

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

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

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

**MPAA-REPRESENTED PROGRAM SUPPLIERS' REPLY TO
INDEPENDENT PRODUCERS GROUP'S OPPOSITION TO MPAA MOTION TO
COMPEL PRODUCTION OF UNDERLYING DOCUMENTS
FROM INDEPENDENT PRODUCERS GROUP**

The Motion Picture Association of America, Inc. ("MPAA"), its member companies and other producers and distributors of syndicated series, movies, specials, and non-team sports broadcast by television stations and retransmitted by cable systems who have agreed to representation by MPAA ("MPAA-represented Program Suppliers"), hereby submit their Reply to Independent Producers Group's Opposition To MPAA Motion To Compel Production Of Underlying Documents From Independent Producers Group ("Opposition"), which was filed with the Copyright Royalty Judges ("Judges") on August 3, 2012.¹

In the Opposition, Independent Producers Group ("IPG") attempts to use baseless procedural arguments to defend its discovery failures articulated in MPAA-represented Program Suppliers' Motion to Compel ("Motion"). For example, IPG absurdly implies that MPAA-represented Program Suppliers were in error for filing the Motion on the deadline established for "Motions Related to Document Production" by the Judges. Opposition at 2. IPG also inaccurately claims that MPAA-represented Program Suppliers are raising IPG's deficient

¹ MPAA-represented Program Suppliers note that IPG's Opposition is untimely, as it was filed with the Judges' more than five business days following the filing of MPAA-represented Program Suppliers' Motion to Compel on July 26, 2012. See 37 C.F.R. § 350.4(f).

document production only for the first time since their June 25, 2012 email correspondence even though IPG is well aware that MPAA-represented Program Suppliers' Follow-Up Requests were served on IPG on June 28, 2012. Those requests set forth, in detail, all of the problems with IPG's substandard production, including specific Follow-Up Requests directed at missing, incomplete, and unusable documents and files. See Motion Exhibit C. IPG chose not to provide additional information or replacement data in its Responses to those Follow-Up Requests, see Motion Exhibit D, and thus MPAA-represented Program Suppliers had to file the Motion. IPG's mischaracterizations and misstatements are simply an attempt to mask the very serious problem of IPG's failure to comply with its discovery obligations.

In substance, IPG's claim in its Opposition that it "did not just dump a pile of documents and records on the MPAA," Opposition at 4, is belied by IPG's production. MPAA-represented Program Suppliers pointed out in their Motion, and IPG concedes (Opposition at 4, n.4), that IPG failed to identify the specific bates ranges of documents responsive to each of MPAA-represented Program Suppliers' Requests. Instead, IPG divided its production into 35 categories of documents labeled as IPG "Items." IPG then designated *numerous* IPG Items (in some cases, nearly all of them) as purportedly responsive to each of MPAA-represented Program Suppliers Requests. A significant number of the IPG Items comprise hundreds of pages of documents and sizeable electronic files, yet IPG failed to identify which specific documents and files within each Items relate to each of the MPAA-represented Program Suppliers' Requests and Follow-Up Requests. Moreover, as to more than twenty Requests, IPG failed to either identify *any* documents at all as responsive or state clearly that no documents exist. To illustrate these issues, MPAA-represented Program Suppliers have prepared a chart, attached hereto as Exhibit A,

summarizing the IPG Items (if any) that IPG indicated were responsive to MPAA-represented Program Suppliers Requests.

Perhaps recognizing its failure to identify responsive documents with specificity, IPG now claims in its Opposition that *all* of the documents in multiple Item categories are responsive to *all* of MPAA-represented Program Suppliers' Requests. *See* Opposition at 4. This broad claim is meaningless. In fact, a review of the exhibits IPG references in the Opposition (as evidence of its compliance with discovery obligations) underscores this point: Opposition Exhibits A and C do not identify the specific MPAA-represented Program Suppliers' requests to which the document production apply. Opposition Exhibit B is merely cover pages of the IPG Items and elicits no information whatsoever about the responsiveness of the content of such Items. Opposition Exhibit D, an email exchange between IPG and MPAA-represented Program Suppliers, in fact confirms that some of the IPG discovery problems now at issue existed well before MPAA-represented Program Suppliers filed the Motion. Opposition Exhibit E, a list of the requests to which IPG Items supposedly respond, is really designed to mask those requests to which IPG did not respond. *Cf.* Exhibit A attached hereto (identifying requests to which IPG provided no response). Finally, Exhibit F is a cover letter of MPAA-represented Program Suppliers' response to IPG's discovery request and has no bearing on whether IPG has satisfied its discovery obligations. In any event, unlike IPG, MPAA-represented Program Suppliers responded to all of IPG's discovery requests. Therefore, MPAA-represented Program Suppliers address below the specific issues that remain unresolved as to IPG's document production.

