

REDACTED PUBLIC VERSION

**BEFORE
THE COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
WASHINGTON, DC**

In re

Distribution of 2014-2017
Cable Royalty Funds

Docket No. 16-CRB-0009-CD (2014-17)

**SUPPLEMENTAL REBUTTAL CASE OF THE
CANADIAN CLAIMANTS GROUP**

Pursuant to Order 28 Revising Hearing Schedule and Related Prehearing Matters (eCRB no. 27490) (February 24, 2023), the Canadian Claimants Group (CCG) hereby submits the Supplemental Written Rebuttal Testimony of Debra Jones Ringold, Ph.D. (Ringold SRT) and the Supplemental Written Rebuttal Testimony of Leslie E. Schafer, Ph.D., both attached hereto.

The Ringold SRT responds to the supplemental discovery production from the Joint Sports Claimants on March 2, 2023, in response to the Copyright Royalty Judges' Order 27 On PTV Motion To Compel JSC To Produce Documents (eCRB no. 27470) (February 14, 2023) ("Order 27"). Because JSC's supplemental production was designated as RESTRICTED,

subject to both the Protective Order entered in this proceeding on February 17, 2022 (“Protective Order”) and the additional restrictions set forth in Order 27, CCG have designated the Ringold SRT as RESTRICTED, subject to both the Protective Order and the additional restrictions set forth in Order 27. A public, redacted copy of the Ringold SRT will be filed concurrently with the RESTRICTED version.

The Schafer SRT is not restricted. It offers certain analyses underling the Ringold SRT.

Respectfully Submitted,

Dated: March 16, 2023

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Supplemental Written Rebuttal Testimony of Debra Jones Ringold, Ph.D.

2014-2017 Cable Royalty Distribution Proceeding

Docket No. 16-CRB-0009-CD (2014-17)

March 16, 2023

On behalf of the Canadian Claimants Group, I hereby submit this Supplemental Written Rebuttal testimony in response to the March 2, 2023 discovery production of Joint Sports Claimants. This supplements my Written Rebuttal Testimony filed on November 2, 2022.

QUALIFICATIONS

I am Professor of Marketing, Dean Emeritus of the Atkinson Graduate School of Management, and JELD WEN Professor of Free Enterprise, Willamette University, Salem, Oregon, USA. My research focuses on regulation and its impact on consumers, producers, and markets. In this work, I employ survey research, content analysis, and experimental design. My research has appeared in the *Journal of Marketing*, *Journal of Public Policy and Marketing*, *Journal of Advertising*, *Journal of Macromarketing*, *Journal of Consumer Affairs*, *Journal of Consumer Policy*, *Journal of Public Affairs*, *Advances in Public Policy and Marketing*, *Psychology and Marketing*, *American Behavioral Scientist*, *Journal of Marketing Management*, and *Journal of the Association of Consumer Research*, among others.

I am a co-recipient of the Thomas C. Kinnear/*Journal of Public Policy and Marketing* Award for outstanding research. I have served as an associate editor and special issue editor of

the *Journal of Public Policy and Marketing* and continue to serve on the editorial boards of the *Journal of Public Policy and Marketing*, *Journal of Advertising*, and *Journal of Consumer Affairs*. As an editorial board member, I am frequently asked to evaluate and comment on survey research submitted for possible publication. Throughout my career, I have taught research methods, including survey research, at the undergraduate and graduate levels and conducted research method workshops for practitioners.

I was elected to the Board of Directors of the American Marketing Association (AMA) and ended my service as Chairperson of the AMA Board. I have provided survey research expertise to the U.S. Census Bureau and U.S. Food and Drug Administration. I have also been employed by and served as a peer reviewer for, the U.S. Federal Trade Commission as an expert in survey research, content analysis, and experimental design. Please see my curriculum vitae in Appendix 1 in my earlier testimony, Rebuttal Testimony of Debra Jones Ringold, Ph.D., dated November 2, 2022, for more detail.

I have appeared as an expert witness on behalf of the Canadian Claimants Group (CCG) in the 1990-1992, 1998-1999, 2000-2003, and 2004-2005 cable royalty distribution proceedings. I also submitted written testimony in the 2010-2013 cable royalty distribution proceeding but was not required to testify in person.

