

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

**SETTLING DEVOTIONAL CLAIMANTS’ NOTICE IN RESPONSE TO JUDGES’
ORDER DIRECTING PARTIES TO REVIEW CALCULATIONS OF
APPORTIONMENT OF INTEREST**

The Settling Devotional Claimants (“SDC”) hereby respond to the Judges’ Order Directing Parties to Review Calculations of Apportionment of Accrued Interest [Restricted Version], directing the parties to review the allocation calculation and to identify by May 8, 2020, any clarification they request in the calculations.

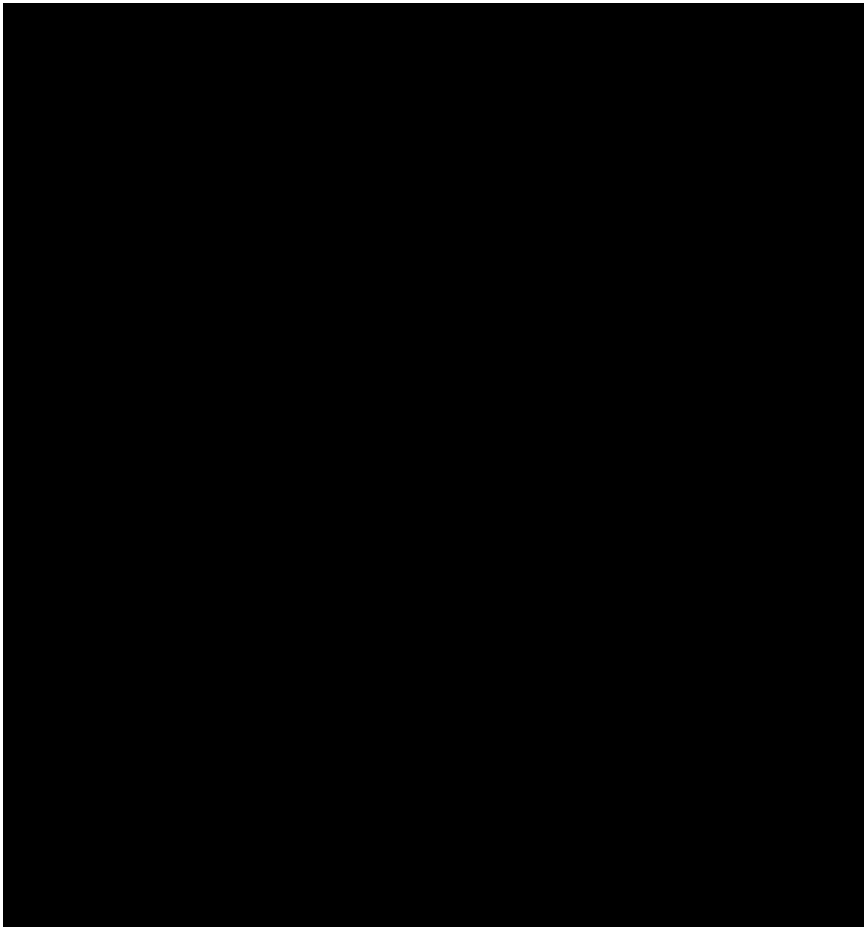
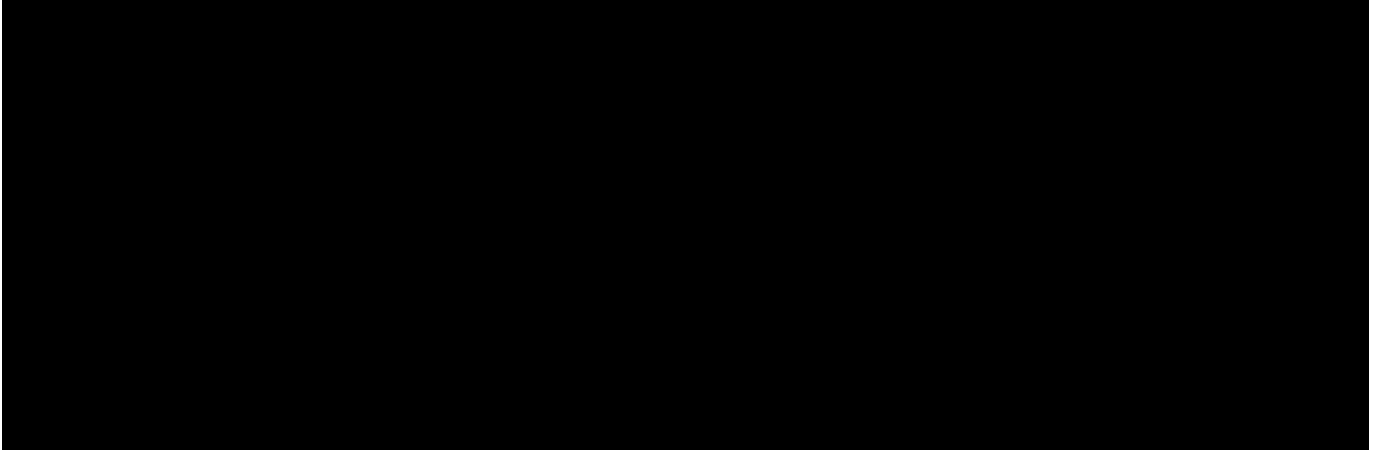
The SDC have reviewed the calculations filed as an Appendix to the Judges’ Order.¹ The SDC have identified the following apparent discrepancies, and they request that the calculations be clarified by correcting these discrepancies:

