Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

IN THE MATTER OF:	
Phase II Distribution of the 2004-2009 Cable Royalty Funds	Docket No. 2012-6 CRB CD 2004-09 (Phase II)
IN THE MATTER OF:	
Phase II Distribution of the 1999-2009 Satellite Royalty Funds	Docket No. 2012-7 CRB SD 1999-2009 (Phase II)

Volume 2

Tuesday,
December 9, 2014

Room LM-403
Madison Building
Library of Congress
101 Independence Avenue, SE
Washington, DC

The above-entitled matter came on for hearing, pursuant to notice, at 9:00 a.m.

BEFORE: THE HONORABLE SUZANNE M. BARNETT
THE HONORABLE JESSE FEDER
THE HONORABLE DAVID R. STRICKLER
Copyright Royalty Judges

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1 P-R-O-C-E-E-D-I-N-G-S

2 9:13 a.m.

3 JUDGE BARRETT: On the record. Good

4 morning. Please be seated. The addition of a

5 Dunkin Donuts to our cellar was not a good thing.

6 (Laughter)

7 When we adjourned yesterday, I believe

8 Mr. Boydston you were examining your client.

9 MR. BOYDSTON: I was, Your Honor.

10 JUDGE BARRETT: Would you like to

11 continue with that?

12 MR. BOYDSTON: Yes Your Honor. I did,

13 though I didn't know if we're going to compare

14 notes on time at this point or not.

15 JUDGE BARRETT: We can do that while

16 Mr. Galaz takes his seat. Our best estimate is

17 that MPAA has used an hour and 32 minutes. IPG

18 has used two hours and 39 minutes. And SDC has

19 used 15 minutes. Is that in the ball park at

20 least?

21 MR. BOYDSTON: Your Honor, that is in

22 the ball park. But I'm not advocating. I'm

1 telling you my calculation was MPAA 129, SDC 25
2 and IPG three. So those are in the ball park
3 three.
4 JUDGE BARRETT: Okay. Thanks.
5 MR. BOYDSTON: Your Honor, I would
6 like to ask if we could have a protection of some
7 time for the afternoon yesterday when it took
8 pretty much the whole afternoon to get into five
9 exhibits because of extensive objections. And
10 you'll recall the Court broke to confer at the
11 break and then had a second break as well or a
12 second conferring as well.
13 JUDGE BARRETT: I don't think you need
14 to worry about having your case curtailed, Mr.
15 Boydston.
16 MR. BOYDSTON: Okay.
17 JUDGE BARRETT: We'll use the rule of
18 reason here.
19 MR. BOYDSTON: Appreciate it. Thank
20 you.
21 MR. BOYDSTON: Good morning, Mr.
22 Galaz. Now as you may recall when we broke

1 yesterday we were discussing the IPG claimant,
2 Devillier Donegan Enterprises.
3 MR. GALAZ: That's correct. Let me
4 get these.
5 MR. BOYDSTON: Let me ask you to take
6 a look at what has been marked as Exhibit 118.
7 We think we had referred to it yesterday, but we
8 certainly not admitted it yet. Let me ask you to
9 take a look at what's marked as Exhibit 118.
10 MR. MACLEAN: Could you repeat that?
11 MR. BOYDSTON: One eighteen.
12 MR. GALAZ: All right.
13 DIRECT EXAMINATION (Cont'd)
14 BY MR. BOYDSTON:
15 Q And are you familiar with this?
16 A Yes, I am.
17 Q And it's a short email from you to Mr.
18 Devillier. Could you give us the context for
19 this?
20 A The context was I had contacted Mr.
21 Devillier and I think he was filing out
22 accounting to them. He called me to explain that

1 the company DDE was no longer functioning. And
2 he had an issue as to how we were going to issue
3 the payment and whether it should be made
4 directly to him or to the DDE bank account. In
5 the course of that conversation, he expressed
6 that they no longer had any records. They had
7 ceased conducting business. And I guess the
8 records -- It sounds like they purposefully
9 destroyed them and wanted to get copies of the
10 contracts that he had with IPG.
11 So that was the context of this. I
12 simply forwarded him the copies of the contracts.
13 MR. BOYDSTON: Your Honor, I would
14 like to move Exhibit 118 into evidence.
15 JUDGE BARRETT: My notes indicate that
16 it was admitted.
17 MR. BOYDSTON: Okay.
18 MS. PLOVNICK: I'm sorry. I thought
19 it was not admitted. If you just want for the
20 record to note our continuing objection to
21 documents that weren't produced. This wasn't
22 produced until December 2nd and it's dated in

1 2010. The documents attached were, but not the
2 email. And so we renew our objection.
3 MR. BOYDSTON: Your Honor, we didn't
4 know that this client was at issue until we got
5 the papers from the MPAA. And it's in response
6 to their argument on the Devillier claimant.
7 JUDGE BARRETT: I was looking at 119
8 this whole time. One eighteen is the email with
9 the attachments.
10 MR. BOYDSTON: Correct.
11 MS. PLOVNICK: And we're objecting to
12 the email portion.
13 JUDGE BARRETT: MPAA's objection is
14 noted and 118 is admitted.
15 (Whereupon, the above-referred to
16 document marked for identification as
17 IPG Exhibit 118 was received into
18 evidence.)
19 MR. BOYDSTON: Thank you, Your Honor.
20 BY MR. BOYDSTON:
21 Q Mr. Galaz, please take a look at 119.
22 A Okay.

1 Q And this is another email. It appears
2 to be -- I'm looking at the wrong thing now.
3 Another email between you and Mr. Devillier. Do
4 you recall this?
5 A Yes, I do.
6 Q And what was the context of this
7 email?
8 A Well, it needs to be read frankly in
9 the context of one of the exhibits that was
10 attached to the MPAA -- And that was the
11 termination letter from DDE which occurred I
12 think the first week of August in 2011. This was
13 after we accounted to DDE and we had given an
14 accounting subsequent to that.
15 Again, Mr. Devillier had indicated
16 that they were no longer conducting business and
17 said, "Okay. We're just terminated that."
18 I said, "That's fine because there is
19 no further licensing as far we understood." So
20 it really had no effect.
21 But nonetheless when he sent the
22 letter I just sent him this follow-up letter

1 within I think a week afterwards of their
2 termination simply saying "And just so we're
3 clear, termination means end of the term. Look
4 at this provision," so forth and so on. The
5 significance of it is that there was never any
6 objection to that. It still meant that
7 termination affected the term date and that all
8 broadcasts occurring until that termination date
9 we had a post term collection right there. If we
10 certainly made claim for those, then we had a
11 continuing right to collect on those claims.
12 MR. BOYDSTON: Your Honor, I would
13 like for Exhibit 119 to be admitted.
14 MS. PLOVNICK: Your Honor, MPAA
15 objects. We move to compel all documents
16 relating to IPG's authority to represent its
17 claimants including Devillier Donegan. This is
18 correspondence that it was a related to a
19 termination letter that was produced pursuant to
20 the July 30th Order. But this actual --
21 The termination letter was produced,
22 but this email and the attached letter, the

1 August 18th letter, here were not produced to us
2 until December 2. So we renew our objection on
3 that basis.
4 MR. MacLEAN: The SDC joins in that
5 objection.
6 MR. BOYDSTON: Your Honor, may I have
7 the witness respond to that?
8 JUDGE BARRETT: The objection is not
9 timely production. Can you not respond on your
10 own? Go ahead.
11 MR. GALAZ: We produced the
12 termination letter in discovery. The only reason
13 that this is being produced here is because there
14 had been no objection to our interpretation of
15 termination letter until the MPAA rebuttal when
16 Devillier Donegan now says "No, termination means
17 termination. There's no post term collection
18 right."
19 Until that point, it wasn't an issue.
20 That's the first time this letter would have been
21 relevant to interpreting anything. We couldn't
22 anticipate that Mr. Devillier was going to

1 reverse course a matter of weeks ago. So this is
2 the first time that this would have been relevant
3 from my perspective to call upon the rights
4 between the parties.
5 JUDGE BARRETT: Ms. Plovnick, I
6 understood you to say this letter was not
7 produced in the original discovery.
8 MS. PLOVNICK: Neither the email nor
9 the letter that's attached that's dated August
10 18, 2011, neither of those documents were
11 produced until we got the last IPG exhibits.
12 MR. BOYDSTON: If I may, Your Honor,
13 it was produced. What was produced was
14 Devillier's termination letter to IPG. That's
15 what was produced. This is a letter back from
16 IPG to Devillier responding to that just to say
17 that we got this but this is what it means. And
18 the reason we're producing it now is --
19 JUDGE BARRETT: I understand.
20 MR. BOYDSTON: Okay. Sorry.
21 JUDGE BARRETT: So did you receive the
22 termination letter from DDE?

1 MS. PLOVNICK: We did receive the
2 termination letter from DDE. We did not get this
3 additional correspondence.
4 JUDGE BARRETT: Okay. One nineteen is
5 admitted.
6 (Whereupon, the above-referred to
7 document marked for identification as
8 IPG Exhibit 119 was received into
9 evidence.)
10 MR. BOYDSTON: Thank you, Your Honor.
11 BY MR. BOYDSTON:
12 Q Mr. Galaz, we touched on this
13 yesterday. But you said at some point after the
14 dates of these emails IPG contacted Devillier
15 with regard to these events. And in the context
16 of that I think you testified that IPG forwarded
17 its big mass of list of 60,000 titles, etc. Is
18 that correct?
19 A That's correct as part of the ongoing
20 back and forth with the representative claimant.
21 We give them copies of everything that's going to
22 be used in connection with these proceedings.

1 And what we had given Mr. Devillier was the
2 proprietary information that we had compiled as
3 to what titles had generated retranmission
4 royalties. And that was in the context of asking
5 them as we had done in the 2000-2003 proceedings
6 to review that list and identify specifically
7 which titles they wanted us to make claim for.
8 JUDGE BARRETT: I'm sorry. I need a
9 time link here. I'm not sure when and where.
10 Was this before the termination letter? After
11 the termination letter?
12 THE WITNESS: This was after the
13 termination letter. After the termination
14 letter, we had a continuing, ongoing relationship
15 with -- I spoke with Mr. Devillier personally
16 several times.
17 JUDGE BARRETT: Okay. That's all I
18 needed to know.
19 THE WITNESS: Okay.
20 JUDGE BARRETT: Thank you.
21 Go ahead, Mr. Boydston.
22 MR. BOYDSTON: You testified yesterday

1 that at some point you found out that Mr.
2 Devillier had passed on the IPG list of 60,000
3 titles to Mr. Olaniran. And how is it you came
4 to learn that?
5 THE WITNESS: We came to learn that
6 because we sent out as part of a global email to
7 all the parties we represented this proprietary
8 information asking -- And it was pursuant to a
9 program that we have a programmer who will
10 combine an HTML document with an Excel
11 spreadsheet and basically send out a form to
12 everybody attaching the Excel list of 64,000
13 titles asking the same question of everyone "Here
14 is the total list. Please go through and respond
15 to us and identify which programs belong to you."
16 We sent this out one evening. By the
17 next morning, we had received a response from Mr.
18 Olaniran objecting to something that we had in
19 our global email to everybody. When Mr. Olaniran
20 responded you can see from the email stream that
21 he had been forwarded it from DDE.
22 Quite evidently, DDE had already

1 relationship because it was after hours that this
2 was sent. Yet Mr. Olaniran already had it by the
3 evening. And that was what we took objection to.
4 It was confidential and proprietary.
5 Everyone knew this. It leads me to believe that
6 all of our communications with DDE had been
7 already shared with the MPAA and --
8 MR. MacLEAN: Objection. Move to
9 strike Mr. Galaz' last sentence which was without
10 foundation and speculation.
11 JUDGE BARRETT: Sustained.
12 MR. BOYDSTON: Mr. Galaz, were you
13 able to understand from this email stream that
14 you got what it was that had made Mr. Olaniran
15 upset?
16 THE WITNESS: Yes, it was. It was a
17 reference in the email to something that had
18 occurred in the 1997 royalty proceedings. And
19 we had gotten wind that something comparable was
20 occurring in these proceedings.
21
22 BY MR. BOYDSTON:

1 Q Specifically?

2 A In the 1997 proceedings, the MPAA had
3 one of its employees, a former New York City
4 policeman, walk in with another individual into
5 IPG claimant's offices, given the impression that
6 he was a detective and said, "I'm here to
7 investigate Independent Producers Group. Could
8 you give me all correspondence, all contracts,
9 you have with them?"

10 Q And how did you learn about that?

11 A From one of our claimants who
12 contacted us. Another claimant contacted us when
13 they were suspicious --

14 MS. PLOVNICK: We're going to object
15 to this because a lot of this is beyond his
16 personal knowledge. It's speculation.

17 THE WITNESS: This is actually in the
18 record in the '97 proceedings.

19 MR. BOYDSTON: He is relaying what he
20 saw in this email and what he had firsthand
21 understanding as to what it was that made Mr.
22 Olaniran upset.

1 JUDGE BARRETT: The email said MPPA
2 sent a detective into a claimant's office.
3 MR. BOYDSTON: Right. He was telling
4 his clients to be aware that something like this
5 may happen. And then Mr. Olaniran took issue on
6 that.
7 MS. PLOVNICK: IPG hasn't brought this
8 email in for anyone to see.
9 JUDGE BARRETT: Correct.
10 MR. BOYDSTON: No, but this is what
11 led to the circumstance and Mr. Galaz read the
12 email. We're not even offering it for the truth.
13 We're offering it to show how it was Mr. Galaz
14 understood that Mr. Olaniran was upset.
15 MR. GALAZ: And actually I think it is
16 one of our exhibits.
17 MR. MacLEAN: Your Honor, if it's
18 offered on that basis, I don't see the relevance.
19 MR. BOYDSTON: We were putting in
20 context how it was that we were able to discover
21 that Mr. Devillier had given Mr. Olaniran this
22 propriety information.

1 JUDGE BARRETT: I think you've already
2 established that by the fact that Mr. Olaniran
3 contacted Mr. Galaz. Enough said.
4 MR. BOYDSTON: Okay.
5 JUDGE BARRETT: Done. Sustained.
6 BY MR. BOYDSTON:
7 Q Now, Mr. Galaz, prior to the events we
8 were just discussing, had IPG ever threatened
9 Devillier with legal action?
10 A No.
11 Q In the aftermath of this transfer of
12 the proprietary information from Devillier to Mr.
13 Olaniran, what steps did IPG take?
14 A IPG communicated to Devillier only in
15 the same letter that it communicated with
16 everybody else, "Here is a list of titles.
17 You're obligated to provide us a copy of your
18 titles that you're making claim for. Please
19 respond." And that is the extent of it.
20 I think at one point with Mr.
21 Devillier he just stopped responding. And I
22 think frankly he was just bothered by the fact

1 that we had discovered that he had been
2 forwarding information to the MPAA.
3 JUDGE BARRETT: I'm sorry. We don't
4 need to have your speculation, Mr. Galaz.
5 THE WITNESS: Sorry, Your Honor.
6 JUDGE BARRETT: Just answer the
7 questions if you would please.
8 THE WITNESS: Sorry, Your Honor.
9 BY MR. BOYDSTON:
10 Q At some point, did IPG take up the
11 issue of the transfer of proprietary information
12 with Devillier?
13 A The very next day, whether we didn't
14 threaten legal actions, simply said, "We're very
15 disappointed in you" and "You jeopardized not
16 just your claim but other people's claims."
17 MR. BOYDSTON: Thank you. Please take
18 a look at what's been marked at Exhibit 124. By
19 my calculation it was not admitted. It was
20 presented yesterday. And Ms. Saunders was asked
21 questions about it, but I don't believe I moved
22 for admission. But it is in front of the

1 witness.

2 JUDGE BARRETT: I don't have it marked

3 as admitted.

4 JUDGE FEDER: It's not admitted.

5 MR. BOYDSTON: I didn't think so. I

6 just wanted to make sure of that.

7 JUDGE BARRETT: Okay.

8 BY MR. BOYDSTON:

9 Q Mr. Galaz, the top email in Exhibit

10 124 is addressed to Worldwide SG. Are you

11 familiar with that email address?

12 A That's the company email address for

13 IPG.

14 Q And it's addressed to "Dear Ms.

15 Vernon." Do you also have access to this email

16 address?

17 A Yes.

18 Q And did you also receive this email?

19 A I saw it. Yes, I reviewed it.

20 Q And what was your understanding of

21 what was going on in this email?

22 A Well, to put it in context, Beckmann

1 International is one of our represented
2 claimants. And we were having difficulty with
3 them. They were initially acting -- I would say
4 that they were being somewhat vitriolic with
5 this.
6 We didn't understand why. And when we
7 pressed them and explained the context of
8 everything including my criminal conviction -- I
9 mean everything has been transparent about that -
10 - they came back and said "Well, this is why we
11 were concerned because we'd been informed that
12 you're a fraudulent organization."
13 And we said, "Okay. Well, on what
14 basis would you do that or why would you think
15 that? We've done this. We've pulled this data
16 together. Everything is transparent."
17 And that's when they sent us this
18 which they forwarded the email from Mr. Olaniran
19 with the re: line Mail Fraud, cc'ed to Ms.
20 Saunders and Ms. Lucy Plovnick. And you can see
21 what it says right there. Mr. Olaniran is saying
22 "Mr. Galaz and his operation." The re: line is

1 Mail Fraud Program Royalties and the assertion
2 that's made by Beckmann Group that Mr. Olaniran
3 had warned her that there was a scam going on
4 which he had been investigating for some time.
5 MR. BOYDSTON: Your Honor, I'd like to
6 move to admit Exhibit 124.
7 MS. PLOVNICK: MPAA objects to this
8 exhibit. Our first objection is that this is not
9 an impeachment exhibit. It wasn't exchanged in
10 advance. That's contrary to the judges'
11 regulations. This is a new exhibit that they
12 could have put in the binder, but they didn't put
13 in the binder.
14 The second is that it's been
15 mischaracterized and I think his summation of it
16 is inaccurate. But it is clearly the program,
17 the mail fraud, and attributing that to Mr.
18 Olaniran.
19 But beyond that this is related or at
20 least some portion of it, the part at the bottom,
21 is related to the 2000-2003 cable proceeding. So
22 I think only the top portion of it is really

1 relevant to this proceeding. The bottom part is
2 not.
3 MR. BOYDSTON: Well, Your Honor, the
4 reason I would argue it's relevant to this
5 proceeding is because it came up in the context
6 of preparing for this proceeding and not 2000-
7 2003.
8 And the reason why it's being brought
9 in now is because it relates to the MPAA's attack
10 on our right to represent Beckmann International.
11 And we do have a right to represent Beckmann
12 International. Beckmann was concerned about
13 this. They communicated with us in this regard.
14 And when we saw the MPAA's papers, we said "Well,
15 we have a piece of evidence to address this with
16 regard to Beckmann."
17 MS. PLOVNICK: Yet they didn't put it
18 in the exhibit binder.
19 JUDGE BARRETT: It's dated March 13,
20 2014.
21 MR. BOYDSTON: That is true. We did
22 not know the significance of this until we got

1 their exhibits for this hearing and in the
2 exhibits for this hearing, Beckmann comes up. So
3 we realized we have to -- we need to put this in.
4 I mean again part of the issue is we
5 didn't -- Neither of the parties saw each others'
6 exhibits for this proceeding until a week before.
7 So we couldn't anticipate everything that we
8 would want to put in until we saw that.
9 JUDGE BARRETT: I understand that you
10 didn't see each other's exhibits. But you had --
11 Did you not have a list of the challenges? Did
12 you not know what the challenges were prior to
13 turning over exhibits?
14 MR. BOYDSTON: Well, in some cases we
15 did. But then again then when the exhibits came
16 for instance there are exhibits addressing Fox
17 Entertainment and there's nothing in their
18 referral statement about that.
19 JUDGE BARRETT: Was there anything in
20 any paper you received from MPAA prior to the
21 exhibit binder that named Beckmann International?
22 MR. BOYDSTON: That named Beckmann

1 International. Well, it named -- I don't believe
2 it named Beckmann. It named companies that
3 Beckmann is an agent for, but not Beckmann as I
4 recall.
5 MS. PLOVNICK: Your Honor, in our
6 written objections to claims which was filed
7 October 15th, we made claims challenges. We
8 didn't make any new claims challenges as in our
9 exhibit binder other than in regard to that one
10 Feed The Children document which was a new
11 document.
12 This is an email that existed in March
13 of 2014. If they wanted to say something about
14 that, I mean we really didn't remove that issue
15 in anything we filed in our exhibit binder. And
16 I just -- This was produced in discovery to us,
17 but it was not in the exhibit binder at all. It
18 was raised yesterday as an impeachment exhibit
19 and they were not able to get it for impeachment
20 purposes. And now they're trying to offer it
21 with their own witness.
22 MR. BOYDSTON: Your Honor, I believe

1 that the witness has information that's pertinent
2 to this. May I direct him to answer that?
3 JUDGE BARRETT: You can ask him a
4 question.
5 MR. BOYDSTON: Okay. What is your
6 understanding of the MPAA's position regarding
7 Beckmann and the entities it represents?
8 THE WITNESS: That the entities that
9 it represents should be excluded for the initial
10 year contract with Beckmann who is the
11 distributor of these entities including Amity.
12 And the purpose of this particular exhibit is to
13 display the difficulties that we've had sometimes
14 unknowingly with parties because unbeknownst to
15 us it's being communicated to them that we are a
16 fraudulent organization.
17 And, Your Honor, I'd point out there
18 --
19 JUDGE BARRETT: Please, Government,
20 can you point me to the MPAA rebuttal statement
21 or any statement from MPAA prior to the exhibit
22 binder that listed?

1 MS. PLOVNICK: I'm not sure I can. I
2 might have to look it up. I have a copy of the
3 chart that we did that would list all of our --
4 You're talking about prior to the written
5 rebuttal statement or in the written rebuttal
6 statement?
7 JUDGE BARRETT: Either.
8 MS. PLOVNICK: Your Honor, I'm not
9 seeing Beckmann International listed as one of
10 the claimants we even challenged in our written
11 rebuttal statement. It's not listed on our
12 Appendix A where we summarized all of our
13 challenges. Now if what he's saying is they're
14 an agent claimant, then it is possible that they
15 are represented agents on here that they didn't
16 identify in the list as being linked to Beckmann.
17 But I don't see Beckmann specifically.
18 JUDGE BARRETT: Exhibit 124 is
19 admitted.
20 (Whereupon, the above-referred to
21 document marked for identification as
22 IPG Exhibit 124 was received into

1 evidence.)

2 MR. BOYDSTON: Thank you, Your Honor.

3 BY MR. BOYDSTON:

4 Q Mr. Galaz, are you familiar with an

5 IPG claimant known as Golden Films?

6 A Yes, I am very well.

7 Q And prior to receipt of the MPAA's

8 rebuttal papers here a couple of months ago, are

9 you familiar with whether or not Golden Films

10 ever disavowed IPG's representation by -- Excuse

11 me. Whether or not Golden Films disavowed IPG's

12 right to representative?

13 A To my knowledge, they had never. I

14 had absolutely no information that they had ever

15 sent a termination letter to IPG and all evidence

16 was to the contrary. I can explain that.

17 Q Have you corresponded with

18 representatives of Golden Films over the years?

19 A Yes, specifically Diane Eskenazi. I

20 recall actually visiting her offices and in Menlo

21 Park, California. We represented them. She was

22 -- They were one of the first clients that we

1 ever had.

2 I recall meeting with her and in

3 connection with these proceedings we had their

4 corroboration. They identified all their

5 programming, when we submitted then the

6 acknowledgment of representation which I know

7 we'll go into greater later detail about those.

8 They executed it. There seemed to be no issue

9 with them until we received the MPAA rebuttal in

10 which they attached a termination letter that was

11 purportedly sent in 2004 that I know for a fact

12 had never been received by us. And I know for a

13 fact that if it had been received by us we would

14 have responded to it --

15 MS. PLOVNICK: Objection.

16 JUDGE BARRETT: Sustained.

17 MR. BOYDSTON: Just out of curiosity,

18 I didn't understand what the objection was.

19 MS. PLOVNICK: He's speculating about

20 things.

21 JUDGE BARRETT: Sustained.

22 MR. BOYDSTON: As far as you know, was

1 that termination letter ever received by IPG?
2 THE WITNESS: I know for a fact it
3 wasn't.
4 BY MR. BOYDSTON:
5 Q Thank you. With regard to -- Are you
6 familiar with another IPG claimant, Pacific
7 Family Entertainment?
8 A Very well as well.
9 Q And at some point did you receive some
10 information from Pacific Family Entertainment to
11 the effect that it no longer wished IPG to
12 represent it?
13 A Well, what we received was notice and
14 I think this was the end of September, just
15 within the last few months. Pacific Family
16 Entertainment we had represented for something
17 like 14 years under an agreement. Again, they
18 had corroborated with us in the 2000 & 2003
19 proceedings. Including in these proceedings,
20 they had acknowledgments of representation. In
21 September, it came to their attention that -- And
22 I can't say it's the right hand not knowing what

1 the left hand is doing -- they had executed an
2 agreement subsequent to the agreement with us
3 also with Compact Collections.
4 Compact Collections is apparently
5 represented by the MPAA. So the MPAA contacted
6 Compact. Compact contacted Pacific Family
7 Entertainment and said, "Hey, you have two
8 conflicting agreements. But we've advanced
9 moneys to you. So who do you want to go with at
10 this point in time?"
11 We had an agreement with Pacific
12 Family Entertainment and the first we ever
13 realized that there was any issue with that, the
14 revocation that was in September.
15 Q Please take a look at what's been
16 marked as Exhibit 120 and tell me if you're
17 familiar with that.
18 A Yes, this was the email stream with
19 Tim Cook. Actually, it somewhat jumps ahead
20 because -- Well, in any event, it's this email
21 stream where the second email down is the one
22 from Mr. Cook. Actually, yeah, it's from Mr.

1 Cook. He cc's himself. I don't know why. But
2 this is where he has --
3 JUDGE BARRETT: Before you tell us
4 what he says, let's see if we can get it in
5 evidence.
6 MR. BOYDSTON: Thank you, Your Honor.
7 Then I would like to move to admit Exhibit 120.
8 MS. PLOVNICK: We have no objection.
9 MR. MacLEAN: We don't --
10 JUDGE BARRETT: One twenty is
11 admitted.
12 (Whereupon, the above-referred to
13 document marked for identification as
14 IPG Exhibit 120 was received into
15 evidence.)
16 BY MR. BOYDSTON:
17 Q And so I believe as the email begins,
18 the very first email is the first email you made
19 reference to earlier in your testimony that says
20 "For the first time we have this agreement with
21 some other entity." Correct?
22 A Yes, but this is -- I'm confused

1 because this first one that says September 14th,
2 I think it may have changed the date on it. It
3 was nowhere near September 14th. And I don't
4 know why he responded to this one and I don't
5 know why the date says September 14th. That was
6 an email that was sent out I believe in March or
7 something like that.
8 In any event, he appears to be
9 responding to that. But it's dated September
10 26th. And this was in fact the first time we had
11 been contacted by Pacific Family Entertainment.
12 And they said that they were breaking the
13 agreement with IPG.
14 Q And then there was a response here too
15 starting "Dear Tim." Was there any reaction or
16 response to that response?
17 A No, there hasn't been any response to
18 that. We had asked him to provide copies of the
19 agreement between Pacific Family Entertainment
20 and Compact Collections that he was saying
21 existed. And we never received anything.
22 Q Let me ask you about a -- Are you

1 familiar with an IPG client by the name of Urban
2 Latino?
3 A Yes.
4 Q And until the filing of the MPAA
5 rebuttal statement, were you aware of -- Had
6 Urban Latino ever disavowed IPG's representation
7 to your knowledge?
8 A No, not to my knowledge. I know that
9 there's a filing apparently that was made by an
10 agent purporting to be their counsel, Ted
11 Hammerman that was filed probably like I think it
12 was a decade ago or something like that.
13 IPG had entered into an agreement with
14 Urban Latino with a minimum of a three year term
15 and a post term collection right. The document
16 on file with the CRB -- that was the Copyright
17 Office -- indicates that they're withdrawing IPG
18 as a representative and it attaches a letter that
19 was purportedly sent that attempts to terminate
20 within one year I think or approximately a year
21 after the agreement had been entered into.
22 I didn't personally know about that.

1 So they were contacted just like all of the
2 parties asking if they'd cooperate in the action
3 of these proceedings. They did cooperate. They
4 provided copies of their or identified their
5 claim to programs. They signed the
6 acknowledgment of representation. And until we
7 got the MPAA rebuttal we didn't realize that
8 there was --
9 Q You had mentioned several times the
10 different parties in addition to Urban Latino
11 about them "cooperating" with you in preparing
12 for this proceeding. What is the time frame
13 you're talking about?
14 A For this particular proceeding, I
15 think we started contacting parties maybe two or
16 three months after they were announced. I think
17 they were announced in September 2013, roughly
18 August or September 2013. So close to the end of
19 the year, we had started contacting parties. But
20 most of it started taking place during the early
21 2014.
22 Q And you said they also signed an

1 acknowledgment of representation.

2 A Correct.

3 Q Approximately when were those sent out

4 to the various claimants?

5 A February - March I think.

6 Q Of this year?

7 A Of 2014, correct.

8 Q And when that happened did Urban

9 Latino come back to you in any way and say "Who

10 are you? Get out of here"?

11 A I know they didn't say that. My

12 recollection was that -- Yeah, I can't recall

13 whether I sent them a copy of our contract or

14 what. But at some point, they had come back.

15 I recall having a conversation because

16 I remember it actually took a while to actually

17 locate the individual who was the person who I

18 should be speaking to in their organization at

19 that point. They had actually moved from New

20 York City to Los Angeles.

21 Q And when you finally contacted them,

22 were they cooperative?

1 A Yes.

2 Q Are you familiar with an IPG claimant

3 known as Worldwide Pants Incorporated?

4 A Yes, very well.

5 Q And when did IPG first enter into an

6 agreement with Worldwide Pants?

7 A Late '90s. I think it was 1998, 1998

8 or 1999.

9 Q At some point, did Worldwide Pants

10 terminate the agreement with IPG?

11 A Yes, they did.

12 Q And approximately when was that?

13 A 2003 I think they sent their

14 termination notice.

15 Q And was there -- In the context of

16 that, did IPG and Worldwide Pants come to any

17 kind of meeting of the minds as to when IPG would

18 be making claims for them and when it would not?

19 A Yes. We continued to make claims

20 pursuant to the agreed-upon termination date.

21 Post term collection right continued. And we

22 continued collecting for all broadcasts occurring

1 up until the termination date. There was no
2 issue.
3 Q At some point after the termination
4 date, did IPG come in contact with Worldwide
5 Pants again and end up representing it again?
6 A Yes. And that was specifically at my
7 working. Worldwide Pants is a company that it's
8 David Letterman's company. And they own The Late
9 Show and The Late Late Show. And they actually
10 are co-owners of Everybody Loves Raymond, though
11 they asked us not to make claim for that
12 particular program.
13 This was after I had come back and
14 started being full-time with Independent
15 Producers Group. I had resolicited Worldwide
16 Pants and I got specific -- And it all came up in
17 the context of -- it's irrelevant to all here --
18 royalties that were coming out of Canada for the
19 Copyright Collection of Canada.
20 And in that context, I resolicited
21 them. I specifically pull the filings from the
22 Copyright Office and from the CRB and

1 demonstrated to them that there were not in fact
2 making claim. They were losing an extraordinary
3 amount of money by not making U.S. claims.
4 At that point, two individuals
5 reconfirmed their reengagement of us and that was
6 Amy Rubin in their New York office, a long-time
7 employee of Worldwide Pants, and their counsel,
8 Eric Weissler in Los Angeles.
9 They then subsequently been in
10 connection with the Canada Collections, signed
11 something confirming our authority, granted only
12 Canada, but --
13 MR. MacLEAN: Objection. Your Honor,
14 at this point, it's unresponsive and becoming
15 narrative.
16 JUDGE BARRETT: Sustained.
17 MR. BOYDSTON: After being rehired by
18 Worldwide Pants, did IPG make claims on behalf of
19 Worldwide Pants?
20 THE WITNESS: Yes. And that was I
21 remember in 2007 because we got it in time to get
22 back for 2006 claims. So starting for the 2006

1 broadcast year which the claim for the U.S. would
2 have been in July 2007, we started making claim
3 for Worldwide Pants again, communicating with
4 them, accounting to them and have collected I
5 think $2 million, close to $2 million, on their
6 behalf that would have been foregone.
7 Q Now when IPG initially entered into an
8 agreement with Worldwide Pants, did IPG inquire
9 of Worldwide Pants as to the distributor CBS or
10 anybody else was application for these types of
11 royalties for it.
12 A Very specifically and the context of
13 that is that David Letterman, The Late Show, used
14 to be on NBC. NBC owned his program. When he
15 had a very well-known falling out with NBC and
16 moved to CBS --
17 MR. MacLEAN: Objection. Move to
18 strike. It's nonresponsive.
19 MR. BOYDSTON: Your Honor, this is the
20 background of the answer. Mr. Letterman did move
21 and when he moved the legal status of his company
22 changed significantly which is how all this could

1 happen.