DISCUSSION

I. Identification Of IPG's Claimants And Claimed Works For Each Of The 2000-2003 Royalty Funds.

MPAA-RP Request Nos. 9, 14, 15, 16, 91, and 102.

MPAA-RP Follow-Up Request Nos. 137, 140, 141, 142, 211, and 222.

Allegedly Responsive IPG Items: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 25, 26, 27, 28, 29, 30, 31, 32, and 35.

Issue: Identified Documents Are Nonresponsive.

Despite repeated requests, IPG failed to produce documents identifying its represented claimants and claimed works for the 2000-2003 cable royalty years on a royalty fund-by-royalty fund basis. Although IPG did not object to the requests and IPG *committed* to the Judges that it would produce such information in discovery, *see* Motion at 6, IPG refused to produce the requested documents. Rather, IPG now argues, cryptically, that its methodology “addresses entitlements on a broadcast-by-broadcast basis” and with respect to documents identifying its claimants and their corresponding works on a royalty fund-by-royalty fund basis, “no such document exists.” Opposition at 8 (emphasis in original). If in fact IPG does not possess a single document identifying each of its represented claimants and its corresponding claimed works on a royalty fund-by-royalty fund basis, the Judges should compel IPG to create such a document and produce it to MPAA-represented Program Suppliers, consistent with their authority to augment the record in discovery in this proceeding. *See Order Granting In Part And Denying In Part Independent Producers Group's Motion To Compel Confidential Disclosure Of The Phase I Terms Of Settlement For Those Categories Of Programming In Which IPG Has Phase II Claims To The Proposed 2000-2003 Cable Royalty Pools*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) at 2 (July 20, 2012).

It is confounding that IPG claims to not possess *any* document that organizes its claims in such a fundamental manner considering that this would be a bare minimum and pivotal step before filing a written direct case. As MPAA-represented Program Suppliers have explained, each of the 2000, 2001, 2002 and 2003 cable royalty funds at issue in this proceeding is a legally distinct fund. *See* MPAA-RP June 4 Motion to Dismiss at 3-4; MPAA-RP Motion to Compel at 6-7. Each royalty fund gives rise to a unique set of claimants asserting a claim or claims to a unique set of programming that was subject to retransmission by cable operators in that specific royalty year only. Because the particular programs that were retransmitted by cable systems varies over the course of each calendar year, it is extremely unlikely that each year's list of claimants or each claimant's list of claimed works for a given year would ever be the same. Besides, the organization of claimants by corresponding works claimed is necessary because IPG, by its own admission, does not have authority to represent all of the Exhibit IPG-1 entities for all of the royalty years at issue in this proceeding. *See* Opposition at 8, 15-16. Accordingly, in order for MPAA-represented Program Suppliers (and the Judges) to evaluate IPG's claims in this proceeding, IPG must produce documents identifying each of IPG's represented claimants and the corresponding claimed works on a royalty fund-by-royalty fund basis. The Judges should compel IPG to produce or create such documents.

II. Full And Complete Copies Of IPG's Representation Agreements For All IPG-Represented Entities Listed On Exhibit IPG-1.

MPAA-RP Request Nos. 9, 13, 55, 62, 103.

MPAA-RP Follow-Up Request Nos. 111, 137, 139, 177, 184, and 222.

Allegedly Responsive IPG Items: 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 21, 21a, 23c, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 35.

Issue: Identified Documents Are Nonresponsive Or Incomplete.

MPAA-represented Program Suppliers explained in their July 26 Motion to Dismiss that IPG (1) failed to produce representation agreements *at all* for sixteen of the entities listed on Exhibit IPG-1, (2) failed to produce executed representation agreements for seven more of these entities, and (3) produced agreements that do not assign IPG any rights to collect U.S. royalties for two more entities. *See* MPAA-RP Motion to Dismiss at 7-11. In its Opposition (to the instant Motion), IPG stated that, "All representation agreements, in their most complete form, have already been produced." *See* Opposition at 11. If that is the case, MPAA-represented Program Suppliers agree that there is nothing left to compel from IPG with respect to the missing, unsigned, or non-U.S. royalty representation agreements. Accordingly, MPAA-represented Program Suppliers request that the Judges grant their July 26 Motion to Dismiss as to all of the Exhibit IPG-1 entities for which IPG failed to produce an executed, written representation agreement covering U.S. royalties. MPAA further requests that IPG be barred from introducing any additional representation agreements related to the Exhibit IPG-1 entities that it has not already produced in discovery.