1. *Omission of partial distribution amount for 2003 cable royalty fund.* The calculation of interest and shares omits the SDC’s partial distribution of [REDACTED] from the 2003 cable royalty fund, made to the SDC by the common agent from the distribution on September 7, 2006.
2. *Double counting of IPG’s interest award for interest accrued prior to partial distribution.* For each cable royalty year, IPG’s interest-bearing “base” at the time of the partial distribution to the SDC is calculated as [REDACTED] of the partial distribution to the SDC,

¹ The SDC note IPG’s statement in its response that “IPG is able to garner little to no relevant information from the calculations and worksheets presented by Appendix A.” IPG Response at 2. The worksheets would have been easier to understand if they had included the formulas used in the calculations. With effort, however, the SDC were able to understand the calculations presented and to determine the formulas applied.

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representing the amount of the partial distribution that IPG hypothetically would have received if its distribution share had been known at the time of the partial distribution. The calculation for the 2000 cable royalty year is shown as an example:

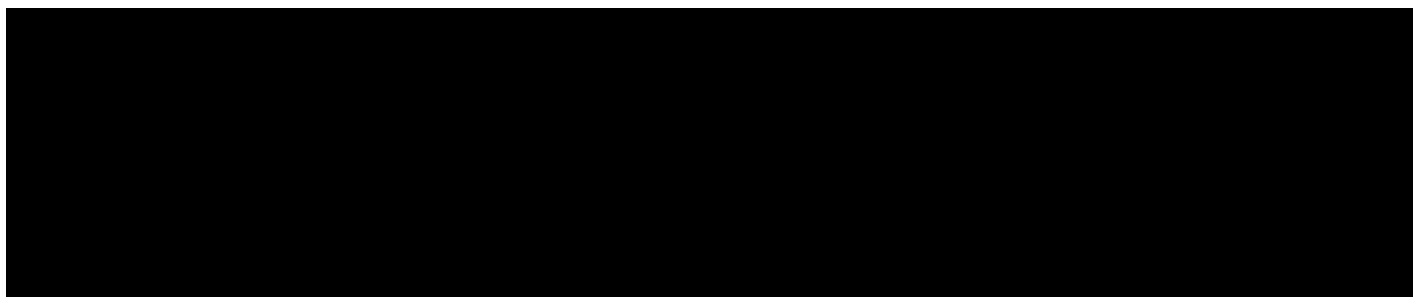


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As shown above, IPG is given an interest allocation as of the time of the partial distribution to the SDC, calculated by multiplying IPG's "base" times the "% of interest earned," which is calculated as the interest accrued on the amounts on deposit at the time of the partial distribution divided by the net royalty fees deposited. So, in the example above, IPG's interest at the time of the partial distribution on [REDACTED] is calculated to be [REDACTED]. The intention appears to have been to determine how much interest had accrued on IPG's hypothetical "base" amount at the time of the partial distribution.