2 JUDGE BARRETT: It sounds like hearsay

3 I think. The objection is sustained. Ask more

4 specific questions and more often.

5 MR. BOYDSTON: My original question is

6 whether or not IPG made an inquiry of Worldwide

7 Pants as to whether or not it had authorized its

8 distributor, CBS, or anyone else to make

9 application for royalties such as these. I

10 believe your answer was no. Or the answer was

11 yes, that IPG did make that inquiry.

12 THE WITNESS: Absolutely made an

13 inquiry. Worldwide Pants now owned The Late Show

14 and The Late Late Show. It was a broadcast on

15 CBS. But the concern is obviously that a

16 distributor whether domestic or --

17 BY MR. BOYDSTON:

18 Q Let me get you out of there. So IPG

19 did make an inquiry as to whether or not

20 Worldwide Pants had assigned its rights in some

21 regard. Yes?

22 A And included a provision in our

1 contract that address that specifically.

2 Q And therefore what was Worldwide

3 Pants' response to the inquiry?

4 A The response to the inquiry was that

5 they have rights that (a) they owned the

6 copyright --

7 MS. PLOVNICK: I have an objection.

8 My issue is that this is speculation and it's

9 also hearsay.

10 MR. BOYDSTON: Well, I'll withdraw the

11 question and ask a different question.

12 JUDGE BARRETT: Thank you.

13 MR. BOYDSTON: Was this issue

14 memorialized in the agreement between Worldwide

15 Pants and IPG?

16 THE WITNESS: Yes, there's a --

17 BY MR. BOYDSTON:

18 Q In what regard?

19 A There's a specific warranty in our

20 contract with Worldwide Pants that says that they

21 have not rendered these rights to any distributor

22 and that they continue to retain the rights to

1 make claim for cable and satellite retransmission
2 royalties. And the reason that it was there was
3 a specific concern of mine that there would be
4 some distributor that would come along at some
5 point and say, "Hey, we're an appropriate
6 claimant." I didn't want to have a conflicting
7 claim.
8 Q And do you understand that some
9 distributor has come along and made that claim.
10 A Correct.
11 Q And who?
12 A CBS Distribution -- David Letterman
13 was broadcast on CBS -- has now indicated that is
14 the claimant for The Late Show and The Late Late
15 Show. It's never identified Worldwide Pants in
16 any of its July claim filings.
17 Q Let me ask a question about that.
18 Have you investigated the CBS July filings to see
19 whether or not they have included Worldwide
20 Pants?
21 A There is no mention of them.
22 Q So you have investigated them?

1 A Yes, I have.
2 Q And is there anything in there?
3 A There is nothing --
4 Q I'm sorry. That's a bad question.
5 When you investigated the CBS July filings, did
6 you find CBS listing The Late Show or the The
7 Late Late Show in their filings?
8 A No, I did not.
9 MR. MacLEAN: Objection. Facts not in
10 evidence, Your Honor. If Mr. Galaz is going to
11 testify to the contents of the document, then we
12 should have that document.
13 JUDGE BARRETT: Sustained.
14 MR. BOYDSTON: Well, Your Honor, he
15 can testify to what he saw on paper. That's all
16 he testifying to.
17 JUDGE BARRETT: He can. But if
18 there's a paper, that would be a better source of
19 evidence.
20 MR. BOYDSTON: Are you familiar with
21 an IPG claimant called Cogeco Radio-Television?
22 THE WITNESS: Yes. I know that

1 they're a claimant. I'm trying to recall the
2 details of their engagement.
3 BY MR. BOYDSTON:
4 Q Do you recall whether or not they
5 signed a contract with IPG?
6 A My recollection is they signed the IPG
7 contract initially and mandate agreement and then
8 an extension agreement. But we've only been able
9 to locate the extension agreement.
10 Q And what does the extension agreement
11 -- You've located that. So tell me about the
12 extension agreement. What does that purport to
13 do?
14 A The extension agreement is our form
15 standard. It's our form extension agreement. If
16 an extension agreement exists, then it means that
17 the immediately preceding year there is a mandate
18 agreement. Then IPG initially started --
19 MS. PLOVNICK: Objection. This calls
20 for speculation.
21 MR. BOYDSTON: Well no. Your Honor,
22 he's testifying as to a business with IPG.

1 JUDGE BARRETT: Well, it's beyond the
2 scope of the question. Ask another question.
3 MR. BOYDSTON: Thank you, Your Honor.
4 BY MR. BOYDSTON:
5 Q What is IPG's practice with regard to
6 extension agreements?
7 A An extension agreement only exists if
8 there is a mandate agreement in the immediately
9 preceding year.
10 Q And again you've testified that there
11 is an extension agreement with Cogeco, although
12 you've not located a mandate agreement. Correct?
13 A Correct. We could not find the
14 original mandate agreement that was entered into.
15 We located and produced the extension agreement.
16 So we know -- And the extension agreement
17 specifically refers to the existence of the
18 mandate agreement.
19 MR. MacLEAN: Objection. Facts not in
20 evidence.
21 MR. BOYDSTON: Well, we've got dozens
22 of these things in evidence. Exhibit 101 is one

1 of these.

2 JUDGE BARRETT: Sustained.

3 MR. MacLEAN: That may be but --

4 JUDGE BARRETT: Sustained.

5 MR. BOYDSTON: Let me ask you. Are

6 you familiar with an IPG client by the name of

7 Envoy Productions?

8 THE WITNESS: Very well.

9 BY MR. BOYDSTON:

10 Q And did Envoy Productions make claim

11 in the prior proceedings, 2000, 2003?

12 A Yes, it did for the calendar 2001

13 broadcast year.

14 Q And were those claims ultimately

15 denied to your knowledge?

16 A They were dismissed.

17 Q And have you investigated the basis

18 for that and?

19 A The basis for it was that the contract

20 that we had with them identifies calendar year

21 2000. I know that it was a typographical error.

22 MR. MacLEAN: Objection, move to

1 strike as nonresponsive and also facts not in
2 evidence.
3 JUDGE BARRETT: Sustained. The
4 nonresponsive part.
5 MR. BOYDSTON: In investigating --
6 Excuse me. So upon what basis do you agree that
7 there was a typographical error in the agreement?
8 THE WITNESS: Well, the agreement --
9 and it's within the documents if we want to jump
10 ahead to it -- it was actually printed out from
11 the IPG website. There was a time where we had a
12 IPG website and you could actually print out the
13 contract and just send it to us. At the time
14 that they printed it out it hadn't been updated,
15 the attached agreement.
16 So it still applied to the 2000
17 calendar year. It was an oversight on
18 everybody's part because at the time that the
19 contract was actually executed between the
20 parties it was already a year past the deadline
21 for the 2000 filing. It was in July 2002 if I
22 recall.

1 The document was executed with the
2 intent of it applying to calendar year 2001. And
3 that is in fact --
4 MS. PLOVNICK: Objection.
5 JUDGE BARRETT: Sustained.
6 MR. BOYDSTON: Have you discussed this
7 issue with the representatives of Envoy
8 Productions?
9 THE WITNESS: Yes.
10 MR. BOYDSTON: And what have they told
11 you in terms of their recollection of this issue?
12 MS. PLOVNICK: Objection.
13 MR. MacLEAN: Objection, hearsay.
14 MS. PLOVNICK: Hearsay.
15 JUDGE BARRETT: I'm going to overrule
16 it.
17 THE WITNESS: That's their
18 recollection as well. They in fact executed a
19 declaration that we submitted as part of our
20 evidence attesting to that and other facts
21 relating to other issues that are being addressed
22 in these proceedings.

1 BY MR. BOYDSTON:

2 Q Please take a look at what's been
3 marked as IPG Exhibit 69. This was relevant in
4 both the program suppliers category and the
5 devotional category. We just put in one so that
6 we didn't overburden this already overburdened
7 paper trail. That is Exhibit 69.

8 A Okay.

9 Q And do you recognize this document?

10 A Yes, this is the declaration that was
11 executed by an executive of Envoy Productions,
12 Curtiss Wittbacht.

13 Q And the document will speak for
14 itself. But just very generally, did you discuss
15 this document with other people?

16 A Yes, I did.

17 MR. BOYDSTON: And, Your Honor, I
18 would like to move Exhibit 69 into evidence.

19 MR. MacLEAN: Objection. Your Honor,
20 there are several bases for this objection.
21 First of all, obviously it's hearsay. With
22 respect to this declaration, no good cause has

1 been shown for why a witness from Envoy can't be
2 here to testify about Envoy's intent with regard
3 to the agreement.
4 Moreover, paragraph four of this
5 declaration actually deals with another issue
6 which is regarding what I understand to be IPG's
7 contention that a distribution agreement existed
8 between Envoy Productions and Promark Television.
9 Now we requested in discovery copies
10 of all agreements between Envoy Productions and
11 Promark Televisions and a number of other
12 claimants that IPG claimed in program titles
13 along with Envoy Productions. In their program
14 title list, they had a lot of, dozens and dozens
15 of programs where they'd say Envoy Productions/
16 and then another company. There were about five
17 other companies that would appear that way
18 including Promark.
19 We asked for -- understanding that IPG
20 was making a claim that Envoy and a number of
21 other companies where claiming the same program -
22 - requested in discovery all agreements and

1 correspondence between these claimants about
2 those programs.
3 IPG's response to that discovery
4 request -- Well, they first refused to provide
5 anything. We moved to compel. Their response to
6 our compel was SDC is making an assumption here.
7 We never said that these are the same programs.
8 We just said it was the same program title. It
9 might be the same program. It might not be the
10 same program. We don't know.
11 The judges granted our motion to
12 compel, ordered IPG to go to their claimants if
13 necessary to get all correspondence and
14 agreements relating to these program titles.
15 They came back and responded. And if you give me
16 a moment, I can tell you where their response is.
17 It's in our exhibit list. Give me one second
18 here.
19 It's SDC Exhibit 625, the IPG
20 discovery response. They responded, "We don't
21 have any documents."
22 That led us to the conclusion based on

1 IPG's response to our motion to compel and then
2 IPG's compelled response to our document
3 production request that there was no relationship
4 between Promark and Envoy. Therefore, Promark
5 and Envoy as IPG suggested were not in fact
6 claiming the same programs.
7 The first time we saw any indication
8 whatsoever that Promark and Envoy are claiming
9 these same programs as opposed to different
10 programs with the same title was here in this
11 Exhibit 69 which we received for the first time
12 last Tuesday. There was no correspondence.
13 Now they say we can't find the
14 agreement. There's no correspondence whatsoever
15 produced. We asked for correspondence, too, and
16 that was compelled. If there is a distribution
17 agreement there would have been correspondence,
18 year to year accounting for royalties. There
19 would have been correspondence year to year
20 regarding the distribution.
21 There is none of that. None of that
22 was produced. This is trial by ambush. And as a

1 result of this, this is prejudicial because Envoy
2 Productions makes a claim for only a single year.
3 Whereas Promark on the other hand makes claim for
4 multiple years. And as a result -- And there is
5 no information produced, none whatsoever,
6 regarding the content of Promark's programs.
7 From what I understand now, they are
8 for the first time in this exhibit claiming that
9 Promark is entitled to royalties for all of the
10 Envoy programs that are identified as the same
11 program titles in Promark's list for all the
12 years Promark claims and moreover are claiming
13 that these are devotional programs.
14 That's prejudicial to us that we did
15 not have this information before last Tuesday.
16 And it's prejudicial to us that nothing was
17 produced in response even after the judges
18 granted our motion to compel.
19 MR. BOYDSTON: Your Honor.
20 JUDGE BARRETT: I'm sorry, Mr.
21 MacLean. I got hung up when you said there would
22 be have been distribution records year after

1 year. Isn't that what we're here for? I don't
2 think there have been any distributions during
3 this time frame.
4 MR. MacLEAN: Let me explain, Your
5 Honor. From what I understand, they're
6 contending that Envoy is the producer and that
7 Promark is a distributor of Envoy's programs.
8 This is the claim that was made for the first
9 time in this affidavit. Never before in this
10 proceeding has this claim been made.
11 JUDGE BARRETT: I got that point.
12 MR. MacLEAN: Okay. So they say we
13 looked and we can't find the distribution
14 agreement between Envoy and Promark. But they
15 never say that they looked for -- By the way,
16 they didn't say this in response to our discovery
17 request. They didn't say this in this affidavit.
18 They never said anywhere either in
19 this affidavit or otherwise that they looked for
20 correspondence as they were required to do and
21 they couldn't find any correspondence. And
22 here's why that's odd. Because if there is a

1 distribution agreement and there is distribution
2 going on from year to year by --
3 JUDGE BARRETT: You mean distribution
4 of the programs.
5 MR. MacLEAN: Of the programs, that's
6 right. Maybe I should say syndication.
7 JUDGE BARRETT: Thank you.
8 MR. MacLEAN: From year to year by
9 Promark, then you would expect to see accounting
10 going back to Envoy from year to year. It's
11 simply not credible that there would not be --
12 And by the way, nobody has claimed that there's
13 no correspondence. That's not even addressed
14 here.
15 It's simply not credible that there
16 would be. Nevertheless, IPG responded to our
17 discovery request saying "There are no responsive
18 documents." That was after the judges granted
19 our motion to compel leading us to believe that
20 IPG was not making a contention that Envoy and
21 Promark were in fact claiming the same programs
22 as apparently IPG is not making contention that

1 Envoy and all the other companies that they
2 listed along with Envoy were claiming the same
3 programs. That's prejudicial for us.
4 Now you Judges might have noticed,
5 MPAA submitted an expert witness with respect to
6 the correct categorization of the eight Envoy
7 programs that IPG submitted exhibits for. Our
8 expert witness does not those programs. We made
9 a categorical decision. We're going to focus on
10 Willie Wilson which is a more significant program
11 that's --
12 MR. BOYDSTON: Your Honor, this is
13 running into a speech to say the least. He's
14 going on for over seven minutes. Now I
15 appreciate he wants to object. But can I address
16 something one at a time or?
17 JUDGE BARRETT: Yes, let's object.
18 Let's let Mr. Boydston respond to your prejudice
19 objection. Is there another legal basis without
20 the narrative?
21 MR. MacLEAN: Your Honor, what I was
22 just saying also goes to prejudice and I wanted

1 to -- I'll make it very quick. I wanted to
2 explain. We made a tactical decision on where we
3 wanted to focus our resources. Admittedly, by
4 all means, we're responsible for the tactical
5 decisions we make.
6 However, we're entitled when we made
7 that tactical decision to have the information
8 before us that we requested in discovery and we
9 did not have that information. And that's
10 prejudicial for us because we made a decision as
11 to how to allocate our resources and where to
12 allocate our focus that based upon the
13 information that we had. And now we have this
14 declaration that makes a whole new claim for
15 multiple, multiple years on behalf of Promark.
16 MR. BOYDSTON: This is not a new
17 claim. No one has ever withheld. We never made
18 a secret about the relationship between these
19 entities. And the document speaks for itself in
20 Exhibit 4.
21 JUDGE BARRETT: You mean paragraph
22 four.

1 MR. BOYDSTON: Yes, thank you. I'm
2 sorry. He exposed the policy of document
3 destruction. That's why they don't have the
4 agreement. And we made inquiry of them pursuant
5 to the order and said, "Give us your agreement
6 and give us your correspondence."
7 They came back and said, "We don't
8 have any. We have the policy of document
9 destruction. We don't have any."
10 At that point, what is IPG supposed to
11 do? Go to them and threatened them with a gun
12 and say, "Oh, I think you do." So, no, we won't
13 withholding anything.
14 And Promark was included. It's not
15 like we didn't explain that we were making claims
16 on behalf of Promark in the first place.
17 Now, Your Honor, may I address a
18 question to the witness to respond to this as
19 well?
20 JUDGE BARRETT: You may.
21 MR. BOYDSTON: Thank you.
22 Are you familiar with the relationship

1 between Promark and Envoy?

2 THE WITNESS: Yes, I am.

3 MR. BOYDSTON: And what is that

4 relationship? And how does that relate to the

5 manner in which IPG is pursing these claims?

6 MR. MacLEAN: Objection, foundation.

7 JUDGE BARRETT: Sustained.

8 MR. BOYDSTON: Well, he said he's

9 familiar with it and --

10 JUDGE BARRETT: I'm familiar with

11 thermodynamics, Mr. Boydston. But I wouldn't

12 attempt to testify regarding it. Let's ask him

13 more specific questions if you can.

14 MR. BOYDSTON: Okay. Do you have an

15 understanding as to what the agreements are

16 between Promark and Envoy with regard to the

17 distribution of Envoy programming?

18 THE WITNESS: Yes.

19 MR. BOYDSTON: And what is that?

20 MR. MacLEAN: Objection, foundation.

21 JUDGE BARRETT: Sustained.

22 MR. BOYDSTON: What is the nature of

1 that agreement?

2 MR. MacLEAN: Objection, foundation.

3 JUDGE BARRETT: Sustained.

4 MR. BOYDSTON: Your Honor, I'm sorry.

5 I don't understand what I'm supposed to do here.

6 THE WITNESS: I can indicate that it

7 was representative --

8 MR. MacLEAN: Objection. There's no

9 question pending.

10 JUDGE BARRETT: Sustained.

11 MR. BOYDSTON: Has IPG included claims

12 for both Envoy and Promark in its filings in

13 these proceedings?

14 THE WITNESS: Yes, we have.

15 BY MR. BOYDSTON:

16 Q And does IPG have an agreement with

17 Envoy?

18 A We have an agreement with Envoy just

19 for calendar year 2001.

20 Q And is there an agreement with

21 Promark?

22 A Yes, there's an agreement for Promark

1 that extends through all years of these
2 proceedings.
3 Q And in response to the court's orders,
4 did IPG make inquiry of Envoy as to its
5 agreements and correspondence with Promark?
6 A Yes, and we also made inquiry with
7 Promark as well.
8 Q And what was the response to your
9 inquiries in regard to Envoy?
10 MR. MacLEAN: Objection, hearsay.
11 MR. BOYDSTON: Your Honor, this is
12 getting ridiculous. I mean --
13 JUDGE BARRETT: Back up. Overruled.
14 THE WITNESS: Envoy responded that
15 they had a document destruction policy. They
16 don't have anything going back I think four years
17 or something like that. Their executives knew
18 the existence of Promark as a distributor, could
19 even testify as to the nature of the agreement
20 where they indicated that it was -- and this
21 appears in this declaration -- a one year
22 continuing term agreement that covered the term

1 of the years covered by this proceeding.

2 Promark when we asked them is no

3 longer in the television distribution business.

4 It's in the music business or something like

5 that. They as well have no records. They

6 literally just ship them off or destroy them or

7 something. I have no idea. But they both know

8 that Promark was the distributor for Envoy.

9 MR. MacLEAN: Objection.

10 THE WITNESS: They've both represented

11 to me.

12 MR. MacLEAN: Objection.

13 JUDGE BARRETT: Sustained.

14 MR. MacLEAN: Move to strike the last

15 sentence.

16 JUDGE BARRETT: Sustained.

17 MR. BOYDSTON: Based upon your

18 familiarity with this declaration you understand

19 that Envoy confirmed to you prior to and in this

20 declaration that Promark was the distributor at

21 the time in question.

22 MR. MacLEAN: Objection, leading and

1 refers to a document not in evidence.

2 JUDGE BARRETT: Sustained.

3 MR. BOYDSTON: The document speaks for

4 itself anyway.

5 JUDGE BARRETT: Only when it's in

6 evidence, Mr. Boydston.

7 MR. BOYDSTON: I'm sorry.

8 JUDGE BARRETT: Only when it is in

9 evidence.

10 MR. BOYDSTON: Yes, you're right, Your

11 Honor. And I once again move for admission.

12 MR. MacLEAN: Objection, Your Honor,

13 on the basis that I've stated.

14 MS. PLOVNICK: We join SDC's

15 objection.

16 JUDGE BARRETT: Could we confer

17 please? Off the record.

18 (Whereupon, the above-entitled matter

19 went off the record at 10:10 a.m. and resumed at

20 10:16 a.m.)

21 JUDGE BARRETT: On the record. Please

22 be seated. With respect to affidavits, there is

1 no question that they are hearsay. There's also
2 no question that our rules give us the discretion
3 to hear and consider hearsay. And we've made a
4 previous decision that we would allow these
5 sorts of adequate statements and that we would
6 consider them for whatever weight they may have.
7 With respect to issues of prejudice
8 however, that as to the weight of your objection
9 as do my colleagues, we believe the production
10 in November of this year prior to the hearing of
11 evidence of a relationship that was not clearly
12 elucidated prior to that date is prejudicial to
13 the SDC. And for that reason, we're going to
14 admit Exhibit 69, but strike paragraph four. So
15 paragraph four will not be part of the record.
16 (Whereupon, the above-referred to
17 document marked for identification as
18 IPG Exhibit 69 was received into
19 evidence, striking paragraph 4.)
20 MR. BOYDSTON: Your Honor, I'm not
21 contesting anything. I just want to make an
22 observation or a question. When a document

1 doesn't exist, this declaration didn't exist
2 until a month ago or less. That would seem to
3 suggest that we should have anticipated creating
4 it and producing it ahead of time. Is that what
5 the panel is suggesting?
6 JUDGE BARRETT: Your comments are on
7 the record, Mr. Boydston.
8 MR. BOYDSTON: Thank you.
9 BY MR. BOYDSTON:
10 Q Please take a look at what has been
11 marked as Exhibit 86.
12 A All right.
13 Q And what is this?
14 A This is a declaration of David Levine.
15 He's the principal of Promark Television.
16 MR. BOYDSTON: And, Your Honor, I'd
17 like to move that Exhibit 86 be moved into
18 evidence.
19 MR. MacLEAN: Objection, Your Honor.
20 JUDGE BARRETT: Mr. MacLean.
21 MR. MacLEAN: Yes, Your Honor. If
22 you'll -- Pardon me, Your Honor. I'm still

1 turning to the exhibit here. But this -- Our
2 objection is on precisely the same basis as with
3 respect to the Envoy declaration and in
4 particular I'll direct the judge's attention to
5 paragraph three which is just the flip side of
6 what Envoy's declaration says.
7 So on the precise same basis,
8 precisely the same prejudice with respect to the
9 Envoy declaration, we object to the admission of
10 this declaration, both on the basis of hearsay
11 and on the basis of the prejudice cause by IPG's
12 failure either in its written direct statement or
13 in discovery or in its opposition to our motion
14 to compel to put us on notice that they were
15 contending that there was any relationship
16 between Envoy and Promark.
17 MR. BOYDSTON: Your Honor, we were
18 never asked to provide that information. We were
19 never asked. I don't know how we could have
20 anticipated this. Our clients have all kinds of
21 different relationships with each other. I mean
22 to exclude this on that basis would seem to

1 require us to make all kinds of things to respond
2 to discovery that hasn't even been requested.
3 Each of these entities I mean they had
4 an agreement with each other. It's not like they
5 ever said to us "Do these parties have an
6 agreement?" And we said, "No." And we refused
7 to respond.
8 JUDGE BARRETT: Do you have a legal
9 response? I don't want a narrative response, Mr.
10 Boydston.
11 MR. BOYDSTON: The legal response is
12 that there is no prejudice here. They never
13 asked us if these companies had a relationship
14 and we never said no. We also never said
15 nothing. I mean I don't know how we were
16 supposed to anticipate that we would have to tell
17 them that these companies have a third party
18 agreement between themselves.
19 JUDGE BARRETT: Thank you.
20 MR. MacLEAN: Your Honor, that's just
21 not true that we didn't ask them. We asked in
22 discovery for the documents establishing these

1 relationships because they had produced this list
2 of titles that paired up in some cases multiple
3 claimants with the same titles.
4 In IPG's opposition to that motion to
5 compel, they said "We never said that these are
6 the same titles."
7 MR. BOYDSTON: No, we never said. We
8 said that -- Regardless the titles, we were never
9 asked whether or not these companies had a
10 contract. We were asked for documents and we
11 didn't have any.
12 JUDGE BARRETT: Exhibit 86 is admitted
13 except for paragraph three which is stricken.
14 (Whereupon, the above-referred to
15 document marked for identification as
16 IPG Exhibit 86 was received into
17 evidence, paragraph 3 stricken.)
18 MR. BOYDSTON: Mr. Galaz, are you
19 familiar with an IPG claimant by the name of
20 Adler Media?
21 THE WITNESS: Yes, I am.
22 BY MR. BOYDSTON:

1 Q And did Adler Media have an executed
2 agreement with IPG?
3 A Yes, they did.
4 Q And to your knowledge is that included
5 in Exhibit 101 which includes a number of
6 different agreements?
7 A Yes. They executed agreements for I
8 believe two years. And one is for calendar year
9 2000. The other one is for calendar year 2002.
10 I don't think we could locate the 2002 agreement.
11 But Adler has confirmed engagement of IPG for
12 2000 and 2002.
13 Q And has Adler corroborated with IPG in
14 this proceeding in terms of providing information
15 regarding its programming?
16 A Fully.
17 Q Are you familiar with an IPG client by
18 the name of Atlantic Film Corporation?
19 A Yes. And Atlantic Film Partners.
20 Q And are you familiar with -- Did you
21 understand that an entity called Atlantic Film
22 Partners was dismissed in the prior 2000- 2003

1 proceeding?

2 A Yes.

3 Q Is there really an Atlantic Film

4 Partners? Or is that to your knowledge Atlantic

5 Film Corporation?

6 A They've always been identified as

7 separate entities. However, they're both

8 distributed by Beckmann International.

9 Q And did IPG sign and enter into an

10 agreement with Atlantic Film Partners?

11 A Actually, that's almost a legalistic

12 issue. Our contract was with Beckmann

13 International. Initially we signed a mandate

14 agreement with Beckmann International In the

15 subsequent year, we signed an extension

16 agreement. In the extension agreement, Beckmann

17 indicated they were signing on its own behalf and

18 on the behalf of --

19 MR. MacLEAN: Objection, facts not in

20 evidence.

21 MR. BOYDSTON: Let him finish at

22 least.

1 MR. MacLEAN: Also nonresponsive.

2 MR. BOYDSTON: Can he please finish

3 the answer?

4 JUDGE BARRETT: Overruled. Go ahead,

5 Mr. Galaz.

6 THE WITNESS: For the extension

7 agreement, Beckmann signed upon its own behalf.

8 But then in a parenthetical it stated on its own

9 behalf and on behalf of these other entities on

10 whose behalf it distributed programming.

11 So Beckmann covered the programming of

12 several entities because it was the distributor

13 in the original mandate agreement and then in the

14 next year filed -- excuse me -- executed the

15 extended agreement. It specifically identified

16 those entities that it distributed.

17 BY MR. BOYDSTON:

18 Q Are you familiar with an IPG claimant

19 by the name of Aviva International?

20 A Yes.

21 Q And do you understand that their claim

22 was dismissed in the 2000-2003 proceeding?

1 A Yes.

2 Q And did Aviva enter into an agreement

3 with IPG?

4 A Well, IPG entered into an agreement

5 with Image Entertainment. The agreement with

6 Image Entertainment specifically identifies Aviva

7 International on the notices section. And in

8 connection with execution with that when we

9 started filing July claims Image Entertainment

10 directed us to specifically identify Aviva

11 International on the joint claim as well.

12 In subsequent evidence that we

13 submitted -- this was told to us at the time --

14 Image filed under penalty of perjury a

15 declaration that Aviva is in fact a wholly owned

16 subsidiary of Image Entertainment.

17 Q Are you familiar with an IPG claimant

18 named Inca Productions?

19 A Yes.

20 Q And does Inca Productions have a

21 contract with itself with IPG?

22 A Again, Inca is distributed by Beckmann

1 International. Beckmann signed a mandate
2 agreement with us. The next year they signed an
3 extension agreement where Beckmann indicated that
4 it was executing not only on its own behalf but
5 behalf of all the entities that it distributes
6 and that included Inca in California.
7 Q And you've mentioned Beckmann.
8 Beckmann has obviously come up here and there.
9 And you've said they distribute certain of these
10 entities. Is that in a sense akin to a
11 distributor like CBS or NBC but smaller?
12 A Well, from the standpoint that -- It
13 all depends on which CBS you're talking about, if
14 you're talking about CBS Broadcasting or you're
15 talking about CBS Distribution. If you're
16 talking about -- Because Beckmann International
17 is not itself a broadcaster. They are a
18 distributor. But, yes, it's smaller, independent
19 entities.
20 Q Are you familiar with an IPG claimant
21 named IWV Media Group?
22 A I've come to know it very well.

1 Q And did IPG entered into an agreement
2 with IWV Media Group?
3 A Yes.
4 Q And I'll have you take a look at
5 what's been marked as Exhibit 70.
6 A Okay.
7 Q And that purports to be a declaration
8 of Maureen Millen, IWV Media Group.
9 A She's the principal of it, correct.
10 Q And did Ms. Millen provide this to
11 you?
12 MR. MacLEAN: Your Honor, if we can
13 just have a second to turn to the exhibit. I
14 apologize.
15 JUDGE BARRETT: Could you give that
16 number again please.
17 MR. BOYDSTON: Yes, Your Honor. It's
18 Exhibit 70.
19 JUDGE BARRETT: Thank you.
20 MR. BOYDSTON: May I continue?
21 JUDGE BARRETT: All set?
22 MR. MacLEAN: Yes, Your Honor.

1 JUDGE BARRETT: Yes.

2 BY MR. BOYDSTON:

3 Q You said you've come to know it well.

4 Have you communicated with Ms. Millen?

5 A Yes, I originally had no personal

6 familiarity with her. But following her contact

7 of and work with IWV we've got our way to her.

8 And I spoke with her on frequent occasions.

9 Q At some point, did the issue of the

10 agreement between IPG and IWV Media Group come up

11 between you and Millen?

12 A Yes.

13 Q In what context?

14 A We asked if she had a copy because we

15 didn't have a copy of it. We knew that -- we

16 presumed that we had entered into an agreement

17 because we had made claims for IWV Media Group as

18 well as her other entities. It's not just IWV

19 Media Group, although she considers that sort of

20 the parent -- I don't want to use technical word

21 parent, but she uses that as sort of a parent.

22 But she has several companies for

1 several different productions that she has. The
2 contact was because we didn't have a copy of the
3 contract and we asked her if she had a copy of
4 the contract.
5 Q And what was her response?
6 A Her response was that she's no longer
7 in the television business. Everything was put
8 into storage and she didn't know where it was.
9 She later gave greater specificity that because
10 she's based in the Houston area that she said
11 that Hurricane Ike literally destroyed all her
12 records. And this was in storage somewhere.
13 Q Did Ms. Millen make any requests of
14 IPG with regard to memorializing the agreement
15 between the two entities?
16 A For her own protection, she asked that
17 we send a copy of the contract that we thought we
18 had entered. I forwarded her the standard
19 contract that we had at the time and handwrote
20 all of her entities that we had made claim for in
21 all of our July claims.
22 Q And what did Ms. Millen do in

1 response?

2 A She indicated originally that she was

3 going to take her word version of the document,

4 type it in, execute it, and return it to us.

5 Instead she just put her name in and sent it back

6 to us.

