

Before the
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Washington, D.C.

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In the Matter of)	
)	
Distribution of 2004, 2005, 2006, 2007, 2008 and 2009 Cable Royalty Funds)	Docket No. 2012-6 CRB CD 2004- 2009 (Phase II)
)	
In the Matter of)	
)	
Distribution of 1999-2009 Satellite Royalty Funds)	Docket No. 2012-7 CRB SD 1999- 2009 (Phase II)
)	

**INDEPENDENT PRODUCERS GROUP'S MOTION TO STRIKE REPLY
BRIEFS FILED BY THE SETTLING DEVOTIONAL CLAIMANTS AND
THE MOTION PICTURE ASSOCIATION OF AMERICA IN RESPONSE
TO INDEPENDENT PRODUCERS GROUP'S OPPOSITION TO MOTIONS
FOR SANCTIONS**

Worldwide Subsidy Group LLC (a Texas limited liability company) dba
Independent Producers Group ("IPG") hereby submits its "Motion to Strike Reply
Briefs filed by the Settling Devotional Claimants' and the Motion Picture
Association of America In Response to IPG's Opposition to Motions for
Sanctions".

On January 10, 2017, the Judges issued their *Order on IPG Motion for
Leave to File Amended Written Direct Statement*. Therein, the Judges granted

IPG's motion to file an Amended Written Direct Statement, and permitted the Settling Devotional Claimants (the "SDC") and Motion Picture Association of America ("MPAA") to file:

"individual motions or a joint motion with authoritative legal analysis addressing the Judges' authority, if any, to impose financial or other sanctions in this circumstance in which a party has disregarded (or negligently or purposely misinterpreted) the Judges' procedural rules without explanation or plausible justification."

Order at 7.

The Order also permitted IPG to file opposition papers thereto 30 days after the filing of such motions. The Order did not authorize the SDC or the MPAA to file reply papers to IPG's opposition. However, the SDC and MPAA have nevertheless filed reply briefs.

Because the Judges did not authorize the filing of reply briefs in the January 10, 2017 Order, IPG moves to strike the reply briefs of the SDC and the MPAA. The briefing at issue was authorized not by statute or regulation, but by the Judges' Order only, and should be proscribed thereby.

Moreover, the SDC have seized upon the unauthorized reply as an opportunity to submit new accusations about IPG and its counsel, submit new accusations about the content of Dr. Charles Cowan's ultimate report, purposely confuse IPG's reference to changes in Dr. Cowan's *written* report versus the *data*

underlying such report, and engage in even more inflammatory rhetoric (e.g., "[w]ith all due respect, IPG does not have a clue . . ."). Finally, the SDC attempts to defend its own errant behavior with a 14-page declaration of SDC counsel whereupon such counsel purports to attest from personal knowledge multiple events with which he evidently had no personal knowledge.¹

For its part, the MPAA similarly twists the factual record in an effort to create malfeasance where none exists, arguing that a statement by IPG's counsel in a footnote that he "had not reviewed" Dr. Cowan's report or data could not be

¹ For example, SDC counsel *attests* as to the scope of Alan Whitt's engagement by the MPAA (twelve years prior) as a computer programmer, and Alan Whitt's produced results to the MPAA (see paras. 2-6 of the Declaration of Matthew MacLean). Mr. MacLean also suggests that the Judges adopted his contentions as truth because such declaration was previously admitted into evidence. Notwithstanding, see 2000-2003 cable proceeding, Transcript of Sept. 8, 2014, at pp. 952-954 (discussion regarding IPG and SDC proposed exhibits):

" MR. BOYDSTON: I haven't even seen [the MacLean declaration]. I mean, I just got it two minutes ago, but, I mean, it's a declaration and he can submit whatever he wants to. I don't really know -- I mean, a declaration is a declaration. It's not evidence, so I -- I don't have any objection to his declaration. How about that? I mean, I might disagree with it, but -- "

"Judge Barnett: It's admitted for the purposes of establishing not the truth of the matter but a sequence of events and the documents that relate to which -- you now, which requests relate to which documents, not to the -- not to the truth of the contents of those documents. "

clarified to reflect that such reference was to a *substantive* review.² Interestingly, the MPAA condemned IPG counsel for his failure to substantively review Dr. Cowan's expert report, while ignoring the fact that MPAA counsel altogether failed to identify errors in the expert report it submitted in the 2010-2013 cable proceedings. As the Judges may be aware, the MPAA recently reported similar calculation errors in the submission of its 2010-2013 amended written direct statement (filed March 9, 2017), and then did not report such errors for four weeks, until April 3, 2017, only after they were discovered by the expert witness.³

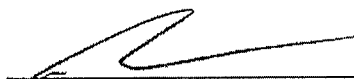
² No explanation is provided as to why the clarification by IPG counsel would make *any* difference, as both the MPAA and SDC have contended that IPG's counsel was required to *substantively* review Dr. Cowan's report, a task that IPG counsel has openly acknowledged he did not do, nor could have done absent engaging a separate expert witness.

³ Notably, in the ongoing 2010-2013 proceedings, while the MPAA provided a redline showing the changes between Dr. Gray's amended report and corrected report, no explanation as to the reason for such changes was provided other than that Dr. Gray "discovered a calculation error". Nor did the MPAA provide a description of the changes made in the data *underlying* the corrected report. Nor did the MPAA seek leave to file the corrected report, even though the MPAA's own redline reflects Dr. Gray's substitution of *substantive* figures. Literally, the MPAA has engaged in the *identical* activity for which it has criticized IPG in the MPAA motion, distinguished however by the fact that the MPAA's discovery of errors has come long after the conclusion of discovery, rather than prior to the start of discovery.

CONCLUSION

For the reasons set forth above, the MPAA and the SDC reply briefs should be stricken and not considered by the Judges.

DATED: April 20, 2017

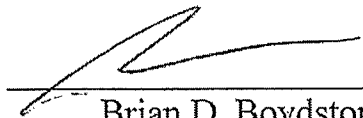


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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of April, 2017, a copy of the foregoing was sent by electronic mail and next day mail to the parties listed on the attached Service List.



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