However, the calculation of IPG's "base" amount already included the interest that would have accrued through the date of the partial distribution. As shown in the example above, the partial distribution was [REDACTED] of the total fund, *including* interest. So, for example, the total amount of the partial distribution on [REDACTED] to all Phase I parties included [REDACTED] of the net royalty fees deposited *and* an additional [REDACTED] in interest. The interest was included as part of the partial distribution to the SDC, and was therefore included in the calculation of IPG's "base," which was calculated from the partial distribution to the SDC.

Then, in the Licensing Division's calculation of IPG's distribution, IPG is incorrectly awarded both the "base" amount (which already included interest through the date of the partial distribution) and the calculated interest on the partial distribution (which includes a second award of interest through the date of the partial distribution, thereby double-counting interest):



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In this example, IPG's award for 2000 is overstated by [REDACTED] plus compound interest on that amount. Similar overstatements appear in the calculations for royalty years 2001 and 2002: IPG's award for 2001 is overstated by [REDACTED] plus compound interest on that amount and IPG's award for 2002 is overstated by [REDACTED] plus compound interest on that amount. (IPG's interest award for 2003 is \$0, solely because the Licensing Division did not include SDC's partial distribution referenced above.) Collectively, the double counting of interest would lead to an overpayment to IPG of [REDACTED], plus compound interest on this amount. Because the "base" amount already includes interest through the time of the partial distribution to the SDC, IPG should only be entitled to an additional allocation of interest on the "base" amount running from the time of the partial distribution to the SDC, not before.

For purposes of comparison, the calculation of IPG's interest allocation in the Program Suppliers category used a very different methodology, as described in Attachment A to the Judges' Order Regarding IPG's Motion for Clarification of Order Re Final Distribution for the Program Suppliers' Category (Dec. 23, 2016). There, IPG's interest-bearing "base" used by the Licensing Division for the calculation of interest was calculated as the entire amount of the IPG's share of the net royalty fees deposited, not including interest, and IPG's total distribution for each royalty year was calculated as its "base" plus all interest allocations. This calculation did not contain the same double-counting of interest contained in the calculation of IPG's distributions in the Devotional category. For the reasons further discussed below, interest should be allocated in a consistent manner across all claimant categories.

3. *Apparent discrepancies in final distributions to Program Suppliers, resulting in surplus and shortfall amounts remaining for distribution.* The SDC previously notified the Judges of apparent discrepancies in the amounts remaining for distribution of royalties for cable royalty

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years 2000-2003, particularly for cable royalty year 2000 (which is significantly higher than expected) and 2003 (which is significantly lower than expected). *See* SDC’s Opposition to IPG’s Motion for Partial Distribution (Apr. 26, 2017) at 13-14. The amounts contained in the Appendix to the Judges’ Order show that these discrepancies result from the calculations of final distributions in the Program Suppliers category on April 14, 2016, which appear to be inconsistent with calculations of earlier final distributions to other claimant categories.

On August 14, 2015, the Phase I parties collectively filed their Joint Response to IPG’s Motion for Final Distribution of 2000, 2001, 2002, and 2003 Cable Royalty Funds in the Program Suppliers Category, advising the Judges of the confidential settlement percentage shares and the allocation of remaining undistributed funds in the Program Suppliers and Devotional categories. All other claimant categories had already received their final distributions by that time, meaning that all remaining funds should have been in the Program Suppliers and Devotional categories. The public redacted version of the Phase I parties’ Joint Response is attached as Exhibit A. In particular, the Phase I parties advised the Judges that percentage shares of the undistributed funds remaining at that time were as follows:

