 21-22 (granting the SDC's request for program exemplars because IPG's "categorization of the programs [was] at issue in t[he] proceeding since IPG ... changed the programs' categorization from prior proceedings"); *see also* Order Granting in Part and Denying in Part SDC Motion to Compel the Production of Documents, Docket No. 2008-1 CRB CD 98-99 (Phase II) (Jan. 31, 2014), at 13 (granting the SDC's motion to compel IPG to provide documents relating to the devotional category content of Feed the Children, Inc. because the SDC asserted a "particular reason for discovery with regard to Feed the Children program").

The only particularized example cited by Multigroup Claimants as an SDC program that Multigroup Claimants contend was incorrectly categorized in the Devotional category is the claymation program *Davey and Goliath*, claimed in prior proceedings by the Evangelical Lutheran Church in America. It is the reddest of red herrings.

First, Multigroup Claimants' bare assertion that *Davey and Goliath* "is far from capable of satisfying the requirements demanded by the SDC in its scrutiny of IPG's programming" is utterly without support. To the contrary, expert testimony in two prior cases referred to *Davey and Goliath* expressly as Devotional programming. Most on point was the expert testimony of Jeff Rovin, presented by MPAA in the 1999-2009 satellite and 2004-2009 cable cases, in which Mr. Rovin testified as to his expert opinion of the correct categorization of certain IPG-claimed

programs. The only IPG-claimed program reviewed by Mr. Rovin that Mr. Rovin concluded was appropriately categorized in the Devotional category was *The City That Forgot About Christmas*, which Mr. Rovin expressly compared to *Davey and Goliath* in reaching his conclusion that it was Devotional:

The plot drives directly toward a final discourse that stops the action to deliver a message ..., following the classic template of *Davey and Goliath* ...: essentially, that Christmas is not only about God and Jesus, but that faith in, and the presence of, Jesus has the power to save the souls of a populace (Devotional). This program is a Devotional program.

Rebuttal Testimony of Jeff Rovin, *Distribution of the 2004-2009 Cable Royalty Funds, etc.*, Docket No. 2012-6 CRB CD 2004-2009 (Phase II) at 10 (Oct. 15, 2014) (attached as Exhibit A). Neither IPG nor Multigroup Claimants have offered any evidence rebutting or challenging this conclusion. There is no genuine dispute as to *Davey and Goliath*'s categorization as a Devotional program.

Second, and perhaps even more to the point, the Evangelical Lutheran Church in America did not file claims in 2010 through 2013. The SDC therefore do not even claim *Davey and Goliath* in this proceeding. Multigroup Claimants have been unable to identify a single program claimed by the SDC in this proceeding that they contend is not Devotional.

4. *The Legal Structure and Organization of Individual Claimants Comprising the SDC Are Irrelevant.*

Unlike Multigroup Claimants, the SDC have pointed to a specific factual basis for their requests for information regarding the organization of Multigroup Claimants and their relationship with IPG and Raul Galaz, including a specific factual basis to suspect that the purported transfer of certain IPG rights to Multigroup Claimants was for a fraudulent purpose, as Raul Galaz and his father, Alfred Galaz, have previously been found to have engaged in similar transactions with the fraudulent intent of evading creditors. The SDC have also pointed to a

specific factual basis to question whether IPG had the authority to assign its claimant agreements to Multigroup Claimants or to sub-delegate its agency to Multigroup Claimants, as IPG's representation agreements with its claimants do not expressly allow for assignment or sub-delegation.

Also unlike Multigroup Claimants, the SDC have pointed to a specific factual basis for their requests for copyright ownership information relating to *Kenneth Copeland* programs, and have limited their discovery requests to request only certain specifically identified information relating to the claimant of those programs. Multigroup Claimants have not offered any factual basis to support burdensome discovery into the ownership of *all* programs claimed by the SDC.

Also unlike Multigroup Claimants, the SDC have produced documents showing their organization, as such - their currently applicable joint collaboration agreements and amendments, which are the only instruments by which the SDC are organized into a collaborative coalition of Devotional claimants. Multigroup Claimants have produced no equivalent documents showing their structure and organization. At present, it is not even clear whether Multigroup Claimants are an entity or merely an alter ego or fictitious name of Alfred Galaz, Raul Galaz, or IPG itself.

Nevertheless, Multigroup Claimants have served requests for information relating to the legal structures, agreements, owners, principals and officers, and employment and licensing agreements of all of the individual claimants comprising the SDC. The only justification offered for Multigroup Claimants' extraordinarily broad requests is the "possibility that the names utilized on [the SDC's] 'July claims' are incorrect." Multigroup Claimants' Opposition to Motion to Quash at 13.

To support this claim, Multigroup Claimants have offered correspondence produced by the SDC showing that some claimants made corrections to their legal names during the process

in which the SDC's counsel obtained confirmation of claimant names and program titles. Most of these corrections were minor (like the omission of "Inc." at the end of a corporate name). Some involved the use of a "d/b/a," which the Judges have already ruled is acceptable for purposes of filing claims using a claimant's "legal name." See Memorandum Opinion and Ruling on Validity and Categorization of Claims, *Distribution of the 2004-2009 Cable Royalty Funds, etc.*, Docket No. 2012-6 CRB CD 2004-2009 (Phase II) at 40-41 (Mar. 13, 2015) ("The identification of [a fictitious name] ... is sufficient to express the parties intent and to give notice to other claimants").

But even if Multigroup Claimants chose to challenge the Judges' prior ruling regarding fictitious names (a challenge that would inevitably cause far more damage to Multigroup Claimants' Devotional lineup than to the SDC's), they have already received the information necessary to do so. Some of the SDC filed claims using names that were slightly erroneous (for example, missing an "Inc.") or fictitious (for example, a division or dba). That is a fact, it has been disclosed, and Multigroup Claimants can make of it what they will. It is not a justification for wide-ranging discovery into matters that are not genuinely in controversy.

B. The SDC Have Voluntarily Produced All Documents Responsive to the Categories Identified in the Judges' Order of March 14, 2016.

In spite of the fact that Multigroup Claimants have failed to raise or preserve any controversies relating to the validity and categorization of the SDC's claims, the SDC have produced all of the information that the Judges urged the parties to produce without request in their Order of March 14, 2016, including full documentation of:

(1) authority to represent each claimant [*the SDC have produced their currently operative joint collaboration agreements and amendments thereto, redacted only to remove confidential business and privileged*

terms that have no bearing on the claimants' agreement to participate together as the SDC];

(2) accurate program identifying information for each claimant (*e.g.*, correct title and other identifying information in cases in which titles may be confused, *etc.*) [*the SDC have produced a spreadsheet showing all programs they claim in these proceedings, by claimant, and have also produced correspondence with each of the claimants confirming and correcting the information contained in the spreadsheet*]; and

(3) a clear statement, by royalty year, of each claimant's claim against each year's royalty fund [*the spreadsheet produced by the SDC shows each year in which each claimant has submitted a claim, and the SDC have also produced all claims filed*].

Multigroup Claimants asserted in their Motion to Compel that certain emails produced by the SDC were produced without attachments, that Multigroup Claimants were unable to pair certain attachments produced by the SDC with their respective emails, and that Multigroup Claimants were unable to identify which spreadsheet produced by the SDC constituted the “final” version of the SDC's list of programs and claimants. As soon as Multigroup Claimants brought the issue to the SDC's attention, the SDC acted promptly to resolve the problem. *See* Ex. B, email exchange between SDC's counsel and Multigroup Claimants' counsel. The SDC understand that these issues are now resolved.

Multigroup Claimants also take issue with the fact that the SDC redacted portions of their joint collaboration agreements. Portions of the joint collaboration agreements relate to the SDC's internal processes for coordinating with lead counsel for purposes of litigation strategy,

and are therefore privileged under the attorney-client and joint defense privileges. Other portions relate to internal confidential business information, including matters relating to the SDC's internal distribution methodologies, and are therefore irrelevant to any "authority to represent each claimant," which was the only purpose of producing the joint collaboration agreements. In short, the redacted portions are either privileged, or non-responsive, or both. In each place where an entire paragraph is redacted, the section header is left unredacted, so that the subject matter of the redacted section is identified.

As is set forth fully and ably in MPAA's Opposition to Multigroup Claimants' First Motion to Compel Production of Documents at 8-11 (July 28, 2016), the Judges' precedents and the longstanding practice of the participants in copyright royalty proceedings permits the redaction of privileged or non-responsive information in documents produced. Indeed, Multigroup Claimants' predecessor, IPG, frequently engaged in the same practice.

Finally, Multigroup Claimants take issue with the SDC's use of general objections. But unlike Multigroup Claimants, the SDC's general objections are truly general in character, because they provide a basis for refusing to produce documents in response to all of Multigroup Claimants' requests, and are not stated only "to the extent that" certain of Multigroup Claimants' are objectionable without defining that extent.

Moreover, the SDC have adequately identified the scope of documents withheld by identifying precisely the scope of the documents the SDC voluntarily produced and stating that documents outside this scope will not be produced. This approach is fully consistent with, by analogy, Fed. R. Civ. P. 34(b)(2)(C) and its accompanying comment:

[A]n objection to a Rule 34 request must state whether anything is being withheld on the basis of the objection. This amendment should end the confusion that frequently arises when a producing party states several objections and still produces information, leaving the requesting party

uncertain whether any relevant and responsive information has been withheld on the basis of the objections. The producing party does not need to provide a detailed description or log of all documents withheld, but does need to alert other parties to the fact that documents have been withheld and thereby facilitate an informed discussion of the objection. An objection that states the limits that have controlled the search for responsive and relevant materials qualifies as a statement that the materials have been “withheld.”

Similarly, the comment accompanying the recent revisions to Fed. R. Civ. P. 34(b)(2)(B) provides an instructive example:

An objection may state that the request is overbroad, but if the objection recognizes that some part of the request is appropriate the objection should state the scope that is not overbroad.