INTRODUCTION

At the request of the CCG, I have evaluated materials produced by the Joint Sports Claimants in response to ORDER 27 GRANTING IN PART AND DENYING IN PART PTV MOTION TO COMPEL JSC TO PRODUCE DOCUMENTS, dated February 15, 2023. Of particular importance are flaws in the design and execution of the survey containing the Bortz “relative

value” question. It is the question on which Joint Sports Claimants’ (JSC) compensation claims are based. This “relative value” question appears in every Bortz Survey. For reference it is numbered 4a in Version H 2 of the “2014 SYSTEM OPERATOR PROGRAMMING QUESTIONNAIRE,” the complete text of which is provided in Appendix 2 of my earlier testimony. Question 4a remains the focus of my testimony.

SUMMARY

Evaluation of new documentary evidence associated with the design and execution of the Bortz “relative value” question reinforces my earlier conclusion that while it produces stable results, it does not measure what it claims to measure. For a variety of reasons enumerated in my earlier testimony (i.e., respondents’ lack of relevant knowledge, respondents’ inability to remember long-past decisions, and extreme task complexity), Question 4a elicits a heuristic response that bears little resemblance to the likely value of Joint Sports Claimants’ content retransmitted by cable systems. This conclusion is reinforced by an evaluation of the method by which respondents were recruited to participate in the Bortz Surveys. It appears that any cable system employee claiming a primary role in determining programming carriage for a particular cable system in a particular year was interviewed. No verification of this claim was undertaken, and this lack of verification further undermines confidence in the respondents’ ability to answer the Bortz “relative value” question in a valid manner.

FLAWS IN THE RECRUITMENT OF BORTZ STUDY RESPONDENTS

At its most basic, a survey question should be asked if, and only if, respondents have the requisite information and are willing to report it (e.g., Diamond 2011, Iacobucci and Churchill

2023). The underlying premise of this advice is that if respondents do not have the required information they will instead employ a “rule of thumb” or heuristic (e.g., Krosnick and Presser 2010, Roberts, et al. 2019 and citations therein). In other words, heuristics are shortcuts or impressions that facilitate responses when participants do not have the information required by a question.

Thus, one of the most basic tenets of survey research is that the population of respondents relevant to the study be identified, verified, and either sampled in an appropriate manner or invited to participate in a census. Either way, individuals completing the survey must have the knowledge required to respond accurately to focal questions (e.g., Diamond 2011, Iacobucci and Churchill 2023). In this instance, it means that Bortz Survey respondents should have been the persons most responsible for programming carriage decisions made by their systems in a given year.

When recruiting respondents, Trautman (2022) reports that Bortz Study interviewers were instructed to ask first for the system executive identified in advance from the *Television & Cable Fact Book*. This compendium lists the individual most likely to have responsibility for programming decisions at a particular cable system at a particular time. It is unclear whether the appropriate edition of the *Television & Cable Factbook* was used when designating system executives for a particular year’s survey. Given that Bortz Survey interviews were retrospective in nature (i.e., interviews about 2014 carriage decisions were conducted as late as 4/7/16; interviews about 2015 carriage decisions were conducted as late as 4/23/17; interviews about 2016 carriage decisions were conducted as late as 4/26/18; interviews about 2017 carriage decisions were conducted as late as 6/26/19), it would be important that the executives who made the carriage decisions in the relevant year be identified. That is, if the survey was about

decisions made in 2014, then the proper respondent would have been the decision-maker in 2014 and the *Television & Cable Factbook* volume actually containing 2014 data should have been used to identify this person. It is not uncommon for information in compendia such as these to exhibit a lag due to data collection, verification, and publication. For example, it would not be surprising if the information published in 2014 was collected in 2013 or even earlier. We have no evidence that this possibility was considered when using the *Television & Cable Factbook* to identify appropriate respondents. As discussed further below, the very low number of respondents identified from the *Television & Cable Factbook* that actually responded to the survey suggests that the wrong edition of the *Television & Cable Factbook* was used each year to identify respondents.

Trautman (2022) goes on to say that Bortz Study interviewers were asked to confirm that the individual respondent selected from the *Television & Cable Factbook* was the person at the system “most responsible for programming carriage decisions made” by the system. If the identified executive did not fit the description, the interviewer was instructed to ask for the person who was most responsible for programming carriage decisions in a particular year.

To evaluate the extent to which the individuals identified as appropriate respondents in the *Television & Cable Factbook* were interviewed, I asked that each completed Bortz Study questionnaire in each year be examined, and tallies kept of expected versus unexpected respondents. This analysis was performed by EconOne.

An examination of the questionnaires produced by Joint Sports Claimants for the year 2014 suggests that of the 170 surveys completed, 13 were actually carried out with the intended respondent. Thus, over 92 percent of respondents were other than those identified in the *Television & Cable Factbook*. In 2015, 2016, and 2017 about 89 percent, 91 percent, and 90

percent of respondents, respectively, were other than those identified in the *Television & Cable Factbook*. See Table 1, below.