Percentage Allocations Of Reserve Funds Available For Distribution (“Reserve Funds”) As Of June 30, 2015				
Cable Year	Reserve Funds as of June 30, 2015	MPAA-Program Suppliers % Share Of Reserve Funds	IPG-Program Suppliers % Share Of Reserve Funds	Devotional Claimants % Share Of Reserve Funds
2000	\$ 5,476,469.25	75.32265%	10.20376%	14.47358%
2001	\$ 4,154,512.18	77.42350%	3.59418%	18.98232%
2002	\$ 5,960,567.42	83.17636%	3.03433%	13.78931%
2003	\$ 5,912,206.89	83.89213%	2.03550%	14.07237%

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Because there were no distributions between August 14, 2015, and April 14, 2016, these percentage shares of undistributed funds as between the Program Suppliers and Devotional categories remained the same until final distributions were made in the Program Suppliers category, even though the shares within the Program Suppliers category as between IPG and MPAA were subject to an adjustment based on allocation of interest. Applying the aggregate percentages, the final distributions in the Program Suppliers category on April 14, 2016, should have been equal to the following percentages of the funds remaining for distribution at the time:

Year	Program Suppliers Share of Undistributed Funds Remaining on 4/14/2016
2000	85.52641%
2001	81.01768%
2002	86.21069%
2003	85.92763%

The amounts that were distributed on April 14, 2016, vary from the amounts that remained in the Program Suppliers category, most significantly for the years 2000 and 2003:

Year	Amount Available for Distribution on 4/14/2016	Amount Available in PS Category on 4/14/2016	Amount Distributed to PS Category on 4/14/2016	Discrepancy
2000	██████████	██████████	██████████	██████████
2001	██████████	██████████	██████████	██████████
2002	██████████	██████████	██████████	██████████
2003	██████████	██████████	██████████	██████████

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Therefore, the amounts remaining available for distribution in the Devotional category appear to be more than [REDACTED] too high in cable royalty year 2000 and appear to be collectively almost [REDACTED] too low in the remaining royalty years.

The reason for the apparent discrepancies is difficult to pinpoint without knowing how all of the distributions to all claimant categories were calculated (including partial and final distributions in all claimant categories, and potentially including distributions made to and by the common agent). However, it appears likely that the discrepancies occurred at least in part because of inconsistencies over time in the methodologies used to apportion interest.

To the SDC's knowledge, the only information they have relating to the Licensing Division's methodologies for apportioning interest in the 2000-2003 funds comes from the Appendix to the Judges' Order Directing Parties to Review Calculations of Apportionment of Accrued Interest (May 1, 2020), showing the Licensing Division's calculation of distributions to the SDC and IPG in the Devotional category, and Attachment A to the Judges' Order Regarding IPG's Motion for Clarification of Order Re Final Distribution for the Program Suppliers' Category (Dec. 23, 2016), showing the calculation of IPG's distribution (but not MPA's distribution) in the Program Suppliers category. As noted above, these two methodologies, even though they are applied to funds for the same cable royalty years, are different and inconsistent. The methodology used in calculating the Program Suppliers distributions uses a bottom-up approach, starting from the parties' shares of the net royalty deposits and apportioning interest at each step along the way. The methodology used in calculating the Devotional distributions uses a top-down approach, starting from the assumption that the funds remaining plus the partial distributions to the SDC constitute the whole of the Devotional category funds, and then

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apportioning them entirely within that closed universe. Each methodology is logical in its own way, but they are inconsistent.

