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Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of	)	
	)	
Distribution of 2014-2017	)	Docket No. 16-CRB-0009-CD
Cable Royalty Funds	)	(2014-2017)
	)	
In the Matter of	)	
	)	
Distribution of 2014-2017	)	Docket No. 16-CRB-0010-SD
Satellite Royalty Funds	)	(2014-2017)
	)	

Multigroup Claimants' Motion For Disallowance
Of Claims By MPA-Represented Program Suppliers

Multigroup Claimants, in accordance with the Judges' *Order for Further Proceedings and Scheduling Case Events* (the "*Scheduling Order*"; Jan. 10, 2022), hereby submits its *Motion for Disallowance of Claims by MPA-Represented Program Suppliers*, which sets forth the bases for disallowance of claims asserted by the MPA-Represented Program Suppliers ("MPA") in these proceedings.

BACKGROUND

On January 10, 2022, the Judges ordered each participant:

> "involved in controversies involving the validity or categorization of claims to disclose to all other participants, whether or not they believe the other participants have a specific interest in the claims controversies 1) their authority to represent each claimant, 2) program information for each claimant (*e.g.,* correct title for each claimed program and other identifying information in cases in which titles may be confused), and 3) a clear statement, by royalty year, of each claim against the royalty fund and the claimant categories in which the asserted claim belongs. . . . The Judges intend to rule promptly on any motions relating to disclosure and

> discovery, ***and take a dim view of any party's reluctance to make the disclosures***."

Scheduling Order, at 3.

"Disclosure and Discovery" commenced on January 12, 2022 (*Scheduling Order*, at 3), and pursuant to a stipulation entered into amongst all participants, discovery requests were to be submitted no later than January 28, 2022, with production due no later than February 18, 2022.[1] Pursuant to the *Scheduling Order*, disclosure and discovery concluded on March 16, 2022. Unfortunately, the MPA failed to document the validity of any of its claims to 2016 and 2017 royalties, by failing to produce the most basic item of information -- the requisite royalty claims filed in July the following year (the "July claims").

According to documents previously filed by the MPA in these proceedings, the MPA asserted that it represents approximately 7,600 claimants for 2016 royalties, and approximately 8,340 claimants for 2017 royalties (see *Amended Joint Petition to Participate of the MPAA-Represented Program Suppliers*, at pages 280-406, 407-545 (June 27, 2019)). Notwithstanding, not a single July claim was produced by the MPA relating to 2016 and 2017 royalties.

No misunderstanding existed as to the required production, as Multigroup Claimants initial document request expressly sought the July claims:

> "For each of the 2015-2017 cable and satellite royalty years, as applicable, please provide:

[1] "Follow-up discovery" requests relating to documents that were produced in discovery were to be submitted no later than March 1, 2022, but does not relate to documents that were not produced in discovery.

> 1. All cable and satellite royalty claims filed on behalf of any MPA-represented claimant entity for 2015, 2016, and 2017."

Exhibit A, at 1.

Of all the participants in these proceedings, not a single participant – other than the MPA – failed to produce the July claims filed for their respective royalty claims. In fact, recognizing the validity of such request, the MPA produced copies of the July claims filed for 2015 royalties, but then objected to production of the July claims applicable to 2016 and 2017 royalties. Multigroup Claimants reviewed its files, and could not find a single instance over multiple proceedings going back decades in which a participant had objected to the production of the July claims, or failed to produce the July claims.

The aggregate of the MPA response to the discovery request was as follows:

> **MPA RESPONSE:** MPA objects to this request to the extent that it seeks documents that are publicly available and to which all parties have equal access, including documents that are available in eCRB. *See* General Objection F. MPA is producing copies of all the claims filed by MPA-represented claimants for 2015 cable and satellite. Starting with the 2016 royalty year, cable and satellite royalty claims were filed through eCRB, and all MPA-represented claimants' claims for the 2016 and 2017 cable and satellite royalty years can be accessed there. *See* https://app.crb.gov/case/claims/17-CRB-0017-CD, https://app.crb.gov/case/claims/17-CRB-0016-SD%202016, https://app.crb.gov/case/claims/18-CRB-0009-CD%20%282017%29, https://app.crb.gov/case/claims/18-CRB-0010-SD%202017. MPA is also producing copies of the attachments to their Amended Petitions to Participate in these proceedings in Microsoft Excel format.