7 MR. BOYDSTON: Your Honor, I would

8 like to move to admit the declaration for Maureen

9 Millen, Exhibit 70.

10 MR. MacLEAN: Objection. First of

11 all, Your Honor, this is hearsay. And so I

12 understand your prior ruling to maintain our

13 objection on that basis.

14 Furthermore, this declaration if you

15 take a look at paragraph eight refers to her

16 opinion of the categorization of the series'

17 primary focus which now we requested in

18 discovery. And I believe MPAA did too.

19 Exemplars of programs for all of the programs

20 that IPG claimed in both the program suppliers

21 and devotional categories.

22 IPG did provide exemplars. However,

1 this --

2 MR. BOYDSTON: Your Honor, this seems

3 to be going on and it's getting --

4 MR. MacLEAN: -- Ms. Millen --

5 JUDGE BARRETT: Don't interrupt

6 please, Mr. Boydston.

7 Mr. MacLean, do you have -- Just take

8 the legal basis of your objection.

9 MR. MacLEAN: Your Honor, it's

10 improper opinion testimony, particularly from a

11 witness who is not present in the courtroom. She

12 should be here just as MPAA's expert witness came

13 here to be cross examined.

14 JUDGE BARRETT: I got it. Improper

15 opinion.

16 MR. MacLEAN: Yes, Your Honor.

17 JUDGE BARRETT: Thank you. Is there

18 anything else on a legal basis?

19 MR. MacLEAN: No, Your Honor.

20 JUDGE BARRETT: Do you want to respond

21 to the legal objection?

22 MR. BOYDSTON: Yes, Your Honor. This

1 is just she made these -- I don't think he's
2 testifying for her or qualifying her as an
3 expert. She's just the recipient witness saying
4 what she thinks the shows are about.
5 JUDGE BARRETT: Well, fact witnesses
6 are not permitted to testify as to opinion.
7 Exhibit 70 is admitted with the exception of
8 paragraph eight.
9 (Whereupon, the above-referred to
10 document marked for identification as
11 IPG Exhibit 70 was received into
12 evidence, paragraph 8 stricken.)
13 MR. BOYDSTON: Your Honor, may I
14 address a question just real quickly to the
15 witness in that regard?
16 JUDGE BARRETT: It's your time. You
17 can use it how you want.
18 BY MR. BOYDSTON:
19 Q Did you discuss with Ms. Millen the
20 nature of her programming as to whether or not it
21 was devotional or not?
22 A We talked about whether it was

1 religious or not, not the issue of whether it
2 should be appropriately categorized in any
3 particular category within these proceedings.
4 Simply how it was marketed. To that end, that's
5 what her testimony, her declaration, is referring
6 to where she's identifying specific aspects of
7 that program's primary focus of which we provided
8 exemplars which she felt were particularly
9 religious as a witness including asking the
10 individual whether they accept Christ into their
11 heart as part of the end credits, things of that
12 nature. And the fact that it was hosted by a
13 Reverend, things of that nature.
14 JUDGE BARRETT: Mr. Boydston, is this
15 a good time to take the morning recess?
16 MR. BOYDSTON: Sure, Your Honor.
17 JUDGE BARRETT: Okay. We'll be at
18 recess for 15 minutes. Off the record.
19 (Whereupon, the above-entitled matter
20 went off the record at 10:33 a.m. and resumed at
21 10:52 a.m.)
22 JUDGE BARRETT: On the record. Please

1 be seated. Mr. Boydston.

2 MR. BOYDSTON: Thank you, Your Honor.

3 BY MR. BOYDSTON:

4 Q Mr. Galaz, are you familiar with an

5 IPG claimant by the name of King Motion Picture

6 Corporation?

7 A Yes.

8 Q And do you understand that this

9 claimant were dismissed in the 2000-2003

10 proceeding?

11 A Yes.

12 Q And did IPG entered into an agreement

13 with King Motion Picture?

14 A Yes, we entered into a mandate

15 agreement and we entered into an extension

16 agreement. We ultimately only located the

17 extension agreement. However, King has

18 cooperated and they have sent us their titles to

19 affirm our engagement.

20 Q Is the extension agreement included in

21 Exhibit 101 and references in Exhibit 115?

22 A I just -- It should be, but let me

1 just confirm. Yes, as is the correspondence from
2 them.
3 Q And I was just going to say. Have you
4 engaged in correspondence with King Motion
5 Picture Association regarding these claims?
6 A Yes.
7 Q And have they cooperated?
8 A Yes.
9 Q And that correspondence is included in
10 reference or is referenced rather in Exhibit 115.
11 A That's correct.
12 Q Are you familiar with an IPG claimant
13 by the name of Sarrazin Couture Entertainment?
14 A Yes.
15 Q And do you understand the claimants
16 for Sarrazin Couture were dismissed in the 2000-
17 2003 proceeding?
18 A Yes.
19 Q And did IPG enter into an agreement
20 with Sarrazin Couture?
21 A We entered into an agreement with the
22 City Productions which was owned by Sarrazin

1 Couture. They had the same address, same contact
2 information and we were directed after executing
3 the agreement with the City Productions to
4 include Sarrazin Couture on all the joint claims
5 that we filed. So we did.
6 Q Has Sarrazin Couture cooperated with
7 IPG in this proceeding?
8 A Yes, including signing acknowledgments
9 of representation both under the name Sarrazin
10 Couture and the City Productions. How they
11 clarified that, the City Productions has been --
12 It ceased to exist because -- And now the rights
13 are handled by Sarrazin Couture and just to
14 clarify -- this should be obvious -- with a lot
15 of productions you have specific production
16 companies that are created -- I presume it's for
17 limitation of liability -- specifically for the
18 particular production. So the City Productions
19 was originally for the production, the City.
20 Q And are the acknowledgments included
21 in the exhibits that have been admitted and
22 references in Exhibit 115?

1 A Yes.

2 Q Are you familiar with an IPG claimant

3 by the name of Kid Friendly Productions?

4 A Yes.

5 Q And did Kid Friendly Productions enter

6 into an agreement with IPG?

7 A Actually, three agreements.

8 Q And were their claims dismissed in the

9 2000-2003 proceeding?

10 A Yes. Actually, we withdrew them and

11 it was because frankly it was just oversight.

12 And we realized that we hadn't produced the

13 documents that we needed to produce and had to

14 conduct further investigation.

15 Q How many agreements does IPG have with

16 Kid Friendly Productions?

17 A We had three. The initial one was

18 just for U.S. and for 1999. Then we entered into

19 an extension agreement with them that handled

20 U.S. 2000 respectively and about the same time

21 within a matter of weeks I think entered into an

22 agreement with them for outside the U.S. starting

1 at that same point.

2 Q Has Kid Friendly Productions

3 cooperated with IPG in this matter?

4 A Yes, they have.

5 Q And have you discussed the confusion

6 with the different contracts with Kid Friendly?

7 A Yes, and they signed a declaration

8 attesting to the foregoing.

9 Q Can you please take a look at Exhibit

10 121? Is that the declaration to which you refer?

11 A Yes, it is.

12 Q And also just taking a quick step

13 backwards, are the agreements that we just

14 referenced within the exhibits that have been

15 admitted and referenced in Exhibit 115?

16 A I know the one XUS is, but I believe

17 we included the 1999 one. I'm not certain

18 whether we did in this. I hope we did. The one

19 that we couldn't locate was the extension

20 agreement that came a year after the mandate

21 agreement.

22 Q And did you discuss these matters with

1 Mr. Hoops?

2 A Jeff Hoops.

3 Q Jeff Hoops.

4 A Yes.

5 MR. BOYDSTON: Your Honor, I'd like to

6 move for the entry of Exhibit 121, the

7 declaration of Jeff Hoops.

8 MR. MacLEAN: I apologize, Your Honor.

9 It took us a minute for us to find it. I need to

10 refresh my recollection what this is.

11 MS. PLOVNICK: We're going to object

12 to this exhibit, Your Honor, on the basis that

13 the first document attached, the mandate

14 agreement, was not produced to us in discovery.

15 Because this is an IPG Exhibit 1 claimant, it was

16 required to be produced pursuant to the July 30th

17 order.

18 The second agreement, the one that I'm

19 referring to is the one that says "Mandate

20 Agreement" at the top. The next page, the

21 following page, but the one that's entitled

22 "Representation Agreement" we're not objecting to

1 that attachment because that document was
2 produced to us in discovery.
3 MR. BOYDSTON: No objection. And,
4 Your Honor, this is just the way Mr. Hoops did.
5 The mandate agreement only applies to '99. It
6 wasn't relevant to this anyhow. So we have no
7 objection to it being --
8 THE WITNESS: Well, it puts in
9 context.
10 MR. BOYDSTON: Let me ask a question
11 of the witness.
12 THE WITNESS: Sorry.
13 BY MR. BOYDSTON:
14 Q Do you know the purpose for why the
15 mandate agreement was attached?
16 A It was just to explain why there was
17 an agreement that covered XUS because the U.S.
18 rights were already covered starting in 1999. So
19 even though the 1999 agreement doesn't apply to
20 program suppliers 2000 and respectively, it was
21 put in there just to lend credence to the fact
22 that there was in fact an extension agreement

1 that followed the 1999 mandate agreement.

2 MS. PLOVNICK: I would object and

3 would want to strike that answer because this is

4 not Mr. Galaz' declaration. He's speaking for

5 the person who signed this, Jeff Hoops, and he's

6 talking about his thoughts, mind and intents in

7 attaching these documents.

8 JUDGE BARRETT: Sustained.

9 MR. MacLEAN: No opposition.

10 JUDGE BARRETT: Exhibit 121 is

11 admitted with the exception of the mandate

12 agreement and the page which just has a one row,

13 one column table in my version. It says Kid

14 Friendly in the first box and Hallmark Workshop

15 in the second box and Series in the third box and

16 nothing in the fourth box. So that page is

17 meaningless and not being included in the

18 exhibit.

19 (Whereupon, the above-referred to

20 document marked for identification as

21 IPG Exhibit 121 was received into

22 evidence, mandate agreement stricken.)

1 MR. BOYDSTON: Thank you, Your Honor.
2 BY MR. BOYDSTON:
3 Q Mr. Galaz, are you familiar with an
4 IPG claimant by the name NTR Program Sales?
5 A Yes.
6 Q And are you familiar with the fact
7 that its claims were dismissed in the 2000-2003
8 proceeding?
9 A Yes, but I'm not sure I recall why.
10 Q Did IPG entered into an agreement with
11 NTS Program Sales?
12 A Yes, and my recollection -- you have
13 to help me on this -- is it was only for one
14 calendar year. But one of the errors that we
15 made is one of our spreadsheets. We erred and
16 put 2000 and 2009. So they're withdrawing for
17 other than -- That one year, I think it's
18 calendar year 2000.
19 Q Okay. And is the agreement that IPG
20 entered with NTS Program Sales included in the
21 exhibits that have been entered and referenced in
22 Exhibit 115, the chart?

1 A Yes, they are.

2 Q Are you familiar with --

3 JUDGE BARRETT: I'm sorry. Mr. Galaz,

4 you said you're withdrawing all except one year

5 and that is?

6 THE WITNESS: I'm fairly certain that

7 the first year and only year that we represented

8 them was calendar year 2000. And on our

9 spreadsheet as part of our direct statement, I

10 think we erred and we put the entire 2000-2009.

11 It really was an error.

12 JUDGE BARRETT: Okay. Thank you.

13 I'm sorry. Go ahead, Mr. Boydston.

14 MR. BOYDSTON: Thank you.

15 BY MR. BOYDSTON:

16 Q Are you familiar with an IPG claimant

17 by the name of Nu/Hart Hair Clinics?

18 A Yes.

19 Q And do you understand that Nu/Hart

20 Hair Clinics' claims were dismissed in the prior

21 proceeding?

22 A Yes.

1 Q And did IPG enter into an agreement
2 with Nu/Hart Hair Clinics?
3 A Well, I know we did. But we don't
4 have an executed agreement. This was a
5 circumstance where we could only locate, both
6 parties could only locate, the confirmation
7 letter that had been sent. But it had admittedly
8 not been counter-executed by Nu/Hart. Nu/Hart
9 nonetheless had no issue with this and signed
10 documents, reported their programming to us in
11 cooperating connections with the proceedings.
12 Q And have those documents -- I believe
13 those documents have been included in the
14 documents entered into evidence here. Were they
15 included in the prior proceeding?
16 A I believe so. Well, prior proceeding.
17 If they're addressed in the prior preliminary
18 hearing I don't think so. And I certainly don't
19 believe I gave any testimony on that. But I
20 think they were produced in the prior proceeding,
21 but I don't think they were addressed in the
22 preliminary hearing.

1 Q Let me ask you to take a look at
2 Exhibit 115, the chart, and identify there from
3 the chart what is included in evidence regarding
4 Nu/Hart Hair.
5 A Well, it gives a reference to Item 4,
6 Representation Agreements, but that's actually an
7 unexecuted representation agreement with a cover
8 letter from Marain Oshita to Nu/Hart. And then
9 it gives a cross reference also to Kellogg
10 Research by -- I happen to know this by third
11 parties. We were engaged -- I think I justified
12 that -- for Infomercial Monitoring Service just
13 providing programming that they knew of for a
14 variety of IPG representative claimants. They
15 had produced infomercials.
16 They came back to us and said, "These
17 were Nu/Hart's programming" which was as well
18 consistent with the correspondence that we got
19 from Nu/Hart in response to a request for the
20 programming for which they wanted us to make
21 claim. But correspondence from Nu/Hart is
22 identified in 115 under Item 10 on pages 4459 and

1 4470.

2 Q Thank you. Are you familiar with an

3 IPG claimant by the name of Psychic Readers

4 Network?

5 A Yes.

6 Q And do they operate under another name

7 as well or have they?

8 A Tide Group, Tide Entertainment.

9 Q And were those claims dismissed from

10 the 2000-2003 proceeding?

11 A My understanding was that all claims

12 for Tide Group doing business as Psychic Readers

13 Network was dismissed. Our agreement was

14 actually with Tide Group, d/b/a Psychic Readers

15 Network. That's the way it reads in the

16 contract.

17 Q And did IPG enter into an agreement

18 with Tide Group?

19 A Yes, we entered into an agreement and

20 my understanding is they were dismissed because

21 there was disparity between the two addressed

22 that were provided in the joint claims. One gave

1 the Florida address which is their physical
2 location. And the other gave the address of
3 their New York counsel and says care of. And
4 it's serving something or another.
5 So we had identified in the joint
6 claims I think the initial year just Tide. And
7 then in the second year which I think was 2002 or
8 2001 respectively, both under Psychic Readers
9 Network and under Tide Entertainment. But like I
10 said, the addresses were different.
11 My understanding was it was dismissed
12 because of a disparity between the two. The
13 contract does read "Tide Group d/b/a Psychic
14 Readers Network" and they are the owner of
15 Psychic Readers Network.
16 Q And was it the request of that entity
17 that you sent that you used the address for their
18 counsel in addition to their physical address?
19 A I don't recall why they wanted us to
20 do that. But yes. It was at their request.
21 Q Are you familiar with an IPG claimant
22 entitled Showtime?

1 A Yes.
2 Q And did they enter into an agreement
3 with IPG?
4 A Yes, they did.
5 Q At some point did they terminate that
6 agreement with IPG?
7 A Yes, they did.
8 Q After terminating with IPG, have they
9 cooperated with IPG?
10 A They have continued to cooperate
11 because the expectation is that the notice of
12 termination only addressed the term of the
13 agreement. It didn't mean that we didn't have a
14 continuing post-term collection right. So again
15 on 115, if you look across, you'll see the
16 references to the correspondence from them by
17 which they cooperated in these proceedings and
18 directed us which programs they wanted us to make
19 fund for.
20 Q Now the MPAA in its papers made a
21 claim that 57 claims of IPG's should be dismissed
22 because based on this information or, excuse me,

1 the incorrect filings. Are you familiar with
2 that charge?
3 A As I understand it, MPAA is asserting
4 that claims should be dismissed for which the
5 identified IPG represented claimant didn't file a
6 July claim.
7 Q And have you looked into that issue?
8 A Yes, I have.
9 Q And what have you been able to
10 determine?
11 A Well, there is a handful -- and
12 actually if I had my sheet over there I could
13 look and identify specifically which ones --
14 where they're correct. And my recollection is
15 something like 14 of them or something like that.
16 Those were circumstances where we had
17 entered into an agreement with an entity that
18 filed as part of the joint claim with the
19 Canadian Broadcasting Corporation. We included
20 them and identified those entities as part of our
21 satellite claim for 2000 when in fact there was
22 no joint claim by the Canadian Broadcasting

1 Corporation for 2000 satellites. So those are
2 correct.
3 There's another instance -- I think
4 Devillier Donegan -- where they indicate that
5 there was no claim filed, although there was a
6 claim independently filed by Devillier Donegan.
7 There's another one for I think Global Response
8 which appears on the joint claim filed by IPG.
9 But the bulk of them all are claims
10 that appear in the 2008 satellite claim for IPG.
11 And we think we know why they're challenging
12 those. It seems fairly evident.
13 Q And why is that? Actually, before you
14 go there, let's look at this exhibit. I direct
15 you to Exhibit 62.
16 A Okay.
17 Q And what is Exhibit 62?
18 A Exhibit 62 is the correspondence that
19 was sent from IPG to the Copyright Royalty Board
20 that contained the IPG 2008 cable and 2008
21 satellite claims.
22 Q And you were referencing this document

1 previously going back to the other issue. What
2 is it that you deduced in terms of why it is that
3 MPAA believes that many of these entities were
4 not part of the claim?
5 A Well, initially we thought it was
6 probably a scanning error or something like that.
7 But the official version that was provided by the
8 CRB to the MPAA for which they asked for judicial
9 notice apparently excludes certain of the pages
10 of IPG's exhibit to the 2008 satellite claim.
11 Now they were sent in the same package
12 and they have the exact same exhibit, IPG's 2008
13 cable claim and 2008 satellite claim. In fact,
14 the exhibit even says that's it's Exhibit A to
15 the cable/satellite claim of IPG.
16 IPG's 2008 cable claim has all the
17 exhibits in the official version that MPAA
18 received from the CLB. IPG's 2008 satellite
19 claim you can see from the page numbering which
20 pages. You see one, two and three and then it
21 jumps to six, seven, eight. So pages four, five,
22 nine and ten that should have been there don't

1 appear in the official version.

2 I can't explain why. It's in

3 everything that we sent. It was in the full

4 exact same exhibit that was appended to the 2008

5 cable claim and that was entered in full with the

6 CRB.

7 So the bulk of the challenges by the

8 MPAA on the basis that there wasn't a July claim

9 by the claimants is because of them listing it.

10 You can just see that it's alphabetical. The

11 omission of any party appears on pages four,

12 five, nine and ten of the exhibit that was

13 appended to IPG's 2008 satellite submission.

14 Q And again Exhibit 62 is a copy of what

15 IPG submitted to the CRB.

16 A This was what was in our files,

17 correct.

18 MR. BOYDSTON: Your Honor, I'd like to

19 move to admit Exhibit 62.

20 MS. PLOVNICK: Your Honor, we have one

21 objection to Exhibit 62. We don't contest that

22 this is IPG's business record. But the

1 particular copy of the 2008 satellite claim
2 that's attached that's included within IPG
3 Exhibit 62 is different from the one that was
4 originally produced to us in discovery. And we
5 first got that copy on November 24th.
6 So we object that this copy isn't what
7 was produced to us and it was produced late. We
8 acknowledge that the certified copy also differs
9 from this copy.
10 MR. BOYDSTON: Your Honor, there's a
11 reason why that was. May I ask --
12 JUDGE BARRETT: First, Ms. Plovnick,
13 to say we first got that copy.
14 MS. PLOVNICK: I'm sorry.
15 JUDGE BARRETT: A definite pronoun,
16 article.
17 MS. PLOVNICK: I'm sorry.
18 JUDGE BARRETT: It's very difficult
19 for me to follow.
20 MS. PLOVNICK: Yes. The copy of the
21 2008 satellite claim that is included in IPG's
22 Exhibit 62, we were first provided with that

1 copy, the one in the Exhibit 62, on November 24,
2 2014. The copy we had previously received in
3 discovery from IPG in their production was
4 different from that, from this copy, the one in
5 Exhibit IPG 62. And it was consistent with the
6 certified copy that the CRB gave us.
7 MR. BOYDSTON: That is all true.
8 JUDGE BARRETT: Missing pages you
9 mean.
10 MS. PLOVNICK: Yes.
11 JUDGE BARRETT: Okay. All right.
12 Go ahead, Mr. Boydston.
13 MR. BOYDSTON: Thank you. That is all
14 true.
15 BY MR. BOYDSTON:
16 Q Why was it that that occurred, Mr.
17 Galaz?
18 A I actually scheduled a specific trip
19 back here to pull a lot of documents and
20 photocopy them. And included in that was my
21 photocopying of all the IPG claims. I also made
22 photocopies of a lot of other claims.

1 What the MPAA received were scanned in
2 copies of what I had made copy of here in the
3 Copyright Office. So that's why they're
4 consistent. It is the same thing. But again,
5 that's not what we sent.
6 Q So, if I may, when you came to the
7 Copyright Office and got this document from the
8 Copyright Office what you got was also missing
9 pages four, five, nine and ten, correct?
10 A Correct. I just didn't realize it at
11 the time.
12 Q And then when IPG produced that
13 document, was asked to produce that document, to
14 MPAA you produced the document you got here at
15 the Copyright Office, correct?
16 A That's correct.
17 Q Okay. At what point did you realize
18 that that copy you got here at the Copyright
19 Office was missing pages?
20 A Only when we received the MPAA
21 rebuttal statement and we received the SDC
22 rebuttal statement. Of pages four, five, nine

1 and ten, obviously there was a lot more programs,
2 suppliers programs, the claimants. And there
3 were I think three SDC or three devotional
4 claimants that were on those pages four, five,
5 nine and ten.
6 You can see from the page numbering
7 how it jumps. You can see it goes one, two,
8 three, six, seven, eight. You can't tell that
9 nine and ten are missing, but you're clear that
10 four and five are missing.
11 Q So when you received the rebuttal
12 statements by the SDC and the MPAA and you had
13 time to read them, did you see that they had
14 explained -- they were making the argument that a
15 number of these claimants were not in the claim?
16 A Right. Initially we thought that it
17 was just a scanning error and that's what we
18 reported to SDC. And the reason for that is that
19 in fact what we had given to the SDC had 2008
20 cable had omitted a page. But the official
21 version of 2008 cable December 13, 2014 doesn't
22 omit that page. So we just presumed it was a

1 scanning error for that and it was a scanning
2 error as well for 2008 satellite.
3 When we then got the MPAA's version
4 that they had requested from the CRB it was
5 missing pages four, five, nine and ten.
6 Q At that point, did you go back and
7 look at what IPG had produced?
8 A Yes, that's when I pulled our files
9 and pulled this document and forwarded it to the
10 MPAA.
11 MR. BOYDSTON: Thank you. Your Honor,
12 I move again for admission of Exhibit 62.
13 MS. PLOVNICK: We stated our
14 objection.
15 JUDGE BARRETT: Overruled. Exhibit 62
16 is admitted.
17 (Whereupon, the above-referred to
18 document marked for identification as
19 IPG Exhibit 62 was received into
20 evidence.)
21 MR. BOYDSTON: Thank you, Your Honor.
22 Mr. Galaz, I'd like you to take a look

1 at an MPAA Exhibit 336.

2 THE WITNESS: Okay.

3 JUDGE BARRETT: That exhibit is marked

4 as restricted, Mr. Boydston. Are you going to

5 ask about the contents or?

6 MR. BOYDSTON: I am. Thank you, Your

7 Honor.

8 JUDGE BARRETT: Or about the facts of

9 it?

10 MR. BOYDSTON: I am going to ask that

11 as content. Thank you.

12 JUDGE BARRETT: If there is anyone?

13 (Off microphone comment.)

14 JUDGE BARRETT: Thank you. If you

15 would put the closed session sign up just in

16 case.

17 MS. PLOVNICK: Your Honor, I just note

18 for the record, according to our records this

19 isn't yet admitted.

20 JUDGE BARRETT: Correct.

21 MS. PLOVNICK: We are going to move

22 its admission. If he wants it to be admitted

1 we'll move it now.

2 JUDGE BARRETT: Hearing no objection,

3 Exhibit 336 will be admitted. Thank you

4 (Whereupon, the above-referred to

5 document marked for identification as

6 MPAA Exhibit 336 was received into

7 evidence.)

8 BY MR. BOYDSTON:

9 Q Mr. Galaz, have you reviewed this

10 exhibit?

11 A Yes, I have.

12 Q And it purports to be a certification

13 that reads "Satellite Carrier Retransmission

14 Royalties Calendar Year 2000." That's on the

15 first page. And have you reviewed the subsequent

16 pages?

17 A Yes, and I have lots of observations.

18 Q On the second page, there are a number

19 of titles listed. Do you see that?

20 A Yes.

21 Q And are you familiar with some of

22 those titles?

1 A I'm actually familiar with a lot of
2 them.
3 Q And you understand that this purports
4 to be a certification by an MPAA client,
5 specifically ABC Family Worldwide Incorporated of
6 programs for which it is making claim or for
7 which it has a right to make claim.
8 A Correct. Well, as a certification,
9 the list was provided to ABC Family Worldwide to
10 affirm or deny their entitlement to these
11 particular programs.
12 Q In reviewing these, were you surprised
13 that ABC Family Entertainment, or excuse me, ABC
14 Family Worldwide was making claim for some of the
15 entities?
16 A Yes.
17 MR. MacLEAN: Objection, relevance as
18 to whether Mr. Galaz was surprised.
19 JUDGE BARRETT: Sustained.
20 MR. BOYDSTON: With regard to these
21 different properties, is it your understanding
22 that some of these properties in fact are not

1 properties that ABC Family Worldwide Incorporated
2 has a right to make claim?
3 MR. GALAZ: No, I'm certain that they
4 aren't.
5 MR. BOYDSTON: And starting on page
6 two which --
7 MR. MacLEAN: Objection, foundation.
8 JUDGE BARRETT: Sustained.
9 MR. BOYDSTON: Looking at page two,
10 which of these do you believe are not properties
11 --
12 MS. PLOVNICK: Objection.
13 MR. BOYDSTON: I haven't got the
14 question.
15 MS. PLOVNICK: It's asking him what do
16 you believe. It calls for speculation. Calls
17 for him to state an opinion and his belief.
18 JUDGE BARRETT: Mr. Boydston, ask your
19 client the basis of his knowledge.
20 MR. BOYDSTON: I was trying to get to
21 what his knowledge was at first and then make the
22 basis for it.

1 JUDGE BARRETT: No.

2 MR. BOYDSTON: I understand. Sorry,

3 Mr. Galaz.

4 Upon what basis do you believe that

5 some of these titles are not supposed to be here

6 or should not --

7 MS. PLOVNICK: Objection.

8 MR. BOYDSTON: Withdraw.

9 MR. BOYDSTON: Upon what basis do you

10 believe that ABC Family Worldwide Inc. does not

11 have the right to make claim for the titles list

12 here on?

13 MS. PLOVNICK: Objection, it's still

14 leading.

15 JUDGE BARRETT: Overruled.

16 THE WITNESS: Before I got into this

17 business, I was the Vice President for Business

18 Affairs for an animation studio that handled

19 exclusively children's programming. I'm very

20 familiar with that entire market. I was Vice

21 President of Business Affairs for Film Roman,

22 Inc.

1 JUDGE BARRETT: I'm sorry. The name
2 again?
3 THE WITNESS: Film Roman, Inc. We
4 produce several Saturday morning children's
5 programming, syndicated children's programming.
6 We did the animation for The Simpsons, a wide
7 variety of animation. I was very familiar with
8 our competitors and I was very familiar with
9 their programming.
10 Subsequent to that, once I founded
11 Worldwide Subsidy Group and started soliciting
12 companies, I became progressively familiar with a
13 lot of programming that was out there and what
14 was produced by who and who owned what
15 programming. So that's the basis of when I
16 looked at this sheet as well as information I got
17 from our own represented claimants.
18 I immediately started noticing any I
19 should say programs that I knew ABC Family
20 Worldwide was neither the producer nor the owner
21 of this programming. I can go right now the list
22 and I mean some of it is almost common knowledge.

1 MR. BOYDSTON: Why don't you tell us
2 which of the titles you see here that based upon
3 your own personal knowledge you believe are not
4 programs for which ABC Family Worldwide Inc. has
5 a right to collect royalties?
6 THE WITNESS: Okay.
7 MS. PLOVNICK: We have an objection.
8 This is a document that MPAA put in as our
9 rebuttal to IPG. And we went ahead and moved it
10 and allowed it to go in because we're trying to
11 be helpful here.
12 But these are new challenges that
13 we're hearing for the first time here. I mean
14 they mentioned a couple of these titles, but now
15 they're delving into other titles that never
16 before have been addressed until right here right
17 now I suspect.
18 MR. BOYDSTON: That's because we
19 didn't see them until we got this a week ago.
20 MS. PLOVNICK: This was produced in
21 discovery originally by us. You've had it for
22 months.

1 MR. BOYDSTON: That's not --

2 JUDGE BARRETT: Mr. Boynston, the
3 challenges that you make to MPAA are what the
4 Court will hear or what the Judges will hear, not
5 the challenges you happened upon when you looked
6 at the exhibit notebook.

7 MR. BOYDSTON: Well, Your Honor, we
8 challenge. We had put in our written rebuttal
9 statement we challenged virtually all of the
10 MPAA's programs on the grounds that they had not
11 provided written confirmation of ownership of the
12 original owners of these shows. So we did
13 challenge them. And then when we saw these, we
14 went and looked up the copyright registrations of
15 the stations. And the exhibit I'm trying to
16 introduce next, the copyright registrations
17 themselves will show that some of these specific
18 programs are not owned by ABC Family.

19 JUDGE BARRETT: Okay. Well, let's
20 just get to -- Overruled. Let's get to the
21 specifics then.

22 MR. BOYDSTON: Okay. Of these

1 programs, which are the ones that based on your
2 personal knowledge you believe are not properly
3 controlled by ABC Family?
4 THE WITNESS: Well, going through,
5 I'll just start with the IPG represented claimant
6 programs, Beast Machines and Beast Wars. Beast
7 Machines is stricken through. That's the same
8 program as Beast Wars. They're actually marketed
9 under a different title in different years and I
10 think in different territories. That's actually
11 the same work.
12 Also DragonBall Z appears on here.
13 That's to back up Beast Wars/Beast Machines.
14 It's owned and produced by Mainframe
15 Entertainment which is an IPG represented
16 claimant. DragonBall Z is the U.S. owner,
17 Funimation, U.S. owner of Dragonball Z.
18 But also going through here and I've
19 confirmed this again with my review of copyright
20 registrations, Angela Anaconda. That's --
21 MS. PLOVNICK: Objection, Your Honor.
22 Angela Anaconda is not a title that was addressed

1 in IPG's written rebuttal statement. And their
2 larger objection about agents does not address
3 this particular claimant, ABC Family or Fox
4 Family. It's not on the list.
5 THE WITNESS: Yes, it is, Your Honor.
6 JUDGE BARRETT: Overruled. Go ahead.
7 MR. MacLEAN: Your Honor, I have an
8 objection to this extent. And it's something Mr.
9 Galaz is testifying as to what he has observed in
10 the copyright registrations. If that's where
11 this is going, I think that's the document that
12 should be before us so that we have the best
13 evidence.
14 JUDGE BARRETT: Sustained.
15 MR. BOYDSTON: Then let's do that.
16 Your Honor, the next in order of IPG's exhibit,
17 this will be IPG Exhibit 125. These are
18 documents from the Copyright Office which we
19 obtained when we saw these titles.
20 (Whereupon, the above-referred to
21 document was marked as IPG Exhibit 125
22 for identification.)