Similarly, the methodology used in the apportionment of Program Suppliers funds, especially if the same methodology was used in calculating both IPG's share and MPA's share, is likely to be inconsistent and incompatible with the methodologies used to make final distributions in other claimant categories. The Judges' Order Directing Accounting of 2000-2003 Cable Royalties Disbursed to the Program Suppliers Category (Nov. 25, 2015) makes clear that the Copyright Office has applied different methodologies for apportionment of interest. *See* Order Directing Accounting of 2000-2003 Cable Royalties Disbursed to the Program Suppliers Category (Nov. 25, 2015) at 2-3. Although the Judges characterized the interest at issue as being "a few cents" or, at most, "several thousand dollars" (*id.* at 2), Attachment A to the Judges' Order Regarding IPG's Motion for Clarification of Order Re Final Distribution for the Program Suppliers' Category (Dec. 23, 2016) shows that the 2000-03 cable royalty funds collectively had earned interest equaling to [REDACTED] at the time of the final distributions in the Program Suppliers category on April 14, 2016. Even small variations over time in the methodologies used to apportion interest could easily generate the net surplus and shortfalls in the amounts remaining, now that the Devotional category, one of the smallest claimant categories, is the only category left to receive a final distribution. In essence, the aggregate sums of the effects of all variations in interest allocations over all of the distributions made in all categories have wound up in the amounts remaining in the one small category that has not received a final distribution.

There are three potential options to resolve the surplus and shortfalls in the amounts remaining:

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Option 1: Allow the Licensing Division's methodology to stand (after correction of the errors noted above), resulting in a higher than expected award to the Devotional category for cable royalty year 2000 and shortfalls in the Devotional category for cable royalty years 2001, 2002, and 2003, on the theory that claimants in other categories have waived any claim for readjustment of shares by accepting their final distributions without timely objection.

Option 2: Use the surplus for cable royalty year 2000 to make up for the shortfalls for cable royalty years 2001, 2002, and 2003, and distribute the remaining net surplus to the Devotional and Program Suppliers categories, on the theory that claimants in other categories waived any claim to the net surplus when they filed their Joint Response to IPG's Motion for Final Distribution of 2000, 2001, 2002, and 2003 Cable Royalty Funds in the Program Suppliers Category (Aug. 14, 2015), acknowledging that all remaining funds belonged in the Program Suppliers and Devotional categories.

Option 3: Using a consistent methodology, perform a full accounting of all amounts distributed to all claimant categories, recoup payments from parties who have received excess amounts, and redistribute as necessary.

Option 1 clearly is the most favorable to the SDC, because it would result in an aggregate net increase to the Devotional category in comparison to the allocation of remaining funds set forth in the Phase I parties' Joint Response to IPG's Motion for Final Distribution of 2000, 2001, 2002, and 2003 Cable Royalty Funds in the Program Suppliers Category (Aug. 14, 2015).

Option 2 also would be favorable to the SDC because it would give the Devotional category and the Program Suppliers category the net benefit of inconsistent accounting over the years.

Nevertheless, the SDC favor Option 3, because it would advance the SDC's long-stated goals of confidence, consistency, and certainty in the distribution of royalties and would ensure

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that all parties are paid correct amounts under consistent accounting practices. This approach would comport with the requirements of the Federal Accounting Standards Advisory Board Handbook, which requires federal government agencies to apply accounting principles consistently over time:

Financial reports should be consistent over time; that is, once an accounting principle or reporting method is adopted, it should be used for all similar transactions and events unless there is good cause to change. The concept of consistency in financial reporting extends to many areas, such as valuation methods, basis of accounting, and determination of the financial reporting entity. If accounting principles have changed or if the financial reporting entity has changed, the nature and reason for the change, as well as the effect of the change, should be disclosed.

FASAB Handbook, Version 18 (June 30, 2019) at 37.²

Whichever option is chosen, any discrepancy should be resolved before a final distribution is made. As the Judges previously have noted, “[t]he Judges are mindful that the best way to ensure such a situation [i.e., failure to repay an over-allocated royalty payment] does not arise in the first instance is to maintain adequate safeguards with respect to partial distributions.” Order Granting Allocation Phase Parties’ Motion for Partial Distribution of 2015 Satellite Royalties, No. 17-CRB-0011-SD (2015) (Nov. 7, 2018) at 7. Similarly, the Judges should seek to avoid any erroneous overpayment in a final distribution. In ordinary circumstances, the SDC and the other Phase I parties would be able to resolve any overpayments among themselves, in accordance with their settlement agreement. But when funds could be distributed directly to IPG (a dba of Worldwide Subsidy Group, LLC), a party that has proven unable or unwilling to return funds that it received improperly and that is currently involved in a