This is precisely what the SDC have done. They identified the limits of the scope to which they believe Multigroup Claimants’ requests are appropriate (or that the SDC are at least willing to accede to) and they have excluded all other scope based on their objections. That sufficiently defines what the SDC are not producing based on our objections.

Conclusion

For the foregoing reasons, the SDC’s Motion to Quash Discovery Requests of Multigroup Claimants, in Part, should be granted, and Multigroup Claimants’ First Motion to Compel Production of Documents by the SDC should be denied.

Dated: August 3, 2016

Respectfully submitted,

SETTLING DEVOTIONAL CLAIMANTS

 *Arnold P. Lutzker / V.L.D.*

Arnold P. Lutzker, Esq. (DC Bar No. 108106)

Benjamin Sternberg (DC Bar No. 1016576)

Jeannette M. Carmadella, Esq. (DC Bar No. 500586)

LUTZKER & LUTZKER LLP

1233 20th Street, NW, Suite 703

Washington, DC 20036

Telephone: (202) 408-7600

Fax: (202) 408-7677

arnie@lutzker.com

Clifford M. Harrington (D.C. Bar No. 218107)

Matthew J. MacLean (D.C. Bar No. 479257)

Victoria N. Lynch (D.C. Bar No. 1001445)

PILLSBURY WINTHROP SHAW PITTMAN LLP

1200 Seventeenth Street, NW

Washington, D.C. 20036-3006

Telephone: 202-663-8525

Facsimile: 202-663-8007

E-Mail: Clifford.Harrington@PillsburyLaw.com

Counsel for Settling Devotional Claimants

CERTIFICATE OF SERVICE

I, Victoria N. Lynch-Draper, hereby certify that a copy of the foregoing was sent via Federal Express, and sent electronically, this August 3, 2016 to the following:

MULTIGROUP CLAIMANTS SPANISH LANGUAGE PRODUCERS Brian D. Boydston Pick & Boydston, LLP 10786 Le Conte Avenue Los Angeles, CA 90024 brianb@ix.netcom.com	MPAA-REPRESENTED PROGRAM SUPPLIERS Gregory O. Olaniran Lucy Holmes Plovnick MITCHELL, SILERBERG & KNUPP LLP 1818 N Street, NW, 8 th Floor Washington, DC 20036 202-355-7917 202-355-7887 goo@msk.com lh@msk.com
JOINT SPORTS CLAIMANTS Robert Alan Garrett M. Sean Laane Michael Kientzle ARNOLD AND PORTER LLP 602 Massachusetts Avenue, N.W. Washington, DC 20001 202.942.5000 (voice) 202.942.5999 (facsimile) Robert.garrett@aporter.com sean.laane@aporter.com Michael.kientzle@aporter.com Richie T. Thomas Iain R. McPhie SQUIRE PATTON BOGGS (US) LLP 1200 19 th Street N.W., Suite 300 Washington, D.C. 20036 Tel: (202) 626-6600 ritchie.thomas@squirepb.com iain.mcphie@squirepb.com Philip R. Hochberg LAW OFFICES OF PHILIP R. HOCHBERG 12505 Park Potomac Avenue Sixth Floor Potomac, MD 20854 Tel: (301) 230-6572 phochberg@shulmanrogers.com	COMMERCIAL TELEVISION CLAIMANTS NATIONAL ASSOCIATION OF BROADCASTERS John I. Stewart, Jr. Ann Mace CROWELL & MORING LLP 1001 Pennsylvania Ave., NW Washington, D.C. 20004 Telephone: (202) 624-2685 Fax: (202) 628-5116 jstewart@crowell.com

<p>NATIONAL PUBLIC RADIO Jonathan D. Hart Gregory A. Lewis NATIONAL PUBLIC RADIO, INC. 1111 North Capitol Street, NE Washington, DC 20002 Telephone: (202) 513-2050 Fax: (202) 513-3021 glewis@npr.org jhart@npr.org</p>	<p>PUBLIC TELEVISION CLAIMANTS PUBLIC BROADCASTING SERVICE Ronald G. Dove, Jr. Lindsey Tonsager Dustin Cho COVINGTON & BURLING LLP One CityCenter 850 Tenth Street, N.W. Washington, DC 20001 Telephone: (202) 662-5685 Fax: (202) 662-6291 rdove@cov.com ltonsager@cov.com dcho@cov.com</p>
<p>BROADCAST MUSIC, INC. Joseph J. DiMona BROADCAST MUSIC, INC. 7 World Trade Center 250 Greenwich Street New York, NY 10007-0030 Telephone: (212) 220-3149 Fax: (212) 220-4447 jdimona@bmi.com</p> <p>Michael J. Remington Jeffrey J. Lopez Jennifer T. Criss DRINKER BIDDLE & REATH LLP 1500 K Street, NW Suite 1100 Washington, DC 20005 Telephone: (202) 842-8800 Fax: (202) 842-8465 michael.remington@dbb.com jeffrey.lopez@dbb.com jennifer.criss@dbb.com</p>	<p>AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS Samuel Mosenkis ASCAP One Lincoln Plaza New York, NY 10023 Telephone: (212) 621-6450 Fax: (212) 787-1381 smosenkis@ascap.com</p>

SESAC, INC. John C. Beiter Shackelford, Bowen, Zumwalt & Hayes 47 Music Square East Nashville, TN 37203 Phone: 615.256.7200 Fax: 615.256.7106 Email: jbeiter@shackelfordlaw.net	CANADIAN CLAIMANTS GROUP L. Kendall Satterfield FINKELSTEIN THOMPSON LLP ksatterfield@finkelsteinthompson.com Victor J. Cosentino LARSON & GASTON, LLP 200 S. Los Robles Ave, Suite 530 Pasadena, CA 91101 Victor.consentino@larsongaston.com
ARENA FOOTBALL ONE, LLC Edward S. Hammerman HAMMERMAN, PLLC 5335 Wisconsin Avenue, NW Washington, DC 20015 ted@copyrightroyalties.com	


Victoria N. Lynch-Draper

Exhibit A

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

<div style="display: flex; justify-content: space-between; border-bottom: 1px solid black; margin-bottom: 5px;"><div style="width: 45%;">In the Matter of</div><div style="width: 5%; text-align: center;">)</div></div> <div style="display: flex; justify-content: space-between; border-bottom: 1px solid black; margin-bottom: 5px;"><div style="width: 45%;">Distribution of the 2004, 2005, 2006 2007, 2008 and 2009 Cable Royalty Funds</div><div style="width: 5%; text-align: center;">)</div></div>)	Docket No. 2012-6 CRB CD 2004-2009 (Phase II)
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<div style="display: flex; justify-content: space-between; border-bottom: 1px solid black; margin-bottom: 5px;"><div style="width: 45%;">In the Matter of</div><div style="width: 5%; text-align: center;">)</div></div> <div style="display: flex; justify-content: space-between; border-bottom: 1px solid black; margin-bottom: 5px;"><div style="width: 45%;">Distribution of the 1999-2009 Satellite Royalty Funds</div><div style="width: 5%; text-align: center;">)</div></div>)	Docket No. 2012-7 CRB SD 1999-2009 (Phase II)
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Rebuttal Testimony of

Jeff Rovin

October 15, 2014

WRITTEN REBUTTAL TESTIMONY OF JEFF ROVIN

I. BIOGRAPHICAL INFORMATION

My name is Jeff Rovin. I have supported myself entirely as a professional writer since 1971, from the age of 19. I have written over 130 books, including non-fiction and encyclopedic books on television, natural and spiritual phenomena, film history, fantasy, science fiction, comic book characters, and pop culture. Among my many books are *The Great Television Series* (1977), *The Films of Charlton Heston* (1977) (Mr. Heston appeared in the biblical epics *The Ten Commandments*, *Ben-Hur*, and *The Greatest Story Ever Told* and *Charlton Heston Presents the Bible*, produced for television), *The Signet Book of TV Lists* (1982), *The Encyclopedia of Super-Heroes* (1985), and the faith-based thrillers *Conversation with the Devil* (2007) and the newly-published *A Vision of Fire* (2014) with TV star Gillian Anderson. My magazine publications include *Fascinating Facts From The Bible* (1995) and *Fascinating Facts From The Bible: New Testament* (2001).

In 1974, I created and edited the groundbreaking Atlas Comics line which included one title I also wrote, the religious-themed *The Phoenix* (EXHIBIT 1). I served as the film and TV columnist for *Omni Magazine*, covered television for *Ladies Home Journal* for fourteen years, and have also worked as a media consultant and a writer for syndicated entertainment series such as *Access Hollywood* and for prime time series such as *Designing Women*. I have written 14 national bestsellers, including 12 novels on the *New York Times* bestseller list. I have also adapted numerous motion picture screenplays to novel form (i.e., novelized) including *Cliffhanger*, *The Game*, and *Broken Arrow*.

