COPYRIGHT ROYALTY TRIBUNAL

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IN THE MATTER OF :

1986 CABLE ROYALTY
DISTRIBUTION PROCEEDINGS : CRT DOCKET NO. 88-2-86CD

PHASE II :

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(This Volume contains pages 114 through 233)

Room 458
1111 20th Street, N.W.
Washington, D.C.

Tuesday, February 14, 1989

The above-entitled matter came on for hearing, pursuant to notice, commencing at 10:00 a.m.

BEFORE:

EDWARD W. RAY	Chairman
MARIO F. AGUERO	Commissioner
J.C. ARGETSINGER	Commissioner
ROBERT CASSLER	General Counsel

APPEARANCES:

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P R O C E E D I N G S

(10:12 a.m.)

CHAIRMAN RAY: We will continue with MPAA's direct case.

Mr. Lane.

MR. LANE: I call Ms. Kessler to the stand.

CHAIRMAN RAY: Okay, Ms. Kessler, will you please stand?

Whereupon,

MARSHA E. KESSLER

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN RAY: Thank you.

We welcome you back before us again, you have been here almost as many times as Mr. Cooper.

THE WITNESS: A far second, I'm sure.

CHAIRMAN RAY: Okay, Mr. Lane.

DIRECT EXAMINATION

BY MR. LANE:

Q Would you please state your name for the record?

A Marsha E. Kessler.

Q And what is your position?

A I am the Manager of Cable Copyright at MPAA.

Q Ms. Kessler, did you prepare a five-paged document entitled Testimony of Marsha E. Kessler, on

behalf of MPAA-Represented Program Suppliers, Phase II, 1986, that was previously exchanged in this proceeding?

A Yes, I did.

Q Do you have any additions, or corrections to that testimony?

A Only one slight, we left out some quote marks on page one. In the second paragraph, the fourth line after "Under measured" there should be a closed quote.

Q Did you prepare, or have prepared under your direction and supervision, three exhibits that were exchanged and have been marked as MEK-1, MEK-2 and MEK-3?

A Yes, I did.

Q Do you have any additions, or corrections to those exhibits?

A No.

Q In past proceedings you have been described as the property maven of MPAA, is that correct?

A Yes, I have been.

Q And since those proceedings, have you continued to work in the distribution area?

A Yes, I have.

Q And as part of your responsibilities in that area, do you receive lists of properties from the MPAA-represented claimants?

A I do.

Q And are these property lists limited just to the Nielsen sample stations and the measurement periods in the particular year?

A Although we ask that they be limited to the stations and the measurement periods, sometimes they contain additional information.

MR. LANE: Mr. Chairman, in past proceedings Ms. Kessler's qualifications have been gone into in detail, and we would ask that they be incorporated, rather than spread it on the record here again. And this is an appropriate time for voir dire.

CHAIRMAN RAY: Any voir dire?

(No response)

CHAIRMAN RAY: No voir dire.

BY MR. LANE:

Q Ms. Kessler, would you describe your role in the distribution of cable royalties to MPAA-represented claimants?

A I see our companies through the entire distribution process, beginning with their filing of a claim in July of one year, and following through all of our various procedures, through a period of time, from 12 to 18 months, which culminates in their receiving a royalty check.

Q Did you testify in the 1985 proceeding, and in

earlier proceedings in detail about the various steps in your duties and responsibilities?

A Yes, I did.

Q And have your duties and responsibilities, or those steps changed significantly since the time of that testimony?

A They have not.

Q And as a result, are you incorporating by reference that testimony as a fuller explanation of those responsibilities and duties?

A I am.

Q Did the Tribunal, in the 1985 proceeding, give consideration to programs not measured by the Nielsen Study sample stations, or measurement periods?

A It did, it said in your final determination that you would give credit when shown that a claimant's programs had not been measured, or they had been under-measured in the study.

Q Does the MPAA methodology used for settlement among the Program Supplier-claimants give credit for non-sample, non-sweep programs?

A It does not. Our methodology is limited to a study which measures broadcasts by syndicated programs, on a specific set of stations during specific measurement periods.

Q Do you propose in this proceeding that the Tribunal consider evidence of non-sample, non-measurement period broadcasts of MPAA-represented programs?

A Yes, we would like for you to do that, thinking specifically two things, number one the statement in last year's determination that you would consider information regarding non-sample, non-sweep broadcasts. And, also, I would like for all of us here, the Multimedia claimants and the NAB-represented claimants, and the MPAA-represented claimants to all be playing on the same field, a level field with the same rules.

So, to the extent that other claimants before you receive consideration for broadcast of their properties, on all stations, all times of the year, I would request that we also receive consideration, as well.

Q Have you prepared an exhibit listing some of the programs of MPAA-represented claimants that appeared in 1986 on non-sample stations, or in non-measurement periods?

A Yes, I have, it is shown as my exhibit MEK-1.

MR. LANE: Mr. Chairman, I would ask at this time that the document -- it is a multi-paged document, which has three -- four columns identified as Title, Station, Date and Time, and was previously marked as MEK-1, now be marked as Program Suppliers' Exhibit 8.

CHAIRMAN RAY: It will be so marked.

(Whereupon, the document was marked for identification as Program Suppliers' Exhibit No. 8.)

BY MR. LANE:

Q How was this list that is in Exhibit 8 compiled?

A As I indicated earlier, we request that our companies provide us a listing of the properties for which they are claiming entitlement. We use these property lists for two very specific purposes: it is our one mechanism for determining when more than one company is putting in a claim for the same property.

We also use it to fine-tune our data base. When I request the company gives us this information, I ask that it be limited to sample station and measurement period times. But often I get information more than what I have asked for. To the extent that companies did give more information than was requested, I pulled out the information from the property lists, and used it to compile this exhibit.

Q Did you make any effort to obtain non-measurement period, non-sample station program data from the MPAA-represented claimants?

A I did not. This exhibit is purely -- it is an

exhibit by design, but it was based on default data. That is information I had by accident, I put it together into an exhibit.

Q What type of programs comprises the majority of the titles on this list?

A The lion's share of properties shown in Exhibit MEK-1 or Exhibit 8, are movies. The reason being that when you look at the recording of movies versus the recording or the recordkeeping of the series programs, when a TV station runs series programs they do what is called "stripping it", that means they run it Monday through Friday, in a particular time slot.

So, for example, if you are watching Three Is Company, Monday through Friday, you only get one title, Three Is Company. Whereas, the same station running movies in a time slot, there will be five different titles.

So the broadcasts are represented by only one title for any number of series broadcasts, but multitudinous titles for the movie broadcasts.

Q Does this list attempt to be a comprehensive list of all the titles of MPAA-represented claimants that appeared outside the measurement period of non-sample stations?

A To me this exhibit is woefully inadequate. As I

indicated before, it is information that I had by accident, that I did not seek from our represented companies. The information was just like I had it in a cardboard box of property lists. And it is just the tip of the iceberg, insofar as this kind of thing is concerned.

Q How does the number of titles on Exhibit 8 compare to the number of titles that are the claim of the MPAA-represented claimants in this proceeding?

A MEK-1 is a little over -- consists of a little over 1800 individual broadcasts of series and movies. There are approximately 800, 820 titles, individual titles in this exhibit. I believe Mr. Cooper yesterday testified that we are claiming for approximately 6200 titles.

So my little 800 title exhibit represents about 13 percent of our claim.

Q Ms. Kessler, in addition to the fact that this was an exhibit by default, rather than design, what other factors would limit the list from being comprehensive?

A The list is limited almost solely, in addition to just movie titles, to broadcasts on sample stations. Our sample stations -- I think we have 113, or thereabouts in our sample this year. I think there are probably somewhere around 900, or 1,000 commercial stations in the United States.

So, insofar as I only have information for maybe 100, 113 stations, there are at least 800, 900 other stations for which I did not have information, and to which our companies license product. So, it is woefully short in terms of the number of titles, for one thing. And in addition, it also under-counts the number of subscriber incidents.

Q You just mentioned a term "subscriber incidents", would you define that for us, please?

A When MPAA makes its selection of sample stations, we do it based on the availability of an individual station as a full-time distant signal to cable subscribers. And we set a limit at which stations who reach that level will be in the sample, and stations that are under that level will not be included.

The level is a measurement of the number of subscribers who have the station as a distant signal. So that if a particular station was available to 100,000 subscribers as a full-time distant signal, we would say the subscriber incident was 100,000. It is a count of the number of distant signal subscribers.

Q Have you provided the number of subscriber incidents for the programs listed in Program Suppliers' Exhibit 8?

A Yes, it is shown in MEK-2.

MR. LANE: Mr. Chairman, I would ask that a 16-paged document which has two columns, one of which is entitled Property Title, and the other Total Subscriber Incidents, be marked as Program Suppliers' Exhibit 9.

CHAIRMAN RAY: Exhibit, what?

MR. LANE: Exhibit 9.

CHAIRMAN RAY: Nine, okay.

(Whereupon, the document was marked for identification as Program Suppliers' Exhibit No. 9.)

BY MR. LANE:

Q How is this exhibit formulated, Ms. Kessler?

A The information shown in Exhibit 8 was transferred to Cable Data Corporation, the company that does our computer work for us. They were requested to group the titles by -- group each title, all the titles together alpha, and then under each title do a subscriber count of TV stations, or a subscriber incident count of TV stations that broadcast that particular movie.

So, for example, the first title on the exhibit is "B" ... Must Die. The stations that carry the broadcast "B" ... Must Die, were grouped under the title, subscriber incident calculated for each station, and then a total shown for the title. That was done for each title,

and a sum is shown on the last page.

Q Just to be clear, Ms. Kessler, "B" ... Must Die, or any other title first had to appear on Program Suppliers' Exhibit 8?

A That's correct.

Q And let's just say that appeared on two different stations, it would only be those two stations on Exhibit 8 that are included in the subscriber incident total in Exhibit 9, is that correct?

A That is correct.

Q And could you just tell us what the sum of the subscriber incidents is for these 820 titles?

A It is a huge number, it is 5.3 billion distant subscriber incidents, which means this program -- these individual programs, or movies had exposure to that many distant signal subscribers of cable television.

Q And is this the full extent of the availability of these programs to cable subscribers, or the availability in a larger scope to all MPAA-represented supplier of programs in 1986?

A I would say that it is not indicative at all for the reasons that I have indicated earlier. Just going back to our "B" ... Must Die, the data for which I had information on "B" ... Must Die was probably limited to sample stations. I am not sure if there is a non-sample

station in that one, or not.

So we don't know to what extent "B" ... Must Die was broadcast by non-sample stations, as well. And, again, the lack of availability of data from our companies means that my number for "B" ... Must Die is limited to what I was told in response to a certain request for information from our companies.

Q Did you undertake any analysis of Superstation series carriage?

A I did, and that is shown in Exhibit MEK-3.

MR. LANE: Mr. Chairman, I would ask that a one-paged document which lists 21 different series, provides distant subs and total subscriber incidents be marked as Program Suppliers' Exhibit 10.

CHAIRMAN RAY: Okay.

(Whereupon, the document was marked for identification as Program Suppliers' Exhibit No. 10.)

BY MR. LANE:

Q Would you state for the record how you went about putting together this exhibit?

A One of the documents that Cable Data produces for us from our Nielsen Study data is a printout that we call Phase I Printout. It is alpha by station, and then

within each station there is a listing of all of the programs, the non-network programs that that station ran during the measurement periods.

I took the 1985 printout and the 1986 printout, and laid them out side by side. I then looked in the '86 printout and identified series that ran continuously for all the measurement periods in '86, and for some continuous period of time in '85 as well. Those were the properties that I isolated and put into this exhibit.

Q And what were the results of this analysis?

A As the bottom line, in the right-hand column shows, there were 25.6, 25.7 billion incidents of distant signal subscribers. Again, exposure of these properties to over 25.6 or .7 billion households.

Q And just go through the calculations on this page, if I look at the fourth column, number of distant subs, for the first program, that is the number of distant subscribers, full-time distant subscribers Form 3 to WGN, is that correct?

A That's correct. If you look down the station column, wherever WGN is listed, the same number will appear, 11,631,207. The same for the other two Superstations.

Q And then you simply multiplied that by the number of telecasts for that particular show, and came up

with the total subscriber incidences, is that correct?

A That is correct.

Q Now, if I took the results of Exhibit 9 and Exhibit 10, and I added them together, would that give the full extent of the non-sample station, non-measurement period carriage of MPAA-represented programs in 1986?

A It would not, it is the tip of the iceberg. Again, I repeat, it is limited to data that I had by default and not by design. It largely excludes between 800 and 900 commercial stations in the US, and a considerable number of series, we only have 21 series shown in Exhibit MEK-3.

