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**Before the
COPYRIGHT ROYALTY JUDGES
The Library of Congress**

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

SETTLING DEVOTIONAL CLAIMANTS' MOTION FOR FINAL DISTRIBUTION UNDER 17 U.S.C. § 801(b)(3)(A)

The Settling Devotional Claimants ("SDC") hereby move the Judges, pursuant to 17 U.S.C. § 801(b)(3)(A), to order final distribution of cable royalty fees collected for royalty years 2000 through 2003 that have been allocated to the Devotional category, as follows, on the ground that the parties have reached agreement and that such fees are no longer subject to controversy:

Devotional Cable Fund

Cable Royalty Year	SDC Share	IPG Share
2000	68.75%	31.25%
2001	68.75%	31.25%
2002	68.75%	31.25%
2003	68.75%	31.25%

On July 12, 2019, in an email following up on earlier settlement discussions, Mr. Arnold Lutzker, trustee and lead allocation phase counsel for the SDC, wrote to Mr. Brian Boydston, counsel for Independent Producers Group ("IPG") with the following settlement offer, in relevant part:

> [I]n the hope of reaching an expeditious resolution, we will make this offer – to agree to the average halfway point between the RODP and HHVH methodologies: 31.25% to IPG, and 68.75% to SDC across all four cable royalty years, 2000-03. We will hold this offer open until COB next Wednesday [July 17, 2019], at which time it will expire.

See Ex. 1, email exchange between A. Lutzker, B. Boydston, and M. MacLean (July 12-16, 2019).

On July 16, 2019, IPG's attorney wrote back to the SDC's trustee, accepting the settlement offer:

> IPG accepts the SDC's offer of 31.25% of the 2000-2003 cable royalty pool attributable to the devotional programming category in order to settle the 2000-2003 cable proceeding.

Id.

Neither the SDC's offer nor IPG's acceptance contained any term other than as to the distribution of copyright royalty fees for cable royalty years 2000 through 2003. The offer and acceptance were complete and definite in their terms, and neither the offer nor the acceptance were conditioned on preparation of any further writing. The offer and acceptance therefore constitute a complete and enforceable written settlement agreement. *JSC Transmashholding v. Miller*, 264 F.Supp.3d 201, 204-5 (D.D.C. 2017) ("A settlement agreement is valid and enforceable if, based on the written agreement, 'each party could be reasonably certain how it was to perform.' *Dyer [v. Bilaal]*, 983 A.2d [349,] 357 [D.C. 2009] (finding an e-mail agreement between the parties to be enforceable because the terms of the agreement were sufficiently defined)"); *Scheinmann v. Dykstra*, 16 Civ. 5446 (AJP), 2017 WL 1422972 (S.D.N.Y. Apr. 21, 2017) (enforcing settlement offer and acceptance by email. "Put another way, [former Mets and Phillies outfielder Lenny] Dykstra's position has struck out.").

Following the parties' settlement of the case, the SDC's counsel, Mr. Matthew MacLean, sent IPG's counsel a draft Joint Stipulation and Motion for Final Distribution and a [Proposed] Order for Final Distribution, with a cover email stating:

> We think the easiest way to effectuate this agreement will be with a simple joint stipulation and motion for final distribution, along with a proposed order. Here are drafts. Please let us know if this works and, if acceptable, please affix your electronic signature to the joint stipulation and motion.

Id.

IPG's counsel responded that the proposed stipulation and motion were "not in the format of prior settlement agreements into which IPG has entered with the SDC and, notably, if it is a 'settlement', it should be deemed confidential …." *Id.*

The SDC's counsel responded, in relevant part, expressing concern about IPG's request for confidentiality:

> We're happy to look at what you have in mind. However, making it confidential will raise significant complications that I was hoping to avoid: (1) It will require the parties to agree on a common agent for distribution, and (2) it may require the parties to agree on a calculation of interest – a task that we are not well suited to perform and for which only the Licensing Division currently has all of the required information.

Id. On the following day, the SDC's counsel wrote again to try to keep things moving, explaining to IPG's counsel that confidentiality was not a term of the SDC's offer or IPG's acceptance and that it would present obstacles that would be "difficult or impossible to overcome," and requesting IPG's counsel to consent to the filing of a notice to the Judges that the parties have reached a settlement:

> Confidentiality was not a term of Arnie's offer or of IPG's acceptance, and I really believe that the practical obstacles will be difficult or impossible to overcome. If you plan on sending us something for our review, can you do so today? If not, can we at least file a notice informing the Judges that the parties have reached a settlement and that a proposed order will be filed soon?