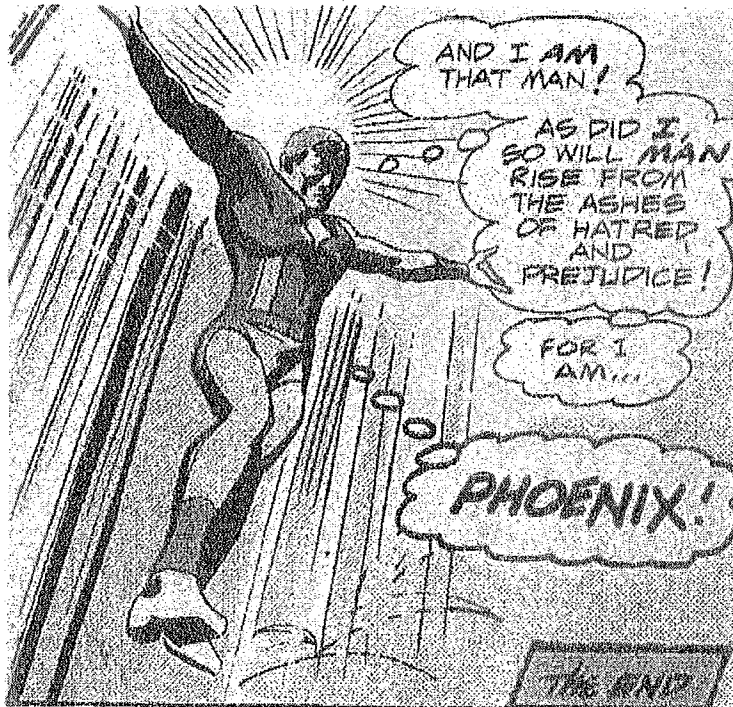


EXHIBIT 1

As a long-time historian of TV, film, and radio -- often with religious subjects; having worked in television in New York and Hollywood; and having been a student of martial arts and Eastern religious philosophy for over a half-century, I have watched and analyzed countless hours of religious programming and history that date back to 1930s radio, especially the tumultuous 1940s when the very topic of what constituted a devotional program and, more importantly, who constituted a devotional programmer were aggressively debated. I also followed the evolution of the issue of which of those devotional programs was deemed reliably a "public service" (that is, wholesomely, traditionally religious) that could be offered during sustaining time: that is, airtime donated by the networks as a public service.¹ In researching my non-fiction and fiction works, I was exposed to works as diverse as *Life is Worth Living* (which

¹ Accurate and comprehensive histories of this era and struggle can be found at <http://www.u-s-history.com/pages/h3817.html> and <http://www.religion-online.org/showarticle.asp?title=3369>. These overviews detail the origins of the radio and television origins of 'hardcore' religious program: that is, programs that are Devotional.

debuted in 1951) starring the legendary Fulton J. Sheen, the first "televangelist" (EXHIBIT 2) and the animated series *Davey and Goliath*, produced by the Lutheran Church in America (EXHIBIT 3).



EXHIBIT 2

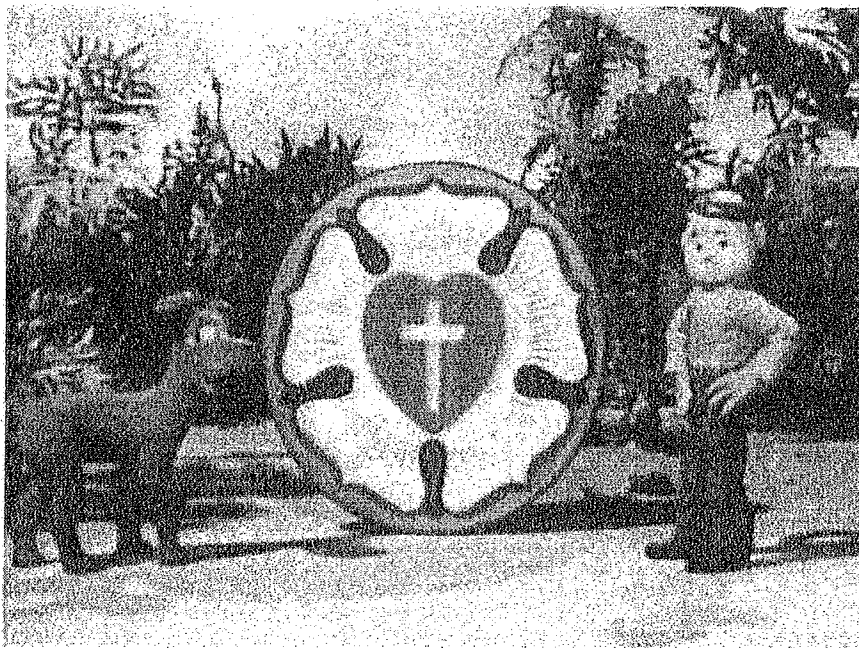


EXHIBIT 3

I have testified as an expert witness numerous times, including testifying in copyright infringement matters where I evaluated TV programming including Warner Bros. (Superman) v. ABC (*Greatest American Hero*) (1981), Mark Gable (*Karma*) v. NBC (*My Name is Earl*) (2008), CBS (*Big Brother*) v. ABC (*Glass House*) (2012) and Randall Shuptrine (*Woodsculpting*) v. Scripps Network (*Man Caves*) (2013), among many others. A copy of my CV listing my professional activities and publications is attached to my report as Appendix A.

II. PURPOSE OF TESTIMONY AND SUMMARY CONCLUSION

I have been retained by the Motion Picture Association of America, Inc. ("MPAA") in this matter to provide expert opinion on whether certain programs claimed by Independent Producers Group ("IPG") fall within the syndicated programming, movies, and non-team sports category (the "Program Suppliers category") or whether they constitute "syndicated programs of a primarily religious theme," and thus fall within the Devotional category.² As explained herein, I evaluated eight IPG-claimed programs, as those were the only titles for which IPG produced representative exemplars in discovery. Of those eight programs, I conclude that seven of them, *Christmas Is*, *Easter Is*, *Little Shepherd*, *On Main Street*, *Red Boots For Christmas*, *The Stableboy's Christmas*, and *Puzzle Club Easter Adventure* are not syndicated programs of a primarily religious theme, and thus should be categorized as Program Suppliers programs.³ One of the titles, *The City That Forgot About Christmas*, is a syndicated program of a primarily religious theme, and thus falls within the Devotional category.

² See Ruling And Order Regarding Claims And Separate Opinion, Docket No. 2008-1 CRB CD 98-99 (Phase II) at 14 n. 19 (June 18, 2014).

³ For purposes of my analysis, I assume that any syndicated program that is not Devotional in nature falls in the Program Suppliers category by default.

III. MATERIALS REVIEWED

In preparing for this testimony, I reviewed the following materials which MPAA's counsel provided to me: (1) a list of titles, listed in Appendix B, that I understand IPG is claiming in both the Program Suppliers and the Devotional categories; (2) thirteen DVDs, listed in Appendix C, that I understand IPG produced to MPAA in discovery as exemplars of the IPG claimed titles; (3) the written and oral testimony of Dr. William Brown in Docket No. 2008-1 CRB CD 98-99 (Phase II); and (4) the Copyright Royalty Judges' Ruling And Order Regarding Claims And Separate Opinion issued in that proceeding on June 18, 2014 ("June 18 Order").

IV. METHODOLOGY

I begin my analysis with the definition that a Devotional program must be a syndicated program of a "primarily religious theme."⁴ To give meaning to this definition, I draw upon my extensive study of over eighty years of broadcast history, including the creation and evolution of religious-themed programs on radio and television and what I understand to be the traditional foundational qualities of Devotional programs. Drawing on this study, I analyze whether the work in question is homiletic or secular.

In general, a homiletic work ultimately proselytizes a specific point of view that is strongly scripture or deity-based. By contrast, a secular work generally communicates, without advocating, a story or stories drawn from a particular religion; provides general spiritual encouragement; or assumes a philosophically neutral stance to educate the audience about one or more religions. My examination includes observations of the various religious elements employed in the work, such as contextual references to the respective "holy books," the use of religious symbols, quotes from scripture, *etc.* In short, there is a clear demarcation between

⁴ June 18 Order at 14, n. 19.

works that are merely reverential (e.g., “God is great,” “Christmas is for celebrating Jesus”) and those that directly or implicitly encourage the viewer to embrace a specific religious point of view. Unlike reverential programming, Devotional programs *do not depend* on the viewer’s past experiences or ‘goodwill’ toward a topic to have an impact. That is, a devout viewer is likely to read more into a Christmas or Easter-themed presentation than a lay viewer. A devout viewer is likely to derive a level of *personal* religious inspiration from a non-religious TV series like *Highway To Heaven* which features angels (see below). To the lay viewer, however, the angelic and miraculous content in *Highway to Heaven* may have no more import than the fantastic and magical genie in the TV series *I Dream of Jeannie*. Naked content, even when there is mention of God, Moses, Jesus, the clergy, or superficial interpolations of scriptural ideas (e.g., “The Golden Rule” which has been secularized despite appearing in Luke 6:31), do not make a program Devotional.

With these elements in mind, I summarize my criteria for evaluating each work as follows:

A. Is the program rooted in or built around homiletic rather than historical or vaguely spiritual content scrubbed of scripture:

B. Is there a strong, focused, proselytic message:

C. And/or is there an evangelical message drawn from a specific faith or worldview (e.g., “Jesus as Savior” rather than “Jesus was born”)?

A program may well have an uplifting, even spiritual content (e.g., non-religious shows about angels ranging from *The Smothers Brothers Show* [1965-1966] to *Highway to Heaven* [1984-1989] to *Touched by An Angel* [1994-2003]). Or the work may be profoundly moving like the classic *Monkees Christmas Special* (1967) which concludes with a legendary rendition of *Rit*

Riu Chiu: that classic Spanish Christmas carol refers to the Nativity and the Immaculate Conception yet the program as a whole still falls far short of being Devotional.⁵ These programs help to underscore my belief that Mr. Brown's view of the topic is overbroad⁶ and that content alone is not sufficient, in broad strokes, to brand a show. The angel in *The Smothers Brothers Show* works miracles and tries to help people but it is not even reverential.⁷ The angel may well have wings like a 12th Century icon (EXHIBITS 4 and 5), but the raw facts do not define the show, *nor* do they preclude the possibility that a viewer who is enamored of angels and angelic lore might not see his or her own belief reflected in the presentation. Such a reaction is not inherent in the program *or* its mission.