Still unresolved, however, is MPAA-represented Program Suppliers' Motion seeking to compel production of additional documents with regard to the representation agreements that IPG did produce. IPG's assertion that "[o]nly a handful of over 150 agreements [IPG produced]

have any redaction, or are not entirely complete” (Opposition at 10) grossly understates the issue because IPG did not produce agreements for a substantial number of the claimants listed on Exhibit IPG-1. Further, dozens of the agreements that IPG actually produced omit information that could affect the validity of IPG’s alleged representation. Specifically, the documents IPG produced as Items 5 and 6 are woefully incomplete: nearly two dozen agreements do not identify the individuals whose illegible signatures appear on the agreements. Other agreements are missing pages, omit exhibits referenced in the agreement, or are illegible. *See* Motion Exhibit G.

IPG has flatly refused to supply MPAA-represented Program Suppliers with any information regarding the illegible documents it produced. Moreover, rather than producing the requested missing documents – or admitting that IPG cannot locate such exhibits – IPG argues that the exhibits do not exist. IPG’s form agreements, which clearly state that the claimant’s catalogue is “including but not limited to those certain Programs attached hereto” are evidence of existing additional exhibits which IPG did not produce. Yet, IPG opposes production of the missing exhibits, claiming that the quoted language from the form agreement “is not exhaustive of the program listing” and “[c]onsequently, and oftentimes, no exhibit is ultimately attached.” *See* Opposition at 10. But IPG has made no offer of proof to support such an assertion.

In light of the foregoing, the Judges should issue an order directing IPG to produce legible, complete copies of its representation agreements identified in the Motion at Exhibit G. If a legible copy cannot be located, the Judges should direct IPG to provide MPAA-represented Program Suppliers with an explanation of the illegible information, or, in the case of an illegible signature, with the name of the person who executed the document. Where referenced exhibits have not been produced, the Judges should compel IPG to produce the documents. If IPG cannot

produce a complete copy of a particular representation agreement for the entities identified by MPAA-represented Program Suppliers (*see* Motion Exhibit G), MPAA-represented Program Suppliers ask that these entities be stricken from IPG's direct case.

III. Full And Complete Copies Of Documents Underlying IPG's Authority To Claim The Works Listed On Exhibit IPG-2, Including Complete Copies Of Email Correspondence In Its Native Form And Email Attachments.

MPAA-RP Request Nos. 14-19, 55-57, 61, 62, 103(B) and 103(C).

MPAA-RP Follow-Up Request Nos. 112-114, 122, 123, 140-45, 177-79, 183, 184, and 223.

Allegedly Responsive IPG Items: 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 21a, 23c, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35

Issue: Identified Documents Are Nonresponsive And Incomplete.

A. Nonresponsive Documents.

Significantly, IPG concedes that it intentionally produced incomplete documents in response to MPAA-represented Program Suppliers' requests for documents underlying IPG's authority to claim the works listed on Exhibit IPG-2 in this proceeding. *See* Opposition at 11 (admitting that the manner in which IPG produced these documents does not necessarily reflect the "aggregate of the document"). Indeed, IPG produced a jumble of documents in Item 6 and Item 8, which fail to support IPG's assertion that it is has been authorized to claim U.S. royalties to certain works for the cable royalty years at issue in this proceeding. IPG's piecemeal production of documents, which intentionally separates interrelated pages, exhibits and correspondence is not only confusing, but also a violation of the discovery rules in these proceedings. *See* Order in Docket No. 94-3 CARP CD 90-92 at 2 (October 30, 1995) ("1990-92 Discovery Order") ("It is the obligation of every producing party in a CARP proceeding to produce documents in an organized and usable format."). To reiterate, for the purposes of discovery, "[organized] does not mean dumping documents upon requesting party and expecting

the requesting party to sort through them and determine on its own which documents are responsive to each of its requests.” *See id.* Unfortunately, this is exactly what IPG has done. IPG expects MPAA-represented Program Suppliers to wade through its sea of incomplete documents and piece together the various pages of documents scattered throughout the Items to come to a determination on the works for which IPG’s entities have authorized IPG to assert claims in this proceeding. That is neither practical, possible, nor permissible practice. IPG should be ordered to produce these documents in an organized and comprehensible manner as required by the discovery rules.

B. Incomplete Documents.

As described in the Motion, many of the documents IPG produced as Items 7, 10, 11, 12 and 13 are incomplete and omit material information or additional correspondence referenced in the underlying documents. *See* Motion at 11. Without the full and complete communications, it is impossible to determine the effect of the correspondence or IPG’s authority to claim royalties on behalf of the claimants.

a. IPG Items 7, 10, 11, and 12.