1 MS. PLOVNICK: Your Honor, we object
2 to this because it's not an impeachment exhibit.
3 According to the Judge's regulations, all
4 exhibits must be exchanged in advance with the
5 exception of impeachment exhibits. It's very
6 clearly defined in the regulations.
7 And unless he's trying to impeach his
8 own witness it can't possibly be an impeachment
9 exhibit. So we think this violates the Judge's
10 regulations. And we object to this line of
11 questioning.
12 MR. BOYDSTON: Your Honor, once again,
13 when we don't get all the documentation and all
14 of these briefings until the week before, we
15 should be allowed to look at what we get the week
16 before and then --
17 JUDGE BARRETT: Mr. Boydston, your
18 client objected to all MPAA's claims to which
19 they did not produce all documentation.
20 MR. BOYDSTON: Right.
21 JUDGE BARRETT: Now you're saying,
22 "Oh, but we didn't know what they were claiming

1 until we got their exhibits." So then how could
2 you then have objected to all of their claims if
3 you didn't know what they were?
4 MR. BOYDSTON: Well, there are
5 different bases for those objections. They had
6 never produced any agreements with the owners,
7 the specific owners, of these works. They
8 produced agreements with agents that purport to
9 represent the owners of these works. And that is
10 what ABC Family is.
11 JUDGE BARRETT: Okay.
12 MR. BOYDSTON: ABC Family on the front
13 of this certification --
14 JUDGE BARRETT: I understand.
15 MR. BOYDSTON: And then when we see
16 these titles, then we say, "Oh, these are the
17 titles that ABC Family says it has an agreement
18 with the owner of those titles."
19 And then we said, "Let's go see them."
20 And we looked at this where we realized that ABC
21 couldn't be the owner of some of those titles.
22 So then we went to the Copyright records to look

1 and the Copyright records bear that out.

2 MS. PLOVNICK: Your Honor, this

3 document was produced to IPG in discovery

4 literally in our original production months ago.

5 They've had this exhibit, MPAA 336, the document.

6 They have had this document for months.

7 And we may not understand their

8 challenge to cover this. I mean this title

9 certainly, but I didn't understand it to cover

10 ABC Family on this basis at any rate.

11 MR. BOYDSTON: Well, I don't think --

12 That's your own interpretation. May I direct a

13 question to the witness as to why?

14 JUDGE BARRETT: No, you may not.

15 Which document do you say was produced to IPG

16 months ago?

17 MS. PLOVNICK: MPAA Exhibit 336.

18 JUDGE BARRETT: In that form.

19 MS. PLOVNICK: Yes, in this form.

20 JUDGE BARRETT: It was produced in

21 discovery.

22 MS. PLOVNICK: Correct.

1 MR. OLANIRAN: With those Bates
2 numbers on it.
3 MS. PLOVNICK: With the Bates numbers
4 on it, yes, Your Honor.
5 MR. BOYDSTON: And we don't dispute
6 that, Your Honor.
7 JUDGE BARRETT: Okay.
8 MR. BOYDSTON: We don't dispute that.
9 But if I may I would like to address a question
10 to the witness as to why it is that we realized
11 this at the time that we did. There's a reason
12 for it. Maybe you'll agree with it and maybe you
13 won't.
14 JUDGE BARRETT: I'm certain there's a
15 reason for it, but it doesn't matter. You had
16 the paper in discovery. You didn't follow up
17 with it at that time. And now you're asking us
18 to take official notice of Copyright records with
19 regard to titles that appear on that discovery
20 that you received in due course.
21 MR. BOYDSTON: Your Honor, may I just
22 ask the witness to explain why that is? And if

1 you don't like the reason, then don't take it
2 into consideration.
3 JUDGE BARRETT: You may put it in the
4 record if you'd like.
5 MR. BOYDSTON: Thank you.
6 Mr. Galaz, why is it that that was not
7 noticed previously?
8 THE WITNESS: First of all, IPG does
9 challenge all claims of ABC Family Worldwide. So
10 that would include all program claims that are
11 certified by MPAA including all these here. That
12 is black and white.
13 With regard to the list of titles,
14 there are -- and this is the point that's being
15 made in IPG's rebuttal statement. I could go
16 down the list and identify hundreds of titles
17 that I know from my personal experience should
18 not be claimed by the particular party. I know
19 for a fact here ABC Family Worldwide from my
20 experience in literally years in the animation
21 business that ABC Family Worldwide does not own
22 these titles.

1 The reason that it's being addressed
2 here is because it was submitted as part of the
3 exhibits by the MPAA to bolster its position that
4 it has warranted to make claim with two programs
5 for which IPG has submitted documentation
6 identifying and confirming that IPG's represented
7 claimant is in fact the appropriate owner.
8 But with that you can't ignore all
9 these other programs. And we are in fact
10 challenging every single program claim by ABC
11 Family Worldwide specifically for the reason that
12 they're including programs that I'm guessing
13 they're in the broadcast, not that they were the
14 owner of them, not that they were the producer of
15 them, not that they were the administrator of.
16 They simply broadcast it.
17 JUDGE BARRETT: Well, Mr. Galaz, we
18 can't base our decision on your guesses.
19 Ms. Plovnick.
20 MS. PLOVNICK: I was going to further
21 object to him drawing legal conclusions and
22 speculating in the answer, Your Honor. But ABC

1 Family Worldwide is a syndicator also. It's not
2 the broadcaster just to clarify for the record.
3 MR. MacLEAN: Your Honor.
4 JUDGE BARRETT: Mr. MacLean.
5 MR. MacLEAN: I took Mr. Galaz'
6 responses as offer of proof for the record. And
7 I have no objection it to be allowed to that
8 extent, but not in evidence.
9 JUDGE BARRETT: Thank you. IPG 125 is
10 rejected.
11 MR. BOYDSTON: Your Honor, I think
12 that you qualified at one point that with regard
13 to the portion of it, the specific sheets related
14 to the IPG properties, we could ask him about
15 that. That's our defense against them.
16 The other ones I understand. But at
17 least we ought to be able to introduce the
18 Copyright documents with regard to our properties
19 that we saw in here to rebutt their argument.
20 JUDGE BARRETT: You might be able to
21 do that in the course of the pre-hearing exchange
22 of information, Mr. Boydston, not here and now

1 when you have offered nothing else in defense of
2 your position prior to this. If you want to
3 offer other things, we'll see them.
4 MR. BOYDSTON: But, Your Honor, we
5 challenge these specific things in these
6 documents. This is --
7 THE WITNESS: If I could offer.
8 JUDGE BARRETT: No, there's no
9 question.
10 Ms. Plovnick.
11 MS. PLOVNICK: I just want to clarify.
12 I know that they did include in their written
13 rebuttal statement at least one of these for
14 DragonBall Z. And so I want to make the record
15 clear that that was included. Other than that
16 though, I don't think it was. Correct me if I'm
17 wrong. That one I'm aware of. But otherwise no.
18 JUDGE BARRETT: Okay.
19 Mr. Boydston.
20 MR. BOYDSTON: Yes, Your Honor. I'd
21 like to be able to address -- I'd like to be able
22 to admit the document regarding DragonBall Z and

1 ask the witness whether or not we also included
2 the Beast Wars. I just want to let you know or
3 confirm whether Beast Wars was included or not.
4 It's concluded that DragonBall Z was included.
5 JUDGE BARRETT: Did you come prepared
6 with any evidence with regard to Beast Wars or
7 DragonBall Z?
8 MR. BOYDSTON: Yes.
9 JUDGE BARRETT: Prior to going to the
10 Copyright Office and pulling those pages?
11 MR. BOYDSTON: Yes, there's other
12 pieces of evidence.
13 JUDGE BARRETT: Well, then something
14 that you can rely on. You cannot rely on this
15 stuff you just pulled out of the record.
16 MR. BOYDSTON: All right, Your Honor.
17 Thank you.
18 THE WITNESS: Can --
19 JUDGE BARRETT: No. There is no
20 question pending.
21 MR. BOYDSTON: Let's see. Where are
22 we going next? Are there other titles in here

1 based on your own personal knowledge you believe
2 that ABC Family does not have the rights to
3 pursue?
4 MS. PLOVNICK: I object. He's asking
5 for his belief. Speculation and opinion.
6 JUDGE BARRETT: Sustained.
7 MR. BOYDSTON: Your Honor, he already
8 was allowed to give that based upon his personal
9 knowledge.
10 JUDGE BARRETT: Then ask the question
11 that you want answered.
12 MR. BOYDSTON: Based upon your own
13 personal knowledge, have you seen -- do you see
14 other titles in there that based upon your own
15 personal knowledge you know are not probably ABC
16 Family Worldwide properties?
17 MS. PLOVNICK: I object because
18 there's already been a ruling on this.
19 MR. BOYDSTON: Well, the Court ruled
20 that he could say that with regard to Angela
21 Anaconda. And now I'm just asking if there are
22 other ones other than Angela Anaconda.

1 JUDGE BARRETT: He can answer the
2 question for whatever weight it might have, Ms.
3 Plovnick.
4 THE WITNESS: Angela Anaconda is owned
5 by Decode Entertainment. Monster Rancher is
6 owned by BKN Inc. which for Bohbot Kids Network.
7 And it was previously known as Bohbot
8 Entertainment.
9 Power Rangers are, all Power Rangers
10 programs are owned by Saban Entertainment. And
11 when I was referring before to common knowledge,
12 it's the fact that Saban Entertainment made so
13 much money, a billion dollars on this, that
14 ultimately it was a segway and actually joined --
15 I don't want to say joined -- merged with Fox
16 Children's Network. So Saban was a half owner of
17 Fox Children's Network.
18 And as I had mentioned before, IPG
19 represented claimant, Mainframe, represents Beast
20 Wars which is also marketed under Beast Machines
21 and Funimation is the U.S. owner for DragonBall
22 Z. I didn't investigate the others, but these

1 are ones that I know from my own personal
2 experience.
3 BY MR. BOYDSTON:
4 Q Thank you. Mr. Galaz, in its appendix
5 to its rebuttal papers, the MPAA in entitled
6 Appendix D referred to a number of IPG claimants
7 for whom it contended that no documents were
8 produced according to the titles for those
9 entities. Are you familiar with that?
10 A I'm familiar with the argument.
11 MR. BOYDSTON: I don't believe this is
12 an exhibit. I'm double checking. Was the MPAA
13 rebuttal statement entered as an exhibit? I
14 don't believe it.
15 MS. PLOVNICK: The Olaniran
16 declaration was entered as an exhibit and the
17 attachments to that.
18 MR. BOYDSTON: Thank you. I obviously
19 have it somewhere.
20 MS. PLOVNICK: Yes, and we have the
21 number.
22 MR. BOYDSTON: Thank you.

1 MS. PLOVNICK: The Olaniran
2 declaration is MPAA Exhibit 308.
3 MR. BOYDSTON: Thank you.
4 Mr. Galaz, let me direct your
5 attention to Exhibit 308, specifically Exhibit B.
6 I said exhibit. It's Appendix B.
7 THE WITNESS: Appendix B?
8 MR. BOYDSTON: Yes.
9 MS. PLOVNICK: I think the exhibits
10 are numbered rather than lettered on this.
11 MR. BOYDSTON: Thank you.
12 THE WITNESS: Can you give me a Bates
13 stamp number?
14 MR. BOYDSTON: Ms. Plovnick, I don't
15 see it and I don't know if I'm missing it.
16 MS. PLOVNICK: What are you looking
17 for?
18 MR. BOYDSTON: Appendix D.
19 MS. PLOVNICK: To what?
20 MR. BOYDSTON: It was Appendix and I'm
21 thinking the answer is it's not in the record.
22 MS. PLOVNICK: The appendices are not

1 in the record. Those were just like --

2 MR. BOYDSTON: That's it.

3 MS. PLOVNICK: Those are attachments

4 to our brief which is -- Our written objections

5 are arguments. So we didn't put them in as

6 evidence. The appendices other than the ones we

7 gave the Judges per their request via email are

8 appendix A. We did not admit them.

9 MR. BOYDSTON: Okay. If it's not in

10 the record, I will simply refer to these and

11 these.

12 BY MR. BOYDSTON:

13 Q Are you familiar with an IPG claimant

14 by the name of Big Events Company?

15 A Yes.

16 Q And is there documentation in the

17 record or is there some sort of documentation

18 that could establish or can you establish what

19 the program titles were for Big Events Company?

20 A Off the top of my head, no. There are

21 a handful that we didn't get a response from the

22 entity. But nonetheless they were included in

1 our claim because of conversations. I don't
2 remember exactly what Big Events is at this point
3 in time. Some I remember. Some I don't.
4 Q Cottage Country, is there an IPG
5 claimant, Cottage Country Television?
6 A Yes. And they are the producer of
7 Cottage Country. That's the name of the
8 television program.
9 Q Okay.
10 A It's also Craig Thompson
11 Productions/Cottage Country Television.
12 Q What about Firing Line d/b/a for
13 National Review, Inc.?
14 A They produce the show Firing Line.
15 Q And what about Fitness Quest, Inc.?
16 A They produce Fitness Quest. They in
17 fact did respond and identify their titles to us.
18 I recall that and we further got further
19 corroboration from Commercial Monitoring Service
20 about the names of their titles.
21 Q And are those documents referenced in
22 Exhibit 115?

1 A Yes, they are.

2 Q What about Gorky Studios?

3 A Gorky Studios actually is part of the

4 agreement for Magus Entertainment. And Magus

5 Entertainment is the entity with which we

6 contracted with. And we also contracted with

7 Greenlight Entertaining. But it's co-owned.

8 Effectively the same owner, same entity.

9 And in I recall Exhibit -- I think

10 it's Exhibit B to the agreement with Magus

11 Entertainment, it identifies all the programs

12 for which they're making claim and identifies

13 Magus/Greenlight/Gorky. So in each circumstance

14 in which the particular entity, one entity or the

15 other, is being attributed ownership to the

16 extent it matters to them internally. That's how

17 we made claim.

18 Q And here it says Magus Entertainment,

19 those documents are described or referenced in

20 Exhibit 115, the chart.

21 A That's correct. And it's additionally

22 identified as one of those in which the actual

1 contracting document identifies the programs for
2 which we're supposed to be making claim.
3 Q There's a Les Distribution Rozon
4 Inc./Just for Laughs.
5 A Just For Laughs, yes. Just For Laughs
6 is the program it produces. And it's a series of
7 programs that Just For Laughs, Last 20 Years,
8 Just For Laughs, Last 25 Years.
9 Q Nelson Davis Productions.
10 A Making It, Minority Success Stories.
11 It's got a single program.
12 Q Saving Baptist Church of Chicago, Inc.
13 A I think that was an error for the
14 program suppliers category. But, yes, they're a
15 devotional claimant and it's Salem Baptist
16 Church.
17 Q Productions Point De Mire.
18 A They've got a handful of programs. I
19 don't indicate that we received anything from
20 them identifying, but they may have gone with one
21 or two programs. It wasn't from my personal
22 knowledge that it was included.

1 Q Slim Goodbody Corporation.

2 A Slim Goodbody. They have a variety of

3 programs. And I actually think that that also --

4 No, I was thinking that InfoMart Commercial

5 Monitoring Service also included them. But Slim

6 Goodbody, yeah. But that's a program.

7 Q Twin Cities Public TV.

8 A Twin Cities Public Television I recall

9 getting correspondence back from them. They

10 again were one of the entities whose catalog we

11 would make claim pursuant to the Beckmann

12 International agreement. Beckmann International

13 is their distributor. And there is in fact --

14 They also sent us a confirmation of engagement.

15 There is -- Twin Cities Public

16 Television. Yes, they've responded not only

17 obviously contracts with them and confirmation of

18 engagement. They've also identified in

19 correspondence back to us what programs for which

20 they're making claim.

21 Q How about Ardent Productions?

22 A Ardent Productions, it's an

1 interesting story. I know them I think
2 predominantly from IMDB. We know it was and it's
3 only a handful of programs. But there was the
4 entity that was owned and run by the younger
5 brother of Prince Charles in the UK.
6 Q And how was it that IPG made the
7 determination of their titles?
8 A I think for that one it was purely
9 Internet Movie Data Base. We cannot get a hold
10 of anyone there anymore. I think they've ceased
11 function.
12 Q Distraction Format.
13 A Handful of programs. I can't recall
14 off the top of my head what it was. But that was
15 information that I believe was wondering if it
16 was actually provided to us. Or whether it was
17 just from -- That was purely from research.
18 Q Les Productions du Verseau and also
19 it's Les Productions Videofilms Limite.
20 A Right. Catalog research. So that
21 would have been IMDB. One or two programs.
22 Q Multimedia Group of Canada.

1 A Well, this sheet says it was based on
2 IMDB. It was from research. But not that it
3 matters, I recall receiving information from
4 them. But I couldn't find it within our paperwork
5 that we had produced already.
6 Q Team Communications.
7 A Team Communications, extensive
8 background for them. Not only do they have an
9 extensive catalog as referenced in IMDB, but also
10 in Copyright registrations that were produced to
11 the MPAA.
12 Q TF1 International.
13 A TF1 International we contracted with
14 and actually the contracting documents identify
15 the programs for which we're supposed to make
16 claim.
17 Q And is that referenced in Exhibit 115?
18 A Yes.
19 Q Venevision International.
20 A Same thing. We have a -- We've done
21 catalog research on them through IMDB, but also
22 the contracting documents reflect the programs

1 for which we're supposed to be making claim.
2 Q Thank you. With regard to Jeff Rovin,
3 did you review Mr. Rovin's testimony that was
4 submitted with the MPAA materials?
5 A Yes, I did. Can you tell me which
6 exhibit that was?
7 Q Let me ask you to turn to that exhibit
8 if you would. I'm looking it up right now.
9 MS. PLOVNICK: It's 335.
10 MR. BOYDSTON: Thank you. Three
11 thirty-five. And my question for you is in
12 reviewing his testimony based upon your own
13 personal knowledge, do you believe that there
14 were any factual inaccuracies?
15 MR. MacLEAN: Objection. It's too
16 vague to direct the witness.
17 JUDGE BARRETT: Sustained.
18 MR. BOYDSTON: Well, I assume in your
19 findings you saw factual inaccuracies in
20 biological information. Correct?
21 THE WITNESS: That's correct.
22 BY MR. BOYDSTON:

1 Q Did you believe you found any factual
2 inaccuracies in his description of his
3 methodology?
4 A No, I found factual inaccuracies in
5 both Appendix B and Appendix C.
6 Q And what factual inaccuracies do you
7 believe there were in Appendix B?
8 A Well, the Appendix B if you look at it
9 he purports that these are claims that are in
10 both the program suppliers and in the devotional
11 claimant categories. First of all, this is a
12 misunderstanding of IPG's data.
13 Q In what respect?
14 A IPG -- it wasn't part of our written
15 direct statement. But in discovery we produced a
16 document where we have particular program titles
17 and we would also have the category column there.
18 Now in some cases this would be cause it would be
19 an issue as to where it should belong. And this
20 is classically I should say all the Envoy
21 Productions' programming or say the Willie Wilson
22 Productions' programming where it's in an issue.

1 At the time that we actually prepared
2 that document, there hadn't yet been a ruling in
3 the '99 cable that addressed the means by which
4 you should define devotional programming. So we
5 generally didn't know what standard would be
6 adopted and whether we should put something in
7 either the programs suppliers category or the
8 devotional category.
9 There are other circumstances where
10 it's two different programs, one of which is in
11 the programs suppliers category and the other of
12 which is in the devotional category.
13 But what I see here is that we have
14 circumstances one of which just caught my mind
15 was IWV Media Group. If you look at it, it
16 appears on Appendix B at the bottom of page 14.
17 They identify all of the IWV Media Group as being
18 claimed in both program suppliers and devotional
19 categories. That's inaccurate.
20 IWV Media only has a single program
21 that it's claiming in the devotional category.
22 That's show Primary Focus where the host is a

1 Reverend and I think I described it before it
2 asks in the closing credits whether or not you'll
3 accept Jesus.
4 MR. MacLEAN: Objection, facts no in
5 residence.
6 JUDGE BARRETT: Overruled.
7 MR. BOYDSTON: Continue.
8 THE WITNESS: It asks whether you
9 accept Christ in your heart. All the other IWV
10 Media Group programming is in the programs
11 suppliers category. So just as a general nature,
12 there is inaccuracies in this. And I didn't go
13 through all this.
14 I can't say that anything that has
15 Envoy Productions and refers to specifically the
16 Envoy Productions production could land in either
17 devotional or programs suppliers. And that's
18 really dependent upon the standard that's
19 ultimately adopted by the Judges for where it
20 should go.
21 I think Mr. Rovin also made a
22 reference to the fact that he didn't look at the

1 programming of Willie Wilson Production or IWV
2 Media Group because he said his rationale for
3 where Willie Wilson Productions is that the DVD
4 he got was not actually at the broadcast and for
5 IWV Media Group he said he didn't actually
6 receive -- I think that's what he says -- the
7 DVDs. In fact, we produced three exemplars of
8 primary focus and those were the -- I didn't
9 intend to give every episode of primary focus,
10 but we gave three of the episodes of primary
11 focus primary and submitted those as exemplars
12 which were not --
13 MR. BOYDSTON: And what about Willie
14 Wilson?
15 MS. PLOVNICK: Objection, Your Honor.
16 I think he's mischaracterizing Mr. Rovin's
17 testimony. In Appendix C, he lists everything
18 that he received and reviewed. And the programs
19 are all listed there. So Mr. Galaz' gloss of Mr.
20 Rovin's testimony is inappropriate.
21 MR. BOYDSTON: Well, I think the
22 document will speak for itself. Either he did or

1 didn't. Reflections said he did not review
2 those. So maybe we're wrong and the record will
3 reflect that.
4 May I ask another question?
5 JUDGE BARRETT: You may.
6 MR. BOYDSTON: Mr. Galaz, you
7 reference Willie Wilson and you said that your
8 recollection was that Mr. Rovin said he didn't
9 review that because it wasn't the Willie Wilson
10 broadcast. What was your comment on that?
11 MR. MacLEAN: Objection, to the extent
12 that counsel is characterizing testimony.
13 JUDGE BARRETT: Sustained.
14 MR. BOYDSTON: You gave your answer
15 with regard to the first entity but not the
16 second entity, Willie Wilson Productions. What
17 were you going to say about that before the
18 objection?
19 THE WITNESS: Well, I --
20 MR. MacLEAN: Objection.
21 MR. BOYDSTON: He was not --
22 JUDGE BARRETT: Overruled. Go ahead.

1 Mr. Galaz, if you can answer.

2 THE WITNESS: We requested Willie

3 Wilson Productions that they provide an exemplar.

4 And what they gave us was what I think they in

5 their good faith estimate was an exemplar of

6 their programming. To the extent that it's not

7 the exact broadcast, it's simply an oversight.

8 The reference that I was previously

9 making to when Mr. Rovin's testimony appears at

10 page nine. It says, "Accordingly, I render no

11 opinion on IPG titles. I cannot match with the

12 produced DVDs."

13 He refers to the programs that he did

14 review that were all Envoy Productions

15 programming which is a subsidiary of Lutheran

16 Church Missionaries. And by default, by saying

17 that he didn't look at the other ones, he's

18 saying for this reason that he couldn't match it

19 up.

20 I'm not sure why we gave the IWV

21 titles. And when if you look at his Appendix C,

22 it says "IWV Media Group" down below and it says,

1 "The Case for Christ, Miracle in Macomb and
2 HoHoHo," I presume that he didn't review those
3 because those --
4 MR. MacLEAN: Objection.
5 THE WITNESS: -- episode titles --
6 MR. MacLEAN: Objection.
7 MR. BOYDSTON: Can he finish please?
8 MR. MacLEAN: Well, he just said, "I
9 presume."
10 JUDGE BARRETT: Sustained.
11 THE WITNESS: He did not look at these
12 because the show was Primary Focus and he was
13 referring here to the episode titles of Primary
14 Focus. Not seeing the episode titles on IPG's
15 list, that's why he elected not to look at those
16 exemplars.
17 MR. BOYDSTON: Your Honor, may I
18 approach?
19 JUDGE BARRETT: You may.
20 MS. PLOVNICK: Before he answers, I'm
21 going to object to move to strike that answer.
22 And I direct the Judges to page five of Mr.

1 Rovin's testimony where he says that he reviewed
2 including 13 DVDs listed in Appendix C. And I
3 feel that Mr. Galaz is mischaracterizing the
4 witness' testimony.
5 JUDGE BARRETT: Thank you. Sustained.
6 MR. BOYDSTON: But, Your Honor, my
7 recollection was that he said that he reviewed
8 eight of the 13 and not five. I would just ask
9 that we let the record speak for itself.
10 JUDGE BARRETT: He received 13.
11 THE WITNESS: I think he says --
12 JUDGE BARRETT: That's what he
13 testified to and that's what's on Appendix C.
14 MR. BOYDSTON: Thank you. May I
15 approach?
16 JUDGE BARRETT: You may.
17 BY MR. BOYDSTON:
18 Q Mr. Galaz, have you seen these videos?
19 A Yes, these were exemplars that were
20 produced pursuant to the Judge's order that we
21 obtain exemplars from our claimants, our
22 represented claimants, that were making claim in

1 the devotional category.

2 Q And these are the same titles that

3 appear on Appendix C here?

4 A Yes, these are the Envoy Productions

5 titles.

6 MR. BOYDSTON: Your Honor, I'd like to

7 move these into evidence Before everyone jumps

8 around with more objections, let me just explain.

9 We provided these in discovery to the parties.

10 We don't have three original copies in the box

11 like this. But we have one that I was going to

12 give to the Judges.

13 JUDGE BARRETT: They've been produced.

14 MR. BOYDSTON: Yes Your Honor.

15 JUDGE BARRETT: Are these the same 13?

16 MR. BOYDSTON: Yes Your Honor. There

17 are some multiple programs per evening.

18 MS. PLOVNICK: Is this what you're

19 giving?

20 JUDGE BARRETT: He just asked that it

21 be marked as an exhibit.

22 MR. BOYDSTON: Yes.

1 MS. PLOVNICK: You just said I'm going
2 to give something else to the judges. So what
3 are you giving to the judges?
4 MR. BOYDSTON: Perhaps I misspoke.
5 I'm simply trying to enter those into evidence.
6 Those are what was produced.
7 MS. PLOVNICK: Yes.
8 MR. MacLEAN: Would you mind if I take
9 a look at the boxes?
10 MR. BOYDSTON: Go ahead.
11 JUDGE BARRETT: Yes, all counselors
12 have to look at them.
13 (Off microphone remarks)
14 MR. MacLEAN: I'm returning the
15 exhibit to the witness.
16 MR. BOYDSTON: Your Honor, may I
17 deliver the exhibits to the clerk?
18 JUDGE BARRETT: If you would please.
19 MS. PLOVNICK: These are all Envoy
20 Productions DVDs.
21 MR. BOYDSTON: Correct.
22 MR. MacLEAN: The SDC has no

1 objection. They would be collective remarks.

2 MR. BOYDSTON: No, it's on here, 123.

3 MS. PLOVNICK: Your Honor, just so the

4 record is clear. I didn't count them all, but

5 that was not 13 DVDs. Those are just the Envoy

6 Productions DVDs.

7 MR. BOYDSTON: Right. And there's 13

8 programs are on there. So there are multiple on

9 some.

10 Finally, Your Honor, I'd like to

11 introduce --

12 JUDGE BARRETT: No.

13 MR. BOYDSTON: I'm sorry.

14 MS. PLOVNICK: Thank you, Your Honor.

15 JUDGE BARRETT: There are maybe 11

16 DVDs. Two of them have multiple. Or 10. How

17 many are there?

18 MR. BOYDSTON: For the record, there

19 are seven boxes with DVDs in them.

20 JUDGE BARRETT: Thank you. Thirteen

21 programs.

22 MR. BOYDSTON: Yes.

1 JUDGE BARRETT: Thank you.

2 MS. PLOVNICK: Thank you.

3 MR. BOYDSTON: Your Honor, Exhibit --

4 THE WITNESS: I'm sorry. I think

5 that's incorrect. There are 13 programs.

6 JUDGE BARRETT: Eleven.

7 MR. BOYDSTON: Am I wrong?

8 JUDGE BARRETT: How many disks are

9 there, Madam Clerk?

10 THE WITNESS: If this is just Envoy,

11 it's just eight I believe.

12 MS. PLOVNICK: Those are Envoy

13 Productions DVDs.

14 MR. BOYDSTON: Well, maybe -- May I

15 present these to the witness to see if I'm

16 incorrect?

17 JUDGE BARRETT: Yes please.

18 MR. BOYDSTON: Well, we may not be

19 marking all of them.

20 MR. MacLEAN: Your Honor, although I

21 have no objection to the submission of this

22 exhibit, I think it might be useful for the

1 record if we read into the record what these DVDs
2 are.
3 JUDGE BARRETT: I'll tell you what
4 we'll do. Let's take a noon break and you can
5 figure it all out. And we have an exhibit that
6 is well defined to admit after lunch.
7 MS. PLOVNICK: For the record, we also
8 have no objection to the admission of these DVDs.
9 JUDGE BARRETT: Thank you. So we'll
10 be at recess until 1:00 p.m.
11 MR. MacLEAN: Your Honor.
12 JUDGE BARRETT: Are we still on the
13 record?
14 MR. MacLEAN: I know we've been asking
15 for this before. But I would ask that the
16 witness be instructed not to discuss his
17 testimony during the break with the exception as
18 we try to get this exhibit worked out. With that
19 limited exception, I move that --
20 JUDGE BARRETT: Yes. Mr. Galaz,
21 you're not to discuss your testimony with counsel
22 or with anyone else during the recess. Off the

1 record.

2 (Whereupon, the above-entitled matter

3 went off the record at 11:58 a.m. and resumed at

4 1:14 p.m.)

5 JUDGE BARRETT: Mr. Boydston?

6 MR. BOYDSTON: Thank you, Your Honor.

7 Before the break there was confusion between the

8 clerk and myself about Exhibit 123. The clerk

9 has marked Exhibit 123. There are seven discs,

10 seven DVD boxes contained seven DVDs and the

11 clerk has marked them Exhibit 123 1 through 7.

12 JUDGE BARRETT: Thank you.

13 MR. BOYDSTON: And I don't know if

14 they were actually admitted or not, but I move

15 that they be admitted now.

16 JUDGE BARRETT: There was no

17 objection, so they are admitted.

18 (Whereupon, the above-referred to

19 document was received into evidence as

20 IPG Exhibit No. 123.)

21 MR. BOYDSTON: Thank you, Your Honor.

22 JUDGE BARRETT: One-twenty-three?

1 MR. BOYDSTON: Yes, Your Honor.

2 JUDGE BARRETT: One-twenty-three is

3 admitted.

4 MR. BOYDSTON: Your Honor, the last

5 exhibit we present here with Mr. Galaz is IPG

6 Exhibit 122. I presume that your books do not

7 have a 122 because mine do not, and presume the

8 same for the --

9 JUDGE BARRETT: I noticed that.

10 MR. BOYDSTON: And I presume the same

11 for the parties. And that was due to chaos in

12 the staff room or some such thing. We have

13 printed it out a copy of it in our hotel, but we

14 were not able to find a Kinko's open that would

15 make copies or put them in a three-ring binder

16 and make holes. So we still need to do that.