² The Federal Accounting Standards Advisory Board is the designated advisory board for setting federal government accounting standards. See Memorandum of Understanding Among the Government Accountability Office, the Department of the Treasury, and the Office of Management and Budget on Federal Accounting Standards and a Federal Accounting Standards Advisory Board (rev. Oct. 2009) (available at http://files.fasab.gov/pdf/OUR_MEMORANDUM_OF_UNDERSTANDING_03_2011-1.pdf).

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show cause proceeding involving its identity, authority, and fitness to receive claimant funds purportedly under the assumed name “Multigroup Claimants” (*see, e.g.*, SDC’s Further Briefing in Response to Multigroup Claimants’ Response to Order to Show Cause, No. 14-CRB-0010-CD/SD (2010-13) (Mar. 16, 2020) at 16 (relating to Worldwide Subsidy Group’s failure to return funds improperly received in Public Television category), it is critical to avoid any potential future need for the Copyright Office to recoup funds that might prove to be unrecoverable.

Conclusion

The SDC request that the Copyright Office clarify its calculations by correcting the discrepancies noted above.

May 8, 2020

Respectfully submitted,

SETTLING DEVOTIONAL CLAIMANTS

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Certificate of Service

I certify that on May 8, 2020, I caused a copy of the foregoing to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

/s/ Matthew J. MacLean
Matthew J. MacLean

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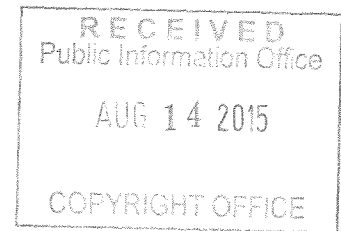
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In the Matter of)	
)	
Distribution of the 2000-2003)	Docket No. 2008-2
Cable Royalty Funds)	CRB CD 2000-2003 (Phase II)
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DECLARATION OF MATTHEW J. MACLEAN

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

1. I am a litigation partner in the law firm Pillsbury Winthrop Shaw Pittman LLP. I represent the Settling Devotional Claimants in this matter.
2. The highlighted parts of pages 1-4, 6, and 7 are designated RESTRICTED – Subject to Protective Order in Docket No. 2008-2 CRB CD 2000-2003 (Phase II) and are redacted in the public version of this notice, because they are derived from information contained in the Appendix to the Judges’ Order Directing Parties to Review Calculations of Apportionment of Accrued Interest (May 1, 2020), which the Judges filed under seal, or, in the case of the first highlighted portion of page 1, equivalent information about the SDC’s partial distribution for cable royalty year 2003.
3. The highlighted part of 8 is designated RESTRICTED – Subject to Protective Order in Docket No. 2008-2 CRB CD 2000-2003 (Phase II) and is redacted in the public version of this notice, because it is derived from information contained in Attachment A to the Judges’ Order Regarding IPG’s Motion for Clarification of Order Re Final Distribution for the Program Suppliers’ Category (Dec. 23, 2016), which the Judges filed under seal.

EXHIBIT A



Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

)	
In the Matter of)	
)	
Distribution of the 2000, 2001, 2002)	Docket No. 2008-2 CRB CD 2000-2003
and 2003 Cable Royalty Funds)	(Phase II)
)	

**JOINT RESPONSE OF THE PHASE I PARTIES
TO IPG’S MOTION FOR FINAL DISTRIBUTION OF 2000, 2001, 2002, AND 2003
CABLE ROYALTY FUNDS IN THE PROGRAM SUPPLIERS CATEGORY**

On July 28, 2015, Independent Producers Group (“IPG”) filed a motion (“IPG Motion”) seeking final distribution of 2000, 2001, 2002, and 2003 cable royalty funds (“2000-2003 Funds”). The IPG Motion followed the U.S. Court of Appeals for the District of Columbia Circuit’s June 30, 2015 decision affirming the Copyright Royalty Judges’ (“Judges”) final determination in this proceeding with respect to the Program Suppliers’ category. *Independent Producers Group v. Librarian of Congress*, No. 13-1274, et al., 2015 U.S. App. LEXIS 11166 (D.C. Cir. 2015). The Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, Music Claimants, Canadian Claimants Group, Public Television Claimants, Devotional Claimants, and National Public Radio (“NPR”) (collectively, “Phase I Parties”) hereby advise that the Judges that they have no opposition to the IPG Motion.