EXHIBIT 4

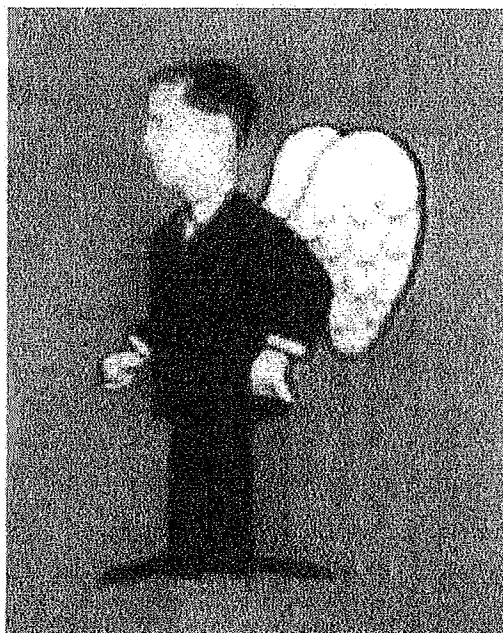


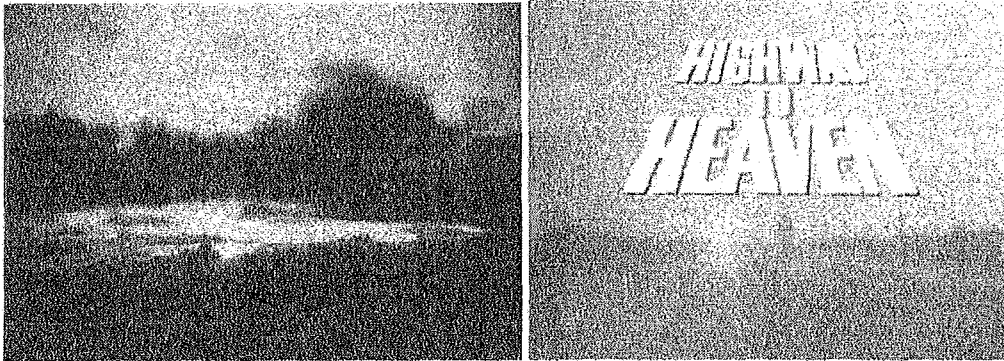
EXHIBIT 5

⁵ https://www.youtube.com/watch?v=c_hlYgCNFZc.

⁶ Written Rebuttal Testimony of Dr. William Brown, Docket No. 2008-1 CRB CD 98-99 (Phase II) at 2-3 (March 14, 2014), *see also* Docket No. 2007-1 CRB CD 98-99 (Phase II) Hearing Tr. at 463-552 (May 6, 2014).

⁷ The opening of a typical show is at <https://www.youtube.com/watch?v=eSREVhyjUG4>.

The Smothers Brothers Show is a comedy but *Highway to Heaven* is not. It is the story of an angel who teams with a mortal man and, using empathy and occasional miracles, helps those in need at the behest of 'the Boss' (God). The program is frequently moving and at times reverential, as underscored by the descent-through-the-clouds opening (EXHIBITS 6 and 7). But it does not have a specifically religious point of view, does not direct the viewer toward scripture, and to a lay viewer could well be considered a 'fantasy' and not 'religious.'



EXHIBITS 6 and 7

These same qualities can be found in *Touched by an Angel*, where an angel and her angelic supervisor deliver hopeful and inspirational messages from a higher source. Once more, there is no point-of-view of any one religion and the common-sense guidance offered could just as easily have come from Aesop or Shakespeare as from the Bible. Despite the occasional reverence toward powers unseen, one could substitute the pantheon of Greek gods for the angelic figures without compromising the theme or impact.

IV. ANALYSIS OF IPG TITLES

I understand that IPG has identified 105 different titles that it is claiming in both the Program Suppliers category and the Devotional category, and produced thirteen DVDs as exemplars of the IPG-claimed titles. See Appendices B and C, respectively. I compared the

program titles on the DVDs IPG produced with the list of IPG-claimed titles, and I identified only eight titles for which exemplars of the program had been produced. These eight titles are *Christmas Is*, *Easter Is*, *Little Shepherd*, *On Main Street*, *Red Boots For Christmas*, *The City That Forgot About Christmas*, *The Stableboy's Christmas*, and *Puzzle Club Easter Adventure*. In my professional opinion, it is essential to have an exemplar of the aired program available in order to evaluate whether or not the program falls in one program category or another. Accordingly, I render no opinion on IPG titles I could not match with the produced DVDs. Based on my analysis set forth above, the following are my conclusions with regard to the program category into which each of the eight matched titles identified above fall:

1. *Christmas Is*

Children put on a Christmas play, and reading a book about Jesus' birth, a child effectively relives the event. Though the program tells the story of Jesus, it does so not through scripture, but through a narrative that is primarily historic. This is not a Devotional program.

2. *Easter Is*

The same family as in *Christmas Is* appears again in a program about the creation of secular Easter posters. One child prays for his lost dog and his father tells him about Jesus returning from the dead and His love. The child proceeds to create a Jesus poster for Easter. Again, there is no scripture or denominational agenda. The content is modestly celebratory, but 'grateful' is not 'prayerful,' and it lacks the strong introspective component that would make it Devotional. Though arguably on the cusp, it is not a Devotional program.

3. *Little Shepherd*

This is primarily an action-based cartoon set in ancient times about shepherds versus wolves. Though there is a climactic quotation of the 23rd Psalm, that oft-cited text is a catchall

that promotes general faith rather than a specific idea. The fact that a child sees the baby Jesus in the manger and talks to Mary and Joseph actually has an anti-Devotional quality by transmuting them from the celestial to the somewhat mundane. This program is not a Devotional program.

4. *On Main Street*

This work, about interviews with 'people on the street,' leads to a generic discussion about angels (akin to the above-mentioned series about angels). This is not a Devotional program.

5. *Red Boots for Christmas*

This is essentially Charles Dickens' *A Christmas Carol* that tangentially contains references to God and Jesus/the Nativity. The bulk of the presentation consists of carols (*Joy to the World, God Rest Ye Merry Gentlemen*). Grace is sung, but there are no scriptural references and the show is primarily *about* the redemption of a selfish man. This is not a Devotional program.

6. *The City That Forgot About Christmas*

This is another story featuring the family from *Christmas Is*. This program is a little different. Once more, there is no scripture and it is largely about the over 'Santa-fication' of Christmas. Moreover, the program is primarily about the *start* of the transformation of a godless town. The plot drives directly toward a final discourse that stops the action to deliver a message beginning at 22:22, following the classic template of *Davey and Goliath* (EXHIBIT 8): essentially, that Christmas is not only about God and Jesus, but that faith in, and the presence of, Jesus has the power to save the souls of a populace (Devotional). This program is a Devotional program.



EXHIBIT 8

7. Stableboy's Christmas

A Nativity scene comes to life and a boy finds himself in the time of Jesus. The presentation of the Star of Bethlehem and the birth of Jesus is presented from a decidedly historic perspective. It requires the goodwill of the viewer – that is, a pre-existing understanding of Jesus and a predisposition to His Divinity – to be considered Devotional. Thus, this program is not a Devotional program.

8. Puzzle Club's Easter Adventure

This program is about kid-detectives who ultimately realize that God loves them, thanks to an elderly man facing death, but having faith in Jesus. The presentation is without coloration or detail and it is not a Devotional program.

CONCLUSION

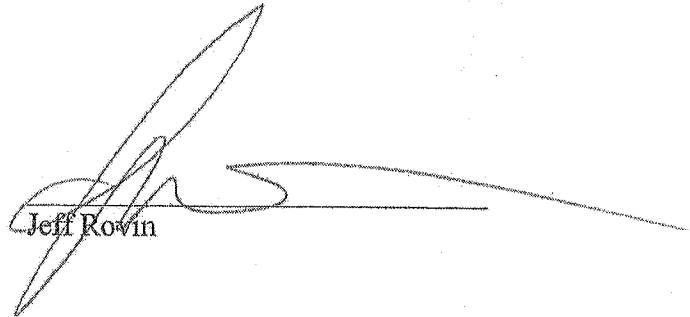
In conclusion, I find that I only have adequate information available to evaluate and categorize eight of the titles that IPG cross-claimed in the Program Suppliers and Devotional program categories. Of these eight titles, I conclude that seven of them should be categorized as Program Suppliers programs, and one of them, *The City That Forgot About Christmas*, should be categorized as a Devotional program.

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

DECLARATION OF JEFF ROVIN

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

Executed on October 15, 2014


Jeff Rovin

APPENDIX A

Jeff Rovin, One West Street, PH 10, NY, NY 10004, 212-742-7917, Jeffrovin@aol.com

PUBLISHED BOOKS (from the earliest)

1. A PICTORIAL HISTORY OF SCIENCE FICTION FILMS (reprinted as CLASSIC SCIENCE FICTION FILMS): NF/Citadel/1975
2. HOLLYWOOD DETECTIVE: GARRISON: F/Manor/1975
3. HOLLYWOOD DETECTIVE: THE WOLF: F/Manor/1975
4. THE HINDENBURG DISASTER: F/Manor/1975
5. OF MICE AND MICKEY: NF/Manor/1975
6. THE FABULOUS FANTASY FILMS: NF/Barnes/1977
Playboy Book Club/Movie Book Club
7. FROM JULES VERNE TO STAR TREK: NF/Drake/1977
8. THE SUPERNATURAL MOVIE QUIZBOOK: NF/Drake/1977
9. THE GREAT TELEVISION SERIES: NF/Barnes/1977
Nostalgia Book Club selection.
10. MOVIE SPECIAL EFFECTS: NF/Barnes/1977
11. THE FILMS OF CHARLTON HESTON: NF/Citadel/1977
Movie Book Club
12. FROM THE LAND BEYOND BEYOND: The Films of Ray Harryhausen:
NF/Berkley-Windhover/1977
13. MARS!: NF/Corwin-Pinnacle/1978
14. THE UFO MOVIE QUIZ BOOK: NF/Signet/1978
15. THE SUPER HERO MOVIE AND TV QUIZBOOK: NF/Signet/1979
16. THE FANTASY ALMANAC: NF/Dutton/1979
17. COUNT DRACULA'S VAMPIRE QUIZ BOOK: NF/Signet/1979
18. THE SIGNET BOOK OF MOVIE LISTS: NF/Signet/1979
19. THE ANDRASSY LEGACY: F/Jove/1981
20. THE TRANSGALACTIC GUIDE TO SOLAR SYSTEM M-17: F/
Perigee/1981
21. THE SCIENCE FICTION COLLECTOR'S CATALOG: NF/Barnes/1982
22. THE SIGNET BOOK OF TV LISTS: NF/Signet/1982
23. THE SECOND SIGNET BOOK OF MOVIE LISTS: NF/Signet/1982
24. ALWAYS, LANA: NF/Bantam/1982 (bio of Lana Turner)
25. THE COMPLETE GUIDE TO CONQUERING VIDEOGAMES: NF/Macmillan/1982
Doubleday Book Club
26. RICHARD PRYOR: BLACK AND BLUE: NF/Bantam/1983 (bought by HBO in 1996
for a movie)
27. THE MADJAN: F/Charter/1984
28. WINNING AT TRIVIAL PURSUIT: NF/Signet/1984
National Bestseller
29. IN SEARCH OF TRIVIA: NF/Signet/1984
National Bestseller
30. TV BABYLON: NF/Signet/1984; revised 1987
31. JOAN COLLINS: NF/Bantam/1984
32. JULIO!: NF/Bantam/1985