Table 1: Expected vs. Unexpected Respondents

Year	Expected Respondent	Unexpected Respondent	Total Surveys Reviewed¹	Percent Unexpected Respondents
2014	13	157	170	92.4%
2015	22	176	198	88.9%
2016	17	180	197	91.4%
2017	18	161	179	89.9%

An examination of the unredacted survey instruments revealed that it was a common practice to cross out the name of the expected respondent and pencil in only the first name or the first name and a last initial of the person who agreed to respond. See the copies of the first pages of a sample of the unredacted survey instruments attached here in Appendix A and the “Respondent” column in the unredacted data entry for the 2014-2017 surveys. I have included excerpts of data provided by JSC showing the respondent information for each survey as Appendices B through E for 2014 through 2017, respectively. (JSC 00080944-JSC 00080947)

The Bortz Survey instruments contain no questions designed to validate the respondent’s assertion that he/she was the person most responsible for programming carriage decisions made by the cable system of interest during a particular year. One would have expected respondents to be asked their full name, complete title, the number of years they had worked in the cable

¹ The numbers in the column labeled “Total Surveys Reviewed” as counted by EconOne differ from those reported by Trautman and Mathiowetz by 1 in 2015 and 2 in 2016.

industry, the number of years they had worked for their current cable system, the number of years they had been in their current job, the number of years for which they had been responsible for deciding which television stations the particular system carried, and whether they were responsible for making budget decisions or recommendations associated with station carriage. Answers to these kinds of questions would have allowed a reasonable degree of verification that the correct respondent had been identified and interviewed. As it is, one is left with the impression that anyone asserting a primary role in determining programming carriage for a particular cable system in a particular year was interviewed.

The Pew Research Center reports that response rates in telephone surveys declined from 15 percent in 2009 to nine percent in 2013 and 2016, to six percent in 2018 (Kennedy and Hartig 2019). In contrast, during the period industry-wide response rates were between six and nine percent, the Bortz survey reports response rates were 53.8 percent, 54.3 percent, 57.7 percent, and 54.6 percent, for the years 2014 to 2017, respectively. (Trautman (2022); Mathiowetz (2022)). Two factors contribute to the unusually high response rates in the Bortz Survey. The first is that individual respondents were allowed to answer for more than one cable system. In 2014, according to Mathiowetz (2022), over 29 percent of respondents answered for three or more cable systems. In 2015, 2016, and 2017 these percentages were about 23 percent, 17 percent, and 16 percent, respectively. The second is the high likelihood that respondents were not the actual decision-makers in the relevant years and thus, much easier to recruit.

Tying this new information back to Appendix 5 of my earlier testimony, I reported on a number of participants who, in response to the Bortz “relative-value” question, provided an estimate of the value of JSC content when in fact their cable systems carried 10 hours or less JSC content on the signals Bortz asked them to consider in their responses. According to JSC’s

categorization of compensable minutes on surveyed signals, significant numbers of respondents (five percent in 2014; 15 percent in 2015; 13 percent in 2016; and 14 percent in 2017) apparently do not know what content is carried on the signals they retransmit and that Bortz asked them to consider. Undoubtedly, they were using a heuristic to fabricate a response to questions about the value of JSC content. Moreover, in systems that carry 10 hours or less JSC content, the estimates of value are quite stable (i.e., 38 percent, 33 percent, 32 percent, and 37 percent) and look quite like the average values given by all respondents over this same period (38 percent, 35 percent, 34 percent, and 38 percent).² These results are again remarkably consistent with the use of a heuristic rather than a thoughtful response to the Bortz “relative value” question.

These problems are even more evident in the datasets of compensable JSC programming as categorized by CCG and CTV. For the years 2015 to 2017, both the CCG and CTV datasets of compensable JSC programming identify a significantly larger number of cable system employees who offer a typical response to the Bortz “relative value” question when carrying 10 hours or less JSC content. For example, in the CCG data for 2015, 53/142 or 37 percent of respondents offer an average relative value of 34.5 percent when their systems carry 10 hours or less JSC content. The results based on CTV-categorized minutes are very much the same. In 2015, 42/142 or 30 percent of respondents offer an average relative value of 35.0 percent when their systems carry 10 hours or less JSC programming. Clearly, this analysis indicates that those responding to the Bortz “relative value” question did not have the required information. Please see Tables 19 through 22 in Appendix 5 in my original testimony for this analysis using all datasets, all years.