17 What this document is -- and it was

18 indicated I think on our Exhibit list, but it is

19 what was item 6 in IPG's discovery responses to

20 the program suppliers. And what the documents

21 are themselves are situations in which the IPG

22 contract with its claimant included the program

1 titles either in the contract itself or in
2 attached pages. So that's what the document is.
3 We only have one copy right now. As
4 soon as we're over here we're going to go and
5 browbeat some -- I shouldn't say that. We'll
6 find a copy place that will do it, because the
7 copy place we went to last would not, and get
8 this together so it can be admitted.
9 JUDGE BARRETT: Because you know back
10 in the olden days when I practiced law we would
11 buy the paper with the holes already in it.
12 MR. BOYDSTON: Surprisingly difficult
13 to do that these days.
14 JUDGE BARRETT: Really?
15 MR. BOYDSTON: Because that is our
16 preference, but it was -- in any event, the copy
17 place we were at did not have that.
18 MR. BOYDSTON: Okay.
19 MR. BOYDSTON: Which is not uncommon
20 these days, and I don't know why that is.
21 JUDGE FEDER: There is a copy place
22 across C Street from --

1 (Simultaneous speaking)
2 MR. BOYDSTON: We tried.
3 (Laughter)
4 MR. BOYDSTON: Yes, yes. In their
5 words, they don't do that kind of thing.
6 JUDGE BARRETT: Okay.
7 MR. BOYDSTON: They're more of a
8 shipping place, really.
9 JUDGE BARRETT: But you're
10 representing that this is a copy of a package of
11 discovery that IPG produced?
12 MR. BOYDSTON: Correct.
13 JUDGE BARRETT: In response to a
14 request for production?
15 MR. BOYDSTON: That's correct.
16 JUDGE BARRETT: Are you familiar with
17 which item this is, counsel?
18 MR. BOYDSTON: It is item 6. And
19 certainly you can take a look at it. It is item
20 6 in our responses to -- in the programs by
21 category.
22 JUDGE BARRETT: Mr. Boydston, maybe

1 you could have the witness identify it without
2 offering it. And then once you've got the copies
3 and we've all had a chance to look, you could
4 then offer it. I'll give you leave to do that
5 after Mr. Galaz is off the witness stand.
6 MR. BOYDSTON: Thank you, Your Honor.
7 My I approach?
8 JUDGE BARRETT: Yes.
9 BY MR. BOYDSTON:
10 Q Mr. Galaz, do you recognize that
11 document?
12 A Yes, I do.
13 Q And what is it generally?
14 A These are documents that were produced
15 in response to discovery, specifically in the
16 program suppliers category. It included
17 documents in which part of the contracting
18 document -- in which part of the contracting
19 documents or else correspondence associated with
20 it immediately when it was returned identified
21 the programs for which we were directed to make
22 claim.

1 Q Thank you.

2 MR. BOYDSTON: Your Honor, as you

3 permitted, I will take that back, if I may, so we

4 can make copies. And I have nothing further.

5 JUDGE BARRETT: Thank you. Cross-

6 examination? Oh, Mr. Olaniran.

7 Let me just say that 20 years of

8 saying I, I, I is a hard habit to break, and when

9 I make pronouncements about what I think or I am

10 doing from this bench, it includes my colleagues

11 here. We work as a unit and they have permission

12 to kick me under the table at any time that I am

13 overstepping.

14 So, Mr. Olaniran?

15 CROSS-EXAMINATION

16 BY MR. OLANIRAN:

17 Q Good afternoon, Mr. Galaz. I'm Greg

18 Olaniran for the record, counsel for Motion

19 Picture Association of America.

20 A Good afternoon.

21 Q Just out of curiosity, Mr. Galaz, you

22 had an exchange with Mr. Boydston about your

1 experience at Film Roman which allowed you to
2 gain some of this industry contacts enough to
3 understand -- to be able to opine on the works of
4 ABC Family. Do you remember that?
5 A Yes.
6 Q And how long were you at Film Roman?
7 A I was at Film Roman for a year. Then
8 after leaving continued as counsel in private
9 practice for several animation studios with which
10 Film Roman contracted specifically I -- I -- I --
11 I think probably about a half-dozen Korean
12 animation studios that produced mostly --
13 (Simultaneous speaking)
14 BY MR. OLANIRAN:
15 Q Actually I just asked you about how
16 long you worked for Film Roman.
17 A Oh, one year.
18 Q Thank you.
19 MR. OLANIRAN: Just a quick
20 housekeeping matter. I understand from talking
21 to Mr. Boydston that he intends to recall Mr.
22 Galaz to address IPG's written rebuttal

1 statement. And if that's the case, I'm going to
2 reserve some line of questioning for that phase.
3 In the case that they choose not to recall Mr.
4 Galaz, I'm preserving the time to come back and
5 finish my questioning with Mr. Galaz, if that's
6 okay with Your Honors.
7 MR. BOYDSTON: I'm sorry. I didn't
8 hear the end of it.
9 MR. OLANIRAN: If IPG chooses not to
10 call Mr. Galaz for their written rebuttal
11 statement, then I'm reserving time to recall him.
12 MR. BOYDSTON: Fair enough. We will
13 be calling him.
14 MR. OLANIRAN: Okay.
15 BY MR. OLANIRAN:
16 Q Mr. Galaz, I've probably questioned
17 you a few times now, so and I've asked several
18 questions about your criminal conduct, so I'm not
19 going to belabor that. Just to summarize, in the
20 '97 proceeding you lied under oath, correct?
21 A That's correct.
22 Q That's correct?

1 A That's correct.
2 Q Oh, okay. And then you illegally
3 obtained royalties from MPAA using a fictitious
4 entity, correct?
5 A Well, using an entity using Tracee
6 Productions.
7 Q You used Tracee Productions to --
8 A The question is that you said it --
9 you called it a fictitious entity, but it was --
10 Q Tracee Productions.
11 A That's correct.
12 Q You illegally obtained royalties from
13 MPAA?
14 A That's correct, yes.
15 Q And then you were required to pay
16 restitution to MPAA, correct?
17 A That's correct.
18 Q Are you still paying restitution to
19 MPAA?
20 A Twenty-five percent of my income.
21 Q Okay. That's a yes?
22 A For the last 10 years, yes, 25 percent

1 of my income.

2 Q Now during your examination yesterday

3 you mentioned the fact that Tracee was a real

4 entity, correct?

5 A Correct.

6 Q And then Francisco Diaz was literally

7 your partner in crime, is that right?

8 A That -- that is correct. He was what

9 I would from a technical standpoint call a co-

10 conspirator.

11 Q Your partner in crime. Is there a

12 difference?

13 A I suppose not.

14 Q Okay. And you took the fall for the

15 crime basically, correct?

16 A Well, that's kind of the layman's way

17 of -- of putting it. I felt responsible for it

18 and when I went to the U.S. Attorney's Office

19 part of the agreement that I made with them was

20 that they wouldn't prosecute anyone other than

21 myself.

22 Q Okay. So you took the fall for the

1 crime and you made a deal so that he wouldn't be
2 prosecuted?
3 MR. BOYDSTON: Objection, Your Honor.
4 Mr. Olaniran said he wouldn't belabor it. He's
5 been belaboring it. We've been down this road
6 many times before.
7 JUDGE BARRETT: Overruled. I think
8 he's about to wrap up or -- he is about to wrap
9 it up.
10 BY MR. OLANIRAN:
11 Q Please answer the question.
12 A I'm sorry. Could you repeat it?
13 Q I asked you if you took the fall for
14 the crime.
15 A I accepted all responsibility for the
16 crime.
17 Q Okay. And now, do you recall that at
18 sometime in '96 Tracee Productions was affiliated
19 with MPAA? And this line of questioning, just so
20 I'm clear, has nothing to do with the crime for
21 which you were prosecuted. Okay? Tracee
22 Productions was affiliated with MPAA some time

1 around '96? I'm not sure of the exact year.
2 A Well, that was the criminal act. It
3 was -- it was the -- it was through that
4 association that the criminal act was conducted.
5 Q I'm not asking you about the criminal
6 act. I asked you --
7 A Well, but you said it wasn't
8 associated with the criminal act, but it -- it
9 was. It was the criminal act.
10 Q So let me finish my question. Just
11 make sure you answer the question I'm asking you.
12 Okay?
13 I said Tracee Productions was
14 affiliated with MPAA; that is, that MPAA
15 represented Tracee Productions sometime about
16 1996. Yes or no?
17 A That -- that is correct and that is
18 how the crime was --
19 Q I'm not asking you about the crime,
20 Mr. Galaz. Thank you very much.
21 A I just don't want you to misstate the
22 facts.

1 Q Thank you. I appreciate that. Now,
2 in 1996 Tracee Productions filed a timely claim
3 for 1996 royalties, correct?
4 A I believe so.
5 Q Okay. And however IPG did not file a
6 claim in that year?
7 A No, IPG didn't exist at that point.
8 Q Okay. Did there come a time where you
9 made a deal with Tracee Productions and asked
10 Tracee Productions if you could append some of
11 WSG claims to Tracee Productions' claims?
12 A Well --
13 Q Did you follow that?
14 A -- as -- as I had said, I effectively
15 was Tracee Productions. And so when Worldwide
16 Subsidy or IPG came in -- into existence and then
17 started soliciting parties and inquiring rights
18 from them, we then took it and turned to the MPAA
19 and requested that the programs that IPG had
20 acquired the rights to be appended to Tracee
21 Productions' 1996 claim. And the MPAA,
22 specifically Dennis Lane, counsel for the MPAA,

1 told me that it can't be done. He forwarded
2 legal opinion to me saying that that couldn't be
3 done and that pretty much concluded it.
4 Q So let me re-ask my question. You
5 were effectively Tracee Productions. What do you
6 mean by "effectively" Tracee Productions?
7 A Well, I --
8 Q Were you the co-owner of Tracee
9 Productions?
10 MR. BOYDSTON: Objection, Your Honor.
11 We're getting deeper and deeper into this.
12 MR. OLANIRAN: No, I'm not, Your
13 Honor.
14 JUDGE BARRETT: Overruled.
15 THE WITNESS: Yes, I was effectively
16 Tracee Productions.
17 BY MR. OLANIRAN:
18 Q What does that mean? Were you an
19 owner, co-owner?
20 A Yes, correct.
21 Q Which one?
22 A Co-owner.

1 Q You were co-owner with Francisco Diaz?
2 A That's correct.
3 Q Okay. So WSG made a deal with Tracee
4 Productions, which had filed '96 claims and IPG
5 had not. And you made a deal with Tracee
6 Productions to append WSG's claims to Tracee
7 Productions' claim, is that correct?
8 A If it could be done, correct.
9 Q If it could be done?
10 A Right.
11 Q Okay.
12 A But it couldn't.
13 Q Now do you recall writing to MPAA and
14 telling MPAA that in fact Tracee Productions'
15 catalogue was larger than having initially
16 reported and then sent MPAA another set of titles
17 which actually were WSG titles? Do you recall
18 that?
19 A That's correct.
20 Q Okay. So, and just to make sure that
21 I'm making this clear, Tracee Productions already
22 had a claim for '96, right?

1 A I believe so, correct.
2 Q You made a deal with Tracee
3 Productions and the deal was you would append the
4 titles which ordinarily would not be compensable
5 because there wasn't a timely claim filed. You
6 wanted to append that to Tracee's timely filed
7 titles, right?
8 A That is correct.
9 Q And get money from MPAA?
10 A And the MPAA told us we can't do that.
11 Q You're not answering my question.
12 MR. OLANIRAN: Move to strike, Your
13 Honor. Non-responsive.
14 JUDGE BARRETT: Right. Granted.
15 THE WITNESS: So, correct.
16 BY MR. OLANIRAN:
17 Q Do you have MPAA Exhibit 304?
18 A Okay.
19 Q Are you there?
20 A Yes.
21 Q Okay. I'll give you a couple of
22 seconds just to review that document.

1 A Okay.

2 Q Okay. Now --

3 A It's -- it's a transcript. I haven't

4 reviewed the whole transcript.

5 Q I understand, and I'm not going to ask

6 you questions about the entire transcript. This

7 is a portion of your testimony in the 1997 Phase

8 II cable case, correct?

9 A It's for the 1997 Phase II, right.

10 Q Okay.

11 A Okay.

12 Q All right. Good. Let me direct your

13 attention to the transcript page 1124 and just go

14 to lines 10 through 13.

15 JUDGE STRICKLER: Which page, counsel?

16 MR. OLANIRAN: Eleven-twenty-four.

17 JUDGE STRICKLER: Thank you.

18 JUDGE BARRETT: This is Exhibit 304?

19 MR. OLANIRAN: Exhibit 304, which has

20 a transcript from another proceeding.

21 JUDGE BARRETT: Are we still on the

22 same topic, Mr. Olaniran? I thought you were

1 going to wrap that up?

2 MR. OLANIRAN: Well, it's actually a

3 different topic, Your Honor.

4 JUDGE BARRETT: Okay.

5 MR. OLANIRAN: Yes.

6 JUDGE BARRETT: Just checking.

7 MR. OLANIRAN: The clarification I was

8 making to Mr. Galaz is this has nothing to -- Mr.

9 Galaz used Tracee for inappropriate conduct for

10 which he was prosecuted, and this is a completely

11 different line of question --

12 JUDGE BARRETT: Okay.

13 MR. OLANIRAN: -- with regard to

14 Tracee Productions.

15 JUDGE BARRETT: Thank you.

16 BY MR. OLANIRAN:

17 Q And on line 10 through 13 on page

18 1124 you see an exhibit being marked 17X?

19 A Yes.

20 Q Okay. I need you to keep that in mind

21 for a second.

22 And now let's go to page 1132 of that

1 transcript, still within Exhibit 304. Now go to
2 line 15 on page 1132.
3 A Yes.
4 Q And I don't need it you read for the
5 record. Just take a look at that and up through
6 the next page to line 7.
7 A Okay.
8 Q You see that? And that's --
9 A Through the next page?
10 Q Yes.
11 JUDGE STRICKLER: Counsel, the
12 representation is; because it says the witness,
13 the witness is Mr. Galaz in the transcript?
14 MR. OLANIRAN: Yes, the witness is Mr.
15 Galaz. Thank you.
16 JUDGE STRICKLER: Thank you.
17 MR. OLANIRAN: Thank you, Your Honor.
18 THE WITNESS: Okay.
19 BY MR. OLANIRAN:
20 Q Okay. And that's where you described
21 essentially the scheme, the arrangement that you
22 have with Tracee Productions, correct?

1 A That's correct.

2 Q Okay. And --

3 A We -- we -- we were trying to append

4 the programs that IPG had acquired from other

5 parties to the existing Tracee claim, but we were

6 told we couldn't do that.

7 Q Because you had not filed a claim,

8 correct?

9 A Correct, because it would be untimely.

10 You can't -- you can't append after the fact.

11 Q I understand that. And just give me

12 one second. But the arrangement was for there to

13 be some kind of compensation to Tracee

14 Productions as a result of this deal --

15 A Right.

16 Q -- if it had actually worked out,

17 correct?

18 A For 1996, right.

19 Q Okay. And let's go to page 1145 of

20 that same transcript. Still in Exhibit 304, on

21 line 10.

22 A Okay.

1 Q You see where the exhibit has been
2 admitted?
3 A Okay.
4 Q Okay. And then let's go to the
5 following page. You see the label 17X?
6 A Okay.
7 Q And that's the actual exhibit that was
8 being admitted, correct?
9 A I'll take your word for it.
10 Q Okay. Well, let's look at the cover
11 letter, which actually has a letter from you
12 dated November 14, '97. Do you recall writing
13 that letter?
14 A Actually and I had an opportunity to
15 look at this prior. That date is wrong, and I
16 testify to that within this excerpt. So this is
17 not a letter dated November 14th, 1997, and
18 actually the contents display that it's
19 incorrect. It was probably a year later.
20 Q But it is your letter, correct?
21 A It's my letter, but not from November
22 1997.

1 Q Fine. And it is the letter in which
2 you are attempting to append WSG claims to Tracee
3 Productions, correct?
4 A For 1996, correct. For the 1996
5 claim, that's correct.
6 Q Fair enough. And just to summarize
7 the letter; I won't make you read the whole thing
8 into the record, in that letter; and that's the
9 letter on the front page of Exhibit 17X within
10 304, you inform Ms. Kessler that you're
11 representing Tracee, correct?
12 A That's correct, or that we have an
13 agreement with Tracee.
14 Q And then you lie to her that the form
15 earlier had mistakenly understated Tracee's
16 catalogue, correct?
17 A It says that what had been submitted
18 previously only identified one property.
19 Q That's true. But that's not true is
20 it? What had been identified earlier was
21 actually Tracee's catalogue? Now this letter
22 conveying the attached titles you were trying to

1 append to Tracee's catalogue, correct?
2 A That's right. And that's what the
3 transcript says. We clarified that it was
4 pursuant to this agreement that we were
5 attempting to append. And as I also testified in
6 there, I spoke with Dennis Lane, MPAA counsel.
7 He said you can't do that after the fact, and
8 that was the end of it.
9 Q Okay. So where in the letter do you
10 explain that you were trying to append?
11 A I don't know that if it's -- that it's
12 in this letter. It's pursuant to conversations
13 with Dennis Lane.
14 Q You just told me that you explain in
15 this letter that you were trying to append.
16 A No, I -- I -- I'm sure -- and if I
17 said that it was within the letter that I was
18 trying to explain that, then that was incorrect.
19 It was in conversations that I had with Dennis
20 Lane. Frankly, I remember that. I -- except for
21 refreshing my recollection from reading this
22 transcript where I specifically refer to my

1 conversations with Dennis Lane where he then sent
2 me a copy of a legal opinion saying that you
3 cannot do so. And that was the end of it.
4 Q Mr. Galaz, the language of your letter
5 says, "Tracee Productions mistakenly identified
6 only the property that was used as part of the
7 applications filed with the Copyright Arbitration
8 Royalty Panel."
9 A That's correct.
10 Q That initial filing was not a mistake
11 because it was not supposed to contain WSG
12 programs, was it?
13 A It was not supposed to contain WSG
14 programs because --
15 Q Thank you. I'm fine.
16 A -- WSG did not exist yet. It couldn't
17 have.
18 Q Let's keep going, Mr. Galaz. And then
19 you attached two lists of titles, Cable and
20 Satellite, Exhibits A and B, to that cover
21 letter?
22 A Okay.

1 Q Is that correct?

2 A Yes.

3 Q And then your objective, as you

4 admitted to a few minutes ago, was basically to

5 try to get money for these titles for which you

6 did not make timely filed claims, right?

7 A Well, we didn't make timely filed

8 claims for the 1996 filing, that's correct.

9 Q But you were trying to get money for

10 '96 claims?

11 A Right, we were trying to append these

12 titles to Tracee's 1996 claim and were informed

13 by the MPAA that you could not do that.

14 Q To get money for these claims?

15 A Of course, yes.

16 COUNSEL: Objection, Your Honor. He's

17 badgering the witness. He's answered the

18 questions. They did try to append.

19 JUDGE BARRETT: Sustained.

20 COUNSEL: They were told no.

21 JUDGE BARRETT: Sustained.

22 BY MR. BOYDSTON:

1 Q Now let's turn to the list of titles
2 that you attached, Mr. Galaz. You have two
3 exhibits to this 17X. You have a cable section
4 and a satellite section, correct? Do you see
5 that?
6 A Mine has Exhibit A series, Exhibit A
7 non-series. They both say cable and satellite.
8 Q I'll tell you what, why don't we just
9 flip to the page --
10 A Oh, on the -- oh, I'm sorry. And then
11 farther on it says satellite only.
12 Q That's fine. Let's just flip to the
13 first page after the cover letter. Okay?
14 A Okay.
15 Q Now if you go down -- I think the
16 titles are in alphabetical order. You see*Beast*
17 *Wars* on that list?
18 A Correct.
19 Q And then you see *Believer's Voice of*
20 *Victory*?
21 A Correct.
22 Q *Jack Hanna's Animal Adventures*?

1 A On the next page or -- on the next
2 page? Yes.
3 Q You see that?
4 A It's not in the order that you --
5 Q My apologies. I'm pretty sure it is
6 on the list.
7 Now let's go -- you can skip that.
8 I'm pretty sure it's on the list, but let's skip
9 to the last two sheets, not the last two pages.
10 A I'm sorry. The last --
11 Q The last two pages. I'm sorry.
12 A The last two pages of the entire
13 exhibit?
14 Q Yes.
15 A Okay.
16 Q And you see *Bold and Beautiful*, which
17 is on the top of the first of the two pages?
18 A Correct.
19 Q And then if you flip the page, you see
20 the *Emmy Awards* on the next page?
21 A Correct.
22 Q And then you flip back again, you see

1 the *Late Show with David Letterman*, right?
2 A Correct.
3 Q And all of these shows that I just
4 mentioned are the same shows that you're now
5 claiming through other claimants in this
6 proceeding, correct?
7 A Pursuant to the same agreements,
8 correct.
9 Q And in fact there are many more shows
10 that are on this list that you're claiming in
11 this proceeding, correct?
12 A I don't understand the question.
13 Q There are many other titles in this
14 exhibit --
15 A Okay.
16 Q -- that we just went through that
17 you're now claiming in this proceeding through
18 other --
19 A In -- in -- in this proceeding --
20 Q Yes.
21 A -- we're -- we're claiming
22 significantly greater number of program. As we

1 grew we -- we entered into numerous additional
2 contracts and consequently represent numerous
3 more programs.
4 Q You're not answering my question.
5 A Well, I'm -- I'm -- I'm -- I'm trying.
6 Q Let me rephrase.
7 A I'm just not understanding it then.
8 Q Let me rephrase. Let me rephrase.
9 There are many other titles in this exhibit that
10 we just went through that are part of your claims
11 in this proceeding?
12 A There -- I'm -- I'm sorry. You're
13 saying there's many programs here that are in our
14 current claims?
15 Q Yes.
16 A Yes.
17 Q Okay.
18 A Yes.
19 Q That was my question. I also want to
20 clarify a couple of things. In terms of the time
21 frame in and out of IPG you started IPG, correct?
22 A Correct.

1 Q And I know you've testified before in
2 another proceeding that you stopped running IPG
3 in May of 2002, correct?
4 A I stopped running it, correct.
5 Q Okay. And you were in jail from
6 February 10, 2003 to May 28, 2004, correct?
7 A I was actually in a halfway house for
8 the last month-and-a-half of that -- that time
9 frame that you're describing.
10 Q Okay.
11 A So I -- I would say I was incarcerated
12 from February 2003 through May of 2004.
13 Q Okay. Fair enough. And you've
14 testified before that you didn't have "firsthand
15 knowledge;" and I use that firsthand knowledge in
16 quotes, of how WSG operated while you were
17 incarcerated?
18 A Well, it's somewhat of a loaded
19 question because at the time there was a
20 contractual dispute going on between Liza Galaz
21 and Marian Oshita. Liza Galaz was in San
22 Antonio, Texas. Marian Oshita was in Los

1 Angeles, California. And they were you might say
2 vying for control of WSG. And that's what
3 ultimately resulted in the lawsuit between the
4 two of them that I think was concluded January of
5 2005 with a judgment in Ms. Galaz' favor.
6 Q But you testified at a deposition that
7 you had very little knowledge of what was going
8 on within WSG while you were in jail. Is that
9 yes or no?
10 A Very little knowledge? No, I -- I
11 would have no knowledge of what Ms. Oshita was
12 doing other than sort of derivatively through
13 Liza Galaz. I knew what line segment was doing
14 and I knew what Liza Galaz' counsel, Mr. Brian
15 Boydston, was doing. So to say I had no
16 knowledge or little knowledge, it's somewhat of a
17 subjective term. I knew what Liza Galaz was
18 doing in connection with IPG. I didn't know what
19 Marian Oshita was doing.
20 Q Do you recall during the '00 through
21 '03 Cable Phase II proceeding that IPG and IPA
22 had a stipulation?

1 A No.

2 Q You don't recall that --

3 A Well, no, I remember that there was a

4 stipulation at some point. I don't remember the

5 specifics of it.

6 Q Okay. May I refresh your

7 recollection?

8 A Sure.

9 MR. OLANIRAN: May I approach, Your

10 Honor.

11 JUDGE BARRETT: Yes.

12 MR. MacLEAN: Your Honor, actually I

13 would like to see that, too.

14 MR. BOYDSTON: I guess I do, too.

15 MS. PLOVNICK: We have copies,

16 actually.

17 MR. BOYDSTON: I'm sorry, are you

18 directing us to certain pages?

19 MR. OLANIRAN: Just give me a second.

20 THE WITNESS: Okay. Starting at page

21 17?

22 BY MR. OLANIRAN:

1 Q Yes.
2 A Okay.
3 Q The relevant stipulation is 168.
4 MR. BOYDSTON: What number?
5 MR. OLANIRAN: One-sixty-eight.
6 THE WITNESS: Okay.
7 BY MR. OLANIRAN:
8 Q Now you recall then there was a
9 stipulation, correct?
10 A I'm -- I presume that that's accurate,
11 and yes.
12 Q And I had asked you about the fact
13 that you had very little knowledge about how WSG
14 was operating while you were in prison. Was that
15 not true?
16 A If I could read it again --
17 MR. BOYDSTON: Objection, Your Honor.
18 The language is in here. It speaks for itself
19 and --
20 MR. OLANIRAN: This is not on the
21 record, Mr. Boydston.
22 MR. BOYDSTON: Oh, I'm sorry. I

1 forgot. I got confused. It was the previous
2 one. Sorry.
3 THE WITNESS: May -- may I see it
4 again?
5 BY MR. OLANIRAN:
6 Q Sure.
7 A Thank you.
8 Q That's 168.
9 MR. OLANIRAN: Your Honor, I'd like to
10 move to admit. It's a publicly filed document.
11 MR. BOYDSTON: I don't have a problem
12 with its entry.
13 JUDGE BARRETT: Okay. We'll mark it
14 as MPAA's next exhibit.
15 MR. OLANIRAN: What number?
16 JUDGE BARRETT: I'll let the clerk
17 tell us.
18 THE CLERK: And that would be MPAA
19 354.
20 (Whereupon, the above-referred to
21 document was marked as MPAA Exhibit
22 No. 354 for identification.)

1 BY MR. OLANIRAN:

2 Q And go to the back of --

3 MR. MacLEAN: I apologize. Has this

4 been moved into evidence or has it just been

5 marked?

6 MR. OLANIRAN: It's just been marked.

7 JUDGE BARRETT: It's just been marked

8 so far.

9 BY MR. OLANIRAN:

10 Q Mr. Galaz, can you go all the way to

11 the back of the last page of the document?

12 A It's a signature page, actually.

13 Q Okay. And that's your signature and

14 Mr. Boydston's signature, correct?

15 A Correct.

16 Q And do you recall being involved in

17 the negotiations of this stipulation?

18 A I -- I don't.

19 Q You don't remember?

20 A I -- I don't recall. But that's okay,

21 because this is accurate.

22 Q Okay.

1 MR. OLANIRAN: I'd move to admit this
2 Exhibit 354.
3 MR. BOYDSTON: No objection.
4 MR. MacLEAN: Your Honor, I haven't
5 had an opportunity to review this entire exhibit
6 yet. What I'd like to do, if I may, is reserve
7 on whether I object.
8 JUDGE BARRETT: Fine. It's admitted,
9 354, subject to SDC having some objection about
10 it.
11 (Whereupon, the above-referred to
12 document was received into evidence as
13 MPAA Exhibit No. 354.)
14 JUDGE BARRETT: It is a matter of
15 public record, Mr. MacLean.
16 MR. MacLEAN: I understand, Your
17 Honor.
18 JUDGE BARRETT: Okay.
19 MR. MacLEAN: It's just I
20 haven't --
21 JUDGE BARRETT: I understand you might
22 have some other grounds.

1 Go ahead, Mr. Olaniran.

2 MR. OLANIRAN: Thank you, Your Honor.

3 BY MR. OLANIRAN:

4 Q Mr. Galaz, if you go to page 19 of

5 Exhibit 354 --

6 A I'm sorry. Is this 354? The new one?

7 JUDGE BARRETT: It is.

8 THE WITNESS: Oh, okay. Sorry. Page

9 19. Okay.

10 BY MR. OLANIRAN:

11 Q And that's the page I was showing you

12 a few minutes ago. And at the top of the page is

13 actually where you say that you stopped running

14 the company in May 2002. You see that?

15 A Yes.

16 Q And then the next stipulation,

17 Stipulation 168, is where I ask you again that

18 you had said that you had very little knowledge

19 of how WSG was operating during the period you

20 were in prison.

21 MR. BOYDSTON: Objection, Your Honor.

22 Mr. Olaniran's characterization of the text here

1 I think isn't an inaccurate one, and the document
2 speaks for itself. Mr. Olaniran can make
3 whatever arguments he wants about what this text
4 says, but I think that was a misinterpretation of
5 it.
6 JUDGE BARRETT: All right. I just
7 heard Mr. Olaniran asking Mr. Galaz to verify
8 that -- I mean, yes, we don't need it
9 interpreted. We can read it.
10 MR. BOYDSTON: Well, Mr. Olaniran was
11 giving his interpretation of it saying doesn't
12 this mean that he didn't know what was going on?
13 That's not what this says. The language speaks
14 for itself. Best evidence rule this ought to say
15 what this says.
16 JUDGE BARRETT: Yes, I think maybe you
17 misheard him, Mr. Boydston. He just said earlier
18 in your testimony you said -- and now here's
19 what's on the paper. Maybe I misheard.
20 You want to rephrase the question?
21 MR. OLANIRAN: I'll make it easy, Your
22 Honor. I'll just rephrase the question.

1 BY MR. OLANIRAN:

2 Q In Stipulation 168 where I'm asking
3 the question, the last question in that says,
4 "What did you know about how it operated," "it"
5 referring to IPG. And just read your response
6 into the record?

7 A "You know, in a very generalized
8 nature all I knew was that Marian Oshita wasn't
9 sharing information with Liza Galaz. I presumed
10 she was carrying on business in the same manner
11 as, you know, prior to my incarceration, but
12 again didn't have any firsthand knowledge."

13 Q So you filed a pleading right about
14 2005 where you stated that you were not involved
15 in the TV royalty collection business at all
16 between June 2002 and November of 2005. Do you
17 recall that?

18 A I -- I don't recall, but that's
19 correct.

20 Q So if you stopped running IPG in May
21 of 2002 and you weren't involved in the business
22 of TV royalty collection from June '02 to

1 November '05, that means that you really didn't
2 have firsthand knowledge of IPG's operation
3 during that period, did you?
4 A No, because for instance one of the
5 primary things I did after May 2002 until
6 February 2003; and this was actually basis of the
7 lawsuit between Liza Galaz and Marian Oshita, is
8 I handed all -- handled all the finances. And I
9 also handled a lot of the data collection and
10 analysis. So -- so to say I wasn't involved at
11 all, that's probably somewhat of an
12 overstatement, but I wasn't having any contact
13 with clients that I could recall. And from that
14 standpoint I -- I wasn't. I was also not
15 employed. I wasn't receiving a paycheck for --
16 nor was I working full time at it.
17 Q I just want to be clear. So from June
18 '02 to November '05 you had no contacts with
19 clients?
20 A Well, let's see, June 2002 to February
21 2003 when I was incarcerated I was certainly
22 involved in the finances for WSG because I was

1 helping put together the financing before I went
2 to prison.
3 Q Mr. Galaz, I'm asking about your
4 contact with claimants.
5 A Right, and you asked me from -- from
6 June 2002 to 2005. And I'm trying to trace in my
7 mind exactly what I did during those times. So
8 that's why I -- I -- I start off -- the first leg
9 of that is from May 2002 until February 2003.
10 And I was explaining what I was doing. And from
11 February 2003 until effectively June 2004 I was
12 incarcerated. And at that point there really
13 wasn't going -- anything going on with IPG.
14 Periodically I would look at matters that -- that
15 would arise, but there really wasn't anything
16 going on other than the lawsuit between Liza
17 Galaz and Marian Oshita.
18 And in -- by January 2005 Liza Galaz
19 had prevailed in a lawsuit against Marian Oshita,
20 reacquired control, full control of IPG. And
21 sometime in that point I started getting back
22 involved.

1 Q I'm sorry. I'm going to have to stop
2 you, Mr. Galaz. You're not answering my
3 question. My question was --
4 A I apologize. What -- I thought it
5 was.
6 Q No, you were not. My question asked
7 you of the contact you had with claimants between
8 June '02 and November '05, because you
9 represented in a pleading to the Federal
10 Government that you were not involved in the --
11 A I -- I --
12 Q Let me finish my question. That you
13 were not involved in the TV royalty collection
14 business.
15 A I --
16 Q So my question to you -- let me repeat
17 it. You did not have any contact with claimants
18 between '02 and '05, June '02 and November '05,
19 yes or not?
20 A I -- I -- I do not recall
21 specifically, and I would have to put it in
22 context of particular dates. Between June --

1 let's say May 2002 and February 2003 I don't
2 recall having any contact with clients. If I
3 did, it would have been very, very nominal. I
4 think the point was that that's when I pled
5 guilty to my crime. I was hands off. I'm not
6 going to have anything to do with this. I'm
7 going to extricate myself from -- from IPG as
8 much as possible.
9 The period after that I was
10 incarcerated. And when I came back I don't
11 recall having contact with anybody. There was
12 very little going on after I had returned, and in
13 fact there were issues between Marian Oshita and
14 Liza Galaz that would have minimized the contact
15 between clients and IPG personnel in any event.
16 Q So you had very little contact?
17 A I think I'm probably -- I think I'm
18 having little -- very little contact. I don't
19 recall any contact --
20 Q Okay.
21 A -- at -- I mean, just off the top of
22 my head.