33. THE ENCYCLOPEDIA OF SUPER HEROES: NF/Facts-On-File/1985
Movie/Entertainment Book Club
34. STALLONE: A HERO'S STORY: NF/Pocket Books/1985
35. APRIL FOOL'S DAY: F/Pocket Books/1986
36. 1,001 GREAT JOKES: NF/Signet/1987
37. THE RE-ANIMATOR: F/Pocket Books/1987
38. THE ENCYCLOPEDIA OF SUPER VILLAINS: NF/Facts-On-File/1987
39. STARIK: F/Dutton/1988 (Pinnacle/paperback/1989)
40. DAGGER: F/Charter/1988
41. HOW TO WIN AT NINTENDO GAMES: NF/St. Martins/1988 updated 1989
National Bestseller
42. 1,001 MORE GREAT JOKES: NF/Signet/1989
43. FORCE FIVE: DESTINATION ALGIERS: F/Lynx/1989
44. FORCE FIVE: DESTINATION STALINGRAD: F/Lynx/1989
45. FORCE FIVE: DESTINATION NORWAY: F/Lynx/1989
46. THE ENCYCLOPEDIA OF MONSTERS: NF/Facts-On-File/1989
47. 1,001 GREAT ONE-LINERS: NF/Signet/1989
48. HOW TO WIN AT NINTENDO GAMES 2: NF/St. Martins, 1989
49. HOW TO WIN AT NINTENDO GAMES 3: NF/St. Martins, 1990
50. THE RED ARROW: F/Dutton/1990
51. THE SPIRITS OF AMERICA: NF/Pocket Books/1990
52. 500 HILARIOUS JOKES FOR KIDS: NF/Signet/1990
53. 500 MORE HILARIOUS JOKES FOR KIDS: NF/Signet/1990
54. THE UNAUTHORIZED TEENAGE MUTANT NINJA TURTLES QUIZ BOOK:
NF/St. Martins/1990
55. HOW TO WIN AT NINTENDO SPORTS GAMES: NF/St. Martins, 1990
56. HOW TO WIN AT SUPER MARIO BROS. GAMES: NF/St. Martins, 1990
57. SIMPSON FEVER! NF/St. Martins, 1990
58. 1,001 GREAT SPORTS JOKES: NF/Signet/1991
59. HOW TO WIN AT SEGA/GENESIS GAMES: NF/St. Martins, 1991
60. THE ILLUSTRATED ENCYCLOPEDIA OF CARTOON ANIMALS: NF/Prentice Hall
Press/1991
61. TV BABYLON 2: NF/Signet/1991
62. HOW TO WIN AT GAME BOY GAMES: NF/St. Martins/1991
63. HOW TO WIN AT NINTENDO GAMES 4: NF/St. Martins/1991
64. LUKE MANIA/JASON FEVER: NF/Berkley/1991
65. LAWS OF ORDER: NF/Ballantine/1992
66. 500 GREAT LAWYER JOKES: NF/Signet/1992
67. 500 GREAT DOCTOR JOKES: NF/Signet/1992
68. 1,001 GREAT PET JOKES: NF/Signet/1992
69. HOW TO WIN AT SUPER NES GAMES: NF/St. Martins/1992
70. THE BEST OF HOW TO WIN AT NINTENDO GAMES: NF/St. Martins/1992
71. THE WORLD ACCORDING TO ELVIS: NF/HarperCollins/1992
72. THE LASERDISC FILM GUIDE: NF/St. Martins/1993
73. THE FIRST GOOD NEWS/BAD NEWS JOKE BOOK: NF/Signet/1993
74. SPORTS BABYLON: NF/Signet/1993
75. COUNTRY MUSIC BABYLON: NF/St. Martins/1993
76. CLIFFHANGER: F/Berkley/1993
77. THE SECOND GOOD NEWS/BAD NEWS JOKE BOOK: NF/Signet/1994
78. THE UNBELIEVABLE TRUTH!: NF/Signet/1994
79. WHAT'S THE DIFFERENCE?: NF/Ballantine/1994

80. BACK TO THE BATCAVE! with Adam West: NF/Berkley/1994
81. DINOMITE DINOSAUR JOKES: F/Pocket Books/1994
82. GAMEMASTER: HOW TO WIN AT SUPER NES GAMES: NF/St. Martins/1994
83. GAMEMASTER: HOW TO WIN AT SEGA GENESIS GAMES: NF/St.
Martins/1994
84. ELLEN!: NF/Pocket/1994
85. ADVENTURE HEROES: NF/Facts on File/1995
86. GAMEMASTER: HOW TO WIN AT VIDEOGAMES: NF/St. Martins/1995
87. DUMB MOVIE BLURBS: NF/Berkley/1995
88. ROBOTS, SPACESHIPS, AND ALIENS: NF/Facts on File/1995
89. MORTAL KOMBAT: F/Boulevard Books/1995
90. CAT ANGELS: F/HarperCollins/1995
91. KELSEY GRAMMER: NF/HarperCollins/1995
92. BROKEN ARROW: F/Berkley/1995
93. TOM CLANCY'S OP-CENTER: F/Berkley/1995: New York Times #1 bestseller
94. TOM CLANCY'S OP-CENTER: MIRROR IMAGE: F/Berkley/1995: New York Times
Bestseller
95. TOM CLANCY'S OP-CENTER: GAMES OF STATE: F/Berkley/1996: New York
Times Bestseller
96. TOM CLANCY'S OP-CENTER: ACTS OF WAR: F/Berkley/1997: New York Times
Bestseller
97. THE ESSENTIAL JACKIE CHAN: NF/Pocket Books/1997
98. THE GAME: F/Boulevard Books/1997
99. TOM CLANCY'S OP-CENTER: BALANCE OF POWER: F/Berkley/1998: New York
Times Bestseller
100. THE RETURN OF THE WOLF MAN: F/Boulevard Books (MCA)/1998
101. VESPER: F/St. Martins/1998 (bought by Touchstone and Sonnenfeld-Josephson
for a motion picture; Book of the Month Club Main Selection; Random House Audio Book)
102. TOM CLANCY'S OP-CENTER: STATE OF SIEGE: F/Berkley/1999: New York
Times Bestseller
103. ST. WAR: F/Berkley/2000 (optioned by Bob Rehme Productions for a TV mini-series)
104. FATALIS: F/St. Martins/2000 (optioned by Universal Pictures for Sylvester Stallone)
105. TOM CLANCY'S OP-CENTER: DIVIDE AND CONQUER: F/Berkley/2000: New
York Times Bestseller
106. ST. WAR: DEAD RISING F/Berkley/2004
107. TOM CLANCY'S OP-CENTER: LINE OF CONTROL: F/Berkley/2001: New York
Times Bestseller
108. TOM CLANCY'S OP-CENTER: MISSION OF HONOR: F/Berkley/2002: New York
Times Bestseller
109. TOM CLANCY'S OP-CENTER : SEA OF FIRE: F/Berkley/2003: New York Times
Bestseller
110. TOM CLANCY'S OP-CENTER: CALL TO TREASON: F/Berkley/2004, New York Times
Bestseller
111. TOM CLANCY'S OP-CENTER: WAR OF EAGLES: F/Berkley/2005, New York Times
Bestseller
112. UNIT OMEGA: LOCH NESS: F/Berkley/2004 (as Jim Grand)
113. UNIT OMEGA: MEDUSA: F/Berkley/2004 (as Jim Grand)
114. TEMPEST DOWN: F/St Martins/2004
115. ROGUE ANGEL: F/St Martins/2005
116. THE DEVIL'S RANGERS: F/Berkley/2006 (as Jim Grand)
117. CONVERSATIONS WITH THE DEVIL: F/Tor/2007