² Please see Tables 19 through 22 in Appendix 5 in my original testimony (Ringold WRT) for this analysis using all datasets, all years.

Because there is no evidence that unexpected respondents were meaningfully screened for their qualifications to answer the survey, we have no way to know if the individuals were qualified or simply cooperative individuals who happened to answer the phone.

CONCLUSION

It is my opinion that the majority of cable system employees responding to the Bortz “relative value” question did not have the required information, could not remember the required information, and/or were asked to expend undue effort in understanding the question or formulating an answer and instead employed a “rule of thumb” or heuristic. This new production of information by JSC established that rather than verifying that Bortz Study respondents were individuals who actually made programming carriage decisions in specific years, the Bortz Study instead recruited a vast majority of individuals who simply claimed and self-affirmed that they were the most qualified person to participate in this questionnaire. It is my opinion that the Bortz “relative value” question (i.e., 4a) in the “2014 SYSTEM OPERATOR PROGRAMMING QUESTIONNAIRE,” and all subsequent versions (i.e., 2015, 2016, 2017), elicits a heuristic response on the part of respondents rather than producing accurate estimates of the relative value of JSC or any other category of content.

This new evidence reinforces the conclusion in my Written Rebuttal Testimony that question 4a does not measure what it claims to measure and cannot be relied upon to determine claimant shares in this proceeding.

LITERATURE CITED

Diamond, S.S. (2011), "Reference Guide on Survey Research," in *Reference Manual on Scientific Research*, Third Edition, Washington, D.C.: The National Academies Press.

Iacobucci, D. and G.A. Churchill, Jr. (2023), *Marketing Research: Methodological Foundations*, 13th Edition, Nashville, TN: Earlie Lite Books.

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Roberts, C., E. Gilbert, N. Allum, and L. Eisner (2019), "Satisficing in Surveys: A Systematic Review of the Literature," *Public Opinion Quarterly*, 83 (3), 598-626.

Trautman, J.M. (2022), "Written Direct Testimony of JAMES M. TRAUTMAN," in re DISTRIBUTION OF CABLE ROYALTY FUNDS, Before the COPYRIGHT ROYALTY JUDGES, Washington, D.C., 16-CRB-0009-CD (2014-17), July 1, corrected Sept. 26, 2022.

**BEFORE
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Docket No. 16-CRB-0009-CD (2014-17)

DECLARATION OF DEBRA JONES RINGOLD, PH.D.

I, Debra Jones Ringold, Ph.D., declare under penalty of perjury that the foregoing is true and correct.

Executed in Salem, Oregon, on March 16, 2023.

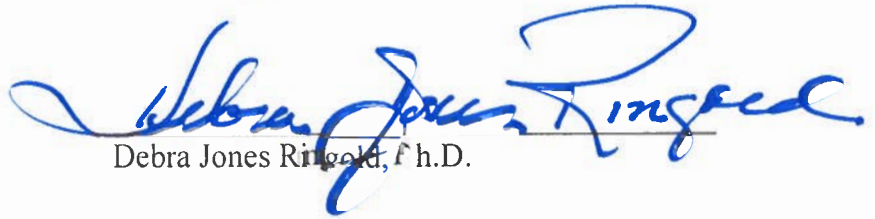

Debra Jones Ringold, Ph.D.

EXHIBIT A

**All content RESTRICTED pursuant
to the February 17, 2022 Protective
Order and Order No. 27**

EXHIBIT B

**All content RESTRICTED pursuant
to the February 17, 2022 Protective
Order and Order No. 27**

EXHIBIT C

**All content RESTRICTED pursuant
to the February 17, 2022 Protective
Order and Order No. 27**

EXHIBIT D

**All content RESTRICTED pursuant
to the February 17, 2022 Protective
Order and Order No. 27**

EXHIBIT E

**All content RESTRICTED pursuant
to the February 17, 2022 Protective
Order and Order No. 27**

Before the
COPYRIGHT ROYALTY JUDGES
WASHINGTON, D.C.

In re

Distribution of Cable Royalty Funds

NO. 16-CRB-0009-CD (2014-17)

SUPPLEMENTAL EXPERT REPORT OF LESLIE E. SCHAFER, PH.D.

Econ ONE Research, Inc.