Id. Even after being informed that "[c]onfidentiality was not a term of [the SDC's] offer or of IPG's acceptance," IPG's counsel agreed to the filing of a notice informing the Judges that the parties had "settled all controversies as to distribution of cable royalty fees collected for royalty

years 2000 through 2003 that have been allocated to the Devotional category, and that such fees are no longer subject to controversy." *Id.*; Joint Notice of Settlement and Motion for Stay (July 17, 2019). Expressly in reliance on the parties' representation that they had resolved all controversies in this matter, the Judges granted the parties' joint motion to stay, and ordered the parties to submit a proposed order or status report within twenty days. Order Staying Deadlines (July 18, 2019).

Because (1) the Judges granted relief in reliance on the parties' representation that they had resolved all controversies in this matter, (2) it would create the appearance that the Judges either were or are being misled if either party were now to deny that they had resolved all controversies in this matter, and (3) it would give a party an unfair advantage now to seek to negotiate additional terms to a deal that both parties informed the Judges was already complete, both parties are now judicially estopped from denying that they have reached a settlement of this case. *See* Order Granting SDC's Motion for Relief from Protective Order (July 9, 2019) at 7 (discussing elements of judicial estoppel).

In spite of the fact that the parties agree they have "settled all controversies as to distribution of cable royalty fees collected for royalty years 2000 through 2003 that have been allocated to the Devotional category, and that such fees are no longer subject to controversy," the parties have been unable to reach agreement on a proposed order. The reason for this has nothing to do with any controversy over the distribution of cable royalty fees collected for royalty years 2000 through 2003, but is rather because IPG is now insisting on further material terms that were not terms of the parties' original settlement. In particular, IPG now demands confidentiality, appointment of a common agent for distribution, release of unidentified "claims," and indemnification. *See* Ex. 2, email exchange between B. Boydston, M. MacLean, and A.

Lutzker (July 18, 2019), attaching draft "Settlement Agreement and Mutual Release"; Ex. 3, email exchange between B. Boydston, M. MacLean, and A. Lutzker (July 18-24, 2019). Notably, IPG's proposed "Settlement Agreement and Release" acknowledges that "[o]n July 16, 2019, the Parties entered into an agreement to settle their claims in connection with the Proceeding …" (¶ B). It contains the same proposed distribution to which the parties agreed on July 16, 2019, (¶ 2.1), and it does not raise any controversy regarding distribution of cable royalty fees collected for royalty years at issue in this proceeding.

For the reasons that are stated more fully in the parties' email exchanges, the SDC are not willing to revise their settlement with IPG to include IPG's new proposed terms. Accordingly, the SDC file this motion for final distribution based upon the parties' settlement by email, on the ground that distribution of the royalty fees at issue in this proceeding is not subject to controversy.

The Judges have the statutory jurisdiction and duty to "authorize the distribution, under sections 111, 119, and 1007, of those royalty fees collected under sections 111, 119, and 1005, as the case may be, to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy." 17 U.S.C. § 801(b)(3)(A). The parties have already agreed, and have represented to the Judges, that they have "settled all controversies as to distribution of cable royalty fees collected for royalty years 2000 through 2003 that have been allocated to the Devotional category, and that such fees are no longer subject to controversy." Joint Notice of Settlement and Motion for Stay (July 17, 2019). There is no dispute that the agreed distribution is "31.25% to IPG, and 68.75% to SDC across all four cable royalty years, 2000-03." Ex. 1. Therefore, there is nothing more for the Judges to do in this case but to order the final distribution to which the parties have agreed.

To the extent that IPG argues that confidentiality, appointment of a common agent for distribution, release of unidentified "claims," indemnification, or any other terms were implied or "presumed" in the parties' settlement agreement (to borrow IPG's words), any such terms would be outside the Judges' purview and jurisdiction. The Judges have jurisdiction only to determine whether the "distribution" of royalty fees is subject to controversy. Whatever controversies the parties might have concerning other terms of their enforceable settlement agreement, the distribution of royalty fees is not among those controversies.

Conclusion

Accordingly, the SDC request the Judges to order final distribution of cable royalty fees collected for royalty years 2000 through 2003 that have been allocated to the Devotional category, in accordance with the parties' agreed distribution.