Exhibit B, at 2.

As a result, the MPA has failed to produce evidence of its July filings and instead maintains in it has satisfied its burden to do so by simply directing Multigroup Claimants to pore through thousands of documents on file with the CRB, contained in an exponentially greater number of pages, in order to locate, identify, and verify, the 7,600 claimants the MPA purports to represent for 2016 royalties, and 8,340 claimants the MPA purports to represent for 2017 royalties. Such direction is clearly not the same as producing the documents requested, and places an undue burden on Multigroup Claimants when the MPA could simply email these multiple and voluminous documents to Multigroup Claimants rather than expecting Multigroup Claimants to laboriously locate such documents by manually identifying them from the screen of a computer.

ARGUMENT

The MPA is not itself a "claimant". Rather, it represents claimants that have made claim to royalties, and it is well-settled that the filing of a "July claim" is a necessary prerequisite to any claim for royalties. 17 U.S.C. §111(d)(4)(A), §119(b)(4)(A). In order to substantiate the 2016 and 2017 claims of its represented claimants, the MPA would ***necessarily*** have to rely on the July claims that it has refused to produce.

The dictate of the Judges in this proceeding was clear and, for whatever reason, the MPA simply decided to test the boundaries of the Judges' *Scheduling Order*. Such decision was ill-advised as federal courts across the country have held that objecting to the production of a document on the grounds that the information sought is "publicly available" is an invalid objection and no defense to a refusal to produce documents in a

party's possession.[2] Moreover, and while the Federal Rules of Civil Procedure do not *per se* apply to these proceedings, they can be consulted for direction, and require parties to produce all documents in their "possession, custody, or control." See FRCP 34(a)(1). The need for production is particularly significant when, as here, the party avoiding production ***must*** rely on such documents in order to assert their claim, yet directs a requesting party to go look for the proverbial "needle(s) in a haystack".

Whether it is deemed a discovery violation or a dismissal based on an inability to substantiate its 2016 and 2017 claims, all MPA 2016 and 2017 claims should now be dismissed. It is not sufficient for the MPA, pursuant to an objection that has been deemed invalid in courts of law across the country, to seek forgiveness via a "do-over". As was repeatedly made clear by the Judges in the immediately prior distribution proceeding, in a series of rulings that heavily favored the MPA, the Judges ***will not consider*** documents not produced in discovery, even if they were inadvertently not produced. *Ruling and Order Regarding Objections to Cable and Satellite Claims* at 15,

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[2] See *National Academy of Recording Arts & Sciences, Inc. v. On Point Events, LP*, 256 F.R.D. 678, 682 (C.D. Cal. 2009)(overruling defendant's objection that interrogatory sought information equally available to plaintiff); *Fosselman v. Gibbs*, 5 No. C 06-0375, 2008 WL 745122, at *4 (N.D. Cal. Mar. 18, 2008)("the objection that information is equally available to the questioner is not a proper objection"); *St. Paul Reinsurance Co. v. Commer. Fin. Corp*., 198 F.R.D. 508, 514 (N.D. Iowa 2000) (plaintiffs' objection that the information and documents sought are equally available to the propounding parties from their own records or from records which are equally available to the propounding parties is a "meritless" basis for objection); *City Consumer Services v. Horne*, 100 F.R.D. 740, 747 (D. Utah 1983) (it is "not usually a ground for objection that the information is equally available to the interrogator or is a matter of public record"; *Petruska v. Johns–Mannville*, 83 F.R.D. 32, 35 (E.D. Pa. 1979)(same); *Todd v. Tempur-Sealy Int'l, Inc.,* 2014 U.S. Dist. LEXIS 161037 (N.D. Cal. Nov. 17, 2014); 8 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice & Procedure § 2014 (3rd. ed. 2010)(same).