It woefully under-represents and under-measures the extent to which our companies properties have exposure outside measurement periods, and outside the stations in our sample.

Q What conclusions would you ask the Tribunal to draw from your testimony and exhibits?

A I would like for you to see that I have attempted to provide an inadequate, but some sort of measure of the exposure of our properties on non-sample stations, outside the measurement periods. I am doing this largely because, as I think I said earlier, I remember Mr. Cooper last year was answering some questions from you, Commissioner Ray, to the extent of how can we,

the Tribunal, evaluate your claim, if you don't present us with evidence?

And this is what I have attempted to do in this exhibit.

Mr. Cooper said last year, and I agree with him, and repeat, that with respect to the ratio between our companies -- the exposure of our companies properties and other claimants' properties within the measurement periods, as compared with outside the measurement periods, the ratio remains the same. I think the fact that these numbers are just huge, in terms of subscriber incidents. I think that they show that our companies, too, license their properties not to 100 stations, not to 113 stations, but to 800, 900, 1,000 stations. These stations broadcast their properties, not solely during the measurement periods, but year around.

I ask that you give us a level playing field. The assessment that you make of all petitioners' claims, insofar as non-sample stations are concerned, non-measurement periods are concerned, if consideration is given to other claimants, I ask that you also give it to us as well.

MR. LANE: That is all the direct I have.

CHAIRMAN RAY: Okay, I have a few questions, Ms. Kessler.

EXAMINATION BY THE TRIBUNAL

BY CHAIRMAN RAY:

Q Number one, don't you think that you are adequately compensated for these through the unclaimed properties, the ratio still exists, doesn't it?

A The ratio does exist.

Q So the field is not that unlevel, is it?

A Well, I think that that assumes that I am happy with the ratio.

Q Well, okay.

A That aside --

Q All right, that aside -- I do see some differences, I wonder if you see some differences -- maybe you can provide me with some information, so I will not see the differences. Of these properties --

A You are in which exhibit?

Q In Exhibit 8. These properties, do you know whether the owners or representatives have timely filed claims?

A I do know that they have timely filed claims.

Q All of these properties?

A Oh, yes, indeed, sir.

Q You know that?

A Yes, sir. The reason that I know that is that MPAA cannot and does not represent companies that have not

filed claims.

Q Well, I know, but you said that you picked this up randomly, this was not provided -- this information was not -- this data was not provided for you by the property owners that you represent.

A I am sorry I made myself unclear, if that's-- when we send out a request for a property list, the recipients of that are only Program Supplier claimants that have agreed to --

Q So, number one, you know that there has been a timely filed claim by the owners, or representatives of the owners?

A Yes, sir, I know that for a fact.

Q Secondly, if we were to award marginal value for these properties outside the sweep period, and on stations not included in the sample, how would you distribute it to the proper owners, since your own regulations --

A I understand your question. My response is that I do not have a mechanism for giving the owner of Elvis, which is the first program on here, credit for the broadcast of Elvis, on WVTV on January 1st.

Q Okay.

A However, to the extent that the royalty base increases, i.e., the dollars that flow to us which we then, in turn, distribute to our companies, to the extent

that that is increased, perhaps the individual program Elvis, does not receive a specific award. But the company does get a benefit from the increased base.

Q Well, I would see this as an unsafe enrichment to --

A Oh, no.

Q -- to a property owner whose is receiving compensation for things that he does not own. But anyway, I think in the case of the tiny few, Multimedia, for instance, properties where we did award a minimum value to a very few properties, we at least knew that, first, the owners have timely filed. Secondly, that we knew who the owners were, and we knew the owners were being compensated for it.

I see a little difference here, do you see any difference here?

A I am afraid I don't.

Q You don't? Okay.

CHAIRMAN RAY: Well, for the time being I am going to stop, but I may have to come back later with a few more questions.

Commissioner Mario?

COMMISSIONER AGUERO: No.

COMMISSIONER ARGETSINGER: Yes.

BY COMMISSIONER ARGETSINGER:

Q Ms. Kessler, your point is well taken, and I understand what you are saying, to use a quote of yours, you wouldn't want to leave the Tribunal with the suggestion that the survey that you do is "woefully inadequate", because we have, for years, been using this as the standard, the beginning point, and now all of a sudden it is "woefully inadequate", you are saying on the record, or "this is only the tip of the iceberg".

How do you project this? How do you -- I know when you take polls, you do a sample, so rehabilitate that thought I have in my mind.

A When I speak of my analysis being "woefully inadequate", I am not referring to the Nielsen Study at all, I am referring to my reading through property lists in a cardboard box, and pulling out data.

Q But that would of course reflect on the Nielsen?

A Oh, I don't think so. The Nielsen Study-- Nielsen only provides us with the data that it has. And we buy all of the data that are available. So to the extent that data are available, we do purchase them and we use them, when we present our Phase I case, and when we present our Phase II case.

I lost my train of thought -- would you ask me your question again, please?

Oh, I remember -- and this goes back to

something that Mr. Cooper said last year -- the ratio between MPAA-represented programs and non-MPAA-represented programs will be the same within measurement periods, sample stations, as outside measurement periods, sample stations.

To the extent that our data indicate that we are entitled to a certain level of compensation, or that broadcast and viewing of our properties represents a certain level, in measurement periods, on sample stations, the same will be true outside those stations, in those periods.

I ask that you take these ratios, or that you keep these ratios in mind, when considering an allocation, not just to MPAA, but to all of the claimants here.

COMMISSIONER ARGETSINGER: Mr. Chairman, no further questions.

CHAIRMAN RAY: Okay, we are ready for cross, Mr. Lutzker.

CROSS-EXAMINATION

BY MR. LUTZKER:

Q Just picking up on Commissioner Argetsinger's last point, I had made a note, too, in terms of the comment that you had indicated that the study was "woefully short on titles of subscriber incidents", weren't you referring to the Nielsen Study, when you made

that comment?

A Absolutely not.

Q So you are saying the study is full and complete?

A To which study are you referring?

Q The Nielsen Study.

A Insofar as it measures the viewing of non-network programs on those stations during measurement periods, it does what it is supposed to do.

Q But you are saying it is not woefully short on titles?

A To my knowledge, it reflects every title that was broadcast by those stations during those periods.

Q In terms of the universe of titles that MPAA represents, is it short on titles?

A I don't believe there is a correlation between what we own, what our companies own and a listing of titles derived from the Nielsen Study. The Nielsen Study is designed to measure certain things, and it measures those things.

Q Are you saying that the Nielsen Study is, in your view, full and complete, in terms of measuring the programming of your represented claimants?

A There are more titles owned by our companies than are reflected in the Nielsen Study.

Q Approximately how many more?

A I don't know.

Q Ten percent?

A I don't know.

Q Help me with your motivation, I mean just in terms of your general concept, in terms of your motivation for going through, which I gather was not a small project -- I mean, it looks like there was a fair amount of effort, what is your motivation for putting this material together?

A My objective -- is that the same question?

Q I will -- give an answer, if I --

A Okay, if you don't like it, you will let me know, right?

My objective in putting together all three of these exhibits, beginning with MEK-1, was to respond to the Tribunal's request -- not the Tribunal's request, the Tribunal's observation that in the past, MPAA had not provided exhibits, data, evidence with respect to the exposure of our companies' products, outside the scope of the Nielsen Study.

Q The quotation that you have is that "The Tribunal would give credit when shown that a claimant's programs have not been measured at all, or have been significantly under-measured". Now, with respect to the

programs listed in MEK-1, is it your statement that those claimants' programs are not measured at all, in the Nielsen Study?

A I have not -- ask me the question again.

Q With respect to the programs listed in MEK-1, is it your testimony that the claimants' programs are not measured at all, in the Nielsen Study?

A Let me make sure I understand your question, taking, for example, this first property, Elvis, are you asking me if Elvis is not measured at all, or if the owner of Elvis is not measured -- his properties, in general --

Q The claimants' programs, is your quote --

A No, that is not my testimony.

Q What is your testimony?

A That MPAA represents companies whose properties in totality have exposure outside the scope of the Nielsen Study. And to the extent that other claimants before the Tribunal receive consideration for similar broadcasts, and similar exposure, I would like for our companies also to receive the same consideration.

Q I understand what we have pointed out in past years, that the Nielsen Study is a slice, it is not the entire universe, it is really a slice of a slice, of a slice, let's say. But the question, in terms of what you are intending to show here is that this slice omits

significant things, and with respect to a particular program, you have one set of questions, and then with respect to a claimant, you have another set of programs.

Let's take the first item that you cite, the first listing on the page, "B" ... Must Die, which is -- I am working with the alphabetical list of -- let me just understand, number -- MEK-1, or Exhibit 8, is a chronological listing by date and MEK-2 attempts to alphabetize this and come up with the subscriber incidences of those stations?

A That's correct.

Q So MEK-1 and MEK-2 contain the same content, in terms of program titles?

A That's right.

Q Okay, working with the alphabetical listing, is "B" ... Must Die, represented, or the owner of that program -- do you know who the owner of that program is?

A I cannot tell you definitively who it is.

Q Do you have some records that would be able to identify it?

A I think I know who it is, but I don't want to put it on the record, in the event I am wrong.

Q Program Supplier X.

A Okay.

Q Is Program Supplier X represented in the Nielsen

Study?

A Yes, he is.

Q Is this program represented in the Nielsen Study?

A I don't know that.

Q Did you make any attempt to check whether any of these programs are represented in the Nielsen Study?

A I made no attempt.

Q If you are offering testimony on whether or not a program claimant's programs are not measured at all, or under-valued in the Nielsen Study, why on earth wouldn't you make an attempt to cross-check this?

A The claimants that we represent agree to the MPAA methodology, because they know the extent to which data are available through Nielsen. One of the aspects of our Nielsen Study is that in terms of a Phase I proceeding, it really does give a good overall comprehensive evaluation of what kinds of programming, syndicated programming are being shown on TV, how much is series, how much is sports, how much is local, how much is devotional.

The Nielsen Study does a terrific job of setting up those percentages. As we get to more detailed data, specifically on a program-by-program basis, just as you observed earlier, there are going to be a limited number

of titles show up in the Nielsen Study.

However, to my knowledge, the Copyright Act does not limit a copyright owner's ability to receive royalties based on the Nielsen Study. The Act says, "Any copyright owner may claim, and is entitled to receive royalties". To the extent that our companies own properties that have exposure outside the Nielsen Study, we would like to have that recognized.

Q The question is do any of these programs have exposure within the Nielsen Study, and are these Program Suppliers already compensated?

A And I have told you I have not made any correlation between the two.

Q It might not surprise you that I started on the unenviable task of trying to figure this out. And I would like you to just write down a couple of numbers.

A Okay.

Q And I don't propose this as an exhaustive --

A Is it "woefully inadequate"?

CHAIRMAN RAY: I hope it doesn't include 800-some titles.

MR. LUTZKER: No, I will just do a handful.

BY MR. LUTZKER:

Q 4495 --

A Well, what is the 4495?

Q Just write down the numbers first on a piece of paper, it will help you.

A (Comply with request)

Q 4495, 879, 556, 307, 3697, 2948, 4556, 4012, and I will stop there.

Now, would you turn to Exhibit ARC-6?

A (Perusing documents)

Q For ease of reference, you might want to take out the first page of your exhibit MEK-2.

A (Perusing documents)

Q And would you go through Exhibit 6 to the ranking numbers, and see if any of those numbers correlate to any of the programs identified?

A (Perusing documents) My exhibit 6 says Summary of Time and Viewing Data.

Q Look a page, or two.

A It only has one -- oh, wrong six. (Perusing documents) Reconciliation Between Summary and Program Listing?

Q Look up rank number 4495, and we will get through the first one.

A (Perusing document)

Q Keep on turning, one more page.

A (Perusing document)

Q This is Mr. Cooper's exhibit, the summary of the

programs -- are you familiar with this exhibit?

A Familiar, yes.

Q Did you help prepare this exhibit in any fashion?

A No.

Q Have you ever seen this exhibit before?

A I have seen the exhibit. Now, what did you ask me to do?

Q You see in the corner the first item is Rank, at the top of the page?

A (Perusing document) Uh-huh.

Q Look up 4495.

A (Perusing document) "B" ... Must Die.

Q Okay, would you turn to 897 -- excuse me, 879?

A (Perusing document) How far does this go? 879?

Q Uh-huh.

A Oh, I am going in the wrong direction -- Adam at 6 A.M.

Q And what is your listing, the fourth item on your list?

A (Perusing document) Adam at 6 A.M.

Q Would you read 556?

A (Perusing document) Al Capone.

Q After Adam on your list, what is the identity, on your exhibit? 556 is?

A Al Capone.

Q And what is the next item on your list?

A After Adam?

Q Uh-huh.

A Al Capone.

Q 307?