- 118: DON'T EVEN THINK ABOUT TELLING THIS JOKE AT WORK: F/Berkley/2007 (as Henry Bergen)
- 119: DON'T EVEN THINK ABOUT TELLING THIS JOKE TO YOUR LAWYER: F/Berkley/2007 (as Henry Bergen)
- 120: GOLDIE'S LOX AND THE THREE BAGELS: F/Kensington/2007 (as Lila Dubinsky)
- 121: MOTHER GOOSEBERG'S NURSERY RHYMES: F/Kensington/2008 (as Lila Dubinsky)
- 122: ERNIE: The autobiography of Ernest Borgnine; NF/Kensington/2008 (Ghostwritten)
- 123: YINGLISH: Jewish-American neologisms; F/Kensington/2009 (as Sasha Klotz)
- 124: 3:10 TO BOCA: Jewish Westerns: F/Kensington/2009 (as Zane Greyberg)
- 125: ONE FOOT IN THE GRAVY: F/Kensington/2011 (as Delia Rosen)
- 126: (Confidential, ghostwritten New York Times bestseller): F/St. Martins/2012
- 127: BLOOD OF PATRIOTS: F/Kensington/2012 (as William Johnstone)
- 128: THE OPERATIVE: F/Kensington/2012 (as Andrew Britton)
- 129: KILLER IN THE RYE: F/Kensington/2012 (as Delia Rosen)
- 130: FROM HERRING TO ETERNITY: F/Kensington/2013 (as Delia Rosen)
- 131: (Confidential, ghostwritten sequel to 126) F/St. Martin's/2013
- 132: (Confidential, ghostwritten novel) F/Headline Books/2013
- 133: TO KILL A MATZOBALL: F/Kensington/2014 (as Delia Rosen)
- 134: THE COURIER: F/Kensington/2014 (as Andrew Britton)
- 135: CRY ME A LIVER: F/Kensington/2014 (as Delia Rosen)
- 136: EARTHEND: VISION OF FIRE: F/Simon & Schuster/2014 with Gillian Anderson
- 137: THREATCON DELTA: F/Kensington/2015 (as Andrew Britton)
- 138: EARTHEND: A DREAM OF ICE: F/Simon & Schuster/2015 with Gillian Anderson
- 140: (Confidential, ghostwritten sequel to 131) F/St. Martin's/2015
- 141: EARTHEND: A SOUND OF SEAS: F/Simon & Schuster/2016 with Gillian Anderson

DVD AUDIO COMMENTARY

Perhaps Love (2007)
Dragon Tiger Gate (2007)
Shamo (2008)
Sleepy Eyes of Death (2009)

SHORT STORIES

1. "The Horse that Jack Built," *Analog Yearbook*, Avon, 1979
2. "A Knight at the Opera," *The Further Adventures of Batman: Catwoman*: Bantam, 1992
3. *Gotham City 14 Miles*: Afterword for Batman book: Sequart Research & Literacy Organization, 2010

SELECTED MAGAZINES

THE BROADSHEET (film columnist, November, 2009 to October, 2012)
WEEKLY WORLD NEWS (freelance editor-in-chief, March, 2005 -August, 2007): Paranormal, monster and extraterrestrial reportage.
SCIENCE FICTION CHRONICLE: 1990 - 2007 (monthly film/DVD/TV/Comic book column, "SF Cinema")
FASCINATING FACTS FROM THE BIBLE: NEW TESTAMENT (2001)

FASCINATING FACTS FROM THE BIBLE (1995)
I WISH I'D THOUGHT OF THAT (1995)
GREAT AMERICAN GHOST STORIES (1994)
MYSTERY SCENE: 1994-1998 (film column, "Mystery Media"), 1999 - 2001 (monthly film column, "Mystery Scinema") (also ran on Hollywood.com)
MAD MAGAZINE: 1986 -1998 (monthly "quote" from Alfred E. Neuman)
LADIES HOME JOURNAL: 1978 - 1993 (celebrity interviews)
EYE-ON: 1984 -1985 (publisher/editor magazine of pop-culture)
VIDEOGAMING ILLUSTRATED: 1982 - 1984 (publisher/editor)
OMNI: 1980 -1982 (monthly film column)
ANALOG: 1975 -1980 (film articles)
HARVEY COMICS: writer, **NEW KIDS ON THE BLOCK** comic book
ARCHIE COMICS: writer for **LAUGH** comic book
CRACKED MAGAZINE (humor)
MUPPET MAGAZINE (humor)

TV SERIES

ACCESS HOLLYWOOD, 1997 - 1999, consultant to syndicated entertainment series.
ENTERTAINMENT TONIGHT, 1994-5, daily consultant.
THOMASON, Linda Bloodworth and Harry, 1993-5, consultant on prime time series
Designing Women, Evening Shade and Hearts Afire.
TRIVIA TRAP: written for Mark Goodson Productions. Aired on ABC 1984-5.
OMNI TV SHOW: writer/consultant, 1980.

MEDIA CONSULTANT

WORLD TRADE ART GALLERY: December, 2013 – present: curator of comic book and Animation art.
APPLE/NATIONAL ENQUIRER: December, 2011 - August, 2012: Editor, Enquirer-Plus iPad App
RadarOnline: October, 2008 – March, 2009: Oversaw the transition from print to web-based, including dramatic demographic shift.
BIG Entertainment (now Hollywood Media) 1996-7 (consultant on comic books, graphic novels, novels, toys, and multimedia enterprises)
DC COMICS 1986-9 (consultant book publishing program)
BLOCKBUSTER VIDEO 1992-3 (consultant on improving rentals)
ENCYCLOPEDIA AMERICANA 1988-91 (wrote entries on popular culture)
LJN 1986 (national spokesperson for Photon toy)
WORLD BOOK ENCYCLOPEDIA 1981-83 (consultant on film coverage)
MGM 1981 (creative consultant on film **CLASH OF THE TITANS** and developed motion picture **THAT'S SPECIAL EFFECTS!**)
WARREN PUBLISHING COMPANY 1976 – 1983 (consultant, special projects editor)
CONDE NAST 1975 (created touring science fiction film program)
PETER PAN INDUSTRIES 1975 (packaged series of **STAR TREK** records)
SCHOLASTIC MAGAZINES 1975 (consultant, fantasy publications)

STAFF EMPLOYMENT

(1971-75; freelance since then)
 Editor, Seaboard magazines and comics, 1974-5: superhero and horror comics, romance magazines, puzzle books, etc.
 Associate Editor, Warren magazines 1973-4, including **FAMOUS MONSTERS**, **CREEPY**, **VAMPIRELLA**, others. Ran Captain Company mail order division.

Copywriter, Country Studios Advertising, 1972-3.

Assistant Editor, DC Comics, 1972. Wrote for comic books TARZAN, LOIS LANE,
LEGION OF SUPER-HEROES, GI WAR STORIES, SGT. ROCK, others. Worked with
Gloria Steinem on her *Wonder Woman* book.

Assistant Editor, Skywald Publishing, 1971-2. Worked on horror and science fiction comics.

Editorial Assistant, Beagle Books (Ian Ballantine): 1970

ACTIVE PROFESSIONAL MEMBERSHIPS

AUTHORS GUILD

SCIENCE FICTION AND FANTASY WRITERS OF AMERICA

MYSTERY WRITERS OF AMERICA

WESTERN WRITERS OF AMERICA

HORROR WRITERS ASSOCIATION

ROMANCE WRITERS OF AMERICA

THE INTERNATIONAL ASSOCIATION OF MEDIA TIE-IN WRITERS

LEGAL MATTERS

20th Century Fox ("Star Wars") v. Universal Pictures ("Battlestar Galactica"): 1979
Youngman, Hungate, Leopold and Rosenfeld, Meyer, Susman
For Defendant

Scott Shaw ("Duckula") v. Filmation ("Quackula"): 1980
Rosenfeld, Meyer, Susman
For Defendant

Marvel Comics ("Spider-Man") v. Filmation ("Web Woman"): 1980
Shea/Gould
For Defendant

Warner Bros. ("Superman") v. ABC ("Greatest American Hero"): 1981
Townley and Updike
For Defendant

Universal Pictures ("King Kong") v. Nintendo ("Donkey Kong"): 1982
Mudge, Rose
For Defendant

Coleman and Burton ("Triumph") v. Milton Bradley ("Dark Tower"): 1983
Wistow and Barylick
For Plaintiff
Note: Jury award of \$737,058.10 for lost royalties

DeStefano ("Predator") v. 20th Century Fox ("Predator"): 1994
Mark Jackson
For Defendant

FASA ("Battletech") v. Playmates Toys ("Exo-Squad"): 1995

Pattishall, McAuliffe

For Defendant

Minsky ("The Aquarius Mission") v. Steven Spielberg ("SeaQuest DSV") 1995

Leopold, Petrich, Smith

For Defendant

Ed McMahon v. Star Magazine: 1995

Leopold, Petrich, Smith

For Defendant

Note: At issue was whether reportage of drunkenness, supporting a public image, was defamatory.

ITC Entertainment ("Dwayne") v. Universal Pictures ("Beethoven"): 1995

Leopold, Petrich, Smith

For Defendant

Schanes/Blackthorne Publishing ("Jack Hunter") v. New Line ("Long Kiss Goodnight"): 1996

Bill Grantham

For Defendant

Zuhdi ("Egyptscape") v. MGM ("Stargate"): 1996

David Kearney

For Defendant

Berns ("The Return of Waldo Fox") v. 20th Century Fox ("The Visitor"): 1997

Bonnie Bogin

For Defendant

River Enterprises ("Damned River") v. Universal Pictures ("River Wild"): 1998

Katten, Muchin

For Defendant

Sears-McClellan ("The Single Allegorical Adventure of Eddie the Existential Ant") v. DreamWorks ("Antz"): 1998

Leopold, Petrich, Smith

For Defendant

Marv Wolfman v. Marvel Comics ("Blade") and New Line Cinema: 1999

Battle, Fowler

For Defendant

NBC ("Law and Order") v. Studios USA ("Arrest and Trial"): 2000

Robert K. Fitzpatrick

For Defendant

van Daalen ("Trust Me") v. Paramount ("Lucky Numbers"): 2000
Katten, Muchin
For Defendant

Selby ("Doubletime") v. New Line Cinema ("Frequency"): 2000
Leopold, Petrich, Smith
For Defendant

Kloor v. Tribune Media ("Gene Roddenberry's Earth: Final Conflict"): 2001
Quinn, Emanuel
For Defendant
Note: Idea submission

Kellerman ("Young Shakespeare") v. Miramax Film Corp. ("Shakespeare in Love"): 2001
Katten, Muchin
For Defendant

NRI Film Production Associates ("Extraterrestrial Mission") v. 20th Century Fox ("Independence Day"): 2001
Bonnie Bogin
For Defendant
Note: Case was heard in Mysore, India