27 (twice), 30, 32, 33 (thrice) (Oct. 23, 2017), Consolidated Proceeding nos. 14-CRB-0010-CD (2010-2013), 14-CRB-0011-SD (2010-2013). Where, as here, there was no claimed inadvertence or oversight by the MPA, but rather a conscious decision to not produce documents that stand as the basis for all of the MPA's 2016 and 2017 claims, no reasonable alternative exists other than for the Judges to dismiss the very claims reliant on the non-produced documents. That the MPA elected to not produce such critical documents in spite of the Judges' edict for any failure to do so, makes the necessary decision even more evident.

CONCLUSION

For the reasons set forth above, Multigroup Claimants respectfully moves for the Judges to dismiss all 2016 and 2017 claims asserted by the MPA-Represented Program Suppliers.

Respectfully submitted,

Dated: May 4, 2022

_____/s/_____

Brian D. Boydston, Esq.
California State Bar No. 155614

PICK & BOYDSTON, LLP
732 West 9th Street, Suite 103
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Attorneys for Multigroup Claimants

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2022, a copy of the foregoing was provided to each of the parties on the attached service list via the Copyright Royalty Judges' eCRB electronic filing system.

_____/s/_____
Brian D. Boydston, Esq.

EXHIBIT A

Pick & Boydston, LLP
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION
732 West 9th Street, Suite 103
San Pedro, CA 90731
Telephone (310)987-2414

January 28, 2022

MPA-REPRESENTED PROGRAM SUPPLIERS

Gregory O. Olaniran Email: goo@msk.com
Lucy Holmes Plovnick Email: lhp@msk.com
Mitchell, Silberberg & Knupp LLP
1818 N Street, N.W., 8th Floor
Washington, D.C. 20036

Re: ***Docket Nos. 16-CRB-0009-CD (2014-2017), 16-CRB-0010-SD (2014-2017); Distribution of the 2014-2017 Cable and Satellite Royalty Funds; Multigroup Claimants' Document Discovery Requests on Claims Issues***

Dear Counsel:

Multigroup Claimants hereby submit the following discovery requests in the above-referenced Dockets (hereinafter the "Proceedings"). The materials sought in this letter constitute our initial discovery requests and may be supplemented. In accordance with the Copyright Royalty Judges' January 10, 2022, *Order for Further Proceedings and Scheduling Case Events*, we expect to receive the MPA's responses to these requests according to the agreed schedule for MPA to produce all responsive, non-privileged documents:

INITIAL UNIFORM DISCOVERY REQUESTS REGARDING CLAIMS VALIDITY AND CATEGORIZATION

For each of the 2015-2017 cable and satellite royalty years, as applicable, please provide:

1. All cable and satellite royalty claims filed on behalf of any MPA-represented claimant entity for 2015, 2016, and 2017;

2. The identity of the claimants you represent and documents supporting your authority to represent each claimant;

3. Accurate program identity information for each claimant identified (*e.g.*, correct title and other identifying information in cases in which titles may be confused, the underlying copyright owner for each program, etc.);

4. All information reflecting that the represented claimant has the authority to make claim for the identified program, either as the copyright owner or as derived from the owner of copyright to the program;

5. The unique program category that applies to each claimed program;

6. Any and all correspondence with represented claimants regarding conflicting claims to a particular program, and the resolution thereof, if any;

7. Any and documents that undermine the basis for you to file each of the claims in this proceeding, e.g., any documents that withdraw, revoke, deny, dispute, limit, qualify, or otherwise "may tend to undermine" your claimed authority to represent the claimant (*see Independent Producers Group v. Librarian of Congress*, 792 F.3d 132, 139 (D.C. Cir. 2015), or any documents that undermine claim to a particular program in this proceeding;