A (Perusing document) Alcatraz: The Whole Shocking Story.

Q Does that appear on your list?

A It does.

Q Would you read the viewing hours of that last one?

A Is that Alcatraz?

Q Yes.

A 1,342,640.

Q Needless to say, you can go down your list, in MEK-2 and find significant numbers of those titles, perhaps the vast majority of those titles, within the Nielsen Study. If that suggestion of the redundancy between MEK-2 and the Nielsen Study exists, answer me again whether you believe that your claimants' programs are not measured at all, or have been significantly under-measured in the Nielsen Study?

MR. LANE: I am going to object to the question, Mr. Chairman. It presents a foundation that has not been

established. We went through four or five programs, and now there is a claim that it is a vast, significantly vast percentage of 800 titles included on the list, and that hasn't been established on the record.

MR. LUTZKER: Well, I just want to understand, the question is posed in a hypothetical context. I think in the interest of conserving time, it is not necessary to present every single title. And, in fact, Multimedia has not completed a study of every title, but we are confident that the analysis would hold true.

CHAIRMAN RAY: Would you repeat your objection?

MR. LUTZKER: I don't have an objection.

CHAIRMAN RAY: Not your objection -- you had the objection -- your question.

MR. LUTZKER: It appears that a significant number of your claimants' programs are measured in the Nielsen Study, what remains the purpose of MEK-1?

CHAIRMAN RAY: Do you still have an objection? He has reworded the question.

MR. LANE: He just took the word "vast" out and left the significant number.

CHAIRMAN RAY: Okay, so there is no objection?

MR. LANE: No, there still is an objection, because he is claiming there is a significant number, when all we have seen is five.

CHAIRMAN RAY: He said, "if", I thought.

MR. LANE: I will allow an answer to a hypothetical question, with the understanding that it is a hypothetical question.

CHAIRMAN RAY: Is it a hypothetical question?

MR. LUTZKER: It is an "if" question.

CHAIRMAN RAY: Yes.

MR. LANE: Well, I am not going to take an answer like it is an "if" question, because there are two types of "if" questions. If there are a significant number of titles in here, which could, or could not be true, is not a hypothetical question.

If this is a hypothetical question, fine, I will withdraw my objection. If it is not, my objection stands.

MR. LUTZKER: The question is if there are a significant number of titles. If you have an objection, then --

MR. LANE: I have an objection, if it is not a hypothetical question, because you have not proved the "if" part of your question.

CHAIRMAN RAY: The objection is overruled.

Will you please answer the question?

THE WITNESS: I hate to do this, but may I hear the question one more time?

BY MR. LUTZKER:

Q If there are a significant number of titles from MEK-1 and 2 in the Nielsen Study, what remains the purpose of this material?

A I am not convinced that there is redundancy, such as you suggested earlier. To the extent that there is a duplication of titles between the list for which we compensated companies, and the list for which companies went uncompensated, I repeat what I said before, our methodology measures all claimants' properties worth, value, not just MPAA-represented companies, but all petitioners before this Tribunal.

To the extent that the study reveals certain ratios between programming, inside the scope of the study, I believe the same ratios exist outside the study. To the extent that anyone is under, or over-measured, I ask the Tribunal again to take this into consideration when making an assessment of the awards.

Q Let's turn to the question of compensation, assume with me for a minute that Multimedia and NAB are not a factor, which they won't be, in any final award given to MPAA, you will get a dollar amount of money from the agency, in effect, it comes into a percentage, but it translates into a check for a sum of money representing your full percentage of the MPAA entitlement under the 1986 proceeding. That check will represent 100 percent of

the money that you will have for distribution to your member companies.

Do I understand your testimony that as regards the programs listed in MEK-1, there will be no effort to incorporate this data into the distribution that you make to your member companies?

A There will be no compensation to -- there was no compensation to our companies for programs that had exposure outside the scope of the study.

Q So your answer is there will be no compensation for any of the programs listed in MEK-1?

A No. To the extent that the programs shown in MEK-1 appeared under the circumstances reflected in MPA-1, there is no compensation for those broadcasts of those programs.

Q And if I am a Program Supplier, and the only program that I have -- let me do this hypothetically. Mr. Cooper has testified that there are occasions where a Program Supplier's programs have zero viewing hours, and under those circumstances they would get zero dollars from the share?

A That's correct.

Q In a situation where a Program Supplier has a zero share of viewing hours in your study, and has programs in MEK-1, what will be his compensation?

A He will not get anything. And to that extent, his programs are, as the Tribunal observed, under-measured, and receive no credit.

Q But MPAA is making no effort to reconcile the data that it is presenting to this agency, with the way it will distribute its revenues?

A That's correct.

Q Do you have authority from your members, who have executed the agreements, to seek an award, based upon this material?

A We undertake to present the programs suppliers before the Tribunal, and there is no discussion of our policies and procedures in that regard, with the individual companies.

Q Does your agreement and your correspondence with them indicate that you will provide any data to the agency, outside the Nielsen Study?

A Does it provide, what? I don't understand what you are asking me.

Q Does your agreement with your Program Suppliers anticipate or recognize your presentation of any data outside the Nielsen material, for the seeking of the awards?

A The companies ares told that their allocation will be based on the Nielsen methodology.

Q Has anyone been told it will be based on this MEK-1 material?

A No one has been told that.

Q And, in fact, under your agreement, you can't do anything with it, from what you have testified here?

A There will not be any allocation for these properties in MEK-1.

Q How many Program Suppliers are represented in MEK-1?

A I don't know.

Q Did you compile MEK-1?

A I did.

Q And this was compiled from where, from what?

A From the property lists the companies submitted to us.

Q You say the property list?

A Lists, plural.

Q And when a company provides a property list, they provide the broadcast stations that are carrying and the hours of broadcast?

A That is what we request of the companies. Some provide more than what we requested, and some provide less. Some provide no lists at all.

Q There are 99 Program Suppliers represented by MPAA?

A I believe that is correct, if that is what has been testified to, I agree with that.

Q Do you deal with the Program Suppliers?

A I do.

Q I mean, your duties include sending all the communication, I assume, correspondence with the Program Suppliers -- you send out letters in one part of the year advising them to file claims?

A Correct.

Q And you follow up on that?

A Not on the claim letter.

Q Do you collect the copies of the claims that are filed?

A We ask that they provide us copies with the claims, and then I come to the Tribunal and get copies from there, that I don't have from the companies.

Q You don't know how many claimants there are in this proceeding?

A Program Supplier claimants, or all over?

Q Program Supplier claimants?

A Are you looking for the exact number?

Q I am looking to know what you know.

A I know all of the names of our represented companies, plus Multimedia and the NAB represented companies.

Q In terms of the Program Suppliers that you represent, do you know how many you represent?

A I don't know how to count -- for example, we make one award to a company known as Taft. Taft files five separate claims for Hanna Barbera, Quinn Martin, Ruby Spears, Sun Classic, and another company. Do you count that as five, do you count that as one?

Q Well, let me get around it like this, in terms of the Program Suppliers represented in MEK-1, you say you don't know how many are represented?

A No, I don't.

Q Assume with me that Mr. Cooper testified there are 99 claimants represented by MPAA, however they are counted. Does this list represent five percent?

A I didn't undertake to count the number of companies represented in MEK-1. If I were to make a projection, I would say that it is -- I don't know. I can't even -- I don't know.

Q Is it one?

A I don't know.

Q This could be represented by a single claimant?

A I know that it is not.

Q When you compiled this material, did you have a lot of papers in front of you, or did you have a few sets of papers in front of you?

A I had a huge cardboard box full of correspondence, from 99-plus companies.

Q And you, personally, put this material together?

A I put MEK-1 together.

Q What did you do? You had this huge box of material --

A When the company send me a property list, I compare it with a printout that Cable Data has provided to us. The company says, okay, we had "B" ... Must Die on-- well, I don't know -- okay, No. 39, "B" ... Must Die, on WTIC on January 4th, 1986. So, then I go to that company's listing of programs, and I see, well, "B" ... Must Die is not here, what is the problem?

Oh, WTIC -- Nielsen doesn't measure WTIC for January. So, I put a note "no January data". I do that for every property that the companies provide to us.

Q Do you know whether WTIC ran that program on that date?

A No, I don't.

Q Does this list purport to suggest that every program that is listed here ran on the station, on the date indicated?

A I have no reason to believe otherwise.

Q Do you have any reason to believe it did?

A I believe they did.

Q On what basis?

A I don't think a company would compile a fabricated list of information, knowing that we do not use these lists as the basis for the allocation. We sometimes use them to confirm, or we use TV Guide data to confirm the broadcast. However, no client's list is ever used to manipulate the Nielsen Study.

The Nielsen Study accommodates the data as we are able to verify the information. Companies know our procedures. It would just give a typist a lot of fun typing, but would not prove anything, or be of any value to anyone.

Q Has there ever been any instance when you have checked the material that has gone into the production of the -- Mr. Cooper's Exhibit 6, where the program was indicated as broadcast and Nielsen shows it was not aired?

A Yes, I think there are some good examples right on the first page of MEK-1. It is my understanding that the way in which our companies get these dates of usage, are from reports that TV stations are required to provide them, called Usage Reports. The station, generally, provides the title and the date upon which the feature was -- the movie was broadcast.

The station does not always provide the time of broadcast. So, if you look on the first page of this

exhibit, you see there are eight properties, which ran on sample stations, which were measured in the appropriate date measurement periods, but which ran after 2:00 o'clock in the morning.

I think if you thumb through here, there are quite a few examples of just this, so I think this responds to the sort of information you seek.

Q There are 56 listings on the first page, and approximately eight set times?

A Correct.

Q And so what is your testimony, that the fact that The Mountain Road, presumably aired at 3:20 a.m., on WTAF is verification that Elvis ran on January 1st on WVTV?

A I make no correlation between the two properties. When we looked up Mountain Road for WTAF on January 2nd, because it didn't show in the data, we found that the reason it didn't show in the data, was because it ran after 2:00 o'clock in the morning.

I have given you every piece of information that I know about these properties.

Q What I am trying to understand -- and maybe this goes to sort of what you did differently here, compared to what you did with respect to the Nielsen material. And you have obviously testified in past proceedings about the

degree to which checking back and forth is made with regard to Nielsen material.

If I recall, you said you have TV Guides and you would check listings in TV Guides?

A Correct.

Q In terms of "B" ... Must Die, which shows up in the Nielsen Study, as well as in this listing, when it is in the Nielsen Study how do you verify that, in fact, it ran on sample stations?

A One of the -- well, the procedures of the Cable Data Corporation are to take a TV Guide, look at the stations and the measurement periods, and to code with a BIB code, all of the movies.

Then when the Nielsen data arrive, the coding is transferred into the movie time slot, reflected the Nielsen data. As I think you are probably familiar, the Nielsen data more likely than not, don't give the individual titles of the movies, they show something like Monday Afternoon Matinee, or Dialing-for-Dollars, or that sort of thing.

So the movies are all put in by hand.

Q By hand?

A In other words, no machine scans it and transfers the data. People take BIB books, they read the description of the movie in the TV Guide, they compare it

with the description of the movie in the BIB book, for year, cast, story line, and assign a BIB code.

Q It is a somewhat laborious process?

A I have never done it, but I would dread having to do it.

Q And with respect to the titles in MEK-1, did anybody undertake to do that laborious process?

A For those where we have indicated a time period outside -- after 2:00 a.m., yes.

Q And who conducted that?

A I don't know the individual's name, but staffers at Cable Data Corporation.

CHAIRMAN RAY: Mr. Lutzker, let's go for another 10-minutes and take a break for Phyllis, and then we will go to 12:30.

MR. LUTZKER: Okay.

BY MR. LUTZKER:

Q So with respect to the ones where there are "A.M." dates listed, you are saying that, in every instance that is what was checked?

A Yes.

Q In terms of certification for the Nielsen listing you have ownership certifications, and the like-- did you engage in that process, with respect to this material?

A Did I send these out to the companies to be certified? I don't understand what you are asking me.

Q I am trying to understand some of the differences that might exist between this process and the Nielsen process.

A Okay.

Q This is material that was in a box?

A Correct.

Q And you pulled it together and you are saying with respect to ones that presumably aired at 3:20 in the morning, Cable Data did research on that?

A Yes, they did.

Q Is there any reason why they didn't do research on any other titles?

A Well, for example, I would not have asked them to do research on anything that ran on January 1, because it wasn't a date included in the measurement periods.

See, the reason that -- as I said earlier, this was an exhibit, drawn together by design, with defaulted information. When I sought this information from Cable Data, it was with three pieces of information, just to use No. 15 as an example, according to what our company had told us, WTAF ran The Mountain Road on January 2nd.