1 Q So for royalty years 2001, 2002, 2003
2 and 2004 you had no involvement with the filing
3 of claims, correct?
4 A I'm sorry --
5 MR. BOYDSTON: Your Honor, that's
6 outside the scope of the time period he's already
7 established.
8 THE WITNESS: Yes, I'm trying
9 to --
10 JUDGE BARRETT: Sustained.
11 BY MR. OLANIRAN:
12 Q Okay. You stopped running IPG in
13 2002, correct?
14 A Correct. Stopped running it, correct.
15 Q Right. Were you involved in filing of
16 claims for 2001, which would have been --
17 A I --
18 Q Let me finish. Let me finish. I want
19 the record to be clear. Were you involved in the
20 filing of claims for 2001 which would have been
21 filed in July of 2002?
22 A I believe that I would have been

1 involved and reviewed anything to give any input
2 that I had.
3 Q Well, you just testified that you had
4 nominal --
5 A Client contact.
6 Q -- involvement. Client contact. Did
7 you have involvement --
8 A You don't have to have client contact
9 to file a July claim.
10 JUDGE BARRETT: Let's try not to step
11 on each other's words.
12 THE WITNESS: My apologies, Your
13 Honor.
14 JUDGE BARRETT: The court reporter is
15 doing the best she can.
16 THE WITNESS: Sorry.
17 JUDGE BARRETT: And it's your record,
18 so --
19 Could you ask the whole question?
20 And then could you give the answer,
21 Mr. Galaz?
22 THE WITNESS: Certainly.

1 BY MR. OLANIRAN:

2 Q Okay. During what I would call the
3 separation period, if you will, which June '02 to
4 November '05, you said you had nominal client
5 contact. Did you have involvement with filing
6 claims during that period?

7 A Well, your predicate is wrong. To
8 call it the separation period is just inaccurate
9 when I know what's going on even though I'm not
10 necessarily having client contact. You don't
11 have to have client contact to necessarily know
12 what's going on. I may not be corresponding with
13 the client, but I might see their -- their
14 correspondence with someone else in IPG.

15 To -- directly to your question, the
16 only claim that I couldn't have had any
17 involvement with would have been the one that was
18 filed in July 2003 for 2002 calendar year. But
19 that necessarily wouldn't have meant that I
20 wouldn't have known about what was in there. If
21 it contained claims for clients that we had
22 entered into -- into contracts with years before,

1 then it wouldn't have necessarily meant -- you
2 don't need client contact in order to file your
3 July claim.
4 Q So then when you represent in a
5 pleading that you did not have any involvement in
6 the TV royalty collection business between June
7 2002 and November 2005, that wasn't true then?
8 MR. BOYDSTON: Your Honor, I'd like to
9 know what this pleading is, because I don't think
10 Mr. Galaz personally filed any pleading. And I'd
11 like to see the basis of this because I don't
12 know that that even happened.
13 (Simultaneous speaking)
14 MR. BOYDSTON: The same stipulation?
15 MS. PLOVNICK: Same stipulation.
16 MR. BOYDSTON: Which number?
17 MS. PLOVNICK: Paragraph 170. And
18 thereafter.
19 MR. OLANIRAN: And if you look at
20 stipulation --
21 MR. BOYDSTON: Understood. Never
22 mind.

1 THE WITNESS: And I understand the
2 pleading and I understand the context in which it
3 came in. So you can ask me any questions about
4 it.
5 BY MR. OLANIRAN:
6 Q I have been asking you questions about
7 it.
8 A Actually, no, you asked me a very
9 general statement, but if you'd like to ask me
10 something more specific about it, then feel free.
11 Q Did you have client contact between
12 June 2002 and November 2005?
13 A If I had any, it would have been
14 nominal, but I don't recall any.
15 Q Did you have any involvement with
16 filing claims between June 2002 and November
17 2005?
18 A I'm certain that I reviewed claims for
19 any year in which I was not incarcerated. So
20 that would have -- the only claim filing that
21 would have occurred when I was incarcerated was
22 the one in July 2003 that pertains to the 2002

1 calendar year.

2 Q So you're saying yes or no? I'm not

3 understanding your response.

4 A Well, you're -- the problem is that

5 you're -- you're saying you have no involvement,

6 no involvement. That's a -- that's a -- I mean,

7 no involvement? No, that would be incorrect to

8 say no involvement, because --

9 Q That was not my question. My question

10 --

11 A Well, it -- I -- I think it actually

12 was. And -- and you -- you were saying is it

13 false that you had -- when -- when you say that

14 you had no involvement?

15 Q You stated here that in stipulation

16 173 in Exhibit 354, "Raul Galaz was not engaged

17 in the industry of television royalty collection

18 between June 2002 and November 10, 2005." Are we

19 together thus far?

20 A Correct.

21 Q And then I asked you did you have any

22 client contact during that period that I just

1 mentioned. Yes or no?

2 A And -- and I said I cannot remember

3 and if I had any, it would have been nominal.

4 Q Did you have any involvement with

5 filing claims?

6 A No, I would have -- well, no, I

7 reviewed claims. I'm certain I reviewed claims.

8 Q So you don't consider reviewing claims

9 part of being --

10 A Well, le me explain.

11 Q Let me finish my question.

12 A Well, I was trying to explain my

13 answer before you --

14 Q Let me finish my question.

15 A -- before you questioned me.

16 Q Let me finish my question. Did you

17 have any involvement with filing claims during

18 June 2002 and November 2005?

19 A I -- I would say that if you were to

20 -- to take in the most literal sense and ask

21 whether I had any involvement with this industry,

22 then I could say that I had involvement

1 perpetually between June 2002 and November 2005.
2 What I didn't have was involvement with any
3 clients. What I didn't do is make claims myself.
4 What I didn't do is correspond with any third
5 parties on behalf of IPG. Did I review the
6 finances of IPG to assist them before I had to go
7 to prison? Yes, I absolutely did. Did I
8 instruct my probation officer everything I was
9 doing?
10 MR. MacLEAN: Objection.
11 THE WITNESS: Absolutely.
12 MR. MacLEAN: May I finish, Your
13 Honor. I have an objection. The witness is
14 questioning himself, Your Honor.
15 JUDGE BARRETT: Sustained. If you'll
16 ask another question, Mr. Olaniran?
17 BY MR. OLANIRAN:
18 Q Besides you and Ms. Vernon is there
19 anyone else testifying on IPG's behalf with
20 regard to personal knowledge regarding the filing
21 of IPG's claims during the period June '02 to
22 November '05?

1 A (No audible response)
2 Q That's not a trick question.
3 A No. No. We're the only two that are
4 involved in this claim.
5 JUDGE STRICKLER: You let him know
6 when you're asking him a trick question?
7 (Laughter)
8 MR. OLANIRAN: I try to be fair, Your
9 Honor.
10 BY MR. OLANIRAN:
11 Q And you actually haven't filed a claim
12 since 1999, is that correct?
13 A I've -- I've reviewed everything.
14 Q I didn't ask you if you've reviewed.
15 Have you actually filed a claim yourself?
16 A No.
17 Q Signed a claim?
18 A No.
19 Q Thank you. And during the period that
20 you were separated from IPG Marian Oshita at some
21 point and then Liza Galaz, or at some point
22 together, were operating IPG, correct?

1 MR. BOYDSTON: Objection, Your Honor.
2 He's explained previously that he was never
3 separated.
4 JUDGE BARRETT: Overruled.
5 THE WITNESS: I'm sorry. Repeat your
6 question?
7 BY MR. OLANIRAN:
8 Q During the period from June '02
9 through November '05 and up until when you
10 rejoined IPG --
11 A As an employee?
12 Q -- as an employee, Marian Oshita and
13 then Liza Galaz, and perhaps an overlap of the
14 two, were responsible for the operations of IPG,
15 correct?
16 A That's correct.
17 Q Okay. And so to the extent that
18 you're supporting or defending any actions taken
19 during the period that they were responsible for
20 operating IPG, you're relying on information that
21 they would have passed on to you when you
22 rejoined IPG and thereafter, correct?

1 A Correct.

2 Q Okay. And to the extent that records
3 existed that support or invalidate claims that
4 were made during the period that you did not have
5 any connection with IPG Ms. Oshita or Ms. Galaz
6 would have been responsible for maintaining those
7 records, correct?

8 A Correct.

9 Q Okay. And if for some reason either
10 one of them failed to pass on documents that
11 tended to invalidate IPG's claims in this
12 proceeding, or any other proceeding for that
13 matter, you would have no way of knowing that,
14 correct?

15 A Well, that's not quite right with Liza
16 Galaz because I had access immediately following
17 my incarceration to whatever records were in her
18 possession, and I ultimately took possession of
19 those -- those records. With regard to Marian
20 Oshita, that would be correct.

21 Q Okay. But if Ms. Galaz held something
22 back, you have know way of knowing because you

1 wouldn't know if she did or not?

2 A I -- I -- I would have no idea if

3 anybody held anything back.

4 Q Thank you.

5 A You don't know what someone doesn't

6 hold back.

7 Q And so it's quite possible that Marian

8 Oshita could have received termination letters

9 from claimants that she didn't turn over to you,

10 correct?

11 A Unlikely because it was in her best

12 interest to do so.

13 Q And Liza Galaz could have had

14 termination letters that she didn't turn over to

15 you either?

16 A No.

17 Q Do you recall testifying in '00

18 through '03 proceeding that Marian Oshita

19 absconded with IPG documents?

20 A That's correct.

21 Q Okay. And of course neither Marian

22 Oshita nor Liza Galaz is testifying in this

1 proceeding, right?

2 A That's correct.

3 Q And is Liza Galaz an interest holder

4 in IPG?

5 A No.

6 Q And let me --

7 A No longer, I should say.

8 Q No longer. And what is her

9 relationship with IPG now, if any?

10 A Mine?

11 Q Her relationship.

12 A None. Non-existent. Former owner.

13 Q Does she have any financial interest

14 in IPG?

15 A No.

16 Q And does IPG have any continuing

17 financial obligation to Liza Galaz?

18 A No.

19 Q Okay. Now in the claims that have

20 been filed since you rejoined and became much

21 more active with IPG you have been closely

22 involved -- or at least you have become

1 increasingly closely involved with the filing of
2 claims. Is that fair?
3 A I don't draw a distinction between
4 before incarceration and after incarceration. So
5 you're saying increasingly involved?
6 Q Well, how --
7 A I still -- I should say I'm still
8 involved.
9 Q Would you significantly involved in
10 the filing of claims?
11 A Yes.
12 Q Okay. And you haven't signed any IPG
13 claims, and is that because of the negative
14 connotation that your name carries?
15 A That and the fact that I don't think
16 I had actually filed claims even earlier to that.
17 Before I had pled guilty to anything the -- we
18 had different responsibilities in IPG, and one of
19 the responsibilities that fell on Marian was
20 preparing the July claims. So even though I -- I
21 looked at it and we all reviewed the July claims
22 to make sure that they were accurate, she was the

1 one on the front line of doing that. So I think
2 she was actually the one that signed it.
3 Q Okay. But in any event, in your
4 current role you interact significantly with
5 claimants. Is that fair?
6 A Correct.
7 Q Okay. And you've assisted with
8 assuring that IPG's claims are properly filed and
9 contain all of the necessary information?
10 A Hopefully.
11 MR. MacLEAN: Objection. Assumes
12 facts not in evidence.
13 JUDGE BARRETT: Overruled.
14 BY MR. OLANIRAN:
15 Q You have assisted with assuring that
16 IPG is duly authorized to represent claimants
17 listed on this. It's a joint claim?
18 A That's correct.
19 Q Okay. And you are very familiar with
20 the rules governing the filing of claims,
21 correct?
22 A At -- at this point, correct.

1 Q Okay. And you understand that as an
2 agent IPG filed a joint claim in order to
3 represent the interests of the copyright owners
4 that it purports to represent, correct?
5 A Well, again, that's -- that's kind of
6 a loaded issue. As you know, and as the Judges
7 are aware, we had always taken the position that
8 our contracts had actually assigned the copyright
9 interest as opposed to merely creating an agency.
10 And from that standpoint if it were truly, truly
11 an assignment to the copyright interest, then the
12 program claim, the July claim would only need to
13 be made, from my understanding of it, in the name
14 of Worldwide Subsidy Group.
15 That's the problem that we entered
16 into or we -- we confronted with the 1997 cable
17 proceedings, because working under that
18 presumption for the first ever filing that WSG
19 had made, we put it just in the name of WSG. The
20 judges at the time -- or it was a CARP, came back
21 and said, no, that's -- that's not sufficient.
22 We believe that you needed to identify the

1 underlying copyright owner from you acquired the
2 rights and you need to do it as part of the July
3 claim filing.
4 And so from that point prospectively
5 that's how we handled it even though we disagreed
6 from a legal standpoint that we needed to do
7 that, we nonetheless complied with that.
8 Q Do you understand that the notion that
9 you just explained has been rejected by the
10 Judges?
11 A Yes.
12 Q Okay. So back to my question.
13 A That's why we complied with it anyway.
14 Q Back to my question, that you
15 understand that as an agent that you had to file
16 a joint claim in order to represent claimants,
17 correct?
18 A That you have to represent a joint --
19 to represent claimants --
20 Q Right.
21 A -- you have to identify the underlying
22 claimant on the joint claim.

1 Q And you also understand that when you
2 list a claimant as a joint claimant, that you
3 must have had an agreement as of the date that
4 you filed that claim, correct?
5 A That's correct.
6 Q Okay. And you also know that the
7 person signing the joint claim is required to
8 certify that IPG is a duly authorized agent of
9 each claimant on the joint claim, correct?
10 A I believe that's correct, yes.
11 Q And in fact the regulations require
12 you to do a declaration as to the authority to
13 file the claim and the veracity of the
14 information in the claim as well as the good
15 faith of the person signing the claim, correct?
16 A I -- I believe that's correct.
17 Q And do you believe IPG has complied
18 with those rules with respect to its claim in
19 this proceeding?
20 A In this proceeding absolutely and I
21 believe that in every instance where this was
22 first raised in the 1997 proceedings we've been

1 particularly careful about it.

2 Q Okay. And you're also aware that the

3 regulations provide that in order to file a

4 petition to participate in this proceeding that

5 you must have the authority and consent of the

6 claimants listed on the petition to participate?

7 A Correct.

8 Q Okay. And you believe IPG has

9 complied with this?

10 A Well, the -- the only caveat to that

11 are circumstances where we initially had

12 authorization and then received a termination

13 that was in breach of the contract. So

14 consequently; and I -- I can only presume you're

15 referring to A&E Television, A&E Television

16 terminated prematurely. And so from that

17 standpoint if -- well, they didn't terminate

18 prematurely, but I -- I think what they did is

19 they denying the existence or effect of the post-

20 term collection right that appears within the

21 contract that was with them. So you have the

22 right --

1 Q Mr. Galaz, you're giving me --
2 A -- if you're -- I'm still answering --
3 Q I asked you --
4
5 A -- the question.
6 Q I understand, but you're going off the
7 --
8 A I -- no, I have not finished my
9 question --
10 Q It's outside -- your --
11 A -- I have not finished my answer.
12 JUDGE BARRETT: Okay. The question
13 has been answered. You're going beyond that and
14 you don't need to, Mr. Galaz. You just need to
15 answer the question that's asked.
16 Go ahead, Mr. Olaniran.
17 BY MR. OLANIRAN:
18 Q You're also aware that in the 2000
19 through 2003 decision the judges also found that
20 where a claimant has stated unambiguously that it
21 no longer wishes to be represented by a
22 particular entity, they will honor that request?

1 You remember that?

2 A I -- I -- I remember that.

3 Q Okay. And the judges also made clear

4 that that determination had nothing to do with

5 part of your contractual arrangement that the

6 terminating claimant has with the terminated

7 agent. Does that question make sense?

8 A I don't believe that that was the

9 ruling, because I think that the basis of the

10 ruling was that our contracts were agency

11 agreements. And premised on that, being an

12 agency agreement, there being an unfettered right

13 to terminate an agency at any time. And as we

14 are, as I'm sure you're aware, addressing on

15 appeal, we disagree with that, specifically

16 because we negotiated within our contracts a

17 post-term collection right. If you were to

18 simply say that it's an agency agreement that

19 gives an unfettered right to terminate any

20 authority, then you're basically negating

21 something that was agreed upon between the

22 parties.

1 Q I understand that you disagree with
2 the judges' ruling. I'm merely asking if you're
3 aware of the judges' ruling.
4 A Well, I'm -- I'm aware of what you had
5 asked me, but I think you had -- you then said
6 and wasn't it premised on this? And I think I
7 disagreed with that, because I think you said it
8 -- it -- I'm trying to recall your words. It was
9 unrelated -- unrelated to the contract between
10 the parties and --
11 Q Fair enough.
12 A -- and -- and so I disagree with that.
13 I don't think that was the premise of the judges'
14 ruling.
15 Q Well, let's talk about A&E. With
16 regard to A&E, as between you and Ms. Vernon, who
17 is in the best position? Are you in a position
18 to answer questions about A&E?
19 A I -- probably me better than her. I
20 -- I'd have to refresh my recollection with
21 stuff, because I don't remember everything about
22 them. I don't think we've had a whole lot of

1 contact with them other than non-response to our
2 requests for information.
3 Q So let's turn to MPAA Exhibit -- well,
4 Exhibit 324. Are you there?
5 A Yes.
6 Q And I need you to flip through all of
7 the exhibits. Just breeze through and just to
8 identify the exhibits.
9 JUDGE STRICKLER: Do you mean he
10 Exhibits 2 through 24?
11 MR. OLANIRAN: The Exhibits 2 through
12 24. Thank you, Your Honor.
13 BY MR. OLANIRAN:
14 Q Now the reason I asked you to do that,
15 Mr. Galaz, is that virtually all of the exhibits
16 relate to correspondence -- not all of them, I'm
17 sorry, but all of the correspondence -- strike
18 that. Several of the correspondence exchange
19 relate to Ms. Vernon. So I'm going to ask you to
20 --
21 A I'm sorry. Linked to Ms. Vernon?
22 Q Ms. Vernon, yes.

1 A The first two are correspondence to
2 Ms. Oshita.
3 Q And you can look at the rest of them.
4 I believe there are six of them there.
5 A Well, it's -- okay. Exhibit C is an
6 email from Ms. Vernon, the -- the form that we
7 sent out.
8 Q Let's go to Exhibit D.
9 A Yes. Exhibit D is a letter from Nancy
10 Alpert of A&E Networks dated December 30, 2011.
11 Q To whom?
12 A Worldwide Subsidy Group, LLC. Oh, and
13 then it says, "Dear Ms. Vernon." "Attention to
14 Ms. Vernon. Dear Ms. Vernon."
15 Q Next exhibit?
16 A Just -- it's the same date. It's a
17 letter to the Copyright Royalty Board and the
18 Office of the General Counsel, to whom it may
19 concern.
20 Q Okay. Next exhibit?
21 MR. BOYDSTON: Your Honor, why are we
22 making Mr. Galaz simply reread what these things

1 say? I think the best evidence is these speak
2 for themselves. I don't know if we need to have
3 him recite them.
4 MR. OLANIRAN: Is there an objection?
5 JUDGE BARRETT: Overruled.
6 THE WITNESS: The -- the -- the last
7 exhibit is an email from WSG to -- it says -- I
8 can't pronounce it -- Flahrty Sene Delvida.
9 BY MR. OLANIRAN:
10 Q Okay. And whose name is at the end of
11 that email?
12 A Denise Vernon. And this was the
13 request for the confirmation of engagement.
14 Q Okay. So let me ask you again, who is
15 in the better position to talk about A&E, Ms.
16 Vernon or yourself?
17 A I -- I don't think -- I -- I -- I
18 don't think it's her. I think it would probably
19 be me.
20 Q You're more knowledgeable about the
21 A&E relationship even though she's --
22 A Well, A&E goes --

1 Q Let me finish my question. Okay. You
2 are more knowledgeable about A&E even though she
3 actually has her name on most of the documents?
4 A Yes.
5 Q Okay. So now going back to the
6 relationship with A&E, now, IPG listed A&E as one
7 of its claimants in the '00-'03 proceeding,
8 correct?
9 A I -- I don't recall.
10 Q May I refresh your recollection?
11 A Please.
12 MS. PLOVNICK: This is a copy of IPG's
13 position to participate in the 2000-2003 cable
14 proceedings. Do you want it marked or is it
15 just for --
16 JUDGE BARRETT: If it's just to
17 refresh recollection --
18 MR. OLANIRAN: If he can answer my
19 question, I'll just as well move on. I
20 just --
21 THE WITNESS: It indicates on the
22 exhibit that A&E Television Network is one of the

1 entities on -- on whose behalf IPG is filing a
2 petition to participate in the 2000-2003 cable
3 proceedings.
4 BY MR. OLANIRAN:
5 Q Did IPG file this claim for A&E for
6 that proceeding also?
7 A You -- you mean in the written
8 statement?
9 Q Was A&E a joint claim on IPG's claims
10 for 2000, 2001, 2002 and 2003?
11 A I -- I would have to go back and check
12 to know which years, if not all of the years.
13 Q Wouldn't A&E have to have been a joint
14 claimant to be listed on the petition to
15 participate?
16 A Well, right, but you said for each
17 year, and so I don't know if it was only for one
18 year or all four years. That was my point.
19 Q But IPG included A&E as a claimant in
20 its written direct statement that was filed on
21 May 30, 2012, is that right?
22 A I again --

1 Q For that period.

2 A I -- I again would have to refresh my

3 recollection. I'll take your word for it, if it

4 would move this along.

5 MR. OLANIRAN: Two seconds, Your

6 Honor.

7 BY MR. OLANIRAN:

8 Q Mr. Galaz, let's turn to Exhibit 324.

9 A I think that's the one we were just

10 on.

11 Q Three-twenty-four-A. Sub-exhibit A of

12 324. You see that?

13 A Yes.

14 Q And that was the first termination

15 letter from A&E to WSG, correct?

16 A (No audible response)

17 Q Are you still on Exhibit A, Mr. Galaz?

18 It's only one page, right?

19 A Yes, you didn't ask me a question.

20 Q I did ask you a question. I asked you

21 if that was the first termination letter that WSG

22 received from A&E.

1 A I presume so. I haven't looked at the
2 records. To -- to be candid, I didn't even
3 bother looking at any A&E records because we're
4 not making claim for them in this proceeding.
5 Q I understand that. Then let's
6 go --
7 A But then you'll understand when I say
8 that I can't recall whether -- I -- I don't know
9 the wealth of correspondence between IPG and A&E.
10 Q But that is --
11 A I didn't bother to investigate.
12 Q That is the first -- that is a
13 termination letter from A&E to WSG, correct?
14 A Again, I have not bothered to
15 investigate anything between IPG and A&E, so I
16 cannot answer any questions other than attempting
17 to interpret these right here.
18 Q So you don't know if 324-A is a
19 termination letter? That's your response?
20 A No, I -- you said is this the first
21 termination letter. I don't know. I don't know
22 if this was sent. I don't know if there was one

1 before it. I have --

2 Q I rephrased my question, Mr. Galaz.

3 A -- I have not -- okay. Rephrase your

4 question then, please.

5 Q I said is this a termination letter to

6 WSG?

7 A It is a termination letter, correct.

8 Q To WSG?

9 A Correct.

10 Q Okay. Let's go to 324-B. Mr. Galaz,

11 that's another termination letter to WSG,

12 correct?

13 A It's another, but that's actually --

14 it's actually kind of interesting because a --

15 Q A yes or no would be fine, Mr. Galaz.

16 A -- contraction from the prior letter.

17 Q I didn't ask you that.

18 A But that was my answer.

19 Q And so if you received this -- the

20 April 1st letter would have preceded the filing

21 of claims for -- the April 1st, 2003 letter would

22 have preceding the filing of claims for July --

1 the filing of claims for 2002, which would have
2 occurred in July of 2004, correct?
3 A No.
4 Q If A&E terminated IPG in April of
5 2003, that termination occurred prior to filing
6 of claims in July, which claims would have been
7 for the 2002 royalty year?
8 A That is correct. That's not what you
9 stated.
10 Q Okay. The September 23 letter, okay,
11 would have preceded the filing of claims for the
12 2003 year, which would happen in 2004, correct?
13 Would have happened, I'm sorry, in 2004.
14 A The letter that -- that is attached as
15 Exhibit B is dated September 23rd, 2003. The
16 next filing of claims would have been July 2004
17 applicable to the 2003 calendar year.
18 Q Okay. Now let's go to Exhibit 324-C.
19 And what is this? This is an email again from
20 Worldwide Subsidy Group on the second page and it
21 has Ms. Vernon's name in there. What is that
22 email for?

1 A This is letter or an email that was
2 sent out November 23rd, 2011. This is part of
3 the -- the global emails that were sent out to
4 parties that were represented during any portion
5 of the 2000-2003 -- for broadcast during the
6 2000-2003 broadcast years, and it would have been
7 -- looks like soliciting information regarding a
8 company's catalogue.
9 Q So just to recap, when IPG filed -- if
10 IPG filed -- assume that IPG filed claims for A&E
11 in 2002 for the 2001 royalty year. IPG would
12 have been aware of the first termination letter,
13 correct?
14 A If they filed in 2002 for royalties
15 having to do with 2001, they would have been
16 aware of the first termination letter, which you
17 are representing occurred April 1, 2003, a year
18 later?
19 Q It's actually admitted --
20 A No, they would not have been aware of
21 that.
22 Q -- it's in admitted evidence now. I'm

1 not --

2 A I'm sorry?

3 Q I'm not merely representing. I'm

4 saying the letter is dated April 1st. It's been

5 admitted into --

6 A April 1st, 2003.

7 Q Right.

8 A No, they would not have known in 2002

9 of a letter that was yet to come.

10 Q I said if IPG filed claims for A&E in

11 2003 applicable to the 2002 royalty year, IPG

12 would have had notice of the April 1st, 2003

13 letter, correct?

14 A If the letter had been received, that

15 is correct. The second letter seems to suggest

16 otherwise.

17 Q Okay. I didn't ask you about the

18 second letter. Just keep to my response. Thank

19 you.

20 A But you're predicate is that the April

21 1 letter was in fact received. And if you look

22 at the next letter, the September 23rd letter --

1 MR. OLANIRAN: Move to strike, Your
2 Honor. He's non-responsive.
3 THE WITNESS: -- it doesn't make any
4 reference to that.
5 JUDGE BARRETT: Sustained. Mr. Galaz,
6 if you would listen carefully to the questions
7 and only answer the questions that are asked,
8 please.
9 THE WITNESS: I'm sorry, Your Honor.
10 I'm -- I'm -- I'm -- the problem is that the
11 predicates are sometimes putting it -- I'm -- I'm
12 sorry, Your Honor. I'll refrain.
13 BY MR. OLANIRAN:
14 Q If IPG filed a claim in 2004 for the
15 2003 royalty year, IPG would have had notice of
16 the September 23, 2003 termination, correct?
17 A If a termination had come on September
18 23rd, 2003 and IPG made a claim filing, a July
19 claim filing in July of 2004, then IPG would have
20 known about the September 23rd, 2003 letter from
21 A&E.
22 Q Okay. And --

1 A If in fact the letter had been
2 received, which I've got no reason to challenge
3 that it hasn't been.
4 Q Fair enough. And when IPG filed its
5 petition to participate in the '00-'03 proceeding
6 on March 11 of 2011 which included A&E as a
7 claimant, IPG knew -- IPG should have had notice
8 of the two prior termination letters, correct?
9 A Again, I -- I'm -- I'm -- I'm sorry,
10 I'm trying not to be short. I have not reviewed
11 any of the correspondence back and forth between
12 IPG and A&E. I'm not trying to be cute here, but
13 I haven't reviewed anything. I have no idea what
14 the dialogue was back and forth between the
15 parties. The reason I haven't bothered to look
16 is because we're not making claim for them in the
17 -- in this particular proceeding. So
18 consequently I haven't bothered to look and I
19 can't represent -- I don't know from memory what
20 the back and forth was between them.
21 Q You did file a claim for A&E in this
22 proceeding, didn't you?

1 A No, actually that's incorrect. If you
2 look at our -- because I went back in connection
3 with your rebuttal statement and I looked at
4 IPG's written direct statement. A&E is not
5 listed on there.
6 MR. OLANIRAN: Your Honor, I'd like to
7 have this marked as Exhibit 355.
8 (Whereupon, the above-referred to
9 document was marked as MPAA Exhibit
10 No. 355 for identification.)
11 BY MR. OLANIRAN:
12 Q Mr. Galaz, please review the document
13 to be marked as Exhibit 355. Mr. Galaz, do you
14 recognize that exhibit?
15 A It appears to be the petition to
16 participate that IPG filed for cable years 2004
17 to 2009.
18 Q And when was that filed?
19 A It's signed September 12th, 2013.
20 Q Do you have a list of claimants
21 attached to the --
22 A Yes.

1 Q -- figure at 355, I'm sorry, the
2 petition to participate?
3 A Yes.
4 Q And does that include A&E?
5 A A&E Television Network, yes.
6 Q A&E Television Network, right?
7 A Correct.
8 MR. OLANIRAN: I move to admit Exhibit
9 355, Your Honor.
10 MR. MacLEAN: No objection.
11 MR. BOYDSTON: No objection.
12 JUDGE BARRETT: Three-fifty-five is
13 admitted.
14 (Whereupon, the above-referred to
15 document was received into evidence as
16 MPAA Exhibit No. 355.)
17 BY MR. OLANIRAN:
18 Q So back to my question, Mr. Galaz.
19 When IPG filed this petition to participate in
20 the '00 through '03 proceeding, they would have
21 notice of the two prior terminations, correct.
22 The two prior termination letters.

1 A You -- you've -- you've asked this
2 several times and I -- I've answered it several
3 times. I --
4 Q Is that a yes or a no? I don't
5 recall. If I asked this several times, I
6 apologize, but is that a yes or a no?
7 A I do not know without reviewing the
8 file to see what is in the file to see what
9 there.
10 Q Okay.
11 A If you're -- if you're representing --
12 Q No, no, that's fine. That's fine.
13 A No. No, let me finish my answer. If
14 you're representing that those letters were
15 received, then it makes sense that -- just from a
16 standpoint, by a decade IPG would have had
17 knowledge of those letters that are attached to
18 the declaration of Nancy Alpert.
19 Q Okay. That's fine. With respect to
20 the '04-'09 petition to participate, which is
21 part of this proceeding and that was filed on
22 September 12th of 2013, you should have had

1 notice -- assuming everything works correctly,
2 you should have had notice of the two prior
3 terminations, correct? Termination letters to
4 IPG from A&E.
5 A I should have had notice?
6 Q IPG should have had notice.
7 A Why should IPG should have had notice?
8 Because I -- because this was filed? That
9 doesn't suggest that a termination letter has
10 been -- there's no cause and effect.
11 Q You did not answer my question.
12 A Maybe you're not answering -- maybe
13 you're not asking well.
14 Q I appreciate your candor.
15 MR. MacLEAN: Objection, Your Honor.
16 Move to strike Mr. Galaz' comment.
17 JUDGE BARRETT: Granted.
18 BY MR. OLANIRAN:
19 Q When IPG filed the '04-'09 petition to
20 participate, the first two termination letters
21 that we talked about should have already been
22 received by IPG if everything worked the way it

1 was supposed to, correct?
2 A Because you're representing that they
3 came a decade earlier. So correct.
4 Q Okay. And then let's go to Exhibit
5 324-D.
6 A I'm sorry. Which?
7 Q Three-twenty-four, sub-part D. Are
8 you there?
9 A Yes.
10 Q And that's another termination letter,
11 correct?
12 A Well, this one refers to a termination
13 by written notice on September 23rd, 2003, which
14 is Exhibit B, not Exhibit A dated April 2003.
15 Q That's not what I asked you, Mr.
16 Galaz.
17 A It appears to be --
18 Q Mr. Galaz --
19 A It appears to be --
20 Q -- please answer my question.
21 A It appears to be a termination letter.
22 Q Please answer my question.