July 25, 2019

Respectfully submitted,

SETTLING DEVOTIONAL CLAIMANTS

/s/ Matthew J. MacLean
Matthew J. MacLean, D.C. Bar No. 479257
Matthew.maclean@pillsburylaw.com
Michael A. Warley, D.C. Bar No. 1028686
Michael.warley@pillsburylaw.com
Jessica T. Nyman, D.C. Bar No. 1030613
Jessica.nyman@pillsburylaw.com
PILLSBURY WINTHROP SHAW
PITTMAN LLP
1200 Seventeenth Street, NW
Washington, DC 20036
Telephone: (202) 663-8000
Fax: (202) 663-8007

Certificate of Service

I certify that on July 25, 2019, I caused a copy of the foregoing to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

/s/ Matthew J. MacLean
Matthew J. MacLean

Before the
COPYRIGHT ROYALTY JUDGES
The Library of Congress

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

DECLARATION OF MATTHEW J. MACLEAN IN SUPPORT OF SETTLING DEVOTIONAL CLAIMANTS' MOTION FOR FINAL DISTRIBUTION UNDER 17 U.S.C. § 801(b)(3)(A)

I, Matthew J. MacLean, hereby state and declare as follows, based on my personal knowledge:

1. I am a partner in the law firm of Pillsbury Winthrop Shaw Pittman LLP, and am counsel for the Settling Devotional Claimants ("SDC") in the above-captioned proceedings.

2. Mr. Arnold Lutzker is trustee for the SDC, and is lead allocation phase counsel for the SDC. Mr. Brian Boydston is counsel for Independent Producers Group.

3. Attached hereto as Exhibit 1 is a true and correct copy of an email exchange between Mr. Lutzker, Mr. Boydston, and me, from April 29, 2019, through July 17, 2019. As shown in this email chain, on July 16, 2019, "IPG accept[ed] the SDC's offer of 31.25% of the 2000-2003 cable royalty pool attributable to the devotional programming category in order to settle the 2000-2003 cable proceeding." In the subsequent email chain that ensued, after Mr. Boydston asked for a further written settlement agreement containing a term of confidentiality, I informed Mr. Boydston that "[c]onfidentiality was not a term of [the SDC's] offer or of IPG's acceptance." Mr. Boydston nevertheless authorized me to affix his signature to the parties' Joint Notice of Settlement and Motion for Stay, which I filed on July 17, 2019, correctly informing the

Judges that the parties had "settled all controversies as to distribution of cable royalty fees collected for royalty years 2000 through 2003 that have been allocated to the Devotional category, and that such fees are no longer subject to controversy."

4. Attached hereto as Exhibit 2 is a true and correct copy of an email exchange between Mr. Lutzker, Mr. Boydston, and me, from April 29, 2019, through July 18, 2019, attaching a subsequent proposed written settlement agreement drafted by Mr. Boydston. The draft agreement acknowledges that "[o]n July 16, 2019, the Parties entered into an agreement to settle their claims in connection with the Proceeding …" (¶ B), and it contains the same distribution to which the parties agreed on July 16, 2019, (¶ 2.1). However, the draft agreement contains multiple new material terms that the parties did not discuss or agree to, including confidentiality, appointment of a common agent for distribution, release of unidentified "claims," and indemnification.

5. Attached hereto as Exhibit 3 is a true and correct copy of an email exchange between Mr. Lutzker, Mr. Boydston, and me, from April 29, 2019, through July 24, 2019. For the reasons explained in my emails to Mr. Boydston, the SDC are unwilling to agree to the additional material terms that IPG is now demanding, and which are not a part of the parties' settlement of July 16, 2019. IPG has nevertheless refused to agree to the filing of a proposed distribution order.

6. The email chains in Exhibits 1 through 3 are lightly redacted to remove information protected by a confidentiality agreement with other parties.

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and accurate.

Executed July 25, 2019, in Vienna, Virginia.

/s/ *Matthew J. MacLean*

Matthew J. MacLean

EXHIBIT 1

MacLean, Matthew J.

From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Sent: Wednesday, July 17, 2019 3:42 PM
To: MacLean, Matthew J.; Arnie Lutzker
Subject: RE: 2000-2003 Cable

That looks fine; please stick my signature on it.

Brian

-----Original Message-----
From: "MacLean, Matthew J."
Sent: Jul 17, 2019 12:06 PM
To: "Brian D. Boydston, Esq." , Arnie Lutzker
Subject: RE: 2000-2003 Cable

Brian,

Here is a draft notice of settlement and motion for stay, with proposed order. If acceptable, please affix your electronic signature to the notice and motion, or let me know if I am authorized to do so on your behalf.

Matt

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t +1.202.663.8183
matthew.maclean@pillsburylaw.com | website bio

From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Sent: Wednesday, July 17, 2019 2:24 PM
To: MacLean, Matthew J. <matthew.maclean@pillsburylaw.com>; Arnie Lutzker <arnie@lutzker.com>
Subject: RE: 2000-2003 Cable

Matt,

No problem with filing the notice with the CRB. We are waiting to hear back from the Licensing Division regarding information that should allow us to move forward confidentially. As to the settlement, we could not find the prior settlement agreements, but know that they are in storage. In order to expedite, we will just redraft. I can't say that it will be completed today because of prior commitments, but we are turning our attention to it as we speak.