Santa Fe Entertainment ("It's About Time") v. Paramount Pictures ("Clockstoppers"): 2001
Leopold, Petrich, Smith
For Defendant

MGM ("It's a Mad, Mad, Mad, Mad World") v. Paramount ("Rat Race"): 2001
Andrew Chang
For Plaintiff

Mattson ("Me") v. New Line ("The Cell") 2002
Pryor, Cashman
For Defendant

Silberstein ("Sqratt") v. 20th Century Fox ("Ice Age"): 2002
Bonnie Bogin
For Defendant

Shreibman and Fiveson ("Clonus") v. DreamWorks/Warner Brothers ("The Island"): 2006
Pryor, Cashman
For Defendant

Siegel v. Warner Brothers ("Superman"): 2006 (ongoing)

Fross, Zelnick

For Defendant

Note: Termination of copyright, apportionment

Hendricks ("Double...Double") v. DreamWorks/Warner Brothers ("The Island"): 2007

Leopold, Petrich, Smith

For Defendant

Rushing v. Warner Brothers ("Dukes of Hazzard"): 2007

Brooks, Pierce

For Defendant

Contract dispute

Gilbert ("When Mom's The Other Woman") v. New Line ("Monster-in-Law"): 2008

White O'Connor Fink & Brenner

For Defendant

Sheldon Abend ("Rear Window") v. Paramount Pictures ("Disturbia"): 2008

White O'Connor Fink & Brenner

For Defendant

Mark Gable ("Karma") v. NBC ("My Name is Earl"): 2008

Mitchell Silberberg & Knupp

For Defendant

Warren Publishing Company v. J. David Spurlock: 2009

Pepper Hamilton

For Defendant

Note: Fair Use issues pertaining to artwork

**James Muller ("The Lost Continent") v. Twentieth Century Fox ("Alien vs. Predator"):
2009**

Leopold, Petrich, Smith

For Defendant

Joseph Davis ("Animal's Night Out") v. DreamWorks Animation ("Madagascar"): 2009

Leopold, Petrich, Smith

For Defendant

Regina Kimbell ("My Nappy Roots") v. HBO ("Good Hair"): 2009

White O'Connor Fink & Brenner

For Defendant

Cinemark v. IMAX (2010)

Akin, Gump, Strauss, Hauer, & Feld

For Plaintiff
Patent issue

Yolanda Buggs ("Critter Island") v. DreamWorks Animation ("Flushed Away") (2010)
Leopold, Petrich, Smith
For Defendant

Terence Dunn ("Zen-Bear") v. DreamWorks Animation ("Kung Fu Panda") (2011)
Loeb & Loeb
For Defendant

Summit Entertainment ("Twilight") v. Beckett Media (2011)
Leopold, Petrich and Smith
For Defendant
Note: Fair use questions

Anthony Spinner ("Lost") v. ABC ("Lost") (2011)
White O'Connor Fink & Brenner
For Defendant
Note: Idea submission

Corbello v. DeVito ("Jersey Boys") (2011)
Leopold, Petrich and Smith
For Defendant
Note: Compare musical book to manuscript; protectability of non-fiction

Chuck Zito ("Nomads") v. FX ("Sons of Anarchy") (2011)
Gibson Dunn
For Defendant

Edgar Rice Burroughs, Inc. v. Dynamite Entertainment (2012)
Fross Zelnick
For Plaintiff
(Compare literary elements to help determine public domain status)

CBS ("Big Brother") v. ABC ("Glass House") (2012)
Gibson Dunn
For Plaintiff

Don Bellisario v. CBS (2012)
Gibson Dunn
For Defendant

Bryant Moore ("Aquatica/Pollination") v. Lightstorm Entertainment ("Avatar") (2013)
Mitchell Silberberg & Knupp
For Defendant

Randall Shuptrine ("Woodsculpting") v. Scripps Network ("Man Caves") (2013)
Katten Muchin
For Defendant

Jayme Gordon ("Panda Power") v. DreamWorks ("Kung Fu Panda") (2013)
Loeb & Loeb
For Defendant

Roger Dean (artist) v. Lightstorm Entertainment ("Avatar") (2013)
Loeb & Loeb
For Defendant

Gold Glove Productions ("Omaha") v. Warner Brothers ("Trouble With the Curve")
(2014)
O'Melveny & Myers
For Defendant

Steve Wilson Briggs ("Butterfly Driver") v. Neill Blomkamp ("Elysium") (2014)
Kinsella Weitzman Iser Kump & Aldisert
For Defendant

Hendricks ("Double...Double") v. BBC America ("Orphan Black"): 2014
Weisberg Willner & Sloane
For Defendant

Bengal Mangle ("Charlie the Abusive Teddy Bear") v. Seth MacFarlane ("Ted")
Katten Muchin
For Defendant

SELECTED PRIOR ART CONSULTANCIES

"Amityville Horror" Orion Pictures, 1992

Leopold, Petrich, Smith

Note: Valuation and usage of numeric "sequels" in film.

"Frankenstein," Universal Pictures, 1995

Leopold, Petrich, Smith

Note: Right of publicity matter before the state legislature; how much of horror character was the actor and how much was makeup.

"It's a Bird...It's a Plane...It's Superman" arbitration, 2012

Patrick Perkins, Esq.

Note: compare literary differences between original musical and new version

APPENDIX B

TITLES CLAIMED BY IPG IN BOTH PROGRAM SUPPLIERS AND DEVOTIONAL CATEGORIES

TITLE	IPG CLAIMANT
3 Days	Envoy Productions / Promark Television, Inc.
Adrift	Envoy Productions
Aftermath	Envoy Productions
Amazing Grace	Envoy Productions / Great Plains National Instructional Library (cka Restructure Holding) / Promark Television, Inc.
An Eye for an Eye	Envoy Productions / Promark Television, Inc.
Betrayed	Envoy Productions / Promark Television, Inc.
Betrayed!	Envoy Productions / Promark Television, Inc.
Better Way	Envoy Productions
Beyond the Stars	Envoy Productions / Promark Television, Inc.
Boomerang	Envoy Productions / Promark Television, Inc.
Christmas Is	Envoy Productions / Promark Television, Inc.
City That Forgot About Christmas	Envoy Productions / Pacific Family Entertainment / Promark Television, Inc.
Class Reunion	Envoy Productions
Conspiracy Theory	Envoy Productions / Promark Television, Inc.
Dark Journey	Envoy Productions / Promark Television, Inc.
Decision	Envoy Productions / Promark Television, Inc.
Diary	Envoy Productions / Promark Television, Inc.
Easter Is	Envoy Productions / Promark Television, Inc.
Easter Is...	Envoy Productions / Promark Television, Inc.
Easy Money	Envoy Productions / Promark Television, Inc. / Reel Media International
Eye of the Storm	Envoy Productions / Promark Television, Inc. / Pacific Family Entertainment
Family Affair	Envoy Productions / Promark Television, Inc.
Fathers' Day	Envoy Productions / Granada Media
Father's Day	Envoy Productions / Promark Television, Inc.
Firestorm	Envoy Productions / Promark Television, Inc.
Focus	Envoy Productions / Promark Television, Inc.
Freedom Is	Envoy Productions / Promark Television, Inc.
Give and Take	Envoy Productions / Promark Television, Inc.
Greatest Gift	Envoy Productions / Promark Television, Inc.
Homecoming	Envoy Productions / Promark Television, Inc.
In the Name of Love	Envoy Productions
Interlude	Envoy Productions
Light in the Darkness	Envoy Productions / Promark Television, Inc.

TITLE	IPG CLAIMANT
Like Father, Like Son	Envoy Productions / Promark Television, Inc.
Linda	Envoy Productions / Promark Television, Inc.
Little Shepherd	Envoy Productions / Promark Television, Inc.
Lost and Found	Envoy Productions / Paradigm Pictures Corporation
Man of the Year	Envoy Productions
Masquerade	Envoy Productions
Millie	Envoy Productions / Promark Television, Inc. / Reel Media International
More Than Conquerors	Envoy Productions / Promark Television, Inc.
New Harvest	Envoy Productions
New Harvest Show	Envoy Productions / Promark Television, Inc.
No Greater Love	Envoy Productions
No Place to Hide	Envoy Productions / Promark Television, Inc. / Reel Media International
No Way Out	Envoy Productions / Promark Television, Inc.
On Main Street	Envoy Productions / Promark Television, Inc.
Other Wise Man	Envoy Productions
Out of the Past	Envoy Productions / Promark Television, Inc.
Pie in the Sky	Envoy Productions / Promark Television, Inc.
Problem Child	Envoy Productions / Promark Television, Inc.
Puzzle Club	Envoy Productions / Promark Television, Inc.
Puzzle Club Christmas	Envoy Productions / Promark Television, Inc.
Puzzle Club Christmas Mystery	Envoy Productions / Promark Television, Inc.
Puzzle Club Easter	Envoy Productions / Promark Television, Inc.
Puzzle Club Easter Adventure	Envoy Productions / Promark Television, Inc.
Puzzle Club Pet-Napping Mystery	Envoy Productions / Promark Television, Inc.
Red Boots for Christmas	Envoy Productions / Promark Television, Inc.
Revenge	Envoy Productions / Promark Television, Inc.
Second Chance	Envoy Productions / Promark Television, Inc.
Shadow of a Doubt	Envoy Productions / Promark Television, Inc.
Shield of Faith	Envoy Productions
Smear	Envoy Productions
Stableboy's Christmas	Envoy Productions / Promark Television, Inc.
The Champion	Envoy Productions / Promark Television, Inc.
The City That Forgot About Christmas	Envoy Productions / Promark Television, Inc.
The City That Forgot Christmas	Envoy Productions
The Edge	Envoy Productions / Promark Television, Inc.
The Empty House	Envoy Productions
The Greatest Gift	Envoy Productions / Promark Television, Inc.