March 16, 2023

Suite 800
550 South Hope Street
Los Angeles, California 90071



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I. Introduction

1. I am the same Leslie E. Schafer who previously submitted an expert report (“Schafer Report”) in the above-captioned proceedings.¹ I understand that the Joint Sports Claimants (“JSC”) produced unredacted responses to the Bortz Surveys which reveal the identity of respondents.² I have been asked by counsel for the Canadian Claimants Group (“CCG”) to provide data analytics support for Debra Jones Ringold, Ph.D. related to this production. In particular, Professor Ringold requested that my team and I identify what percentage of unredacted survey responses appeared to be collected from an unexpected respondent.
2. Materials my team and I considered to complete this assignment are set forth in the footnotes of this Report and/or in **Exhibit 1**.
3. Econ One is being compensated for the time I spend on this matter in 2023 at \$625 per hour. Econ One also is being compensated for time spent by research staff on this project at rates ranging between \$165 and \$350 per hour and project-related expenses (*e.g.*, computer charges, travel). Neither my nor Econ One’s compensation are contingent upon my findings or the outcome of these proceedings.
4. To the extent that continuing discovery or additional requests from Dr. Ringold reveal new information relevant to my assignment, it may become necessary for me to update this report.

II. Unexpected Respondents

5. Professor Ringold requested that my team and I identify what percentage of unredacted survey responses appeared to be collected from an “unexpected respondent.” An “unexpected respondent” is defined as a name on a completed “System Operator Programming Questionnaire” that is different from the name originally entered in the “Respondent’s Name” field.
6. The cover page from each survey instrument between 2010 to 2017 was manually inspected to determine if (1) the initial name was crossed out and (2) an entirely

¹ Expert Report of Leslie E. Schafer, Ph.D., November 2, 2022 (“Schafer Report” or “Report”).

² JSC 00080944-47, JSC 00051382-57898.

distinct new name was added. The counts of expected and unexpected respondents were recorded and shares calculated by year.

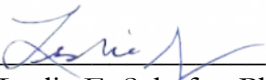
7. This assessment is a conservative estimate of the share of survey questionnaires with an unexpected respondent because instances where a second name was written but the first was not explicitly crossed out were counted as expected respondents. Furthermore, the following survey responses were excluded from the count entirely due to ambiguity:
 - a. Instances where the respondent field was left blank.
 - b. Instances where the initial name was crossed out but a second name was not added.
8. As seen in **Table 1**, Between 2010 and 2017, there were 1,376 survey instruments. 88% of survey questionnaires had an unexpected respondent. The minimum share of unexpected respondents occurred in 2010 (81.5%). The maximum share of unexpected respondents occurred in 2014 (92.4%).

Table 1
Share of Unexpected Respondents

Year	Expected Respondents	Unexpected Respondents	Total Respondents	Share of Unexpected Respondents
		(Count)		(Percent)
(1)	(2)	(3)	(4) = (2) + (3)	(5) = (3) / (4)
2010	30	132	162	81.5%
2011	22	139	161	86.3%
2012	14	157	171	91.8%
2013	18	120	138	87.0%
2014	13	157	170	92.4%
2015	22	176	198	88.9%
2016	17	180	197	91.4%
2017	18	161	179	89.9%
Total	154	1,222	1,376	88.8%

Note: Instances where a second respondent name was written but the first respondent name was not crossed out were counted as expected respondents. Surveys with no respondent name or where the initial respondent name was crossed out and no new one was written to replace it have been excluded.

Sources: JSC 00051382-57898



Leslie E. Schafer, Ph.D.
March 16, 2023

Exhibit 1
Distribution of Cable Royalty Funds

Materials Relied Upon

Bates Numbered Documents

JSC 00051382 - JSC 00057898
JSC 00080944 - JSC 00080947

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Docket No. 16-CRB-0009-CD (2014-17)

DECLARATION OF LESLIE E. SCHAFER, PH.D.

I, Leslie E. Schafer, Ph.D., declare under penalty of perjury that the foregoing is true and correct.

Executed in Boulder, Colorado, on March 16, 2023.



Leslie E. Schafer, Ph.D.

Proof of Delivery

I hereby certify that on Thursday, March 16, 2023, I provided a true and correct copy of the SUPPLEMENTAL REBUTTAL CASE OF THE CANADIAN CLAIMANTS GROUP to the following:

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

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

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

Multigroup Claimants, represented by Brian D Boydston, served via E-Service at brianb@ix.netcom.com

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

National Public Radio, represented by Amanda Huetinck, served via E-Service at ahuetinck@npr.org

Public Television Claimants, represented by Ronald G. Dove Jr., served via E-Service at rdove@cov.com

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

ASCAP, represented by Sam Mosenkis, served via E-Service at smosenkis@ascap.com

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Broadcast Music, Inc. (BMI), represented by Jennifer T. Criss, served via E-Service at

jennifer.criss@dbr.com

Signed: /s/ Lawrence K Satterfield