But when I looked in the listing of the properties for that company, there was no listing. So, I

would say to Cable Data, "There may be a problem here, would you look this movie up, and tell me why it does not appear in the study?"

Cable Data came back and said, "Yes, it did run on WTAF, it did run on January 2nd, but it ran after 2:00 in the morning, that's why it is not there".

Q So you are saying you did that with respect to every program carried on a sample station?

A During the measurement period, if it was not turned up in the initial pass through of the data.

Q And January 2nd was a measurement period?

A Yes, it was -- actually, is that true?

MR. COOPER: It is in my testimony.

THE WITNESS: Which exhibit?

MR. COOPER: It is in my base testimony, page 7 or 8.

THE WITNESS: (Perusing document)

CHAIRMAN RAY: Page 5.

THE WITNESS: Page 5? (Perusing document) January 2nd, was a sweep date.

BY MR. LUTZKER:

Q And so for all programs within all the sweep periods, you fed this information to them, to determine whether or not the program aired, according to the other checks?

A Only if the program had not appeared as I would have expected it to. For example -- and this is similar to an example I gave earlier -- No. 12, the Guyana Tragedy, on KVOS, in January, I would not have asked Cable Data, "Why didn't Guyana Tragedy not show up with this company's properties?", because I know that Nielsen doesn't measure KVOS in January. So, I already know the answer why that particular property did not show up for that date, on that station. I would not have asked them to look at that one.

MR. LUTZKER: Now is a good time.

CHAIRMAN RAY: Let's take a 10-minute break.

(Whereupon, a short recess was taken)

CHAIRMAN RAY: Mr. Lutzker?

BY MR. LUTZKER:

Q In your direct testimony you used the figure 13 percent, did I understand you to say that your assessment of MEK-1, this listing of programs, represents approximately 13 percent of the claim that the Program Suppliers are making in this proceeding?

A I think what I said was -- I just gave an example of what these 120 programs represent of the totality of the programs listed in Mr. Cooper's exhibit, which is approximately 13 percent. I could elaborate on that, and say that the 6200 titles in his exhibit, because

of the limitations I have described earlier, i.e., having been licensed to more than just sample stations and having been broadcast outside sweep periods -- again, 6200 is what is captured in the data base of the Nielsen Study. But it is certainly not the totality of properties owned by our companies.

So that is what the 13 percent represented.

Q Is it your testimony that the Tribunal should take into account material outside the sweep periods in the sample stations?

A Yes, I believe that would be a good idea.

Q And do you feel that they have not done this in the past?

A With respect to our companies, or with respect to all claimants?

Q With respect to your companies?

A I don't know the extent to which the Tribunal has, or has not taken that into account. What I observe is, for example, you were saying something earlier about "Well, which of the programs in MEK-1 are also in the ranked exhibit? And what percentage are in, and what percentage are out?"

And I said I didn't know, because I hadn't undertaken to do such a measurement, but I would observe that there are many programs in our study. For example,

there are Multimedia programs in our study, there are programs for the NAB-represented clients in our study, that are measured in the Nielsen Study.

The Tribunal has given awards to those parties that differ from the information that the Nielsen Study has provided. So, I would draw the conclusion that the Tribunal, at some point, has chosen to look at the Nielsen Study, and go beyond, and going beyond, I mean taking into account non-sample station broadcasts, non-measurement period broadcasts. And I would like for that to be the procedure for all of us.

CHAIRMAN RAY: Well, Ms. Kessler, do you believe that the Tribunal in the past has taken into account that the MPAA companies have hundreds and hundreds of specials, that don't show, and we have mentioned this in some of our determinations, in effect, hasn't the Tribunal taken those specials into consideration in this final determination?

You don't know that, of course, do you?

THE WITNESS: I was just going to say, I don't know, I don't know.

CHAIRMAN RAY: But you don't know whether we have for the other parties either, do you, other than this last statement in the final determination, 1955?

THE WITNESS: 1985?

CHAIRMAN RAY: I mean 1985.

THE WITNESS: We were all a lot younger in 1955 --

CHAIRMAN RAY: Yes.

THE WITNESS: No, I think what it is, I am concerned because it is true that up until this proceeding, MPAA has never given any concrete example of the exposure of our properties outside the measurement period, whereas I know that the Multimedia has had exhibits which show all of the broadcasts, year around, on all stations.

So, insofar as they have offered the evidence that we have not, I would like to respond to that in some way, and this is the way in which we have done that.

CHAIRMAN RAY: Okay. Thank you.

BY MR. LUTZKER:

Q Let me make an assumption that MPAA's award has taken into account the fact that the sample stations and programming is offered, and that there is a projection to the whole of that material, so that the award is not reflective of 26 weeks of programming, but is reflective of a larger universe, in fact, a 52-week sample for the universe of programming.

Would it be fair to suggest that, to the extent an award has been made in the past on that basis, that if this material were presented as an independent, not as

part of the MPAA case, but just as an independent case, that this material would take away from, rather than add to, the MPAA award?

A I have so many problems with your assumption, that I can't get past that part of your question, because I think in the past, what we have offered as evidence, based on the Nielsen Study, is that our represented companies have received a certain ratio of the viewing, and that other claimants' properties have represented a different ratio.

To the extent that we have received a percentage lower than what the Nielsen Study has revealed, and other claimants have received a percentage higher than they revealed, I can't go along with your assumption.

Q But bear with me, isn't that because the agency has not accepted without question, MPAA's analysis?

A That may be true, but what I have hoped to show in these exhibits is that insofar as we receive a certain ratio of the viewing within the scope of the study, I think it is fair to see that, just by the magnitude of these numbers, we also have exposure outside these periods, that again, forms a ratio with other petitioners' properties.

Q I agree, and isn't the irony of your presentation that you are, in effect, supporting the

critique that has been made year after year, after year, after year, of the Nielsen Study, it doesn't measure all stations, it doesn't measure all programming?

A And it is the single most important piece of evidence presented before this Tribunal.

Q I accept the language that the agency has stated year after year, after year, but still the question remains, does not your presentation underscore, in an almost ironic way, the inherent weakness in the Nielsen approach?

A No. I think it buttresses what I am saying, i.e., that there are certain ratios between all of us, that exist 365-days a year, in the totality of commercial stations. And that they are presented in an accurate way, by the Nielsen Study. And these exhibits buttress that position, outside the scope of the study.

Q You have not made any effort to indicate any viewing information in Exhibit MEK-1, have you?

A There is no information.

Q Isn't the foundation of the Nielsen Study of viewing concept?

A Yes, it is.

Q Do you have any idea how many Program Suppliers' programs are carried on WTBS?

MR. LANE: I am going to object to the question,

it is outside the scope of the testimony.

MR. LUTZKER: Mr. Lane --

MR. LANE: She has not provided any information about any programs that were carried in sweep periods on sample stations. By definition, her testimony is limited to exactly the opposite.

MR. LUTZKER: Mr. Lane has incorporated Ms. Kessler's functions and responsibilities and activities, as presented in past proceedings. Ms. Kessler is the point person at MPAA that deals directly with each and every Program Supplier, and she knows, or has the ability to determine, how many Program Suppliers deal with particular claims, and she is the one that deals with this.

I appreciate the fact that there is, sort of a new material here, but they have incorporated, both by reference in their document, and by Mr. Lane's opening statement, and questions of her past activities. And this line of questioning relates to that.

MR. LUTZKER: I don't see how it relates to it. That past testimony talked, primarily, about the certification process, in response to the Tribunal's about how did we know ownership, and it doesn't relate to how many properties are on particular stations.

MR. LUTZKER: I am not asking how many

properties, I am just asking about Program Suppliers.

CHAIRMAN RAY: Mr. Stewart?

MR. STEWART: I am not certain precisely what direction Mr. Lutzker is going in, but yesterday when I questioned Mr. Cooper about program categorization on WTBS, he deferred those questions to Ms. Kessler, and I intend to ask questions in a similar area.

CHAIRMAN RAY: I recall the same statement, Mr. Stewart.

Overruled.

THE WITNESS: Would you ask the question again, please?

BY MR. LUTZKER:

Q How many Program Suppliers have programs carried on WTBS?

A I don't know.

Q Is that information you could provide to us?

A Not instantly.

Q This afternoon?

A No.

Q There are 99 Program claimants?

A Yes.

Q Well, we will use that number, okay?

A That's right.

Q Do a majority of them have programs carried on

WTBS?

A I don't know.

MR. LUTZKER: Well, I will ask if that is information you can provide for the record?

MR. LANE: We will take it under advisement.

CHAIRMAN RAY: Is that information that you can do yourself, based on the evidence that has been presented, the exhibits that have been presented?

MR. LUTZKER: Are you directing that question to me? No, we can't.

CHAIRMAN RAY: It isn't?

MR. LUTZKER: No, it isn't.

MR. LANE: I think, Mr. Chairman, we have to consider the extent that that information is asked by claimants, to the extent that we would be giving away, possibly confidential and proprietary information. And we have continually upheld the right of our represented claimants to maintain the confidentiality and proprietary the information about the programs on a claimant basis. And that is why we present the list by program basis, because that has responded to your concerns and your interest in getting that information, and balancing with our necessity for confidentiality.

CHAIRMAN RAY: Mr. Lane, aren't programs when they are broadcast on WTBS, is that -- don't they even

publicly acknowledge who the producers and syndicators are in many instances on the TV set?

MR. LANE: On the station?

CHAIRMAN RAY: Yes.

MR. LANE: In some instances they may, in some instances they may not. The point is not so much that somebody -- we recognize that somebody could go through the whole BIB Book, for example, and take this entire list of properties, and figure out which properties belong to which claimant. But we know that that takes months and months of effort, which we spend a lot of money doing. And if they want to do that, that's their right. But we are certainly not going to help that cause along.

And we have given as part of our agreement with these people that we will maintain --

CHAIRMAN RAY: We will accept your comment that you will take it under advisement.

Okay, Mr. Lutzker, will you continue?

MR. LUTZKER: Mr. Chairman, yesterday I asked Mr. Cooper to provide information regarding the percentage of Program Supplier claims on TBS programming. I will just ask relevant to when that material is going to be provided?

This was in response to my request discussing Exhibit 4, which --

MR. LANE: My understanding is that you wanted a listing of the syndicated series and movies breakdown by category, that was similar to Program Suppliers' Exhibit 4.

MR. LUTZKER: As a percentage, yes.

MR. LANE: Well, we will provide that, but we can't do that instantly, it takes a lot of work to provide that information.

Do I think it will be ready today, if that's your question, I can virtually guarantee you, no, it will not be ready today.

MR. LUTZKER: Will the number with respect to WTBS alone be ready?

MR. LANE: I think that -- if I am understanding your question directly, we have already provided you that information in discovery. So, I don't know why you are asking me for that information, which you already have.

MR. LUTZKER: Well, it was not available in discovery.

THE WITNESS: May I ask Mr. Lutzker a question?

CHAIRMAN RAY: Ordinarily no, but yes.

THE WITNESS: Do you have one of your Phase I printouts? If you do have one of those, you have the ability to calculate it.

BY MR. LUTZKER:

Q With respect to the functions you have undertaken, in the 1986 proceeding, compared with the 1985 proceeding, would you describe any differences from the past proceedings, in terms of how you handled things differently, or -- well, have you changed any of your procedures with regard to the procedures described which relate to the preparation of the property list in ARC-6?

A I don't think anything has changed between the two years. The only change that I can even think of, and it didn't change anything, is I put my data base on a PC and it had been analysis pad paper stuff before. But the work done on the PC is identical to the work done on the analysis pad of paper.

Q Mr. Cooper indicated that there were approximately 17 -- I'm sorry, 12 Program Suppliers in 1985, who are not participating in 1986, are you aware of that?

A Uh-huh, yes.

Q Do you have any explanation for why they are not participating?

A There are some who were producer-claimants, and last year, when both they and the syndicator filed claims, they at one point looked like potentially conflicting claims, which the companies resolved. Some of those companies, the resolution was that the flow of royalties

would go through the distributor, and the producer would not make a claim.

Q Are all of those 12 in some fashion represented?

A I would say virtually every property represented by those companies are represented -- is represented.

Q Does the increase in the number of Program Suppliers from 94 in 1985, to 99 this year, represent a change in the number of entities?

A In the number of claimants?

Q That you represent?

A Of properties?

Q Yes.

A Which one?

Q The number of claimants?

A It certainly represents an increase in number of titles, the number of properties for which there are claims being made. I don't know how to evaluate the first part of your question.

Q Before you had listed, as an example, Hanna-Barbera, and you listed three or four, or five different titles. Were they listed that way in the past? I see they are listed that way currently in Mr. Cooper's exhibit.

A He has them listed as five.

Q He has separate listings.

A For each one. I don't know how we have done it in the past.