1 A That's what I'm trying to do.
2 Q No, you're not.
3 A You just asked if it's a termination
4 letter and I --
5 JUDGE BARRETT: Gentlemen --
6 THE WITNESS: -- said it's a
7 termination letter.
8 JUDGE BARRETT: Enough. Please ask
9 the question. Mr. Galaz, only answer the
10 question that is asked, please. Don't elaborate.
11 I should think your counsel would have advised
12 you of that in any event for cross-examination.
13 Mr. Olaniran?
14 BY MR. OLANIRAN:
15 Q Is Exhibit 324-D another termination
16 letter to WSG?
17 A I would say it's more than that. I
18 would say it's a cease and desist letter, a cease
19 and desist letter referring to a termination on
20 September 23rd, 2003.
21 Q Okay. And 324-D is dated December 30,
22 2011, correct?

1 A Correct.

2 Q So you filed a petition to participate

3 on behalf of A&E in 2013. And by the time you

4 filed that petition to participate, which -- do

5 you recall whether or not you filed a cable

6 counterpart for A&E?

7 A I -- I'm sorry. Ask the question

8 again?

9 Q Do you recall whether or not you filed

10 a petition to participate -- I'm sorry -- a

11 petition to participate on the satellite side for

12 this proceeding for A&E?

13 A I -- I -- I don't recall.

14 Q That's fine. But you did file a cable

15 petition, which is for '04 through '09?

16 A That's what this indicates, correct.

17 Q So, and that was filed in 2013 based

18 on the document we just looked at. And so, by

19 September of 2013 you now have three letters: one

20 dated April 1st, 2003; a second dated September

21 23, 2003; and a third dated December 30, 2011,

22 asking IPG to stop representing A&E, is that

1 correct?

2 A It -- it -- it appears -- correct, if

3 the first one was received. But it's not

4 referenced, so I'm not certain about that.

5 Q And as you correctly characterized,

6 the December 30, 2011 was actually a cease and

7 desist, correct?

8 A That's correct.

9 Q Okay. And yet in May of 2012 when you

10 filed the written direct statement for the '03

11 proceeding, you listed A&E as one of IPG's

12 claimants?

13 A Correct.

14 Q Okay. When you were under examination

15 yesterday I recall you discussing -- I want to

16 talk about BBC Worldwide Americas very quickly.

17 A Okay.

18 Q Okay. You've reviewed the affidavit

19 that BBC Worldwide Americas provided for the

20 purpose of this proceeding?

21 A I did. I have a general recollection

22 of it.

1 Q Okay. Turn to MPAA -- I'm sorry,
2 Exhibit 325, please.
3 A All right.
4 Q And that exhibit outlines the
5 representation of authority for MPAA and IPG with
6 respect to BBC Worldwide Americas, correct?
7 A Well, it's a declaration. I'm not
8 sure if I would agree with your characterization
9 of it defining the entitlements of the parties.
10 Q It outlines what BBC Worldwide
11 Americas believes is --
12 A What the desires --
13 Q Let me finish my question, please. It
14 demarcates essentially what the representation of
15 authority is for -- as between IPG and MPAA with
16 respect to BBC Worldwide Americas' interest,
17 right?
18 A It represents what BBC Worldwide
19 desires to be the authority of IPG and the MPAA
20 in these proceedings.
21 Q You think its affidavit is a desire,
22 or it's affidavit is a position that it's taking

1 with respect to who's representing its interests?
2 A I -- I -- I think it's a -- I think
3 it's a desire.
4 Q Okay. Now have you produced anything
5 in the course of these proceedings to actually --
6 any documentary evidence other than your words to
7 change anything that BBC Worldwide Americas has
8 said, or to challenge anything that BBC Worldwide
9 Americas has said in this affidavit?
10 A One second. I think we have submitted
11 documentation that would contradict these
12 representations.
13 Q Okay. But do you have anything from
14 BBC Worldwide Americas dated after this affidavit
15 that changes anything that BBC Worldwide Americas
16 has stated in this affidavit?
17 MR. BOYDSTON: Your Honor, I think I'd
18 object. I think it's just the phrasing.
19 You say change. I think you mean
20 challenge, correct?
21 MR. OLANIRAN: I know what I'm asking.
22 MR. BOYDSTON: Well, then I object.

1 I don't know how evidence could change what
2 they're saying.
3 JUDGE BARRETT: I didn't hear the
4 question, so I can't rule on the objection to the
5 question. Could you re-ask the question, please,
6 Mr. Olaniran?
7 MR. OLANIRAN: Just to make Mr.
8 Boydston happy.
9 JUDGE BARRETT: Thank you.
10 BY MR. OLANIRAN:
11 Q Do you have any document dated after
12 this affidavit from BBC Worldwide Americas that
13 changes anything stated in this affidavit.
14 A Well, we don't have --
15 MR. BOYDSTON: Same objection. I
16 don't know how a document changes it. It might
17 challenge it, but it can't change what's in this
18 declaration.
19 JUDGE BARRETT: Overruled.
20 MR. BOYDSTON: What's in the
21 declaration is in the declaration.
22 JUDGE BARRETT: Overruled.

1 THE WITNESS: Well, the -- the simple
2 answer is that we don't have anything authored by
3 BBC dated after September 19, 2014, which is the
4 date of this declaration.
5 BY MR. OLANIRAN:
6 Q Thank you. Let's move to Exhibit 326.
7 And this is the affidavit from Beyond
8 International. Are you there?
9 A I -- I see it's a affidavit of Mikael
10 Borglund who represents himself to be the
11 managing director of Beyond International,
12 Limited.
13 Q And just give me one minute. Let me
14 direct you to paragraph 7 of that affidavit, and
15 it states that MPAA, not IPG, is authorized to
16 represent Beyond International and its related
17 entities in this proceeding, correct?
18 A No. It says that IPG is not
19 authorized to represent the interests of Beyond
20 International. I don't think there's a reference
21 to MPAA.
22 Q That's correct. You're correct. But

1 it says that IPG is not authorized to represent
2 Beyond International and its related entities,
3 right?
4 A That's -- that's what it says.
5 Q Okay. Now --
6 A And it's a declaration --
7 Q Okay.
8 A -- dated September 22nd, 2014.
9 Q Now have you produced anything dated
10 after the time that this affidavit was submitted
11 that changes anything in the content of this
12 affidavit?
13 A We have --
14 MR. BOYDSTON: I'm just going to
15 object again. This word "change." It might
16 challenge it. It might contradict it. I don't
17 know that anything can change what's on this
18 written page.
19 THE WITNESS: We have no
20 correspondence authored by Beyond International,
21 Limited dated after September 22nd, 2014.
22 BY MR. OLANIRAN:

1 Q Thank you. Switch to Exhibit 327.
2 JUDGE BARRETT: I have to say for the
3 record this is my favorite one because it begins
4 with, "I am 78 years old."
5 (Laughter)
6 JUDGE BARRETT: Not just over 18, but
7 60 years older.
8 BY MR. OLANIRAN:
9 Q Actually, Mr. Galaz, I'm going to move
10 on to Exhibit 328. Are you there?
11 A Yes.
12 Q And I want you to take a look at
13 paragraph 4 of Exhibit 328. You see that?
14 A Yes.
15 Q And that states that IPG is not
16 authorized to represent the interests of Golden
17 Films before the Copyright Royalty Tribunal in
18 any proceeding concerning the collection of U.S.
19 cable and satellite retransmission royalties for
20 2004 through 2009 royalty years. Any cable or
21 satellite royalties attributed to Golden Films
22 for 2004 through 2009 royalty years should be

1 distributed to MPAA, Golden Films' authorized
2 representative.
3 Do you have anything from Golden Films
4 since the date of this affidavit?
5 A We have received no correspondence, no
6 documentation from Golden Films subsequent to
7 October 2nd, 2014.
8 Q Let's go to 329. And that's the
9 affidavit of Tim Cook from Pacific Family
10 Entertainment. Are you there?
11 A Yes.
12 Q And that also says that IPG is not
13 authorized to represent it in this proceeding,
14 right?
15 A It says IPG is not authorized to
16 represent the interests of Pacific before the
17 Copyright Royalty judges in any proceedings
18 concerning the collection of U.S. cable and
19 satellite retransmissions royalties.
20 Q And that would include this
21 proceeding, right?
22 A That would include this proceeding.

1 Q Okay. Have you received any
2 correspondence or do you have any documentary
3 evidence after this affidavit was --
4 A The affidavit is dated September 10,
5 2014, and we have no correspondence from Pacific
6 Family Entertainment subsequent to September 10,
7 2014.
8 Q In fact, you can make my life easier.
9 With respect to Urban Latino, there's a similar
10 language that's 331, which also says that IPG is
11 not authorized to represent its interests. Do
12 you have anything from Urban Latino after the
13 date, which is September 2nd of 2014, after it
14 was executed that changes any position that Urban
15 Latino has articulated in that affidavit?
16 A We have no correspondence from Urban
17 Latino subsequent to September 2, 2014. This is
18 executed by LATV Networks, LLC, which says it
19 acquired certain -- it doesn't say which, but it
20 says certain assets of Urban Latino in 2007.
21 Q Let's go back to -- I'm sorry?
22 A I'm not sure which. It -- it doesn't

1 define which assets it acquired, but in any event
2 we haven't received anything from LATV Networks,
3 LLC after September 2nd, 2014.
4 Q Let's go to back to 327, which is the
5 affidavit of --
6 A Mr. Devillier?
7 JUDGE BARRETT: Did you say 326?
8 MR. OLANIRAN: Three-twenty-seven.
9 JUDGE BARRETT: Oh, thank you.
10 MR. OLANIRAN: I'm sorry.
11 BY MR. OLANIRAN:
12 Q Are you there?
13 A Yes.
14 Q And I'll give you a couple seconds to
15 review the affidavit.
16 A The entire affidavit?
17 Q Have you looked at this prior to
18 today?
19 A I -- Yes, I glanced this. I don't
20 recall the details of it. If there's something
21 you want to --
22 Q Okay.

1 A -- direct me to, then --
2 Q Okay. Well, it makes a couple of
3 points. The first point was that IPG threatened
4 Mr. Devillier with legal action if he didn't
5 cooperate with providing title information. Is
6 that true?
7 A If he didn't comply with this
8 agreement. That's correct.
9 Q But specifically if he didn't provide
10 title information?
11 A Correct, which was his legal
12 obligation.
13 Q Right. So you threatened him with
14 legal action if he didn't provide title
15 information, correct?
16 A You know, I'd have to go back and look
17 as to exactly what was -- what was stated. I
18 know that it started out originally in the
19 correspondence with him as simply encouraging him
20 to do so, but I think things took a turn when we
21 found out that he had been, you know, providing
22 information to you.

1 Q Why don't we go to part C, or 327-C
2 7C of Exhibit 327? And I want you to pay
3 particular attention to the email dated March 29,
4 2012 at 7:46 p.m., which appears to be you
5 communication with Mr. Devillier. Do you see
6 that?
7 A 7:46 p.m.?
8 Q Yes.
9 A Yes.
10 Q Okay. If you'd go to the very last
11 paragraph in that letter before your signature
12 and read that into the record, please.
13 A "We expect your list of programming to
14 be provided to us no later than Monday, March 29,
15 2012 in order for this matter not to be further
16 reduced to a legal action. I trust that you will
17 pass this email on to Joan Lanigan yourself."
18 Q So basically give us title information
19 or we'll sue?
20 A Correct.
21 Q Okay. Mr. Galaz, you had an exchange
22 with Mr. Boydston about the email that Mr.

1 Devillier passed on to me. You recall that
2 conversation, right?
3 A You mean my -- my testimony here?
4 Q Yes.
5 A Yes.
6 Q And the first point you made was that
7 Mr. Devillier forwarded the attachment that you
8 had sent to him to me. Do you recall that?
9 A No, I said that he sent it to his
10 counsel, Joan Lanigan.
11 Q Yes.
12 A And Joan Lanigan forwarded it on to
13 you.
14 Q Okay. And do you know who Joan
15 Lanigan is?
16 A He's represented that it's his legal
17 counsel.
18 Q And do you know what organization
19 she's affiliated with?
20 A Not that I recall.
21 Q Would it surprise you to know that
22 she's one of my colleagues at Mitchell

1 Silberberg?

2 A I -- I couldn't hear you. I'm sorry.

3 Q Would it surprise you to know that

4 she's one of my colleagues at Mitchell

5 Silberberg?

6 A Actually yes.

7 MR. OLANIRAN: I have no further

8 questions, Your Honor.

9 JUDGE BARRETT: This is a good time

10 for us to take our afternoon recess, which we

11 will do unless -- well, yes --

12 MR. MacLEAN: My redirect is very

13 short, but whatever you want to do.

14 JUDGE BARRETT: Let's take a --

15 MR. BOYDSTON: It's my turn.

16 (Laughter)

17 JUDGE BARRETT: Let's take a --

18 MR. BOYDSTON: Never mind.

19 JUDGE BARRETT: We're going to take

20 our break.

21 (Whereupon, the above-entitled matter

22 went off the record at 2:55 p.m. and resumed at

1 3:32 p.m.)

2 JUDGE BARRETT: Please be seated. Mr.

3 MacLean?

4 MR. MACLEAN: Your Honor, before I

5 begin, my colleagues informed me during the break

6 that I walked out of the courtroom at the

7 beginning of the break before the Judges had

8 left. I am very sorry about that. It is not

9 something that I would have intended to do, my

10 mind was elsewhere. So anyway, I meant

11 disrespect.

12 JUDGE BARRETT: I am getting the

13 noodles wet in the back room to give you lashes

14 with wet noodles.

15 (Laughter.)

16 JUDGE BARRETT: So don't worry, your

17 comeuppance is coming.

18 JUDGE FEDER: Maybe we should make him

19 stay after.

20 (Laughter.)

21 MR. MACLEAN: Good afternoon, Mr.

22 Galaz. As you know, I am Matthew MacLean and I

1 represent the Settling Devotional Claimants.

2 Your Honor, I cross-examined -- or I

3 examined Mr. Galaz extensively during the 1999

4 proceedings, particularly related to his history

5 of criminal conduct and his history with Tracee

6 Productions. Although I will touch on it, I do

7 not want to delve deeply into that. One of our

8 exhibits, SDC Exhibit 628, is Mr. Galaz's

9 transcript in its entirety from the 1999 claims

10 portion of the proceeding, and I would move SDC

11 Exhibit 628 into evidence and ask the Judges to

12 consider that so that it's part of the record and

13 that I don't have to go through it in toto here.

14 MR. BOYDSTON: Your Honor, I would

15 object on the grounds of relevance. We are not

16 in the '99 or -- which one was it, '98?

17 MR. MACLEAN: This is the transcript

18 from the 1999 claims portion of the proceeding in

19 which I examined Mr. Galaz extensively on his

20 credibility and his criminal history and

21 connection with Tracee Productions.

22 JUDGE BARRETT: And for the record,

1 that was the hearing on May 5th and 6th of this
2 year, so --
3 JUDGE STRICKLER: Which exhibit number
4 again, I am sorry?
5 MR. MACLEAN: SDC 628.
6 JUDGE STRICKLER: 628, okay.
7 MR. BOYDSTON: My objection is
8 relevance.
9 JUDGE BARRETT: Okay. Overruled.
10 (Whereupon, the above-referred to
11 document was received into evidence as
12 SDC Exhibit 628.)
13 JUDGE BARRETT: I think that the
14 regulations provide that parties can designate
15 testimony from prior proceedings and --
16 JUDGE STRICKLER: In that regard, I
17 agree. Of course, that's what the regulations
18 say. But we had this come up with another
19 proceeding where designated testimony -- I won't
20 say which counsel it was -- but that designated
21 testimony was provided and it was just many, many
22 pages but then not referred to necessarily in the

1 arguments and proposed findings and conclusions
2 of counsel.
3 So can you be -- to save the Judges
4 some work in not looking through materials that
5 you don't intend to rely on within Exhibit 628,
6 can you call our attention to, either now or at a
7 subsequent point in time --
8 MR. MACLEAN: Yes, Your Honor.
9 JUDGE STRICKLER: -- which pages you
10 are de facto designating?
11 MR. MACLEAN: Yes, Your Honor. Well,
12 we actually did designate the transcript in our
13 written rebuttal statement so it is designated.
14 JUDGE STRICKLER: Okay.
15 MR. MACLEAN: But with respect to the
16 particular pages, the -- and it's extensive
17 because it was an extensive examination, but the
18 portions relating to Mr. Galaz's credibility and
19 his criminal history and Tracee Productions can
20 be found at pages 25, line 17 through 74, line 2
21 and pages 418 line 21 through 443 line 8.
22 JUDGE BARRETT: Could you give that

1 second section again please?

2 MR. MACLEAN: 418 line 21 through 443

3 line 8.

4 JUDGE BARRETT: Thank you. And just

5 so the record is clear, I think -- well, I am

6 assuming much of what you would have covered, Mr.

7 Olaniran has covered. It is in the record of

8 this proceeding. It wasn't asked by SDC, but

9 it's still part of the record, and every party is

10 entitled to the evidence that is in the record,

11 the benefits and the burdens of the evidence.

12 MR. MACLEAN: Thank you, Your Honor.

13 And I just didn't want to unnecessarily waste

14 everybody's time because I know we've been over

15 much of this from before.

16 JUDGE BARRETT: Thank you.

17 MR. MACLEAN: Mr. Galaz, could you

18 please turn to MPAA Exhibit 304, which is in

19 volume one of two of MPAA's exhibits?

20 THE WITNESS: Volume one of two?

21 MR. MACLEAN: Yes.

22 THE WITNESS: I am sorry, which

1 exhibit?

2 MR. MACLEAN: Exhibit 304.

3 THE WITNESS: Okay.

4 CROSS-EXAMINATION

5 BY MR. MACLEAN:

6 Q And you'll see that this is a

7 transcript that you testified about earlier, and

8 then I'd like you to turn to the end of the

9 transcription part to the first exhibit attached

10 to the transcript, which is marked MPAA Exhibit

11 17X.

12 A Okay.

13 Q And you testified regarding this

14 exhibit regarding Mr. Olaniran, do you remember

15 that?

16 A Yes.

17 Q Okay. Looking at this letter -- and

18 this is your letter, correct?

19 A Yes, it's my signature.

20 Q Looking at the bottom line there, it

21 says cc: B. Taylor. Do you see that?

22 A That's a Bill Taylor, the alter ego

1 that I was using in connection with my crime.
2 Q So Bill Taylor is you.
3 A That's correct.
4 Q You were cc'ing yourself here.
5 A That's correct.
6 Q Were you cc'ing yourself to give this
7 letter some verisimilitude?
8 A I am sure.
9 Q Now you of course take responsibility
10 for Bill Taylor's actions because he is you,
11 right?
12 A That's correct.
13 Q Now Mr. Olaniran asked you if you
14 will, and the words he used were take the fall --
15 if you took the fall for Francisco Diaz, correct?
16 A That's correct.
17 Q And you responded in your words that
18 you take responsibility, or you took
19 responsibility. Is that right?
20 A That's correct.
21 Q Why is it with respect to Francisco
22 Diaz you prefer the language "take

1 responsibility" to "take the fall"?

2 MR. BOYDSTON: Objection, Your Honor.

3 I am not sure what that has to do with anything

4 that's relevant here. We are talking about

5 different colloquialisms which might be

6 interesting in a debating society or an English

7 class, but I don't see where it has any relevance

8 here.

9 JUDGE BARRETT: Its relevance, Mr.

10 MacLean?

11 MR. MACLEAN: Your Honor, Mr. Galaz

12 has said over and over again, and this seems to

13 be a part of his case and I respect that, that he

14 takes responsibilities for his actions, and I

15 think that I'm entitled to inquire as to how he

16 takes responsibilities for his actions.

17 JUDGE BARRETT: Overruled, I will

18 allow it, I guess.

19 BY MR. MACLEAN:

20 A It's a very simple answer. I think

21 the connotation when you say "take the fall" is

22 that somehow you've been you might say

1 inappropriately saddled with responsibility, and
2 that is not a way I would have characterized it.
3 It was definitely my responsibility for the
4 actions that occurred, and I brought Francisco
5 Diaz into it, so I felt that to say "take the
6 fall" would be inappropriate, as though I was
7 somehow jaded about the fact that he was not
8 prosecuted.
9 Q So you are responsible for these
10 crimes --
11 A Yes.
12 Q -- even though others were involved?
13 A Yes.
14 Q You acknowledge that your crimes
15 caused harm to the MPAA.
16 A Yes.
17 Q And you take responsibility for that?
18 A I have, yes.
19 Q And you are paying for it, even --
20 A Even today, that is correct.
21 Q You acknowledge that your actions
22 caused harm to the Copyright Office?

1 A That's a more difficult question.
2 There have been representations that it harmed
3 the system and resulted in a mistrust of the
4 system and that changes would result. There are
5 no changes that have resulted, and that's just a
6 fact.
7 And the reason that I see that and
8 know that and have evidence of it is specifically
9 because I can look through the claims of people
10 who are making claim -- we will address some of
11 these in our challenge to the MPAA -- where I can
12 look through and I can see particular companies
13 that maybe they're not using a false entity or a
14 false name, but they are nonetheless making false
15 claim for programs that they know that they have
16 absolutely nothing to do with.
17 Q So you deny that your actions caused
18 harm to the Copyright Office?
19 A What I am denying is that the
20 Copyright Office acted in response to it or
21 sufficiently acted in response to it.
22 Q But that's not my question.

1 A Well, then it's a harm that continues
2 to exist that hasn't been remedied by a change in
3 practices.
4 Q Do you take responsibility for it?
5 A Yes.
6 Q So you admit that there was a harm?
7 A I think there was a harm, probably, to
8 the trust that could go with any of these. I
9 would have preferred for there to be actually
10 greater inquiry along the way with some of the
11 claims that are being made, and I don't feel that
12 that occurred despite the assertion that there's
13 been harm.
14 All actions seem to suggest that there
15 hasn't been harm because there hasn't been, in my
16 opinion, a sufficient reaction.
17 Parties are still -- and we're getting
18 off topic -- but parties are still equally
19 capable of filing false claims now as when I did,
20 and the point I am trying to make is that that's
21 demonstrated when we look at the programs that
22 royalties are being -- the parties to whom

1 royalties are being attributed in these
2 proceedings.
3 Q You took advantage of the trust that
4 the Copyright Office places in the claims that
5 are filed before it, is that right?
6 MR. BOYDSTON: Your Honor, we're just
7 covering old ground here. Mr. Galaz has
8 confessed and confessed and confessed, and I
9 don't know how many more ways he can confess.
10 MR. MACLEAN: Your Honor, Mr. Galaz
11 has --
12 MR. BOYDSTON: My objection, for the
13 record, is asked and answered.
14 JUDGE BARRETT: Sustained.
15 BY MR. MACLEAN:
16 Q You committed these acts, these
17 criminal acts, through an entity known as Tracee
18 Productions.
19 MR. BOYDSTON: Same objection.
20 JUDGE BARRETT: That's established in
21 the record. Sustained.
22 BY MR. MACLEAN:

1 Q Tracee Productions is a real entity,
2 correct?
3 MR. BOYDSTON: Same objection. This
4 is exactly what Mr. Olaniran asked, and he
5 answered it.
6 JUDGE BARRETT: I am hoping this is a
7 stepping stone to something else. Overruled. Go
8 ahead, Mr. MacLean.
9 BY MR. MACLEAN:
10 A It was an organization -- let's see,
11 I think it was a DBA for Francisco Diaz in Los
12 Angeles County.
13 Q Tracee Productions was a registered
14 fictitious name, is that --
15 A That's correct, or DBA.
16 Q I will ask you to turn to Exhibit SDC
17 605. It's in the SDC exhibit binder.
18 JUDGE BARRETT: Could you give me that
19 exhibit number again, sorry?
20 MR. MACLEAN: 605.
21 JUDGE BARRETT: Thank you.
22 BY MR. MACLEAN:

1 A Okay.

2 Q You testified earlier about IPG's

3 mandate agreement with Envoy Productions, and

4 this is -- SDC 605 is that mandate agreement,

5 correct?

6 A That's correct.

7 Q Your Honor, recognizing that it's

8 already in evidence but just so that I can put my

9 finger on it more quickly, I would ask to admit

10 SDC 605 into evidence.

11 MR. BOYDSTON: No objection.

12 MS. PLOVNICK: No objection.

13 JUDGE BARRETT: 605 is admitted, but

14 Mr. MacLean, it's also marked as restricted.

15 (Whereupon, the above-referred to

16 document was received into evidence as

17 SDC Exhibit 605.)

18 MR. MACLEAN: It is, yes Your Honor.

19 JUDGE BARRETT: And can you give me

20 the cross reference, the other exhibit number

21 under which it was admitted, anybody?

22 MR. MACLEAN: I am sorry, I cannot.

1 MR. BOYDSTON: Your Honor, I am pretty
2 sure it is in IPG T101.
3 JUDGE BARRETT: Oh, okay.
4 MR. MACLEAN: I'd rather work with
5 this than IPG T101 --
6 JUDGE BARRETT: That's fine, it's
7 perfectly fine.
8 BY MR. MACLEAN:
9 Q You see, as you've testified before,
10 this agreement says it's for funds attributable
11 to 2000 cable and satellite retransmission
12 royalties, right?
13 A That's correct.
14 Q And you did not have any other
15 agreement with Envoy productions that would be
16 related to 2001 cable or satellite retransmission
17 royalties, did you?
18 A Well, that's incorrect. This
19 agreement has to do with 2001. It says 2000, it
20 was a typographical error. That was my testimony
21 before, and I can explain how I know that.
22 Q I understand that was your testimony.

1 I said you don't have any other agreements.
2 A With Envoy Productions? No, this is
3 the only agreement with Envoy Productions.
4 Q If you turn to IPG 069 --
5 A I am sorry, IPG --
6 Q IPG Exhibit 069 which is in IPG's
7 Exhibit Binder 1.
8 A Okay.
9 Q This is the declaration that you
10 offered from Curtiss A. Wittbacht, Envoy
11 Productions, correct?
12 A That's correct.
13 Q Who drafted this declaration?
14 JUDGE STRICKLER: Which document?
15 MR. MACLEAN: IPG 069.
16 JUDGE STRICKLER: Thank you.
17 BY MR. MACLEAN:
18 A It was really a combination effort.
19 With regard to this one in particular, I had
20 contacted Envoy Productions to discuss what the
21 issues are and gave a forum where we were doing
22 this originally for several different parties,

1 just to address the singular issue of the
2 acknowledgment of representation being signed
3 under penalty of perjury.
4 With regard to Envoy Productions,
5 there were additional issues that were raised,
6 specifically in the SDC rebuttal statement.
7 Those were addressed with Envoy and I know that
8 they edited it, so they were the ones that
9 actually came up with a lot of the language.
10 Q Okay. But who drafted this document?
11 A Well that was my point. I guess I
12 started off and then they finished it.
13 Q So you drafted it, and they --
14 A I had the initial draft of it, and
15 then subsequent to that, they edited it. For
16 instance --
17 Q I am not asking you for an example --
18 A Okay.
19 Q I am just trying to establish --
20 A All right.
21 Q -- who wrote this document. All
22 right.

1 Did you have correspondence with Envoy
2 Productions about the drafting of this
3 declaration?
4 A I am sure there was one or two back
5 and forth emails.
6 Q Emails back and forth -- forwarding
7 copies of these declaration in various stages of
8 its editing process?
9 A Probably, yes.
10 Q Did you produce those emails to the
11 SDC?
12 A This was only prepared in response, so
13 it's not a matter of discovery. It was --
14 Q I am just asking if you produced it to
15 SDC.
16 A Well if your full question is was it
17 produced in discovery, it didn't exist and wasn't
18 requested in discovery.
19 Q Mr. Galaz --
20 A This was prepared in response to the
21 SDC's written rebuttal statement, which was filed
22 in October.

1 Q Did you produce those emails that we
2 just described to the SDC?
3 A No. We produced as part of our
4 exhibit a final product of the dialogue back and
5 forth.
6 Q And now I want to take a look at
7 Exhibit IPG T101, which is in --
8 JUDGE BARRETT: Are we in closed
9 session, or did we close previously?
10 JUDGE STRICKLER: You were using a
11 restricted document, so we were in closed
12 session, so the transcript would note it. So the
13 question is whether we are no longer on a
14 restricted document --
15 MR. MACLEAN: Well 101 is also
16 restricted --
17 MR. BOYDSTON: There are portions of
18 101 that are restricted.
19 JUDGE BARRETT: Okay. I think the
20 observers must have absented themselves because I
21 didn't make a statement for the record, so --
22 MS. LYNCH: They did.

1 JUDGE BARRETT: -- thank you. Go
2 ahead, Mr. MacLean?
3 THE WITNESS: Please bear with me. I
4 am still trying to find it.
5 MR. MACLEAN: It's in IPG's Exhibit
6 Binder, volume 3 of 4.
7 THE WITNESS: I'm sorry, which
8 exhibit?
9 MR. MACLEAN: 101. It's 101, IPG
10 T101.
11 THE WITNESS: Okay, located.
12 JUDGE STRICKLER: Formerly known as
13 106?
14 MR. BOYDSTON: Right.
15 MR. MACLEAN: Your Honor, you are
16 really going to confuse me. IPG T101 is your
17 collection of representation agreements, is that
18 right?
19 THE WITNESS: Correct.
20 BY MR. MACLEAN:
21 Q You testified that these are from
22 IPG's business records?

1 A Correct.

2 Q I am going to ask you the same

3 question that I asked Ms. Saunders yesterday.

4 Are any of these agreements fabricated for the

5 purpose of using in this proceeding, in these

6 proceedings, copyright royalty proceedings?

7 A Absolutely not. That -- I am sorry,

8 fabricated, you mean false, fraudulent, not

9 actually executed?

10 Q When you went looking for

11 representation agreements for use --

12 A Correct.

13 Q -- in copyright royalty proceedings,

14 were there any in here that you weren't able to

15 find?

16 MR. BOYDSTON: Your Honor, that's a

17 curious question. They are all here, so I guess

18 they were found. Maybe you could clarify what

19 you mean.

20 THE WITNESS: I honestly don't know

21 what you mean. If you're suggesting that was

22 anything fabricated in order to include here, no,

1 absolutely not.

2 BY MR. MACLEAN:

3 Q And how about in order to include in

4 the 2000 and 2003 proceedings?

5 A No.

6 Q If you could turn to IPG -- within

7 this exhibit, the document Bates marked IPG 3219.

8 A All right.

9 Q Are you there?

10 A Yes.

11 Q You'll see this is purported to be a

12 representation agreement. The first line says

13 "The following shall set forth the agreement

14 between Worldwide Subsidy Group, WSG, and Maureen

15 Millen, principal, dated as of -- ." There's a

16 date there. Can you read the date?

17 A Mine is very faint. It looks -- it's

18 either -- I can't read the first, the last two

19 are 02.

20 Q Would that be a reference to 2002?

21 A Yes.

22 Q This agreement was not signed in 2002,

1 was it?

2 A No. It was signed proximate to the

3 2000 to 2003 proceedings, I think in 2012.

4 Q It was signed in preparation for those

5 proceedings.

6 A No, not really. It was signed at the

7 request of Maureen Millen who had requested that

8 we draft something that set forth the parties'

9 respective rights. When I first contact Ms.

10 Millen, we asked her whether or not she had a

11 copy of the contract --

12 Q Why did you ask her that?

13 A Because we couldn't find a copy of the

14 contract.

15 Q So you couldn't find this contract in

16 your business records at that time, is that

17 correct?

18 A We could not find a contract with Ms.

19 Millen or any of her companies. We contacted her

20 and asked her whether or not she in fact had a

21 copy.