MPAA-represented Program Suppliers have requested through initial Requests and Follow-Up Requests complete copies of email correspondence between IPG and IPG-represented entities. IPG refused to produce such documents, arguing that the “vast bulk of these documents will reflect the repetitive content of the form emails, and nothing more, and in no circumstances will retain more information than was underlying any testimony provided by IPG.” *See* Opposition at 14. IPG’s assertion should be viewed with great suspicion and the correspondence produced in connection with Decode Entertainment illustrates exactly why IPG should be ordered to produce all correspondence, including referenced attachments. IPG produced

correspondence from [REDACTED] of Decode Entertainment to [REDACTED] of IPG, dated [REDACTED]

[REDACTED]. IPG did not produce [REDACTED]

[REDACTED]. Clearly these documents are not “repetitive content of the form emails,” as IPG suggests but documents which go to the core of IPG’s representation of a particular claimant. Accordingly, IPG should be compelled to produce full copies of all correspondence, including all documents referenced and incorporated in such correspondence.

It is indeed laughable that IPG believes it is not required to produce documents, such as termination correspondence, because it did not rely on them in the course of preparing its written direct statement. *See* Opposition at 9 (“IPG has already produced all of the records utilized in the creation and application of its methodology.”) and 14 (“IPG has already produced all of the records relied upon in order to identify the programs and broadcasts for which its represented parties are making a claim.”). The notion that IPG could submit a claim on behalf of a claimant by ignoring evidence of its lack of authority to submit such a claim is bunk. If IPG is aware that such evidence exists, its assertion that it represents such a claimant would constitute a blatant lie. Moreover, there are several additional Exhibit IPG-1 claimants, including Jay Ward Productions and Sandra Carter Productions, who terminated their relationship with IPG and even notified the Copyright Office of such a termination, but for whom IPG produced no termination documents. IPG cannot make an unauthorized claim in this proceeding, or evade its discovery obligations, on the basis that it chose not to acknowledge the existence of documents limiting or terminating its authority to represent the Exhibit IPG-1 claimants, or restricting IPG’s authority to assert a claim as to particular works. Moreover, IPG cannot choose to ignore such fundamentally relevant documents simply to avoid having to produce them in discovery, and then argue that IPG did not

rely on those documents in its testimony. IPG should be required to produce all documents that impact IPG's authority to make claims for any and all years at issue in this proceeding.

Separately, MPAA-represented Program Suppliers renew their request for complete copies of all of the email correspondence that IPG produced as Items, 7, 10, 11, and 12 in its electronic, native form, inclusive of all email attachments. IPG admits that it deliberately opted to produce only certain pages of email correspondence and separate emails from their attachments. *See* Opposition at 12-14 (admitting, among other things, that attachments to correspondence, which set forth the programs claimed by a given claimant, were produced separately, and in a different form, than the underlying correspondence). The problem with IPG's approach is that there is no way to verify the authenticity of the purported email attachments or the connection between the underlying document and its purported attachment. Moreover, IPG has not offered any witnesses who could confirm or establish a connection between the correspondence and its purported attachment, or confirm the source of notations made thereon.²

These documents bear directly on IPG's authority to make claims thus establishing this link is essential to verifying such authority. Without the ability to verify whether claimants certified ownership of their programs, MPAA-represented Program Suppliers cannot determine the extent of IPG's authority to make claims in this proceeding. Therefore, these documents should be produced in an "organized" manner as required by the Judges, so that MPAA-represented Program Suppliers can conclusively determine which attachments belong to which correspondence and thus establish authority (or lack thereof) for programming for each specific IPG-represented claimant.

² IPG is not presenting any of its represented entities as witnesses in this proceeding. Moreover, the bulk of the incomplete email correspondence involved Denise Vernon of IPG, and not Raul Galaz.

IPG's claim that this request would be "unduly burdensome," *see* Opposition at 14, rings hollow. The email correspondence at issue dates back no more than four or five months from the filing of IPG's written direct statement, and MPAA-represented Program Suppliers have requested the production of native, electronic files, not paper copies of such documents, as IPG erroneously assumes in its Opposition. It is clear that these documents were created and exchanged between IPG and its claimants in an electronic form, and IPG has not argued that the documents do not exist in that form. Therefore, the Judges should compel IPG to produce complete copies all of the email correspondence in Items 7, 10, 11, and 12 in its native, electronic form, inclusive of all attachments.

b. IPG Item 13.

IPG Item 13 consists of form letters that were apparently sent to IPG's represented entities. These incomplete form letters are not responsive to MPAA's Requests because it is impossible to determine from the letters when and to which entities these letters were sent. It is also unclear – yet significant – how the claimants responded to the letters. Letters seeking claimants' authority to represent them and claimants' certification of programs are clearly relevant to this proceeding – and in fact, are important elements in determining IPG's authority to make claims. Therefore, IPG should be ordered to produce copies of the actual correspondence that IPG sent to the Exhibit IPG-1 claimants, and all responses received in connection therewith. To the extent such documents were delivered via email, MPAA-represented Program Suppliers request that IPG be ordered to produce the correspondence in its native, electronic form.