Q So it is possible that -- I mean, is the cast of characters different between '86 and '85?

A The cast of characters is always different.

Q Do you have any idea how many new characters you are dealing with?

A Approximately a half dozen.

Q Were these non-claimants in prior years?

A They were non-claimants in prior years, some of them because they did not exist as businesses, in prior years. Others may have existed, but didn't have properties in syndication until 1986.

Q Explain the first thing, they didn't exist in prior years?

A If I were to form Kessler Syndication today, I wouldn't be able to make a claim until next July. In other words, I couldn't participate in previous year's distributions. So to the extent that companies did not exist, and went into business, they couldn't have claimed for previous years.

Q But you are not indicating a change if Paramount Pictures, Inc. became Paramount Pictures Corporation, they are still the same company?

A That's correct, but that is not the circumstance

that I am addressing here.

Q Okay. But as far as the principal responsibilities, with respect to the Cable Study, it was just an opportunity to say if there are any significant differences, and you have indicated there are none?

A None.

Q Do you know with respect to the property lists, how the percentages divide out between movies and syndicated series?

A I do not.

Q Turn to Exhibit MEK-3, or 10.

A (Perusing documents)

Q What is the purpose of this exhibit?

A This exhibit is designed to give a general idea of the number of -- of the exposure of these series, vis-a-vis superstations, with respect to distant signal carriage.

Q Just to understand, the first item, Andy Griffith, WGN had 11 million distant households, is that what that suggests?

A That's right, as per the Statements of Account there was an average of 11.6 million households.

Q An average between the two statements?

A Right, uh-huh.

Q The 125 number is designed to reflect, what?

A That is designed to -- the Nielsen Study picked up six-months' worth of broadcast, this is an estimation of the other half of the year, minus one week.

Q And I gather the last column, Total Subs Incidents, you multiplied the 125 times the 11 million?

A Correct.

Q How long is the Andy Griffith Show?

A It is a half hour.

Q Is there any reason why you didn't multiply it by 30, to show on a per-minute basis what the subscriber incidents would be?

A Why we didn't multiply it by 30? I didn't want to estimate time, I was going to number of broadcasts.

Q But if you wanted to have, perhaps, an even more impressive figure than one billion subscriber incidents, you could have had 30 billion subscriber incidents, correct?

A Possibly, but I am content with an exposure of 1.4 billion.

Q Okay. How do you propose the Tribunal evaluate that number?

A Which number?

Q 1.4 billion?

A This is the number of distant signal subscribers who had access to WGN, to whom Andy Griffith was available

during '86, and who were not measured.

Q It fitted into the Tribunal's criteria?

A Of?

Q Of awarding royalties?

A You mean harm/benefit? The entire exhibit, along with the previous exhibit, is designed to show that our companies have properties that are accounted for within the scope of the study, and outside the scope of the study, just as Multimedia has properties that are accounted for within the scope of the study, and without the scope of the study, just as NAB has properties accounted for within the scope of the study, and outside the scope of the study.

Insofar as ratios can be drawn, these same ratios will exist inside the study, as outside the study. And these numbers are huge and they demonstrate that fact.

Q Do you feel that subscriber incidents is a valid measure of awarding cable royalties?

A Actually, I got this idea from one of your exhibits last year, Arnie. It was one that measured Young People's Specials, and I think some country -- one of the country music awards, and I think I used the same methodology of looking at -- of making an estimate, trying to pull together a universe, not just a Nielsen Study portion of what is going on, but a totality.

And insofar as it was a valid exhibit for one claim, it seems to me it would be a valid exhibit for more claimants, all claimants.

Q Is it your position that the Andy Griffith Show is under-represented in the MPAA study? Is it unmeasured in the MPAA study?

A It is not unmeasured.

Q It is under-represented in the MPAA study?

A It is under-represented to the extent that any property, be it an MPAA-represented property, or a Multimedia property, or an NAB property, is measured -- it is reflected in that same ratio.

To say that it is under, or over isn't valid. It appears in the ratio that all claimants' properties appear.

Q Turn to page 1 of Mr. Cooper's Exhibit 6, and find Andy Griffith in that listing, please.

A (Perusing document) Do you know where it is?

Q I think you will find it reasonably quickly.

A No. 5.

Q Do you have any idea as to what the award for that program, under your study, was, or is?

A I consider that to be proprietary.

Q On what basis -- can you calculate that, based upon material that is supplied in this exhibit --

MR. LANE: Mr. Chairman.

CHAIRMAN RAY: Yes, we agree with the witness, this is proprietary.

MR. LANE: He asked us this last year.

CHAIRMAN RAY: I know.

Will you ask another question?

MR. LUTZKER: I will ask another question.

BY MR. LUTZKER:

Q Did you read into the record the number of viewing hours?

A No, I didn't.

Q Could you just do that for that program?

A 39,854,815.

Q You've got a number in your study here that you refer to as mind-boggling, on page 4.

CHAIRMAN RAY: What study are we talking about?

MR. LUTZKER: I'm sorry, in her testimony, page 4 of her direct testimony, the last paragraph.

THE WITNESS: (Perusing documents)

BY MR. LUTZKER:

Q Would you describe the process that you went through to arrive at this 248 number?

A Okay, we have said that 850 titles represent approximately one-eighth of all titles that are in our claim. If we take the 31 billion subscriber incidences,

multiply it by eight, you get a total of 248 billion subscriber incidences.

Q It is a multiplication. And 31 billion consists of what?

A The total subscriber incidents in MEK-1 -- I'm sorry, MEK-2, of 5.3 billion, plus the 25.6, 25.7, in Exhibit MEK-3.

Q And you are saying that you simply multiplied those two numbers by eight?

A The sum of those two numbers by eight, correct.

Q Why?

A If the 850 titles are approximately one-eighth, in order to get something to 100 percent, you multiply by the denominator.

Q Well, what is the relationship of the numbers that you have in MEK-3 to MEK-1?

A MEK-1, as I indicated earlier, is by and large, feature films. There is no measurement in there of series, carried stripped, so in order to have the series accurately reflected, the MEK-3 was drawn up. So, MEK-1 shows features, movies; MEK-3, series; put them together.

Q I just remain baffled, by both the logic and purpose of your multiplication.

A What don't you understand?

Q I understand multiplying 31 times eight, what I

don't understand is what possible relevance, or relationship the two have.

But let's move on.

A Well, no, I can respond to that. I am saying that these titles represent about one-eighth of the total titles in our claim. If I want to bring that number up--

Q You have --

A That's how you do it, you multiply.

Q You have deliberately selected for Exhibit 10, or MEK-3, a number of series on the superstations, have you not?

A That's correct.

Q And is that intended to reflect one-eighth of the content of the series?

A Not of the series, but as I said earlier, a series has one title. So that in 365 days of broadcasting you still only get one title. In order to bring it up to each individual episode having been exposed, you have to perform the multiplication.

Q Well, I still remain quizzical about the purpose, but let's move on.

In the future do you intend to measure non-sample stations and outside the sweep periods?

A If they were measured outside the sweep periods, then they would be sample stations, and we have no plans

to do that.

Q Have you determined a separate award request for this non-sweep, non-sample station material?

A I have not.

Q Are you aware of what Mr. Cooper has requested?

A I know that he has requested something, to be honest with you, I don't recall the figure.

Q You didn't talk to him about this?

A No.

Q Do you have any opinion about it?

A I always have an opinion. I think that we should get somewhere in the range of 99 percent of the Program Supplier award.

Q How much should you get for the evidence that you presented in your exhibits?

A Just doing simple arithmetic, I would say the difference between what we have historically been awarded and 99 percent.

Q And with respect to that percentage, you would fold that money, or percentage into the other programs, you wouldn't trace it to any of the other Program Suppliers directly for these programs?

A That's correct.

Q Have you ever presented materials similar to this in prior proceedings?

A Similar to the three exhibits that are --

Q Similar to Exhibit 1?

A I never have, this is the first time.

Q Have you ever offered in rebuttal any materials similar to this?

A I don't recall that I have. It is my feeling this is the first time we have ever put anything like this before the Tribunal.

Q Is any program listed in MEK-1 not protected by copyright?

A I don't know the answer to that.

Q Did you engage in any check, or review of that?

A No, I did not.

Q Is it your testimony that all of the programs are entitled to an award?

A I have not testified to that.

Q With respect to the programs listed in Exhibit 6, Mr. Cooper's Exhibit 6, the property list, are there any programs in that list, that are not protected by copyright?

A I don't know the answer to that question.

Q Is there any program in that list that has not been certified by a Program Supplier as something that they are entitled to receive royalties for?

A All properties have been certified.

Q So as far as you are concerned, each title in the Exhibit 6 qualifies for royalties?

A Yes, I am.

Q Are you familiar with the CableVision Ruling?

A Yes, I am.

Q Does this case have any impact on the work that you did in the 1986 proceeding?

A It gave me a lot more money to give out.

Q Other than an increase in royalties, is there any other impact this has had on the work that you performed in the '86 proceeding?

A No.

MR. LUTZKER: Bear with me for one minute--that is it.

CHAIRMAN RAY: Thank you, Mr. Lutzker.

We will recess until 2:00 o'clock.

(Whereupon, at 12:20 p.m., the luncheon recess was taken, to reconvene at 2:00 o'clock, p.m.)

AFTERNOON SESSION

(2:00 p.m.)

CHAIRMAN RAY: Mr. Stewart, and it is 1988.

MR. STEWART: Which is?

CHAIRMAN RAY: You may begin -- as opposed to 1955, it is 1989. Okay.

COMMISSIONER ARGETSINGER: It's Pearl Harbor Day, isn't it?

(Laughter)

CHAIRMAN RAY: I hope that's not on the record.

CROSS-EXAMINATION

BY MR. STEWART:

Q Good afternoon, Marsha.

A Good afternoon, John.

Q In the distribution that MPAA does of the royalties that are at issue here, if a producer makes a claim for a program, but the distributor of the same program, if it is different from the producer, does not make a claim, does MPAA distribute royalties for that program to the producer?

A Yes, we do.

Q I want to show you a document that was provided

to us by counsel for MPAA --

MR. STEWART: I have marked it NAB Exhibit II-4X, X to designate a cross-examination exhibit.

CHAIRMAN RAY: All right.

(Whereupon, the document was marked for identification as NAB Exhibit No. II-4X.)

BY MR. STEWART:

Q Have you had a chance to look at that document?

A (Perusing document) I know the document.

Q Do you recognize it?

A This is what I call our Phase I Printout.

Q And this is a portion of the printout that lists the actual household viewing hours, a portion of which are included in the exhibits that have been submitted in this Phase II proceeding, is that right?

A That's correct. I would also make the observation that this particular printout is dated July 3rd, '88, and these were the raw data, as they came to us. I believe that some program classifications have changed since that time.

Q Well, that's what I wanted to ask you. First, has there been a subsequent printout of this same data?

A There has been one -- at least one.

Q Do you know the date of that printout?

A August.

Q August 1988, you think?

A I think -- I don't know, I really don't know.

Q Do you think that that subsequent printout, whenever it was, reflected modifications of program classifications?

A It is possible that it did.

Q We asked for this information and received this -- a copy of this document, as part of our discovery.

MR. STEWART: And I would ask counsel to make available to us the subsequent printout.

MR. LANE: The question that was asked in discovery was the document we used to produce MEK-3, and if I may ask Ms. Kessler to verify, is the document we produced, isn't it?

THE WITNESS: Yes.

MR. LANE: We produced everything that was asked for in discovery.

THE WITNESS: That's true.

MR. STEWART: Okay.

BY MR. STEWART:

Q Mr. Cooper testified yesterday -- let me preface this, I asked Mr. Cooper the question, "Why the total viewing to syndicated series and movies number that was in the Phase I direct case, that MPAA submitted several

months ago, was higher than the total syndicated series and movies viewing submitted in this Phase II portion of the 1986 proceeding?" And he responded that he believed that there had been some reclassifications of some programs from syndicated series to local, and that he believed that those programs were on WTBS.

MR. STEWART: Is that a fair characterization, Dennis, of Mr. Cooper's answer?

MR. LANE: I think the record will speak for itself. But I will accept that as a preface to your question.

MR. STEWART: Well, fine, I don't want to mischaracterize his testimony in anyway, but that's my recollection of it.

BY MR. STEWART:

Q And he further said that you would be better able to answer questions about the classifications, than he would. Do you know, Marsha, whether any of the programs that are categorized as 2SS, are syndicated series on this exhibit, or were subsequently reclassified as local?

A I can think of three. Let me look and see how they are reflected here.

Q Okay.

A (Perusing document) I know of three programs

that are reclassified.

Q Can you tell me which they are?

A The first one is on the third page, page 449, entitled Rocky Road. The second is right below that, Safe At Home. And the third is on the final page, page 450, Women For America.