22 Q And she told you she didn't?

1 A And she indicated that she didn't.
2 Q And you put together this agreement
3 and sent it to her?
4 A Correct. But your question before was
5 whether it was in preparation for these
6 proceedings, and --
7 Q Well why were you asking her if she
8 had an agreement?
9 A Well, I guess in that general manner,
10 it was, so --
11 Q Because you wanted to establish that
12 you had authority to represent IWV Media in those
13 proceedings, correct?
14 A That's correct. That's absolutely
15 correct.
16 Q You didn't have a copy, she didn't
17 have a copy.
18 A We could have just as easily done a
19 confirmation letter.
20 Q But you didn't do a confirmation
21 letter. You prepared this agreement.
22 A At her request. That is correct.

1 Q And if you turn to the bottom of the
2 second page of this agreement, whose signature is
3 that under Worldwide Subsidy Group?
4 A That is mine.
5 Q So you signed this document?
6 A Correct.
7 Q And if you look over to the side, at
8 the signature block to the side, it says Maureen
9 Millen, is that right?
10 A That's correct.
11 Q To your knowledge, did she sign this?
12 A Yes, she absolutely signed it.
13 Q Neither signature is dated, correct?
14 A As our form doesn't have a spot for
15 dated as of.
16 Q Well, actually --
17 A Dated as of the signature. Dated as
18 of the controlling document as opposed to the
19 date of the signature, it doesn't have a line
20 next to the signature that indicates when it's
21 executed.
22 Q So when you have a document that has

1 an as of date of a particular date, that does not
2 imply that the document, if it's an IPG document,
3 was signed before that as of date or on that as
4 of date?
5 A No, it doesn't.
6 Q You have other agreements,
7 representation agreements here, signed after the
8 as of dates.
9 A I think it would have to follow the as
10 of date. Well, I guess it doesn't have to, but
11 generally probably would.
12 Q Generally, your representation
13 agreements were signed after the as of dates.
14 A Yes.
15 Q And those that do not have dates
16 --
17 A If not on that date, then after that
18 date. Typically you wouldn't post-date a dated
19 as of date.
20 Q So where you don't have dates by the
21 signature blocks, you wouldn't be able to say
22 when these contracts were signed?

1 A You wouldn't be able to definitively
2 know the moment that that was signed or the date
3 that it was signed.
4 Q Now, you said that these documents are
5 business records.
6 A Correct.
7 Q You are yourself a former lawyer,
8 right?
9 A Yes.
10 Q So you -- when you say they are
11 business records, you mean that in the legal
12 sense, the rules of evidence sense of a business
13 -- of a record made and kept in the regular
14 course of business.
15 A Correct.
16 Q Is it IPG's regular course of business
17 to prepare agreements dated up to ten years after
18 the as of date of the agreement?
19 A I think that it was a unique
20 situation. We could have just as easily done a
21 letter agreement or a confirmation letter, let me
22 put it that way, a confirmation letter saying

1 this is to acknowledge that IPG was engaged for -
2 - you know, starting on this date under these
3 terms. We could have just as easily done that.
4 Q You could have done it just as easily?
5 A We could have done it just as easily.
6 We instead followed the format of using the
7 standard contract that IPG has parties represent.
8 Q Is there anything in this document
9 that would inform the parties or the Judges by
10 any notice whatsoever that this is a document
11 that was prepared in 2012 as opposed to 2002?
12 A Only my testimony, and that's why I
13 testified to it.
14 Q Well --
15 A So the document itself, the short
16 answer is no, there is nothing in the four
17 corners of this document that would reflect the
18 day it was actually executed, and that's why it
19 was offered to explain when it was actually
20 executed.
21 Q And you testified to that --
22 A Correct.

1 Q -- today, right?

2 A No, I testified to it in the 2000 to

3 2003 proceedings.

4 Q You also testified to it in the 2003

5 proceeding, correct?

6 A Okay.

7 Q Is that right?

8 A Well, I know I did in 2000/2003. I am

9 actually trying to remember if I testified to it

10 today, but anyway.

11 Q You did testify to it in the 2000 to

12 2003 proceedings?

13 A Correct.

14 Q Before your testimony, nobody had any

15 knowledge or way of knowing that this was a

16 document prepared shortly before the 2000 to 2003

17 proceedings?

18 A That is absolutely correct.

19 Q You didn't testify to that in your

20 direct examination in the 2000 to 2003

21 proceedings, did you?

22 A I actually don't recall.

1 Q You testified in response to Mr.
2 Olaniran's questions on cross-examination, didn't
3 you?
4 A I actually don't recall.
5 Q Well, we can take a look at that.
6 MR. BOYDSTON: Your Honor, we will
7 stipulate to it.
8 JUDGE BARRETT: Thank you.
9 BY MR. MACLEAN:
10 Q Before Mr. Olaniran happened upon that
11 question, neither the parties nor the Judges
12 would have had any way of knowing that this was a
13 document prepared for the purpose of litigation.
14 A If that's -- it was on cross-
15 examination, then I will accept that, correct.
16 Q How many other agreements in IPG T101
17 were signed after the date of the claims that IPG
18 filed pursuant to the representation set forth in
19 the agreements?
20 A You mean, and I just want to get this
21 straight, if there was a contract that says dated
22 January 1 of a particular year, how many of them

1 were signed January 2 or after?

2 Q No. Let me come at it this way. With

3 respect to each of the agreements here in IPG

4 T101, IPG has filed claims on behalf of the

5 claimants set forth in the agreement, correct?

6 A Correct.

7 Q At least as to IWV Media, the

8 agreement that is here in IPG Exhibit 101 was

9 signed after the filing of the claim, is that

10 right?

11 A That's correct.

12 Q How many other agreements in here were

13 signed after the filing of IPG's claim on behalf

14 of the claimant?

15 A I would have no way of determining

16 that. The dated as of date is the date on which

17 authorization was provided. That's the

18 reference. So simply looking at the dated as of

19 date, and as I indicated before, you do not know

20 the exact date of execution.

21 Q So it is a regular course of IPG's

22 business that contracts were signed after the as

1 of date.

2 MR. BOYDSTON: I think he clarified it

3 before the end of the question.

4 THE WITNESS: The regular course of

5 business was to identify the dated as of date

6 being the date on which authority was authorized

7 irrespective of the date on which it's actually

8 being executed.

9 Now, with regard to all the documents

10 here or any other being offered in any category,

11 whether it's sports or devotional or program

12 suppliers, this is the only instance that comes

13 to mind in which a new contract was executed,

14 specifically because it was a unique situation

15 where Ms. Millen requested -- and this is in the

16 declaration that we're submitting on her behalf -

17 - she had specifically requested that we prepare

18 this contract for her protection, that's how she

19 viewed it.

20 Q Well let's take a look at that

21 declaration. It's IPG T070. It's in volume 1 of

22 4 of IPG's exhibit binder.

1 A All right, I am there.

2 Q Who drafted this declaration?

3 A I drafted the initial part with -- for

4 the purpose of including -- that actually, I take

5 that back because it was two declarations. She

6 signed one that addressed the issue of the

7 acknowledgment of representation.

8 This one addressed a variety of other

9 issues, and it was predominantly -- I mean, I

10 gave her the form, but it was predominantly

11 drafted by her. And I'm looking at specifically

12 the details about her first communication and

13 encounter with Marian Oshita. The programming, I

14 am certain I added that in, but she described how

15 she distributed it.

16 Q Were there communications back and

17 forth with Ms. Millen, between you and her,

18 editing this declaration?

19 A I actually recall there only being

20 one, when I sent my draft, and then I recall she

21 executed hers -- she edited it and executed it,

22 and the reason it sits on the forefront of my

1 mind is that she doesn't --

2 Q I am not asking you --

3 A Okay, all right --

4 Q I am just asking you --

5 A -- fair enough.

6 JUDGE BARRETT: Are we out of

7 restricted session at this point?

8 MR. MACLEAN: Oh, I think most

9 certainly, Your Honor.

10 JUDGE BARRETT: Okay.

11 THE WITNESS: I'm sorry, is there a

12 question?

13 MR. MACLEAN: I was giving the --

14 THE WITNESS: Oh, I'm sorry --

15 MR. MACLEAN: -- the audience a chance

16 to come back in.

17 BY MR. MACLEAN:

18 Q If you'll take a look at paragraph 7

19 of this declaration -- oh, I am sorry, there was

20 a question.

21 The question is the correspondence

22 relating to the drafting of this declaration, did

1 you produce that correspondence to the SDC?
2 A It was all --
3 Q I am just asking if you produced it,
4 Mr. Galaz.
5 A It was never requested in discovery is
6 the short answer.
7 Q I am just asking if you produced it.
8 MR. BOYDSTON: Your Honor, these
9 constant questions about producing things that
10 weren't requested, I mean, I don't have a formal
11 objection, but it wastes time and there's no
12 obligation to do this.
13 JUDGE BARRETT: Nobody is talking
14 about obligation either, Mr. Boydston. It's a
15 simple yes or no question. Overruled.
16 THE WITNESS: The answer is no, this
17 was in the last month or so --
18 JUDGE BARRETT: No, Mr. Galaz, the
19 answer is no.
20 THE WITNESS: Okay, all right,
21 accepted, Your Honor.
22 BY MR. MACLEAN:

1 Q If you take a look at paragraph 7 --
2 A All right.
3 Q -- of this declaration, it says
4 "Following execution of the replacement contract,
5 I have engaged in extensive correspondence with
6 IPG confirming details regarding my production
7 catalogue and other matters, including
8 confirmation that IPG was authorized to collect
9 cable and satellite retransmission royalties on
10 behalf of my various companies."
11 Do you see that there?
12 A Yes.
13 Q Have you produced the correspondence
14 referred to in that sentence?
15 A Some of it, maybe. All of it, no,
16 because we don't --
17 Q I didn't ask you why. I just asked
18 you --
19 A Well we weren't requested, so the
20 short answer is some of it.
21 Q Did you, in the course of obtaining
22 either the representation agreement, that is to

1 say the representation agreement that was offered
2 in this proceeding, or this declaration of Ms.
3 Millen, inform Ms. Millen or otherwise suggest to
4 her that if she did not confirm the existence of
5 a representation agreement as of the date of
6 filing a claim, that IWV Media Group would not
7 receive royalties?
8 A Well can I ask a question to your
9 question? You are referring to this
10 representation, but this paragraph 7 is referring
11 to the acknowledgment document?
12 Q I am asking a different kind of
13 question here. I am asking did you tell Ms.
14 Millen or suggest to her that if she did not
15 provide you with the representation agreement,
16 the one that was drafted in preparation for the
17 2000 to 2003 proceeding --
18 A Okay, I understand your question.
19 Q -- or if she did not provide you a
20 declaration with regard to that agreement, did
21 you tell her or suggest to her that she or her
22 companies would not receive copyright royalties?

1 A No.

2 MR. MACLEAN: Can I just have one

3 moment, Your Honor?

4 Your Honor, I would like to have this

5 exhibit marked as the next SDC exhibit in order.

6 MR. BOYDSTON: Can I see it?

7 JUDGE BARRETT: I am going to put this

8 at 632.

9 CLERK WHITTLE: Yes, 632.

10 (Whereupon, the above-referred to

11 document was marked as SDC Exhibit 632

12 for identification.)

13 MR. MACLEAN: Your Honor, may I

14 approach the witness?

15 JUDGE BARRETT: Yes.

16 BY MR. MACLEAN:

17 Q Mr. Galaz, I have just handed you SDC

18 Exhibit 632, okay? Do you recognize this

19 document?

20 A It indicates that it was produced in

21 discovery, and it looks like an email string --

22 Q This is an email string between you

1 and Maureen Millen.

2 A Maureen Millen. But it --

3 JUDGE BARRETT: Can we have some

4 dates? This is just for identification purposes.

5 MR. MACLEAN: Well, it's a lengthy

6 email string. But is this an email string

7 between you and Maureen Millen that includes

8 emails from March of 2012?

9 THE WITNESS: Yes.

10 BY MR. MACLEAN:

11 Q And if you turn to the second -- well,

12 Your Honor, I move to admit SDC Exhibit 632.

13 MR. BOYDSTON: No objection.

14 JUDGE STRICKLER: Do you have copies

15 for the parties?

16 MR. MACLEAN: Yes, I do. I was

17 waiting until it was admitted.

18 JUDGE BARRETT: Thank you.

19 MS. PLOVNICK: We have no objection.

20 JUDGE BARRETT: Okay. SDC Exhibit 632

21 is admitted.

22 (Whereupon, the above-referred to

1 document was received into evidence as
2 SDC Exhibit 632.)
3 MR. MACLEAN: Your Honor, may I
4 publish it to the panel?
5 JUDGE BARRETT: Please.
6 JUDGE STRICKLER: Thank you.
7 JUDGE FEDER: Thank you.
8 BY MR. MACLEAN:
9 Q All right. Mr. Galaz, will you take
10 a look at the second page of SDC 632? About
11 halfway down the page you will see an email that
12 says on March 1, 2012, 11:55 a.m.,
13 worldwidesg@aol.com wrote -- and first of all
14 worldwidesg@aol.com is an email that you used on
15 behalf of IPG, is that right?
16 A That's correct.
17 Q And you'll see an email there saying
18 "Hi Maureen," that is addressed to Maureen
19 Millen, correct?
20 A Correct.
21 Q And that's your name at the bottom
22 row?

1 A Yes.

2 Q And if you'll take a look at -- and

3 you wrote this email, correct?

4 A Yes.

5 Q And if you'll take a look at the last

6 sentence of the first full paragraph -- I am

7 sorry, it's the second to last sentence, starting

8 with "Also," you wrote --

9 A Okay.

10 Q -- "Also we still need you to print

11 out and send us the agreement."

12 A Correct.

13 Q "If we cannot prove that we have

14 authority to act on your company's behalf, we

15 simply cannot make claim to your programming."

16 Correct?

17 A That is correct.

18 Q The agreement you are referring to is

19 in fact the agreement that was submitted as part

20 of IPG 101, is that right?

21 A I would presume so.

22 MR. MACLEAN: No further questions,

1 Your Honor.

2 JUDGE BARRETT: Mr. Boydston?

3 MR. BOYDSTON: Thank you, Your Honor.

4 Mr. Galaz, I think it's been made --

5 JUDGE BARRETT: Could we give Mr.

6 MacLean a minute?

7 MR. BOYDSTON: Oh, sorry.

8 JUDGE BARRETT: Now, Mr. Boydston.

9 MR. BOYDSTON: Thank you, Your Honor.

10 You were asked whether or not you

11 produced all correspondence with Ms. Millen, and

12 you said that you produced some but not all. Why

13 was that?

14 THE WITNESS: Well, obviously there

15 were only certain categories of documents that

16 were requested. My recollection was that the SDC

17 requested all correspondence with all Devotional

18 Claimants. We objected they move to compel, and

19 the Judges came back and affirmed that you don't

20 have to provide everything, and there are in fact

21 entities such as Kenneth Copeland where I think

22 we've safely said we had 1,000 emails or

1 something, 1,000 pieces of correspondence,
2 something like that.
3 REDIRECT EXAMINATION
4 BY MR. BOYDSTON:
5 Q The last email strings you ended by --
6 or led by the SDC in which questions were put to
7 you, as you said, there is a Bates stamp number
8 on that. That was produced, correct?
9 A That is correct.
10 Q To your recollection, was that the
11 majority of the correspondence with Ms. Millen?
12 A No, I am sure that there's all sorts
13 of things, some of which has nothing to do with
14 this. In fact, it was funny because I was
15 actually looking at one of the references there,
16 and it says boy, you've been through the ringer.
17 She was describing some of the physical ailments
18 that she was experiencing after a car crash, you
19 know? So there's probably lots of correspondence
20 that was not produced.
21 Q Okay. Going back to the cross-
22 examination by Mr. Olaniran, you revisited the

1 events of your criminal activity and then moved
2 on to some issues involving Tracee Productions
3 and the attempt to append the IPG claims to
4 Tracee Productions's submission, do you recall
5 that?
6 A Yes I do.
7 Q Now you testified that you had
8 communication with a Mr. Dennis Lane at the MPAA,
9 and Mr. Lane explained to you that you couldn't
10 do that, correct?
11 A My recollection is actually with
12 outside counsel, but I am not certain --
13 Q With outside counsel on behalf of the
14 MPAA?
15 A Yes. But that was my recollection,
16 but no, I do recall, and it was -- the only
17 reason I remember is that it refreshed my
18 recollection when I was reading through the
19 testimony and you could actually see my reference
20 to it, and I was explaining how we had explained
21 exactly what was going on, saying we were trying
22 to append these, you know, and he said you can't,

1 and I recalled in the testimony how he had then
2 sent me a legal opinion saying no you can't do
3 this, and we said oh, okay, and that was it.
4 We understood at that point and we
5 appreciated at that point you could not append,
6 even if you acquired authority after the fact, if
7 you acquired the authority after the July filing
8 deadline, you couldn't append.
9 Q Did you explain to Mr. Lane that
10 Tracee Productions had filed its own claim
11 initially and that IPG had been created later on
12 --
13 A Yes.
14 Q And that you wanted to --
15 MR. MACLEAN: Objection, leading.
16 JUDGE BARRETT: Sustained.
17 BY MR. BOYDSTON:
18 Q Did you fully explain the entire
19 situation to Mr. Lane?
20 A Yes. It was thoroughly explained to
21 him. There was nothing held out, held back. We
22 even offered to produce copies of the contracts

1 between WSG and the entities whose programming
2 appears on that exhibit, which would be the same
3 documents that we ultimately produced in the 1997
4 cable proceedings.
5 Q And you explained that in your
6 testimony before, you were saying that, in
7 response to questions, that Tracee Productions
8 and IPG had an agreement by which IPG was going
9 to essentially give its programming or assign its
10 programming to Tracee Productions. Am I using
11 that language correctly or not?
12 A Well that was -- I guess that was
13 correct just for the 1996 claim. At some point
14 it was going to be the opposite, that Tracee
15 Productions, whatever it acquired was just going
16 to be covered by WSG and its relationships
17 because we were also making claim not just in the
18 United States but also outside the United States.
19 Q But with regard to the '96 portion of
20 it where IPG was essentially assigning its rights
21 to Tracee for Tracee then to pursue them, did you
22 make that clear to Mr. Lane when you talked with

1 him?

2 A Abundantly, very clear, as I have even

3 been testifying.

4 Q With regard to A&E, you saw

5 correspondence in 2003 in which A&E was

6 purporting to terminate its contract with IPG, do

7 you recall that?

8 A Correct.

9 Q I believe you testified that IPG did

10 make claims for A&E programming for 2003 in the

11 July 2004 claims period, correct?

12 A I am certain we did. And --

13 Q And why was that?

14 A Because of the post-term collection

15 right and the termination right that appears in

16 that contract. Termination on September 2003

17 would have resulted in WSG having authority to

18 collect on all broadcasts through June of 2004,

19 so consequently, we would have been making claim

20 even in 2005 for June 2004 -- excuse me, in July

21 2005 for 2004 royalties, so even if there had

22 been a September 2003 termination, there would

1 have been activities subsequent to that
2 specifically because of the post-term collection
3 right that exists in all of our contracts.
4 Q With regard to Exhibit 328, which was
5 the Diane Eskenazi declaration, in that
6 declaration -- and let me ask you, let's all look
7 at it, it's Exhibit 328.
8 And I am focusing in on paragraph 3
9 there, specifically the last full sentence, "I
10 executed the acknowledgments." And I will just
11 read the whole thing.
12 "I executed the acknowledgments in
13 error based on misrepresentations made by IPG,
14 and I hereby revoke all acknowledgment on behalf
15 of Golden Films."
16 The question is are you aware of any
17 misrepresentations IPG ever made to Golden Films?
18 A No. In fact, I actually reviewed the
19 correspondence between IPG and Golden Films when
20 we saw this, which was the first we'd ever heard
21 of Golden Films recanting on IPG's
22 representation. The first time we found out

1 about it was the MPAA rebuttal statement.

2 But there were -- and in fact, two

3 observations. The correspondence wasn't with

4 Diane Eskenazi. We kept trying to actually deal

5 with Diane Eskenazi, and there was another

6 individual that works with her that said no,

7 Diane would prefer for me to be on the forefront

8 of this in dealing with all of you.

9 As far as misrepresentations, I have

10 absolutely no idea. I actually presume that it's

11 part of the form that was prepared by the MPAA

12 because we've seen that same little line in some

13 other affidavit here as well.

14 Q And given your explanation that you

15 didn't communicate, really, with Diane Eskenazi,

16 do you know whether or not IPG made any

17 misrepresentations to anyone else at Golden

18 Films?

19 A Oh, I know there were no

20 misrepresentations that were made. We were

21 simply saying here's acknowledgment of

22 representation, these are the years that we

1 represented you, and that was, to the best of our
2 knowledge, accurate. And we gave it to them,
3 they confirmed that, executed it, and returned it
4 to us, and it was as straightforward as that.
5 We had no knowledge of their attempt
6 to revoke authority until we received this as
7 part of the MPAA rebuttal statement. There was
8 no correspondence, nothing.
9 MR. BOYDSTON: Thank you, Your Honor,
10 nothing further.
11 JUDGE BARRETT: Okay.
12 MR. MACLEAN: Nothing based on that
13 Your Honor.
14 JUDGE BARRETT: Thank you. I wasn't
15 asking, but thanks for volunteering. I thank
16 you, Mr. Galaz. You may step down.
17 It is 4:15 --
18 MR. BOYDSTON: Your Honor, I think I
19 can get Ms. Vernon on and off in that time --
20 that's not a very nice thing to say -- finished.
21 JUDGE BARRETT: If you would like, you
22 may --

1 MR. BOYDSTON: Thank you.

2 JUDGE BARRETT: -- Mr. Boydston. I

3 didn't think anybody would have enough energy

4 left, but if Ms. Vernon can stand it, so can we.

5 MR. BOYDSTON: Thank you, Your Honor,

6 I appreciate that.

7 JUDGE BARRETT: Do you solemnly swear

8 or affirm that the testimony you give in these

9 proceedings shall be the truth, the whole truth,

10 and nothing but the truth?

11 THE WITNESS: I do.

12 JUDGE BARRETT: Please proceed.

13 WHEREUPON,

14 DENISE VERNON

15 was called for examination by Counsel for the

16 Worldwide Subsidy Group, having been first duly

17 sworn, assumed the witness stand, was examined

18 and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BOYDSTON:

21 Q Good afternoon, Ms. Vernon.

22 A Hi.

1 Q Could you tell us your position with
2 IPG?
3 A I am the Member of IPG, the Owner.
4 Q And in addition to being the Owner, do
5 you also perform duties for IPG?
6 A Yes, I do.
7 JUDGE BARRETT: Before we proceed, Ms.
8 Vernon, would you spell your first and last name
9 for the record?
10 THE WITNESS: I'm sorry. Denise, D-E-
11 N-I-S-E, Vernon, V as in Victor, E-R-N-O-N.
12 JUDGE BARRETT: Thank you.
13 THE WITNESS: Yes.
14 BY MR. BOYDSTON:
15 Q And do you correspond with IPG's
16 claimants?
17 A Yes I do.
18 Q And in what context do you oftentimes
19 do that, or generally do that?
20 A Usually to get information, sometimes
21 just telling them what's been going on, you know,
22 with the hearings here, any information that's

1 going to be needed or things that they've sent
2 that I've questioned, like a program title or
3 something like that, and clarifying those types
4 of things with them.
5 Q And did you communicate with IPG
6 claimants in connection with these proceedings?
7 A Yes, I did.
8 Q And let me ask you to take a look at
9 what's been marked as Exhibit 109, and tell me if
10 you -- now, can I approach, Your Honor?
11 JUDGE BARRETT: You may.
12 THE WITNESS: Excuse me, did you say
13 109?
14 MR. BOYDSTON: Yes, 109.
15 THE WITNESS: Okay.
16 BY MR. BOYDSTON:
17 Q And this is a letter, and your name is
18 at the bottom of it. Do you recall this letter?
19 A Yes. This is when we were informing
20 them that the 1999-2009 satellite retransmission
21 royalties and 2004-2009 cable proceedings would
22 be starting, and

1 JUDGE FEDER: Excuse me, Ms. Vernon,
2 them who?
3 THE WITNESS: Oh, I am sorry, our
4 claimants. Yeah.
5 So we sent this, a mass email
6 basically to our claimants to let them know this
7 is what's going on, you know this is the
8 background, this is where the 2000-2003
9 proceedings stand right now, letting them know
10 that we had appealed the decision, you know, and
11 that sort of thing.
12 And we -- and because of what had
13 happened in the 2000-2003 proceedings, then with
14 at least some of them we wanted to additionally
15 get an acknowledgment of representation, you
16 know, from them. We didn't think we needed it
17 from all of them, but you know, some of them we
18 thought, you know, if anything else, it's a belt
19 and suspenders, you know --
20 BY MR. BOYDSTON:
21 Q And when you say belt and suspenders,
22 I think I've got a good idea about what you mean,

1 but perhaps could you explain a little further
2 what you mean by belt and suspenders?
3 A Well belt being like we've got a
4 mandate agreement, you know, and an extension
5 agreement, you know, and an additional
6 acknowledgment of representation would be
7 suspenders.
8 Or let's say, you know, belt being ten
9 years of correspondence back and forth with them
10 and then providing their program list to us that
11 entire time, yeah, and then but not having, for
12 whatever reason, either that they couldn't find
13 the original mandate agreement or we couldn't
14 find it or, you know, it got lost or whatever the
15 case was, we did not have that, so even though we
16 had all that correspondence for a decade, then we
17 wanted to make sure that we had acknowledgment of
18 representation as well.
19 And of the reasons for that is because
20 what occurred in the 2000-2003 proceedings where,
21 you know, because of that -- and there were other
22 reasons as well, some of them being we just

1 didn't have the time to get them entered into the
2 exhibits, but a lot of our claims were dismissed,
3 you know, because we didn't have all of that
4 backup.
5 And so with these proceedings, we
6 wanted to cover everything and just have as much
7 as we possibly could.
8 Q And did you get responses to this mass
9 email?
10 A Yes. Not from everyone, and a lot of
11 them never even went through because it was done
12 by our programmer, Kyle Otto, and what he did is
13 he merged the Word document with the claimants'
14 addresses, you know, that we had on file. Some
15 had changed, some of the emails had changed --
16 and then he sent out a mass email on the WSG
17 email, and that's AOL, and for whatever reason
18 there are a lot of the companies that as soon as
19 they get something in from AOL, it goes directly
20 into their spam.
21 Sometimes they open the spam,
22 sometimes they do not, you know. And there were

1 some of them that, well, we just didn't bother,
2 we don't have --
3 MR. MACLEAN: Objection. At this
4 point this response is giving narrative.
5 THE WITNESS: Oh, well I am trying to
6 explain.
7 MR. BOYDSTON: I'll ask another
8 question.
9 THE WITNESS: You can ask another
10 question.
11 MR. BOYDSTON: Actually, first, Your
12 Honor, I would like to move that Exhibit 109 be
13 admitted into evidence.
14 MS. PLOVNICK: No objection.
15 MR. MACLEAN: No objection.
16 JUDGE BARRETT: 109 is admitted.
17 (Whereupon, the above-referred to
18 document was received into evidence as
19 Exhibit 109.)
20 MR. BOYDSTON: Thank you, Your Honor.
21 BY MR. BOYDSTON:
22 Q After getting the responses or non-

1 responses you described, did you follow up with
2 an additional correspondence?
3 A Yeah. Well, not with every one of
4 them, this is what I was trying to get to,
5 because some I didn't see the purpose for, you
6 know, at least with regard to the acknowledgment
7 of representation.
8 You know, my biggest concern was
9 making sure that I had the program titles for all
10 of the various claimants, you know, and if there
11 were any discrepancies or shortages, you know, if
12 I had not gotten their lists, then that was my
13 biggest concern, was trying to get those as well.
14 But some that we were lacking, you
15 know, that we wanted, that had been dismissed in
16 the 2000-2003 proceedings, you know, I did want
17 to get those acknowledgment of representations as
18 well as their program lists.
19 Q Please take a look at what's marked as
20 Exhibit 110 and tell me if you recognize that
21 letter. It's got your name at the bottom of it.
22 A Yeah. This was just basically a

1 follow-up email sent on -- I am not sure exactly
2 when we sent it. At some point when we hadn't
3 gotten a response from a particular claimant,
4 then just saying, hey we sent you this email on
5 March 2 and we haven't heard back from you or we
6 haven't gotten your acknowledgment of
7 representation, and can you please go ahead and
8 send it to --
9 MR. BOYDSTON: Your Honor, I would
10 like to move to admit Exhibit 110.
11 MS. PLOVNICK: No objection.
12 MR. MACLEAN: No objection.
13 JUDGE BARRETT: 110 is admitted.
14 (Whereupon, the above-referred to
15 document was received into evidence as
16 Exhibit 110.)
17 MR. BOYDSTON: Thank you, Your Honor.
18 BY MR. BOYDSTON:
19 Q Please take a look at what's been
20 marked as Exhibit 111. This is another letter
21 with your name on it. Do you recall sending this
22 out as well?

1 A Yes.

2 Q And was this essentially a further

3 follow up?

4 A Well, this was specifically asking

5 them -- this is when we had gotten the program

6 list, you know, all of the data of the programs,

7 and we needed them to go through the program

8 titles and identify which program titles were

9 theirs, you know, were for each particular

10 claimant, and we explained how to do it because

11 we sent an Excel spreadsheet, we tried to be

12 really clear on how to do it, and that's where I

13 spent a lot of my follow-up time is talking,

14 basically, step-by-step talking to people on how

15 to operate the Excel spreadsheet. And --

16 Q So contrary to -- I think my question

17 was was this a follow-up with regard to

18 acknowledgments and things like that? This was

19 really more directed at getting the program

20 titles, is that what you're saying?

21 A Yes, that's right. And at this point

22 is when we -- let me look at this one. I think

1 this is when we had sent the -- this was just the
2 satellite --
3 MR. MACLEAN: Your Honor, I don't
4 think there was a question pending, or if there
5 is, I think she answered it.
6 JUDGE BARRETT: There is --
7 THE WITNESS: I was just trying to
8 identify the document because this one in
9 particular is when we had sent them the Excel
10 program for the satellite, 1999 to 2009 satellite
11 program titles, so that was what this one was.
12 MR. BOYDSTON: Your Honor, I would
13 like to move to admit Exhibit 111.
14 MS. PLOVNICK: No objection.
15 MR. MACLEAN: No objection.
16 JUDGE BARRETT: 111 is admitted, and
17 in response to your objection Mr. McLean,
18 overruled.
19 (Whereupon, the above-referred to
20 document was received into evidence as
21 Exhibit 111.)
22 MR. BOYDSTON: Thank you, Your Honor.

1 BY MR. BOYDSTON:

2 Q Please take a look at what's been

3 marked as Exhibit 112. This is another letter

4 from you.

5 A Yes, this is just our -- do you want

6 me to identify it?

7 Q Yes, thank you.

8 A This is just another follow up of a

9 follow up email asking them to execute the

10 representation acknowledgment. We just say on

11 March 2 we sent an email, then again on March 12,

12 we forwarded you an email, and asking them to

13 please get after it.

14 Q And again, this was -- was this

15 targeted at those claimants who had been

16 dismissed or had issues about their, IBG's

17 authority in the 2000-2003 proceedings?

18 A Primarily, but not exclusively, yeah.

19 MR. BOYDSTON: Your Honor, I would

20 like to move Exhibit 112 into evidence.

21 MS. PLOVNICK: No objection.

22 MR. MACLEAN: No objection.

1 JUDGE BARRETT: 112 is admitted.
2 (Whereupon, the above-referred to
3 document was received into evidence as
4 Exhibit 112.)
5 MR. BOYDSTON: Thank you.
6 BY MR. BOYDSTON:
7 Q Please take a look at what's been
8 marked as Exhibit 113. This is another letter
9 from you, and I know that it begins saying "Last
10 night we erringly sent you an email," so I guess
11 there was something a little more going on with
12 this one. Perhaps you could explain to us.
13 JUDGE BARRETT: I am afraid that
14 explanation is going to have to wait. Mr.
15 Boydston --
16 MR. BOYDSTON: Very well.
17 JUDGE BARRETT: -- we are going to be
18 at recess. We will reconvene in the morning at 9
19 o'clock.
20 (Whereupon, the hearing went off the
21 record at 4:28 p.m.)
22

A

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Neal R Gross

Court Reporter