IV. Copies Of IPG's Electronic Files In A Format Allowing Access To All Fields Of Data.

MPAA-RP Follow-Up Request Nos. 119, 128.

Allegedly Responsive IPG Items: 23c, 35.

Issue: Identified Documents Were Not Produced In a Usable Form.

IPG takes issue with what is essentially a very basic request—that IPG produce a copy of the electronic files that it produced as Items 23c and 35 in a usable format, *i.e.*, a format allowing MPAA-represented Program Suppliers to access all lines of data in the produced files. As explained in the Motion, Items 23c and 35 each contain 11.3 and 8.3 million lines of data, respectively. However, the specific file format in which IPG chose to produce the files, the “Microsoft Excel Comma Separates Values” file format, impedes MPAA-represented Program Suppliers’ ability to access all of the data in the files because it allows access to only about 1 million lines of data. *See* Motion at 15-16. Had IPG simply produced these files in a “.txt” format, as they did for other files, MPAA-represented Program Suppliers would likely not have encountered this difficulty. Accordingly, MPAA-represented Program Suppliers reasonably requested replacement copies of the files in a usable format. *See id.* IPG, however, has refused to produce replacement copies of the files.

IPG admits that the files it produced *cannot* be utilized in the form in which they were produced. *See* Opposition at 6 and n.6. Instead of simply producing replacement files in a usable format, IPG attempted to send MPAA-represented Program Suppliers on a wild goose chase of multiple software programs to attempt to find a program that would allow them to fully access IPG’s data. *See id.* This obstructionist practice violates the discovery rule. *See* 1990-92

Discovery Order at 2. Accordingly, IPG should be compelled to provide MPAA-represented Program Suppliers with a replacement copy of the files in a usable format.

V. The Underlying Data File From Which Item 35 Was Extracted.

MPAA-RP Follow-Up Request No. 128.

Allegedly Responsive IPG Items: None Identified Or Produced.

Issue: IPG Refuses To Produce Documents Allowing Bottom-Line Numbers In Exhibit IPG-10 To Be Verified.

IPG does not deny that Item 35 is an extract from a larger file, or that it utilized that larger file as the basis for developing the bottom-line numbers cited in Exhibit IPG-10. Instead, IPG simply asserts that MPAA-represented Program Suppliers must be misrepresenting their ability to access Items 23c and 35 if they were able to figure out that Item 35 is an extract from a larger database. *See* Opposition at 7. IPG's base assertion is completely unfounded.

MPAA-represented Program Suppliers never claimed to be unable to "open" Items 23c and 35, as IPG seems to suggest. Rather, they are prevented from accessing all of the data in Items 23c and 35, as the format in which they were produced provides access only to the first million lines. MPAA-represented Program Suppliers' experienced information technology professionals analyzed Items 23c and 35, concluded that they were unable to be fully accessed in the format provided, and that Item 35 had been extracted from another, larger file. *See* Motion at 15-17.

MPAA-represented Program Suppliers must be able to verify all of the bottom-line figures in IPG's testimony and exhibits, including Exhibit IPG-10, which offers integrated calculations for the Program Suppliers, Joint Sports, and Devotional programming categories.

Accordingly, IPG should be compelled to produce the underlying database from which Item 35 was extracted.

VI. Retransmissions Data For All IPG Claimants Alleged To Have Claims In The Program Suppliers Category In This Proceeding.

MPAA-RP Request Nos. 14-16, 18-19, 101, and 104.
MPAA-RP Follow-Up Request Nos. 123, 124.

Allegedly Responsive IPG Items: 29 and 30.

Issue: IPG Failed To Produce Any Distant Retransmission Data For Fourteen Exhibit IPG-1 Claimants (America's Black Forum, C/F International, Candid Camera, Inc., Cogeco Radio-Television, Direct 2U Network, Inc., Enoki Films, Entertainment Rights PLC, Healthy TV, Inc., Mentorn International Distribution, Ltd., New Visions Syndications, Inc., Simply Fishing, Inc., Slim Goodbody Corporation, Tide Entertainment, and Venevision International).

IPG cavalierly admits that it failed to produce any retransmission data for the fourteen entities listed above. *See* Opposition at 14-15 (“The MPAA is free to examine IPG witnesses as to *why* there are not electronic records of Item category nos. 29 and 30 for each party appearing on Exh. IPG-1, however suffice it to say that IPG has already fully responded.”). Although IPG’s methodology relies entirely on analyses of retransmission data for IPG’s represented entities, *see* MPAA-RP Motion at 18, IPG *produced no retransmission data* with respect to the fourteen entities listed above, and claims that no such data exists. Because IPG cannot support its claim for these fourteen entities, MPAA-represented Program Suppliers request that the claimants be stricken from IPG’s written direct statement and dismissed as IPG-represented claimants.