Q And that represents something over 15 million household viewing hours -- I'm sorry, I may be reading it incorrectly.

A Rocky Road is 10.4; and Safe At Home is 5.2, so about 15.5 million.

Q Okay, do you know of any other programs that were reclassified from syndicated to some other category, between the Phase I and Phase II submissions by MPAA?

A To the best of my knowledge, these are the only three.

Q On any station?

A On any station.

Q And were each of these reclassified as local programs?

A Yes, they were.

Q Were any programs reclassified as syndicated series from some other category, between the date of this printout and the date when the MPAA Phase II case was submitted?

A (Perusing document) I don't know the answer to the question, I think that it is possible that a program belonging to Group W, Westinghouse was reclassified local to syndicated, based on information they provided to us in their property list. It is also possible it was originally syndicated, because I know we had some problems with their properties.

So whether that change had been made before, or after our Phase I submission is not clear to me, because that took place right around our distribution, which was September 29th. So it has certainly been reclassified by September 29th, but I am not quite sure how that date falls into the Phase I submission.

Q That's fine. Do you remember what program it was, what Group W program it was?

A It was a special of theirs, but I don't remember the title.

Q Could there have been more than one Group W special?

A Group W had more than one special, but I don't recall there being more than one that had been originally classified as local.

Q And you don't remember any other programs that might have been -- that were originally classified as local and were later reclassified as syndicated series?

A Those are the only ones that I recall.

Q And to make sure that I asked the proper question, by syndicated series I meant to include syndicated series, specials and movies.

A I understood your question.

Q Okay, fine. Now, in your testimony you described the way that you collected the lists of programs, or lists of broadcasts that you have presented today. And if I understand it correctly, it was based on the property lists that claimants sent you as one of the first steps of your process, is that correct?

A That's correct.

Q And the next things you do in your process are to -- among the next things, let's put it that way, that you do in your process, are to take the property lists and compare it with the viewing reported in the study, such as is described in this exhibit II-4 and other materials, and then you produce a list that you send back to the claimant, is that right?

A Almost right. I don't -- I may refer to a Phase I document, but actually Cable Data produces for me a raw cut of what I call a Phase II document. This is a printout that is sorted by owner, alphabetical by owner, then within each owner, that owner's programs -- series, specials, movies, whatever, are then given Series in

alphabetical order, followed by Movies in alphabetical order.

Then what I do is I take the company's property list, and if the company said I ran "B" ... Must Die on such-and-such a date, such-and-such a station, I look in that initial allocation printout, to see if it shows up. And if it does, I put a check by it. If the property doesn't show up in the company's group of properties, then I look at the date, and if I recognize, oh, no, a sweep date, that's why it won't show up, then I put an "S" for non-sweep. Or if they have given a sample station that is not a sample, I put NSNP, non-sample station.

But if they have given me what appear to be completely accurate data, i.e., a sample station, a broadcast date, then I wonder if we have miscoded something, or if we need to look further. So, I send a list of such properties to Cable Data Corporation, and ask them to recheck the TV Guides.

So, in the case of MEK-1, those properties that had times behind them, were ones that I had sent to Cable Data, and they had come back with the information, oh, yes, it did show, but it was after 2:00 o'clock in the morning.

Q And that's helpful -- and if then the program from the property list either was an "S", not within a

survey period, NSNP, not a sample station, or at a time that wasn't measured, you did not then include it on the list you sent back to -- on the ultimate list you sent back to the claimant, is that right?

A That's correct. They actually receive two lists, after -- well, actually, potentially three lists. After I have taken the property lists from all of the companies and cross-checked them with the Phase II printout, I may have been looking for something that was miscoded, but I am more interested in multiple-claims.

So a company will actually have received three things from me: a notification that it has a conflict with another company; then a certification printout, and then the final printout. The certification printout is when I have combed the property lists and found everything there is to find, notified it -- notified companies of conflicting claims, and put everything on the table, i.e., here is our distribution, here is what is set in stone, here is what still needs to be cleaned up. We will do it within this period of time.

Q And the difference between the certification printout and the final printout is what?

A The certification reflects the work that I have done with the property lists, it reflects any conflicts that have been resolved, and this is the point -- and,

also, our major sort is using the BIB data, which we have on computer tape. Like any piece of computer data, there may be a bad piece of information in there. And a company may have been credited with a property for which it, for whatever reason says it cannot claim entitlement to.

So this is the opportunity -- it is a twofold opportunity, it is an opportunity for companies to cross off a property that perhaps they have been credited with, but they can't accept the money for, and it is one last opportunity, especially for those companies that don't provide a property list, to call my attention to something they believe needs attention.

Q So the certification printout and the final printout go to the claimant at different times?

A Correct. The certification -- this is not set in stone, but it is generally a two to three week period, I will send out the certification statement, usually I also already have the money in the bank. So I will say, "This money is due to mature on such-and-such a date, and if everybody gets back in time, you can get paid on that date", and that's a great incentive to get people to work.

So this is the point -- and we require that they certify that they can receive the money, before we will give them a check. So, then when the checks go out, the documentation that we provide for them detailing their

percentage, is the final printout. And they can compare-- we've got X-number of household viewing hours, they look on their printout, it shows X-number of household viewing hours. We tell them the denominator and we do the calculation of the percentage for them.

Q Okay. First, let me ask you, how many of the claimants received the first kind of printout that you talked about, which was multiple claims or conflict in claims?

A I obviously don't know the answer to that question, I don't know.

Q Was it as many as half of the claimants?

A No.

Q Can you -- okay. So, any of the programs, or any of the particular broadcasts of the programs that were not in the sample -- in the Nielsen viewing study, that didn't show up there, were not included in the list that you asked the claimant to certify, is that correct?

A That's true.

Q So that all of the programs, the specific broadcasts of the programs in Exhibit 8, or MEK-1, were not certified by the claimants?

A Not those broadcasts of those properties. And actually, just to make that a little bit clearer, when we provide the certification lists to them, it is only by

title. We don't provide -- in fact, except upon request, we don't provide anything other than the station on which it ran, and that comes in the final printout.

Q I see.

A But for certification purposes, it is alpha Series and alpha Movies.

Q Would you look at your written testimony, pages 3 and 4?

A (Perusing documents)

Q And this is where you talk about the mind-boggling number of additional subscriber incidents that would be in the exhibit, if you had information -- the numbers that begin to suggest the magnitude of a study, based upon more complete information. The general thrust of that testimony is that there are, in your view, additional programs, that you haven't even listed at all, and additional broadcasts that you haven't listed at all in your exhibits that would be attributable to MPAA-represented claimants, is that right?

A Yes.

Q And with respect to those other ones, it is the case that you have not listed any such broadcasts in your exhibits here, is that right?

A I'm sorry, would you ask me that again?

Q You haven't provided any listing of those

broadcasts and programs in your exhibits that you presented here today, have you?

A I'm sorry, I am being dense. I realize --

Q It is kind of the point of your testimony that those are the ones that you haven't listed, is that right?

A Yes.

Q And you have not provided any evidence at all, in this proceeding, about those additional programs that you suggest might be produced through a more complete study?

A No, I have not given any evidence here.

Q Okay. Now, the programs that you did list, let's look at Exhibit 8, MEK-1, and you went through with Mr. Lutzker in some detail how this was produced. And I won't go over the basics again, but let me ask you, down at title No. 304, several pages into the exhibit --

A (Perusing document) Project Kill?

Q Yes. This appears to be a program that was broadcast within the survey period, was on a sample station, and was not broadcast at a time after 2:00 a.m., is that correct?

A (Perusing document) It sure does.

Q Why would that program be on this list?

A I don't know.

Q My conclusion as well.

A But I am going to go back and check it, as soon as I get out of this room.

Q At first I found quite a number of them that were on sample stations, during survey periods and weren't broadcast after 2:00 a.m., but all stations are not measured during all sample -- survey periods, correct?

A That's correct. In fact, although it would probably not be a good idea to make the general assumption, generally if it is a January, or an October broadcast, that means it is in one of those markets that Nielsen doesn't measure during those months.

Q So that even though you could go down and find -- most of the ones that don't have times during those months, were on sample stations, is that right?

A For the most part, yes.

Q And the answer to the question why they are on the list, is because for those particular stations, that was not a survey period?

A Correct.

Q Now, if you keep going a bit further, two pages further, you come to No. 407, Down to Earth, which ran on WTBS, on March the 3rd. And that is on this list because March the 3rd was not during a survey period?

A That's correct.

Q Do you know what that program is?

A No, I don't.

Q I want to ask you to look at the BIB, which was provided to us by counsel, and that is the BIB that he used, although you explained this morning, you had it on computer tape, as well?

A That's correct.

Q I am giving you what I think are the appropriate volumes, which are the Series, as opposed to the Movies, and includes the supplement.

A Okay.

Q If you could take a look at that, and see if that helps you figure out what Down to Earth is, I would appreciate it.

A (Perusing document) Down to Earth, concerns the activities of the Preston Family in their heaven scent, s-c-e-n-t, housekeeper, Ethel. The family's sole parent, father, Richard, has his hands full maintaining harmony among his three children. It stars Dick Sergeant, Carol Mansel, 25 minutes, 104 tapes.

Q Does the BIB indicate -- first, do you think that that is the same Down to Earth that was broadcast on WTBS?

A I don't think it is, because I know what series were in this, and Down to Earth, I don't believe was one.

Q And if you will look there, I think the date

that is indicated for the earliest production of that program, was after 1986?

A That's right, so that's another reason why I don't think it is the same program.

Q Do you know now, based on having looked at that, which Down to Earth is reflected on your Exhibit MEK-1?

A Do you have a Features book, by any chance?

Q All I have with me is the Supplement, I don't have the -- I will show you what I've got -- I don't have the main volume -- (handing)

A No, this is the Series Supplement. I think that it is a feature film in here.

Q Well, this is the feature film --

A See, these are both for Series, and I was asking for Feature Film.

Q Isn't this for Feature Film?

A No, these are Series here -- (indicating).

Q I see --

A Oh, I'm sorry, you are right, you're right. (Perusing document) There is a feature film called Down to Earth.

Q Do you think that is the one that was broadcast?

A I think it is more likely that that is what it was.

Q Before you go farther, look back at this Exhibit

II-4X, which I gave you earlier.

A (Perusing document) Okay.

Q That suggests that it was not a feature film, doesn't it?

A That would suggest that is, indeed, a Series.

Q It is a Series. You mentioned before that you thought there was a different Down to Earth, that was not included in the BIB Book, did I hear you correctly?

A I think that it is possible that there is a movie called Down to Earth.

Q But that is not likely to be the one that was on WTBS?

A No -- actually, I don't know, I don't know if it was on WTBS, or not.

Q Okay. But it appears that there was a series entitled Down to Earth on WTBS. You believe that is not the one that is listed in the BIB?

A Well, until you showed me this, (indicating), I didn't think it was the same one. I don't know what it is. I would have to go back and look at a TV Guide, see what the client submitted, that sort of thing.

Q Well, is it possible, based on the fact that the BIB Series book indicates that the Down to Earth series listed there was produced, beginning in 1987, and that it appears to have been a series, and not a feature film that

was referred to here, is it possible that this Down to Earth program was not a syndicated series at all?

A I don't know. I am going to go back and look at the source information, before I answer the question.

Q Okay. Now, turning to Exhibit MEK-2, what has been called Exhibit 9 this morning --

A (Perusing documents)

Q Do you know how many of the programs on this list were broadcast by only a single station during 1986?

A I don't know that.

Q If you look down at the third program here, Abandon Ship, and then you look down a bit farther, I think it is -- it is hard to line these up, but Alvarez Kelly, you will see that the two of them have precisely the same subscriber incidents, 26,373,979. Do you see that?

A Yes, I do.

Q And there are other examples of pairs like that, or more like over on the next page there is Boots Malone, which has the same number, 26,373,979. And I haven't gone through to match them up, but could you explain why those numbers would be precisely the same?

A If they were carried by the same set of stations, or the same station, they would be identical.

Q Did you check -- strike that. If you go down to

the program called Arruza, on this first page, and also, the same is true for the Atomic Submarine and the Beast of Babylon versus Hercules --

A You picked out some of my favorites, John. Arruza, the Beast of Babylon and what else?

Q Atomic Submarine.

A Atomic Submarine, okay.

Q Those three are listed with zero subscriber incidents. What is the significance of that?

A The significance is that the stations that carried these were not carried anywhere by cable systems as full-time distant signals.

Q And if you go through this exhibit, over on page 2, A Belle From Hell and others that have similarly intriguing titles, there are about 25 or 30 on this list that have zero total subscriber incidents. Why were those programs included in your exhibits?