8. Any and all correspondence amongst represented claimants regarding any claim or program claim in this proceeding.

All of the documents should be produced in an organized and labelled format, and, wherever possible, in a "usable, electronic form," *i.e.*, searchable. *See* Amended Joint Order On Discovery Motions, Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II) at 16-17 and 25 (July 30, 2014). In addition, all program title information produced should be grouped with the name of the copyright owner, or authorized agent of the owner, and segregated by broadcast year. *See id*. at 16.

In order to facilitate an efficient compliance with the January 10 Order, the parties to the referenced proceeding should comply with the following discovery schedule:

DISCOVERY SCHEDULE
CLAIMS VALIDITY AND CATEGORIZATION

Case Event	**Date**
Service of Initial Discovery Requests Related to Claims And Categorization Issues	January 28, 2022
Objections to Initial Requests & Production of Disclosures and Documents In Response To Initial Requests	February 18, 2022
Parties Meet and Confer Regarding Document Production	February 23-25, 2022
Service of Follow Up Discovery Requests (if any)	March 1, 2022
Objections to Follow Up Requests	March 8, 2022
Parties Meet and Confer Regarding Follow-up Objections	March 9-11, 2022
Production of Documents In Response to Follow Up Requests	March 16, 2022
End of Discovery Related To Claims And Categorization Issues	March 16, 2022

Accordingly, your Responses to the Initial Requests identified above, and your production of documents in response to the Initial Requests, are due February 18, 2022.

Sincerely,

PICK & BOYDSTON, LLP

/s/

Brian D. Boydston, Esq.
Counsel for Multigroup Claimants

EXHIBIT B

MITCHELL SILBERBERG & KNUPP LLP
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Lucy Holmes Plovnick
Partner
(202) 355-7918 Phone
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February 18, 2022

VIA E-MAIL ONLY (BRIANB@IX.NETCOM.COM)

Brian D. Boydston
Pick & Boydston, LLP
732 West 9th Street, Suite 103
San Pedro, CA 90731

Re: Docket Nos. 16-CRB-0009-CD (2014-2017), 16-CRB-0010-SD (2014-2017); MPA's Responses To Multigroup Claimants' Document Discovery Requests on Claims Issues

Dear Brian:

On January 28, 2022, MPA received a series of requests for disclosure and discovery from Multigroup Claimants ("MC") (the "MC Requests"). This letter provides MPA's Responses to the MC Requests, as required by the parties' agreed discovery schedule. We repeat each of the MC Requests below, followed by our Responses.

1. General Objections:

A. MPA objects to the MC Requests to the extent that they are vague, ambiguous, or otherwise not susceptible to a response, and to the extent that they are overly broad, unduly burdensome, and seek the disclosure of documents and information not reasonably calculated to lead to the discovery of evidence admissible in this proceeding.

B. MPA objects to the MC Requests to the extent that they seek disclosure of documents and information that are not subject to discovery pursuant to the rules, procedures, and orders of the Copyright Royalty Judges ("Judges"). Without limiting the generality of the foregoing, MPA objects to each request insofar as it seeks production documents other than those required to be produced under Section 351.6 of the rules of the Judges, which require production only of "nonprivileged underlying documents."

C. MPA objects to the MC Requests to the extent that the definitions and instructions, the content of the requests, or the deadlines assigned for production purport to impose obligations beyond those imposed by the rules, procedures, and orders of the Judges.

D. MPA objects to the MC Requests to the extent that they seek the disclosure of information and documents protected from disclosure by any privilege, including, without limitation, the attorney-client privilege and the work product doctrine.

E. MPA objects to the MC Requests to the extent they call for MPA to create documents or perform analyses, or to produce a document not within MPA's possession, custody, or control.