VII. Documents Underlying The So-Called “Restrictions” On IPG’s Authority To Represent Its Claimants, And The Definitions Of Abbreviated Terms Referencing These Restrictions In IPG “Item 32.”

MPAA-RP Follow-Up Request Nos. 127 A-DDDDD.

Allegedly Responsive IPG Items: None Identified Or Produced.

Issues: IPG Refuses To Provide An Explanation Of Abbreviated Terms In Contravention Of Precedent; IPG Refuses To Produce Copies Of Documents Underlying Restrictions On Its Authority to Represent The Exhibit IPG-1 Entities, Including Termination Correspondence.

IPG’s Item 32 (the entirety of which IPG included as Exhibit C to its Opposition) is an Excel worksheet which contains a column of abbreviated terms under the heading “Restrictions.” According to IPG, the “Restrictions” column of the chart reveals “the territorial or temporal restrictions applicable to a party making claim to a particular broadcast.” Opposition at 8. Because of the short-hand notes written into the chart, MPAA-represented Program Suppliers requested that IPG produce definitions fully explaining the meaning for each of the abbreviations contained in Item 32. IPG refused to produce *any* definitions. Instead, IPG now directs MPAA-represented Program Suppliers to review its jumble of documents, and make assumptions regarding IPG’s interpretation of those documents, in order to ascertain the meaning of the abbreviated terms in Item 32. *See* Opposition at 15-16. The meaning of each of the abbreviated restrictions is not clear on its face as IPG suggests. *See id.* The contrary is true. Without an explanation of IPG’s short-hand notes in Item 32, the information is utterly meaningless. For example, one of the notes under the “Restrictions” heading reads: “3DD all, Granada 2000.” Without a legend or additional information from IPG, MPAA-represented Program Suppliers would be required to make assumptions about whether “3DD all” refers to all programs or all years. Further, it is unclear whether “3DD all” is a restriction of rights (as labeled in the heading), *e.g.*, a restriction on “all” years or “all” programs, or whether it is an expansion of

rights, e.g., rights are granted or authority is established for “all” years or “all” programs. Notes such as “Beacon thru 7/2003” are similarly vague or ambiguous and should be defined or explained by IPG.

Reviewing Item 32 in light of the documents IPG produced only confuses the information even further. In its Opposition, IPG explains: “For instance, ‘BBC 2000’ corresponding to a broadcast for which the British Broadcasting Corporation were making claim would mean that the BBC would only be making claim to broadcasts for the identified program occurring during 2000.” Opposition at 8. But IPG does not even apply this rule consistently. For example, with regard to the claimant, “Simply Fishing,” based on IPG’s rule, the restriction “[REDACTED]” noted next to the only broadcast program identified for that claimant should mean that Simply Fishing would only be making a claim to broadcasts for the identified program “Simply Fishing” aired during 2001. However, after reviewing the joint claims IPG filed with the Copyright Office, and which IPG produced, it is clear Simply Fishing is listed as an IPG-represented claimant on IPG’s cable claims in years 2002 and 2003, in addition to 2001. This type of discrepancy is precisely why MPAA-represented Program Suppliers requested that IPG produce a description of each of the short-hand notes set forth in the Restrictions column of Item 32.

It is a waste of time and resources for MPAA-represented Program Suppliers to try to guess what IPG’s handwritten notes signify. Moreover, not only *should* IPG provide an explanation of these cryptic notes, but IPG is legally *required* to do so. See Order, Docket No. 2001-8 CARP CD 98-99 at 8 (March 20, 2003) (requiring NAB to provide a “plain English” index to explain the meaning of “highly abbreviated” terms in electronic data). Accordingly, the Judges should compel IPG to produce definitions of the abbreviated restrictions noted in Item 32.

VIII. Documents Establishing That IPG's Methodology Meets The Standards For Studies And Analyses Set Forth In The Judges' Regulations.

MPAA-RP Request Nos. 35 and 37.

MPAA-RP Follow-Up Request Nos. 161 and 163.

Allegedly Responsive IPG Items: 21, 23a, 23b, 23c, 24, 31, 32, 34, and 35.

Issue: Indicated Documents Are Nonresponsive.