A As I told you, or as I told Mr. Lutzker, actually I modeled MEK-1 and 2 after an exhibit that had been put in the Phase II proceedings for 1985. And insofar as those exhibits included stations that were non-sample stations, and stations that were carried by very few subscribers, or not carried on cable at all, or if carried, not carried as distant signals, I made my exhibit comparable.

Q I see. And over on the last page, you have the total number -- the final total subscriber incidences, 5 billion-some, do you see that?

A Correct.

Q Now, I think you may have misspoken this morning, when you said that this indicated that these programs were available to 5 billion cable households, or subscriber households. There aren't that many subscriber households, are there?

A No, there certainly are not.

Q And the same goes for your Exhibit K-3, that had a 25, or 26 billion number, that has nothing to do with-- that does not represent the actual number of cable subscribers --

A You are absolutely right.

Q And I will tell you, if you go back to page 5 of your Exhibit MEK-2, why I was interested in Down to Earth.

A (Perusing document)

Q Do you see there it has 2.6 billion subscriber incidents, alone?

A Correct.

Q And that represents virtually half of all of the total subscriber incidents in your entire Exhibit 9, MEK-2?

A That's right.

Q Now, does that mean to you that the value of Down to Earth represents half of the value of all of the programs listed in this exhibit?

A As you know, we represent the value, or we count the value of properties in our distribution by household viewing hours. Insofar as this is the same Down to Earth that was on WTBS, but ran during non-sweep periods, I am sure that it is the fact that it is carried by WTBS which is certainly the most available TV station to distant subscribers in the US. That is what makes that number so high.

Q And, in fact, I spent sometime going through Exhibit MEK-1, or Exhibit 8, and counting the number of times Down to Earth on WTBS shows up, and it is something like 96 times in MEK-1, the same program appears over and over and over again.

A I think I know what Down to Earth is, it is not the one in the Series Book, I think it is Proctor and Gambles' Down to Earth.

Q Can you describe that?

A I have no idea what it is about.

CHAIRMAN RAY: It sounds like a commercial, 96 times.

(Laughter)

THE WITNESS: I know it is Proctor and Gambles'

Down to Earth. That's not the same show.

BY MR. STEWART:

Q Okay. And let me get back to that in a minute.

A I remember that now.

Q So, basically, the number for Down to Earth in your Exhibit MEK-2, is just the number of subscribers who received WTBS at all, multiplied by 96, or a number between 90 and 100, if I didn't count them precisely?

A Exactly. And much the same theory behind MEK-3.

Q So you count the same subscribers again and again?

A Correct, because as you know, while the point that I made with the Series is that although you have one title repeating, as opposed to a movie, which will have five different titles, in reality there is a different episode behind that title. So you are not seeing the same program over and over again. You are seeing a different episode of a program.

Q Do you know how many separate episodes of Down to Earth there were -- of this Proctor and Gambles' Down to Earth there were in 1986?

A Approximately 260.

Q Do you know that just by having figured out how many broadcasts there were during the year, or do you know independently whether were 260 available?

A I don't know independently, but I know from their property list, they covered the vast majority of the year, when I was preparing this exhibit.

Q Okay. You don't know what the Proctor and Gambles' Down to Earth program is about, is that what you said before?

A I don't know what it is about.

Q Do you know whether it was broadcast by any other stations in 1986?

A I believe it was only -- I don't know if it was broadcast by other stations in the US.

Q Was it offered to other stations, do you know, in 1986, for broadcast in 1986?

A I don't know what their marketing was of that.

Q Before we leave Down to Earth, I want to hand you the May 1986 Volume of the Arbitron publication, Syndicated Program Analysis, and it is the volume that includes these -- first of all, do you know what this publication lists?

A That is one I am very familiar with.

Q Could you describe what it lists?

A This is similar to the Nielsen ROSP, wherein programs that are broadcast by stations across the United States are rated, in terms of viewing audiences here.

Q Okay. Now, could you look to see whether in

May, in this May of 1986 book, Down to Earth appears?

A (Perusing document) It does not appear.

Q Okay, do you know what reason, if any, there would be for Down to Earth not appearing in this book?

A It is my understanding that in order for a program to appear either in a ROSP, or a SPA, it has to have been on a minimum of five stations.

So my assumption would be that it was on four stations, or less.

Q Okay. Now, I didn't do what Mr. Lutzker did, in looking for programs on Exhibit 9, appearing on Mr. Cooper's Exhibit 6. I took the easy way out, because the last dozen or so pages are in alphabetical order, so it was easier to do. But I found 50, or more programs that had zero viewing, that first were on your Exhibit 9, but had zero viewing on Mr. Cooper's Exhibit 6.

And without asking you to check that to be certain, if that were the case, what would be the marketplace value of those programs, in your view, in this proceeding?

A You are saying a property that was both on my exhibit and on Allen's exhibit was zero viewing?

Q Yes.

A I don't know what the marketplace value of those properties would be, but they would receive nothing from

us in our distribution.

Q Is it possible that a program that has zero viewing in your study, has marketplace value from the Tribunal's perspective?

A I think it is very possible.

Q It has marketplace value within the context of the cable distant signal marketplace that the Tribunal considers here?

A Yes, I would think so.

Q And I think we have already established that with respect to every broadcast of a program represented in your Exhibit 9, or MEK-2, it is MPAA's position that none of those broadcasts should receive royalty compensation in this proceeding?

A I'm sorry, would you ask me that again?

Q It's too long, let's see if I can do it in a shorter way.

A I only hear 11 words, and then I cut off, John.

Q Well, I will have to start counting my words. I'm sorry.

MPAA does not propose to distribute any royalty compensation for the broadcast of any of the programs included in your MEK-1 or MEK-2 exhibits, is that correct?

A We have already given out our money, and these properties broadcast on these stations, on these dates,

did not receive compensation, though they may have, if they were broadcast by another station, under the appropriate circumstances.

Q That is that -- all right, fine, I understand that. Would you turn to MEK-3, which has been marked as Exhibit 10?

A (Perusing document)

Q First, do you know why it is -- was this exhibit actually prepared by you, or was it prepared by Larson?

A I prepared this on a PC.

Q Can you tell me why it is that when you multiply 125 by 11,631,207 you get a number that is different from the one you list there?

A No.

Q I mean, if they end in 5 and 7, it has got to have a 5 on the end.

A (Perusing document) My guess is that -- in fact, I know what the answer is, the column that says Number of Distant Subs, is actually a calculated number, and not what I call a "plug" number.

Q It is an average between the first and second--

A It is an average and the decimal points are not displayed.

Q Okay, okay.

A You scared me, John, I didn't know the answer.

Q My calculator has been disparaged in prior proceedings, so I just wanted to make sure it wasn't me.

A Actually, I couldn't have done that one on my calculator either, I had to use the PC to do it.

Q All right. Now, you did not, as you described to Mr. Lutzker this morning, include in this any consideration of the length of the programs, that you have listed on this exhibit, right?

A No, no part of it.

Q And some of these are 30-minute programs, some are 60-minute programs, at least one, Night Track, is several hours long, is that correct?

A That's correct.

Q I want to read to you something that Mr. Cooper testified to on January 15th, 1984, in the 1981 Phase II Proceeding, which was the last time NAB used subscriber incidents in its case. He said, "Even if you talked about availability, or some kind of a factor involved, I've got to know how many times that program was broadcast, and how long the program was, as to whether or not there has got to be some sort of adjustment made to the subscriber figures, or else you would have absolute and utter nonsense, and they become totally insignificant, to the point of being ludicrous".

A That sounds like -- I could have guess Allen was

the person who said that.

Q Would you agree with his characterization of the general approach of providing subscriber incidents with respect to these problems, without accommodating the length of the program?

A I think his remarks are absolutely valid. And I would go on to add that, as I indicated earlier, I modeled this exhibit after an exhibit that Multimedia had, and had had some success with. And to the extent that it had been successful for another claimant before these proceedings, and in all fairness, to provide a similar measurement--this is the way I produced this.

Q All right. So, I started out by asking you whether you had provided any evidence about the programs that you say might be discovered, or might be added to these lists, if you did a more comprehensive study, and you said you didn't produce any evidence with respect to those programs, correct?

A I have not tried to.

Q Okay, with respect to the programs that are in these lists, which again represent broadcasts that are outside the viewing study, you have provided, first, the name of the program --

A You are in which exhibit now?

Q I am in MEK-1, Exhibits 8, 9 and 10.

A Okay.

Q You have provided the name of the program, with respect to all except Exhibit 10, I suppose, the dates of broadcast, and the stations on which they are broadcast, and you have provided subscriber incident totals, is that correct?

A That's correct.

Q And you have not provided viewing numbers for those programs?

A The viewing data don't exist.

Q Well, to the extent that the programs were broadcast on stations not included in your "sample list", the data do exist, isn't that right?

A The viewing data?

Q Yes.

A I don't believe they do.

Q Didn't Nielsen measure viewing on all stations, in 1986, not just the 113 that you have included in your survey?

A Oh, may I am misunderstanding your question.

Q There is viewing data available for stations not included among your 113, isn't that right?

A Okay, I understand the question now. Yes, there is, for the measurement periods.

Q Okay. But you didn't provide any viewing data

for any of these programs listed in 8, 9 and 10?

A No, I did not.

Q Except for the subscriber incident totals that you've got, have you provided any evidence about the value of those programs when they're retransmitted as a distant signal, on a distant signal basis, in cable households in 1986?

A The value to --

Q Cable operators, cable subscribers.

A No.

Q Have you provided any evidence about the harm that would result to the program owner as a result of the retransmission of these programs on a distant signal basis, in 1986?

A There's no evidence provided here, but I think the numbers speak for themselves, that what is going on during measurement periods is also going on outside measurement periods. The world doesn't change between sweep and non-sweep. The world goes on.

Q I want to explore that with you. You talked this morning about a ratio that existed during sweep periods and during the rest of the year as well, did I understand that correctly?

A Yes, that's right.

Q Now, first of all, you don't have any data on

viewing outside the survey periods that would allow you to be certain of your assumption that viewing ratios are the same inside and outside survey periods, correct?

A To my knowledge, those data do not exist.

Q Secondly, you do not know -- let me start over.

You don't have the hard viewing data of distant signal viewing for the programs -- I'm sorry -- for the stations you've left off your list, to compare with the stations you've measured, isn't that right?

A That's true.

Q You don't have that viewing data. And the stations themselves that you've left off the list, are different from the ones you've included in the list, aren't they?

A That's true.

Q And they have different configurations of non-network programming and they have different viewing patterns than the ones you've included in your list, isn't that correct?

A I don't know.

Q Something you said this morning occurred to me as a direct analogy here. If you look at your Exhibit 9 which lists some 800 programs, and your task was to try to measure the universe of those programs. If you selected the 100 most widely carried programs, you certainly would

have Down to Earth, wouldn't you?

A Yes.

Q And you would also have all of the handful of Series programs that exists in this list, wouldn't you?

A No, wait. Say that again. If I pick the 100 most broadcast --

Q Widely carried.

A -- widely carried -- okay.

Q In other words, we've got a list here that you've set up alphabetically, but you could have set it up in descending order of the number of subscriber incidents.

A Okay.

Q And that would be analogous, in a way, to the list of stations, several hundred stations that were actually retransmitted on a distant signal basis, in descending order --

A That's right.

Q -- with WTBS at the top.

A Certainly.

Q If you took the top 100 programs on this list, you would get Down to Earth because it is basically just multiplied 96 times, it's cut almost half of the subscriber incidents all by itself.

A Okay.

Q And you would have all of the Series programs

that may appear in this list as well, isn't that likely?

A No, because I think the Series that are in here, I only had in Exhibit NEK-1, one broadcast each of them. So, they are undercounted.

Q All right. So that -- fine -- but if you took the top 100 and didn't include the other 700, the 700 left out would be principally Movies, would they not?

A Yes, they would be.

Q And if you only measured the top 100 including that gigantic Down to Earth program, you would underrepresent the Movies in this universe, would you not?

A I feel like I'm undervaluing or undercounting everything, so maybe I'm not understanding what you're asking me.

Q Well, if you just take this list of 800 or so programs as the universe that you're concerned with -- and forget about measuring viewing here. What we are going to do is see what kinds of programs there are in the universe.

You say there is one series that shows up with this huge subscriber count, but most of the programs here are movies.

A Correct.

Q If you just took the top 100, you would certainly measure that one series because it appeared

again and again --

A Yes.

Q -- but you'd leave out 700 movies.

A Correct.

Q And to that extent, you would not give a fair representation of this universe which has roughly 799 movies and one series, isn't that right?

A I don't understand your use of "fair". You're saying that the remaining 700 or so would be undercounted?

Q They wouldn't be counted at all.

A If I only isolated it to a hundred programs.