Brian

-----Original Message-----
From: "MacLean, Matthew J."
Sent: Jul 17, 2019 10:36 AM
To: "Brian D. Boydston, Esq." , Arnie Lutzker
Subject: RE: 2000-2003 Cable

Brian,

We'd like to move on this quickly, so as not to run into difficulties with the schedule or to burden the Judges unnecessarily if they are focusing on this case. Confidentiality was not a term of Arnie's offer or of IPG's acceptance, and I really believe that the practical obstacles will be difficult or impossible to overcome. If you plan on sending us something for our review, can you do so today? If not, can we at least file a notice informing the Judges that the parties have reached a settlement and that a proposed order will be filed soon?

Matt

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t +1.202.663.8183
matthew.maclean@pillsburylaw.com | website bio

From: MacLean, Matthew J.
Sent: Tuesday, July 16, 2019 7:26 PM
To: 'Brian D. Boydston, Esq.' <brianb@ix.netcom.com>; Arnie Lutzker <arnie@lutzker.com>
Subject: RE: 2000-2003 Cable

Brian,

We're happy to look at what you have in mind. However, making it confidential will raise significant complications that I was hoping to avoid: (1) It will require the parties to agree on a common agent for distribution, and (2) it may require the parties to agree on a calculation of interest – a task that we are not well suited to perform and for which only the Licensing Division currently has all of the required information. The interest calculation component is a result of IPG's litigation of the issue with MPAA, and has not been a feature of prior settlement agreements. It principally benefits IPG. We would prefer for the distribution to be calculated by the Licensing Division and to go directly to SDC and IPG.

What prior settlement agreements with the SDC are you referring to? The one that Marion Oshita signed and that IPG later challenged? You can see why I am trying to keep things simple this time.

Matt

From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Sent: Tuesday, July 16, 2019 6:56 PM
To: MacLean, Matthew J. <matthew.maclean@pillsburylaw.com>; Arnie Lutzker <arnie@lutzker.com>
Subject: RE: 2000-2003 Cable

Although I appreciate the brevity, this is not in the format of prior settlement agreements into which IPG has entered with the SDC and, notably, if it is a "settlement", it should be deemed confidential, no different than settlement agreements with other participants. That is, there should be nothing more than a notification to the CRB that the parties have resolved their differences, and that no further dispute exists between them.

Do you want me to take a stab at it?

Brian

-----Original Message-----
From: "MacLean, Matthew J."
Sent: Jul 16, 2019 1:59 PM
To: Arnie Lutzker , "Brian D. Boydston, Esq."
Subject: RE: 2000-2003 Cable

Brian,

I'm glad we are finally bringing this matter to a conclusion after so many years. We think the easiest way to effectuate this agreement will be with a simple joint stipulation and motion for final distribution, along with a proposed order. Here are drafts. Please let us know if this works and, if acceptable, please affix your electronic signature to the joint stipulation and motion.

Matt

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t +1.202.663.8183
matthew.maclean@pillsburylaw.com | website bio

From: Arnie Lutzker <arnie@lutzker.com>
Sent: Tuesday, July 16, 2019 2:23 PM
To: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Cc: MacLean, Matthew J. <matthew.maclean@pillsburylaw.com>
Subject: RE: 2000-2003 Cable

*** EXTERNAL EMAIL ***

Brian – Thanks for your response and the ability to resolve at least one long-standing matter. We'll draft something in the form of a short settlement agreement with a joint letter to the CRB. Then the CRB will instruct the LD to come up with the right numbers for distribution to IPG and SDC.
Arnie

From: Brian D. Boydston, Esq. [mailto:brianb@ix.netcom.com]
Sent: Tuesday, July 16, 2019 1:18 PM
To: Arnie Lutzker <arnie@lutzker.com>
Cc: matthew.maclean@pillsburylaw.com
Subject: RE: 2000-2003 Cable

Arnie,

IPG accepts the SDC's offer of 31.25% of the 2000-2003 cable royalty pool attributable to the devotional programming category in order to settle the 2000-2003 cable proceeding. We have reached out to the Licensing Division of the Copyright Office in order to determine the exact value of such pool, but suffice it to say that as long as the figures provided to IPG by the SDC previously were accurate when made (figures IPG has been relying on for several years), there will be no issue.