F. MPA objects to the MC Requests to the extent that they seek production of documents to which all parties have equal access, including but not limited to publicly available documents.

G. MPA objects to the MC Requests to the extent that they seek the disclosure of confidential, proprietary, or "trade secret" information.

H. MPA objects to the MC Requests to the extent that they call for production of documents, data, or related information that is already within MC's possession, custody, or control.

I. These General Objections are incorporated into each of the following Responses.

2. Responses Pertaining to Specific MC Requests:

For each of the 2015-2017 cable and satellite royalty years, as applicable, please provide

1. All cable and satellite royalty claims filed on behalf of any MPA-represented claimant entity for 2015, 2016, and 2017;

MPA RESPONSE: MPA objects to this request to the extent that it seeks documents that are publicly available and to which all parties have equal access, including documents that are available in eCRB. *See* General Objection F. MPA is producing copies of all the claims filed by MPA-represented claimants for 2015 cable and satellite. Starting with the 2016 royalty year, cable and satellite royalty claims were filed through eCRB, and all MPA-represented claimants' claims for the 2016 and 2017 cable and satellite royalty years can be accessed there. *See* https://app.crb.gov/case/claims/17-CRB-0017-CD, https://app.crb.gov/case/claims/17-CRB-0016-SD%202016, https://app.crb.gov/case/claims/18-CRB-0009-CD%20%282017%29, https://app.crb.gov/case/claims/18-CRB-0010-SD%202017. MPA is also producing copies of the attachments to their Amended Petitions to Participate in these proceedings in Mircosoft Excel format.

2. The identity of the claimants you represent and documents supporting your authority to represent each claimant;

MPA RESPONSE: MPA objects to this request to the extent that it seeks privileged, confidential and/or proprietary information. MPA also objects to this request to the extent that it seeks information that is not subject to production under the regulations and orders of the Judges, including documents that are not reasonably calculated to lead to the discovery of admissible

evidence. *See* General Objections B, C, D and G. MPA is producing nonprivileged underlying documents in response to this request subject to the Protective Order entered in these proceedings on February 17, 2022.

3. Accurate program identity information for each claimant identified (*e.g.*, correct title and other identifying information in cases in which titles may be confused, the underlying copyright owner for each program, etc.);

MPA RESPONSE: MPA objects to this request to the extent that it seeks privileged, confidential and/or proprietary information, and to the extent that it seeks information that is not subject to production under the regulations and orders of the Judges. *See* General Objections B, C, D and G. MPA is producing nonprivileged underlying documents in response to this request subject to the Protective Order entered in these proceedings on February 17, 2022.

4. All information reflecting that the represented claimant has the authority to make claim for the identified program, either as the copyright owner or as derived from the owner of copyright to the program;

MPA RESPONSE: MPA objects to this request to the extent that it seeks privileged, confidential and/or proprietary information, and to the extent that it seeks information that is not subject to production under the regulations and orders of the Judges, and to the extent that it seeks documents not within MPA's possession, custody, or control. *See* General Objections B, C, D, E, and G. MPA is producing nonprivileged underlying documents in response to this request subject to the Protective Order entered in these proceedings on February 17, 2022.

5. The unique program category that applies to each claimed program;

MPA RESPONSE: Other than as articulated in the General Objections, MPA does not object to this request. MPA confirms that each of its claimed programs in this proceeding falls within the Program Suppliers category, as that category has been defined by the Judges.

6. Any and all correspondence with represented claimants regarding conflicting claims to a particular program, and the resolution thereof, if any;

MPA RESPONSE: MPA objects to this request to the extent that it seeks documents that do not exist, or information that is not subject to production under the regulations and orders of the Judges, and to the extent that it is unduly burdensome, and seeks documents not within MPA's possession, custody, or control. *See* General Objections A, B, C, and E. MPA also objects to this request as inappropriate because the Judges already ruled that it is "not reasonably calculated to lead to the discovery of admissible evidence" to the extent that it seeks production of documents relating to conflicting claims among MPA-represented claimants. *See Order Granting*

In Part Multigroup Claimants First Motion To Compel Production Of Documents By Motion Picture Association Of America, Docket No. 14-CRB-0010-CD (2010-13) at 3-4 (Sept. 14, 2016). MPA will re-produce the same documents that it provided to MC and IPG in past proceedings related to conflicting claims between MC/IPG and MPA in response to this request.