TITLE	IPG CLAIMANT
The Hunger Next Door	Envoy Productions
The Message	Envoy Productions / Promark Television, Inc.
The Morning After	Envoy Productions
The Morning Show	Envoy Productions / Promark Television, Inc.
The People Next Door	Envoy Productions / Promark Television, Inc.
The Promise	Envoy Productions / Promark Television, Inc.
The Puzzle Club Christmas Mystery	Envoy Productions / Promark Television, Inc.
The Puzzle Club Easter Adventure	Envoy Productions / Promark Television, Inc.
The Stableboy's Christmas	Envoy Productions / Promark Television, Inc.
The Stranger	Envoy Productions / Promark Television, Inc. / Reel Media International / TV Matters cka Film Matters
The Sure Thing	Envoy Productions / Promark Television, Inc.
The Tie That Binds	Envoy Productions / Promark Television, Inc.
Three Days	Envoy Productions / Promark Television, Inc.
Time for Change	Envoy Productions
Transition	Envoy Productions
Transitions	Envoy Productions / Promark Television, Inc.
Trial by Fire	Envoy Productions / Promark Television, Inc.
Undertow	Envoy Productions / Promark Television, Inc.
Victory	Envoy Productions / Promark Television, Inc.
Wednesday's Child	Envoy Productions / Promark Television, Inc.
When the Bough Breaks	Envoy Productions
Catherine's Story	IWV Media Group, Inc.
Color My World: The Arts in Medicine	IWV Media Group, Inc.
Faces of Keeneland	IWV Media Group, Inc.
Healthy Living	IWV Media Group, Inc.
Healthy Living Sunday	IWV Media Group, Inc.
Healthy Living: Mysteries of the Mind	IWV Media Group, Inc.
Keeneland	IWV Media Group, Inc.
Money: History in Your Hands	IWV Media Group, Inc.
Nicola Tesla, the Life and Times of a Forgotten Genius	IWV Media Group, Inc.
Primary Focus	IWV Media Group, Inc.
Singsation	Willie Wilson Productions, Inc.
SingsationI	Willie Wilson Productions, Inc.
SingsationI International Gospel Humanitarian Award Show	Willie Wilson Productions, Inc.
Singsations	Willie Wilson Productions, Inc.

APPENDIX C

DVD EXEMPLARS PRODUCED BY IPG IN DISCOVERY

Envoy Productions

Little Shepherd

Little Shepherd, Experience The Wonder Of The Very First Christmas

On Main Street

Red Boots For Christmas

The First Valentine

The Magic Boy's Easter/Three Easter Classics

Three Christmas Classics

Christmas Is

The City That Forgot About Christmas

The Stableboy's Christmas

Three Easter Classics

Easter Is

The Magic Boy's Easter

The Puzzle Club Easter Adventure

Yeshua, The Promise, The Land, The Messiah

IWV Media Group

The Case For Christ

Miracle In Macon

"Ho, Ho, Ho"

Willie Wilson Productions

Dr. Willie Wilson's Through It All

Exhibit B

MacLean, Matthew J.

From: MacLean, Matthew J.
Sent: Saturday, July 30, 2016 6:53 AM
To: Brian D. Boydston, Esq.
Cc: 'Arnold Lutzker' (arnie@lutzker.com); Harrington, Clifford M.; Draper, Victoria L.; Ben Sternberg (Ben@lutzker.com)
Subject: Re: CRB 10-13 Discovery Responses

Brian,

We have looked into your inquiry. Thanks for bringing it to our attention.

Yes, SDC0000272 is the spreadsheet that was provided to all claimants, and SDC0000341 is the final version with all comments incorporated. The claim year columns were added manually using information obtained from the claims themselves.

If you look at the email chain at SDC0000295, you'll see that a partially updated spreadsheet was sent to some claimants before all changes were received. That version of the spreadsheet had the date columns added, and some claimants responded using that version instead of the original version. Although we produced the email chain, we did not produce each individual email within that chain as a separate email, which means you didn't receive the attachment to the email with the partially updated spreadsheet. We will provide a supplemental production containing the individual emails in the chain, with their attachments.

Matt

Sent from my iPhone

On Jul 29, 2016, at 4:09 PM, Brian D. Boydston, Esq. <brianb@ix.netcom.com> wrote:

Matt,

Thank you for your clarification, however, it remains verifiably inaccurate, in part. As I understand, you are representing that SDC0000272 was what was sent by the SDC to its represented claimants, and SDC0000341 is the final version of all SDC-represented claimants and their claimed programs after incorporation of their comments.

Initially, although we saw that the latter document was referred to as an amendment to the former on its label, the latter document contains information that did not appear to be communicated through the emails that the SDC produced. For example, SDC0000341 contains information as to which years claims were made for specific claimants. In some of the responding claimant correspondence the attached spreadsheet contains such information, on some it does not. As such, it is clear that SDC0000272 was not the sole document sent to all SDC-represented claimants, but rather some other spreadsheet was as well. I have yet to verify your other representations, but accept your explanation.

Regardless, it is your representation that SDC0000341 is the final version of all SDC-represented claimants and their claimed programs?

Brian

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

From: "MacLean, Matthew J."

Sent: Jul 28, 2016 1:49 PM

To: "brianb@ix.netcom.com"

Cc: "Arnold Lutzker" (arnie@lutzker.com) , "Harrington, Clifford M." , "Draper, Victoria L." , "Ben Sternberg" (Ben@lutzker.com)

Subject: FW: CRB 10-13 Discovery Responses

Brian,

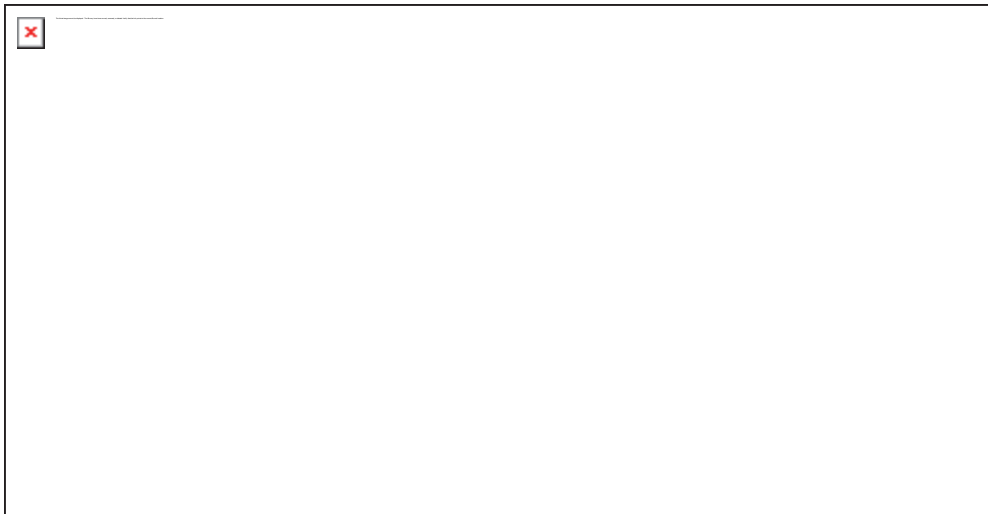
The SDC program title spreadsheet that was initially sent for comments is SDC0000272. The amended spreadsheet incorporating all comments is SDC0000341. We indicated in the file name that it was the amendment:



The rest of the documents in the April 15 production (bates numbers SDC0000282 - SDC000341) consisted of emails from our claimants confirming their programming. If a claimant confirmation email included an Excel file attachment (e.g. the claimant made changes directly to the claimant spreadsheet), the next document in the production is a PDF slip page indicating that the attachment is produced natively, and then the attachment (with the same bates number) immediately follows in its native Excel form. This is standard production practice for native files. We left the Excel attachments in their native formats, rather than converting them to PDFs and attaching them directly to the emails, because the conversion significantly altered the formatting so you could not properly read them. It is standard production practice in practically every case in which I have been involved for the parties to produce Excel spreadsheets in native format.

The only "blank" pages in the production are .htm files that are attached to claimant email confirmations. This sometimes happens, for example, when an email is forwarded from a phone. This is readily discernable from the production. Examples are below:





I trust this has fully resolved your confusion. Please let me know if there is anything further that we can add.

Matt

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

From: Brian D. Boydston, Esq. [mailto:brianb@ix.netcom.com]

Sent: Thursday, July 28, 2016 11:07 AM

To: Harrington, Clifford M.; MacLean, Matthew J.; Draper, Victoria L.; arnie@lutzker.com

Cc: worldwidesg@aol.com

Subject: CRB 10-13 Discovery Responses

Dear Counsel,

As MC reviews the SDC document production, we are left with a certain amount of confusion for which we require clarification.

First, because the responsive documents were not categorized, we are uncertain to which requests they are responsive. For example there are a variety of Excel spreadsheets that appear similar in nature, yet we are unclear whether they are just different versions of each other, pertain to different royalty pools, etc., or are attachments to various emails (but utilizing a different electronic name). While it appears that a general email was sent out by SDC counsel, we cannot discern what attachment was provided with such email, as we only see the response thereto that indicated that changes were made to the previously forwarded email (that was either not produced or not labeled). In other circumstances, there are bate-stamped pages that contain no information, so it is unclear why they are there or what is their significance, e.g., SDC0000340.pdf. In fact, we are unclear whether there is a "final" version or not of the programs claimed by the SDC associated with the program claimant, as is expressly required by the Judges, because no document indicates itself as such.

At this time, please indicate that the SDC will either supplement its current production in order to clarify such matter, or identify a date when this will occur.

Brian Boydston

The contents of this message, together with any attachments, are intended only for the use of the individual or entity to which they are addressed and may contain information that is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this message, or any attachment, is strictly prohibited. If you have received this message in error, please notify the original sender or the Pillsbury Winthrop Shaw Pittman Help Desk at Tel: 800-477-0770, Option 1, immediately by telephone or by return E-mail and delete this message, along with any attachments, from your computer. Thank you.