Contrary to IPG's assertion, Opposition at 16, MPAA-represented Program Suppliers neither cited, nor referred to the former discovery rule Copyright Arbitration Royalty Panel (CARP) governing admissibility of expert testimony, 37 C.F.R. § 251.48(f), at any point in their Motion (or their Requests and Follow-Up Requests seeking production of documents from IPG). Instead, MPAA-represented Program Suppliers referred to (and quoted from) 37 C.F.R. § 351.10(e), which requires certain information to be included in studies and analyses presented to the Judges. The salient point is that MPAA-represented Program Suppliers are entitled to have IPG produce any documents that underlie the economic theory and statistical basis for IPG's methodology articulated in Mr. Galaz's testimony. IPG has failed to produce any documents responsive to this request to date, and has refused to confirm that no such documents exist. Accordingly, IPG should either state that no documents exist or, to the extent that such documents exist, be ordered to produce them.

IX. Documents Underlying Specific Assertions Regarding IPG's Claimants And Claimed Works In This Proceeding.

MPAA-RP Request Nos. 20 and 60.

MPAA-RP Follow-Up Request Nos. 146 and 182.

Allegedly Responsive IPG Items: None Identified Or Produced.

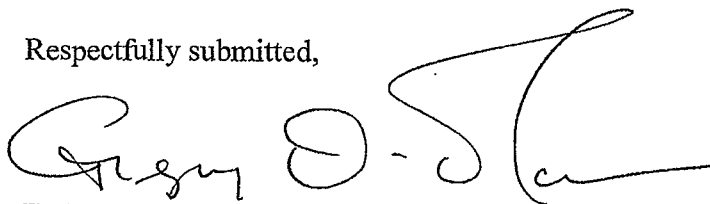
Issue: IPG Refuses To Produce Documents Identifying Exhibit IPG-1 Claimants Who Refused To Confirm IPG's Authority To Represent Them In This Proceeding.

IPG does not deny that Mr. Galaz was referring to specific IPG-represented entities when he made the statements in his testimony that certain entities had been unable to confirm IPG's authority to represent them in this proceeding because they had been "dissolved, gone bankrupt, been acquired by other companies and, in some instances, the principal is now deceased." Galaz Testimony at 11. IPG also does not deny that Mr. Galaz was referring to specific IPG-represented entities when he made comments about needing to "re-educate" them "as to the nature of the assigned rights" IPG claims to have in this proceeding. *Id.* at 18, n.14. Because these are factual assertions, IPG should be compelled to produce documents underlying these statements or, at a minimum, identify the particular Exhibit IPG-1 entities that are addressed in the statements.

CONCLUSION

For all of the foregoing reasons, MPAA-represented Program Suppliers' Motion should be granted, and IPG should be ordered to produce the underlying documents requested in the Motion.

Respectfully submitted,




Dated: August 9, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2012, a copy of the foregoing pleading was sent by Federal Express overnight mail to the parties listed on the attached service list.



Kimberly P. Nguyen

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EXHIBIT A

IPG PRODUCTION IN RESPONSE TO MPAA-RP INITIAL AND FOLLOW-UP REQUESTS

MPAA REQUEST	MPAA FOLLOW-UP REQUEST	RESPONSIVE IPG ITEM # IDENTIFIED BY IPG (IF ANY)
1	129	
2	130	NO RESPONSIVE DOCUMENTS EXIST
3	131	3
4	132	3
5	133	3
6	134	3
7	135	14, 15, 21, 23a, 23b, 23c, 24
8	136	14, 15, 35
9	137	4, 5, 13, 25, 26, 27, 28, 30
10		4
11		4
12	138	4, 5
13	139	5
14	140	25, 26, 27, 28, 29, 30, 31, 32
15	141	25, 26, 27, 28, 29, 30, 31, 32
16	142	5, 6, 7, 8, 9, 10, 11, 12, 13, 25, 26, 27, 28, 29, 30, 31, 32
17	143	6, 7, 8, 9, 10, 11, 12, 13
18	144	6, 7, 10, 11, 12, 25, 26, 27, 28, 29, 30, 35
19	145	25, 26, 27, 28, 29, 30, 35
20	146	NO RESPONSIVE DOCUMENTS EXIST
21	147	NO RESPONSIVE DOCUMENTS EXIST
22	148	NO RESPONSIVE DOCUMENTS EXIST
23	149	
24	150	NO RESPONSIVE DOCUMENTS EXIST
25	151	
26	152	NO RESPONSIVE DOCUMENTS EXIST
27	153	NO RESPONSIVE DOCUMENTS EXIST
28	154	NO RESPONSIVE DOCUMENTS EXIST
29	155	NO RESPONSIVE DOCUMENTS EXIST
30	156	NO RESPONSIVE DOCUMENTS EXIST
31	157	
32	158	
33	159	NO RESPONSIVE DOCUMENTS EXIST
34	160	NO RESPONSIVE DOCUMENTS EXIST
35	161	21, 23a, 23b, 23c, 24, 31, 32, 33, 34, 35
36	162	21, 23a, 23b, 23c, 24, 33, 34
37	163	35
38	164	
39	165	NO RESPONSIVE DOCUMENTS EXIST
40	166	
41	167	
42	168	NO RESPONSIVE DOCUMENTS EXIST