7. Any and documents that undermine the basis for you to file each of the claims in this proceeding, e.g., any documents that withdraw, revoke, deny, dispute, limit, qualify, or otherwise "may tend to undermine" your claimed authority to represent the claimant (*see Independent Producers Group v. Librarian of Congress*, 792 F.3d 132, 139 (D.C. Cir. 2015), or any documents that undermine claim to a particular program in this proceeding;

MPA RESPONSE: MPA objects to this request to the extent that it seeks documents that do not exist, or information that is not subject to production under the regulations and orders of the Judges, and to the extent that it is unduly burdensome, and seeks documents not within MPA's possession, custody, or control. *See* General Objections A, B, C, and E. MPA is not aware of any documents responsive to this request in its possession, custody, or control other than documents that are already a matter of public record in past royalty distribution proceedings in which IPG and MC participated. MPA will re-produce the same documents that it provided to MC and IPG in past proceedings related to conflicting claims between MC/IPG and MPA in response to this request.

8. Any and all correspondence amongst represented claimants regarding any claim or program claim in this proceeding.

MPA RESPONSE: MPA objects to this request as overly broad and unduly burdensome, and not reasonably calculated to lead to the production of admissible evidence in this proceeding. MPA also objects to this request to the extent that it seeks documents that do not exist, or information that is not subject to production under the regulations and orders of the Judges, and to the extent that it seeks documents not within MPA's possession, custody, or control. *See* General Objections A, B, C, E, F, and H. MPA also objects to this request as inappropriate because the Judges already ruled that it is "not reasonably calculated to lead to the discovery of admissible evidence" to the extent that it seeks production of documents relating to conflicting claims among MPA-represented claimants. *See Order Granting In Part Multigroup Claimants First Motion To Compel Production Of Documents By Motion Picture Association Of America*, Docket No. 14-CRB-0010-CD (2010-13) at 3-4 (Sept. 14, 2016). MPA will re-produce the same documents that it provided to MC and IPG in past proceedings related to conflicting claims between MC/IPG and MPA in response to this request.

Sincerely,

/s/ Lucy Holmes Plovnick

Lucy Holmes Plovnick
Partner for
MITCHELL SILBERBERG & KNUPP LLP

LHP/pxt

Proof of Delivery

I hereby certify that on Wednesday, May 04, 2022, I provided a true and correct copy of the Multigroup Claimants' Motion For Disallowance Of Claims By MPA-Represented Program Suppliers to the following:

Broadcast Music, Inc., represented by Jennifer T. Criss, served via E-Service at jennifer.criss@dbr.com

Program Suppliers, represented by Lucy H Plovnick, served via E-Service at lhp@msk.com

Major League Soccer, L.L.C., represented by Edward S. Hammerman, served via E-Service at ted@copyrightroyalties.com

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis, served via E-Service at smosenkis@ascap.com

Global Music Rights, LLC, represented by Scott A Zebrak, served via E-Service at scott@oandzlaw.com

Devotional Claimants, represented by Matthew J MacLean, served via E-Service at matthew.maclean@pillsburylaw.com

SESAC Performing Rights, LLC, represented by John C. Beiter, served via E-Service at john@beiterlaw.com

Broadcaster Claimants Group, represented by John Stewart, served via E-Service at jstewart@crowell.com

Joint Sports Claimants, represented by Michael E Kientzle, served via E-Service at michael.kientzle@arnoldporter.com

Signed: /s/ Brian D Boydston