Q Yes. And if you tried to represent the universe by picking the top hundred, you would underrepresent the proportion of movies in that list of 800, wouldn't you?

A Yes, I believe so.

Q And even though -- if we just ignore the other series and say that half of the subscriber incidents are movie incidents -- I haven't done the calculation to see what proportion of the movie incidents we would eliminate by cutting off the bottom 700, but certainly your representation of the percentage of subscriber incidents, the percentage of carriage, in effect, accounted for by movies as opposed to syndicated series, would be misleading, wouldn't it?

A Not misleading because the series are always

going to be your heavier properties.

Q Because you have one that's carried a whole lot of times versus a whole lot, each of which is carried a few times.

A Correct.

Q Okay. And that seems to me, in part, analogous to the selection of the MPAA stations for the study, where there are 6-700 stations carried, you pick the top ones and leave off the bottom ones, you don't represent the configuration properly through that method, do you?

A Oh, I disagree completely. The selection of the sample stations -- I don't remember the station, I remember the top one is WTBS -- and the cut-off -- let me just write this down so I can -- our cut-off point, the number at which we cut off the subscribers, all stations above that accounted for, I believe, something like 90 percent, maybe 99.9 percent of all distant signal subscribers.

You also have to take into account that -- I'm not sure how many commercial stations we have here in the U.S., but say it's 900 or 1,000 -- a sizable portion of those are either not carried on cable at all or, if they are carried on cable, they are not carried as distant signals. So, you are including that group of stations within what you are determining to be your universe. I

have a problem with what you are suggesting.

Q And, of course, I was referring to distant stations carried as distant signals, of which there are perhaps 3-400 in addition to the 113 that you measured. Are you aware of that --

A I'll accept your figure.

Q Now, you don't know, because you haven't measured the viewing on the several hundred -- let's just call it several hundred that were left off -- what the viewing to those stations actually was, do you?

A No, I don't know that.

Q You don't know the order of magnitude of the viewing there nor do you know the allocation of the viewing to the different kinds of programs?

MR. LANE: I'll object to the question, Mr. Chairman, that Mr. Cooper's testimony had at least one page, I think, possibly two pages, and he testified at length about his estimate of what the viewing was, and how it was broken down, and this is just trying to get another witness who didn't testify, to address this issue which is clearly his and presented in direct.

MR. STEWART: Mr. Chairman, this witness has testified that she thinks that all of her -- this witness has presented us with lists of hundreds of programs that weren't in the MPAA study, and part of the relevance

asserted by the witness for this is that those programs-- that the universe that's not measured by the MPAA-Nielsen Viewing Study is the same, is subject to the same ratio and, therefore, should justify an increased award to MPAA, and what I'm trying to do is investigate the basis for her assumption that the ratio is the same for non-measured programs.

COMMISSIONER ARGETSINGER: The ratio, Mr. Stewart, is the same as --

MR. STEWART: As the viewing ratio within the MPAA-Nielsen Viewing Study.

CHAIRMAN RAY: The objection is overruled.

BY MR. STEWART:

Q Let me repeat my question and break it down because I asked you two at once.

You don't know the order of magnitude, how much viewing there was to the several hundred stations not included in the Nielsen Study, is that right?

A Can I ask if either you or Mr. Lutzker have something that we provided to you on discover, the printout from which we took our sample stations? I would like to have that to answer your question. It will have my handwriting written on the front of it.

(Document handed to witness by Mr. Lutzker.)

Q I'll look over your shoulder so I can see what

it is you're referring to.

A This is a printout from which our sample station selection was made, and this was a ranking of the TV stations by the number of full-time distant subscribers in 1986, and it starts out with WTBS accounting for 21.7 million subscribers, and I believe the cut-off was probably KATV, with 80,769 subscribers.

When you consider the magnitude of difference between a station available to 21.7 million subscribers and a station available to 80,000 subscribers, or the last station which came in at 1100 subscribers, I suggest there's a huge magnitude of available viewing out there.

Q May I see this?

A (Handing document.) Only so many subscribers can only look at a station. If there's nobody getting it, they're not looking at it.

Q So, you think subscriber incidents are a good substitute for viewing?

A I like viewing.

Q Do you think that --

A The exhibit worked for Multimedia, I want to throw it through for my guys.

Q Fair enough. Bear with me for just a moment, if you would.

I won't go too much further with this, but if

you compare this percentage of subscriber incidents with the exhibit that Mr. Cooper put in that showed percentage of viewing, you see that the numbers are a bit different. KTVT represents -- let's see -- I'm not finding it on your list, for some reason -- because it's down further. WOR represents 10 percent of the subscribers and 7 percent of the viewing, for example, within your study, and other numbers are similarly not -- don't match up directly with the number of subscriber incidents.

Isn't it the case that viewing does not necessarily follow subscriber incidents directly?

A I'm not suggesting that there is a one-on-one correlation. That would be foolish to do. What I am saying is that if you have a station available to whatever the top number I quoted for TBS which is in the tens of millions, and you compare it with the bottom station which is at 1100, there are only so many households that can be viewing each of those stations, and the magnitude of one, the top one, as compared to the bottom, is mind-boggling.

Q So, in effect, if you measured WTBS, you could save everyone a lot of money and concern and base the distribution on WTBS' viewing?

A I would not.

Q And similarly, you could go to your exhibit and see that Down to Earth represented almost half of the

subscriber incidents, and knowing whatever you had to know about Down to Earth would basically give you enough information to measure that universe in Exhibit 9, is that what you're saying?

A I'm not sure I understand what you're asking.

Q I will move on. Also outside the MPAA viewing study are markets that didn't have measurements during the fifth and sixth additional survey periods, isn't that right?

A Yes.

Q You're talking about the bottom 100 or 120 or 130 markets in size?

A To tell you the truth, I don't know on what basis that distinction was made.

Q Do you think the viewing patterns in smaller markets differ from the viewing patterns in larger markets?

A I have no information on that.

Q Is this what you are asking the Tribunal to do? First, you want them to assume that the ratio, referring I believe to the viewing ratio, is that correct? --

A Yes.

Q -- is the same within your study as it is outside the study?

A Yes, that's what I want them to think.

Q And then you want them to apply those viewing numbers to the whole universe --

A That's correct.

Q -- precisely -- apply them precisely so you get 99 percent of the whole universe?

A You bet.

Q And you are not -- you've provided us with the subscriber incidents data -- let me take that back.

You want to take the viewing study which shows 97 percent which you want to ratio up to 99 percent within the viewing study itself, and then you provide the subscriber incident data so you get a portion of everything else as well.

A Yes.

Q And you're not willing to abandon, nor do you intend to abandon the viewing study itself?

A Have no intention of doing that.

MR. STEWART: If I might have just a moment.

(Pause.)

Thank you, I have no further questions.

CHAIRMAN RAY: Mr. Lane, how long will it take?

MR. LANE: Do you want to take a break?

CHAIRMAN RAY: Yes, if you are going to take longer than -- if you have more than two questions --

MR. LANE: I know what will happen, we will take

a break and then we'll clean up and it probably will take only five or ten minutes.

CHAIRMAN RAY: Let's take a break.

(Whereupon, a short recess was taken.)

CHAIRMAN RAY: Mr. Lane?

REDIRECT EXAMINATION

BY MR. LANE:

Q Ms. Kessler, do you recall that you've been asked a series of questions by counsel concerning our Phase I exhibits and our Exhibit 6 in this proceeding?

A Six is the ranking? Yes.

Q Would you turn to the Summary page of Exhibit 6, please -- not the Reconciliation page.

A Not the Reconciliation?

Q Do you have that?

A I have one entitled Reconciliation Between --

Q Not the Reconciliation.

A Not the Reconciliation. I have one that's been stricken through that says 1986 Viewing Data Summary.

Q Right.

A Yes, I have that.

Q Do you recognize, of your own knowledge, any number on this page?

A I recognize the middle number, the middle Household Viewing Hour number.

Q Is that the 2,618,283,918?

A Yes, I'm intimately acquainted with that number.

Q And would you describe why you're intimately acquainted with that number?

A I'm intimately acquainted with this number because this is the basis for our distribution of the '86 funds, our denominator, and this was the number that we were audited against for our distribution.

Q Now, Ms. Kessler, you will see next to that is a percentage number of 97.511, do you see that?

A Yes.

Q And Mr. Stewart was just asking you some questions a few minutes ago, about the viewing percentage, and was this the figure that you had in mind as the MPAA-represented claimants viewing percentage?

A Yes, it was.

Q Well --

A I'm sorry -- no. I thought the 99 percent number -- I thought that was this number.

Q So that when you were answering those questions, you thought that the Nielsen results produced a number of 99 percent or more?

A Yes, I did.

Q And this page shows that that assumption was inaccurate, does it not?

A That's true.

Q Ms. Kessler, you've been asked many times about Exhibit 9, whether any Program Suppliers -- that's MEK-2 -- will receive compensation for those particular programs, do you recall that?

A Yes, I do.

Q And your answer was that they would not receive compensation for these particular telecasts, as I view that?

A That's right.

Q And is that a matter of the settlement among the Program Suppliers?

A Yes, it is. Before a company signs an agreement for MPAA representation, we describe the methodology to them completely, in a memorandum, and they know that it will be limited to a certain number of stations, during certain periods of time, and they sign the agreement knowing full well that's the circumstances under which allocations will be made.

Q So, whether they receive compensation or not is not really a question that has to be addressed by the Tribunal because that's been settled, is that correct?

A That's true. They have agreed that MPAA should petition for the money and receive it in their behalf, and then allocate it to them based on our manner of

distribution.

Q And do you recall that earlier this morning, Mr. Lutzker was asking you some questions whether if we knew who the particular claimant was for any of these properties, that claimant would receive an allocation of funds based on the settlement and, effectively, based on Exhibit 6. Do you recall that question?

A I recall the question.

Q And do you recall in the 1985 proceeding, that the properties of Multimedia, whether they received a-- would have received an award -- that is, they had viewing on sample stations in sweep periods in the 1985 study?

A Yes, they were Multimedia programs that were in our study.

Q So, even though Multimedia, just like any of the Program Supplier claimants who would receive compensation under Exhibit 6, just like Multimedia put in additional evidence on the non-sweep, non-measurement periods, your Exhibit MEK-2, Exhibit 9, is the same type, is it not?

A That's right.

Q Ms. Kessler, you were asked some questions by Mr. Stewart this afternoon, about whether the additional stations, the viewing on the additional stations not in the sample, would make any difference in the final results, do you recall that?

A Yes, I do.

Q Now, I'm going to ask you to reach far back in your memory. Do you recall approximately how many stations were in the 1979 Nielsen Study?

A I did not do the '79 study, but I know it was in the neighborhood of 50 stations.

Q And is it accurate to say that each year the number of stations has increased so that we are now up to well over double the number of stations?

A We certainly are, from 50 to over 100.

Q And to your knowledge, do you recall, first of all, the Program Supplier award, the Phase I award?

A Yes, I do.

Q And is it accurate to say that that number has hovered around 81 percent through all those years?

A You mean the award or --

Q I'm sorry -- the Nielsen results, viewing results, and that of that Phase I portion, the MPAA-represented claimants has steadily increased over the years as we have gotten more claimants, as a percentage of that viewing, is that also accurate?

A That's true.

Q And so that as we add more stations, the percentage of the MPAA-represented claimants of the Syndicated Program category has actually increased, is

that accurate?

A Yes, it has.

MR. LANE: Those are all the questions I have on redirect.

CHAIRMAN RAY: Mr. Stewart, as you know, we will not permit recross, however, if you have a question for clarification to Mr. Lane, you might ask.

MR. STEWART: I'm going to stick with tradition and not ask anything further, thank you.

CHAIRMAN RAY: Okay. Well, this concludes MPAA's direct case, and tomorrow morning we will start Multimedia's direct case, right, Mr. Lutzker?

MR. LUTZKER: Yes.

CHAIRMAN RAY: And your witness will be here at 10:00 o'clock?

MR. LUTZKER: Planning to, yes.

CHAIRMAN RAY: All right. Before we recess, we have a motion from MPAA to strike certain portions of the direct testimony of Multimedia, Inc. That motion is denied.

Okay. We will recess until 10:00 a.m. tomorrow morning.

(Whereupon, the witness was excused.)

(Whereupon, at 3:28 p.m., the hearing was adjourned, to reconvene on Wednesday, February 15, 1989,

at 10:00 a.m., in the same room.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: CRT - 1986 CABLE ROYALTY DISTRIBUTION PROCEEDINGS

Before: EDWARD W. RAY, CHAIRMAN

Date: FEBRUARY 14, 1989

Place: WASHINGTON, D.C.

represents the full and complete proceedings of the aforementioned matter, as reported and reduced to typewriting.

Phyllis Young

PHYLLIS YOUNG