IPG PRODUCTION IN RESPONSE TO MPAA-RP INITIAL AND FOLLOW-UP REQUESTS

MPAA REQUEST	MPAA FOLLOW-UP REQUEST	RESPONSIVE IPG ITEM # IDENTIFIED BY IPG (IF ANY)
43	169	21
44	170	21
45		23a, 23b
46		21
47	171	23c
48		21, 22
49	172	22, 23c
50		21
51	173	23c, 24, 35
52	174	31, 35
53	175	23a, 23b, 23c
54	176	23c, 31
55	177	10, 11, 12, 13, 25, 26, 27, 28, 29, 30
56	178	6, 7, 8
57	179	9
58	180	NO RESPONSIVE DOCUMENTS EXIST
59	181	NO RESPONSIVE DOCUMENTS EXIST
60	182	
61	183	4, 5, 12, 25, 26, 27, 28, 30, 35
62	184	3, 5, 6, 7, 8, 9, 10, 11, 12, 21, 21a, 31, 32
63	185	
64	186	
65	187	NO RESPONSIVE DOCUMENTS EXIST
66	188	21, 35
67	189	21, 35
68	190	21, 21a
69	191	
70	192	
71	193	NO RESPONSIVE DOCUMENTS EXIST
72	194	14, 21, 35
73		21
74	195	
75	196	
76	197	NO RESPONSIVE DOCUMENTS EXIST
77	198	NO RESPONSIVE DOCUMENTS EXIST
78	199	34
79	200	
80	201	33, 34, 35
81		33
82	202	33, 34
83	203	
84	204	33, 34

IPG PRODUCTION IN RESPONSE TO MPAA-RP INITIAL AND FOLLOW-UP REQUESTS

MPAA REQUEST	MPAA FOLLOW- UP REQUEST	RESPONSIVE IPG ITEM # IDENTIFIED BY IPG (IF ANY)
85	205	35
86	206	
87	207	35
88	208	35
89	209	
90	210	23c, 35
91	211	35
92	212	35
93	213	
94	214	NO RESPONSIVE DOCUMENTS EXIST
95	215	23, 24, 32, 35
96	216	
97	217	
98	218	
99	219	
100	220	NO RESPONSIVE DOCUMENTS EXIST
101	221	5, 6, 7, 8, 9, 10, 11, 12, 13, 21, 22, 23c, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35
102	222	5, 32
103	223	4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 23c, 24, 25, 26, 27, 28, 29, 30, 32, 35
104	224	6, 7, 8, 9, 10, 11, 12, 13, 23c, 25, 26, 27, 28, 29, 30, 32, 35
105		21
106		21, 22
107	225	34
108	226	
109	227	35
110	228	

IPG PRODUCTION IN RESPONSE TO MPAA-RP INITIAL AND FOLLOW-UP REQUESTS

**MPAA FOLLOW-UP REQUESTS REGARDING NON-RESPONSIVE OR INCOMPLETE IPG
"ITEMS" PRODUCED BY IPG**

IPG ITEM	MPAA FOLLOW-UP REQUEST	IPG RESPONSE
5	111	NO FURTHER DOCUMENTS WILL BE PRODUCED.
6	112	NO FURTHER DOCUMENTS WILL BE PRODUCED.
7	113	NO FURTHER DOCUMENTS WILL BE PRODUCED.
8	114	NO FURTHER DOCUMENTS WILL BE PRODUCED.
10	115	NO FURTHER DOCUMENTS WILL BE PRODUCED.
11	116	NO FURTHER DOCUMENTS WILL BE PRODUCED.
12	117	NO FURTHER DOCUMENTS WILL BE PRODUCED.
13	118	NO FURTHER DOCUMENTS WILL BE PRODUCED.
23c	119	NO FURTHER DOCUMENTS WILL BE PRODUCED.
25	120	NO FURTHER DOCUMENTS WILL BE PRODUCED.
26	121	NO FURTHER DOCUMENTS WILL BE PRODUCED.
27	122	NO FURTHER DOCUMENTS WILL BE PRODUCED.
28	123	NO FURTHER DOCUMENTS WILL BE PRODUCED.
29	124	NO FURTHER DOCUMENTS WILL BE PRODUCED.
30	125	NO FURTHER DOCUMENTS WILL BE PRODUCED.
31	126	NO FURTHER DOCUMENTS WILL BE PRODUCED.
32	127	NO FURTHER DOCUMENTS WILL BE PRODUCED.
35	128	NO FURTHER DOCUMENTS WILL BE PRODUCED.

EXHIBIT B

REDACTED