In order to facilitate the final distribution of 2000-2003 Funds in the Program Suppliers category sought by the IPG Motion, the Phase I Parties hereby disclose to the Judges (subject to the Protective Order entered in this Phase II proceeding) the confidential Phase I settlement shares for the Program Suppliers and Devotional Phase I categories for each of the 2000-2003

Funds for each royalty year after removing the funds NPR received in final distribution for each royalty year.¹

Program Suppliers' Confidential Phase I Share Of 2000-2003 Cable Royalty Funds			
Cable Year	Basic Fund	3.75% Fund	Syndex Fund
████	██████████	██████████	██████████
████	██████████	██████████	██████████
████	██████████	██████████	██████████
████	██████████	██████████	██████████

Devotional Claimants' Confidential Phase I Share Of 2000-2003 Cable Royalty Funds			
Cable Year	Basic Fund	3.75% Fund	Syndex Fund
████	██████████	██████████	██████████
████	██████████	██████████	██████████
████	██████████	██████████	██████████
████	██████████	██████████	██████████

The Phase I Parties further advise the Judges that the portion of the 2000-2003 Funds held in reserve by the Licensing Division of the Copyright Office should be allocated as follows

¹ NPR settled with the other Phase I Parties and received final distribution of the 2000, 2001 and 2002 cable royalty funds on April 19, 2007, and of the 2003 cable royalty fund on February 29, 2008. *See* Order, Docket Nos. 2001-8 CARP CD 98-99, 2002-8 CARP CD 2000, 2003-2 CARP CD 2001, 2004-5 CARP CD 2002, at 6 (April 3, 2007); Order Granting Partial Distribution of 2003 Cable Royalty Fund, Docket No. 2005-4 CRB CD 2003 at 2 (Jan. 23, 2008).

among MPAA-represented Program Suppliers, IPG-represented Program Suppliers, and the Devotional Claimants.:

Percentage Allocations Of Reserve Funds Available For Distribution (“Reserve Funds”) As Of June 30, 2015				
Cable Year	Reserve Funds as of June 30, 2015	MPAA-Program Suppliers % Share Of Reserve Funds	IPG-Program Suppliers % Share Of Reserve Funds	Devotional Claimants % Share Of Reserve Funds
2000	\$ 5,476,469.25	75.32265%	10.20376%	14.47358%
2001	\$ 4,154,512.18	77.42350%	3.59418%	18.98232%
2002	\$ 5,960,567.42	83.17636%	3.03433%	13.78931%
2003	\$ 5,912,206.89	83.89213%	2.03550%	14.07237%

The percentage allocation of the Reserve Funds identified above represents the full amount of IPG’s Program Suppliers’ royalty share for each of the 2000-2003 Funds, and the percentage of both MPAA and the Devotional Claimants’ royalty shares remaining undistributed following previous partial distributions.² The Phase I Parties respectfully request that the Judges distribute the Program Suppliers’ percentages of the Reserve Funds identified above to MPAA and IPG, and continue holding the percentages attributable to the Devotional Claimants in reserve until all appeals addressing the Judges’ Final Determination as to the Phase I Devotional category are fully resolved.

² IPG’s share of the Reserve Funds is higher than its Phase II award because IPG did not receive any partial distribution within the Program Suppliers category.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August, 2015, a copy of the foregoing pleading, was sent by Federal Express standard overnight mail, to the party listed below.


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Lucy Holmes Plovnick

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