I presume that the parties will jointly submit a document formally informing the CRB of this settlement. I also presume that you will want to have a settlement agreement executed. Do you have a form you would prefer to use?

Brian

-----Original Message-----
From: Arnie Lutzker
Sent: Jul 12, 2019 3:51 PM
To: "Brian D. Boydston, Esq."
Cc: "matthew.maclean@pillsburylaw.com"
Subject: RE: 2000-2003 Cable

CONFIDENTIAL SETTLEMENT COMMUNICATION

Brian,

Without getting into the merits, it appears that there are currently only two proposed methodologies in this case that the Judges have credited in the past: (1) the RODP methodology, which the Judges applied in the 1999 case, which gives IPG an average of 30%, and (2) the HHVH methodology, which the Judges used as a confirmatory measure in the 1999 case, which gives IPG an average of 32.5%. The D.C. Circuit has already affirmed the Judges' use of these methodologies, and the Judges' rejections of IPG's methodologies. There are no other methodologies, period. If 30% is IPG's "worst case scenario," then 32.5% is our "worst case scenario."

Reliance on the RODP methodology would be more consistent with precedent than reliance on the HHVH methodology. Nevertheless, in the hope of reaching an expeditious resolution, we will make this offer – to agree to the average halfway point between the RODP and HHVH methodologies: 31.25% to IPG, and 68.75% to SDC across all four cable royalty years, 2000-03. We will hold this offer open until COB next Wednesday, at which time it will expire.

As to IPG's spreadsheet, I have already told you that your figures are not correct and that I have no clue they come from. Regardless, due to the obstacles that I already brought to your attention, we have no more ability to confirm the numbers in the devotional pool than you have. You should pursue the information with the Licensing Division if you feel like you need it.

We are open to discussion of an agreed methodology for 2015-17 (as you know, IPG and MGC have no claims for 2014), but we know that will involve a larger discussion and we do not intend to link the two proceedings now. If your position is that the two cases are inexorably tied, please just let me know right away, and we will drop any 2000-03 settlement effort.

Arnie

From: Brian D. Boydston, Esq. [mailto:brianb@ix.netcom.com]
Sent: Friday, July 12, 2019 1:43 PM
To: Arnie Lutzker <arnie@lutzker.com>
Cc: matthew.maclean@pillsburylaw.com
Subject: RE: 2000-2003 Cable

Arnie,

Thanks for the offer, however there may be more at work than you realize. We were somewhat surprised by the CRB's ruling, but particularly that it clearly grants the SDC the opportunity to use certain MPAA data, but not IPG. We aren't certain how that aspect of the ruling could ever be rationalized and, quite possibly, reviewed in light of other possible rulings relating to the discovery sanction in the "Mega Case", all of this may not ultimately turn out the way you expect. Perhaps the Court of Appeals will not care about those rulings, which IPG has always considered extreme and draconian, but perhaps it will view all CRB rulings (including one granting the SDC the right to use particular data, but deny IPG the same right) in a different light. Who knows.

I would also reiterate that the SDC is still offering IPG to accept its worst case scenario, all in exchange for expediting payout of funds that IPG already has not received for over fifteen years. In a prior email you asserted that IPG is pushing to negotiate based on a "nuisance value", but such statement disregards that IPG sees the SDC's position in a similar light. Moreover, what the ruling this week makes clear is that the SDC are presenting distant MPAA data to support local SDC data. As noted in the SDC's prior filings, the MPAA data generates a blended 32.5% award to IPG. Why the CRB would not, at minimum, just accept the results of distant data over local data, seems obvious. Consequently, any starting point for the SDC should logically begin with those MPAA figures.

I would also point out that IPG was willing to discuss an acceptable methodology for the 2014-2017 proceeding, and future proceedings, but the SDC declined. Coming to an ongoing agreement would, obviously, allow both parties to devote their attention to other matters, and make any settlement for 2000-2003 more palatable. Failing to do so results in exactly what you previously stated you wanted to avoid, by giving no assurance to IPG (or the SDC) that it will not be right back here addressing the identical issues.

Finally, you may recall that we were approaching all of this from the standpoint of percentages, but which were evidently influenced by the amounts existent in the devotional programming category. We presented you with a spreadsheet that reflected what the SDC previously reported as being in the 2000-2003 devotional programming royalty pools, but never heard back from you to confirm that those were the correct figures. If you can confirm those, it would expedite any negotiations.

In sum, you have seen our spreadsheet. Your starting point should be to correct or confirm the figures reflected in the devotional programming pool. In light of what is revealed in the spreadsheet, simply offering a 70/30 split is not constructive. IPG was previously willing to accept what the CRB ordered the first time around, and while the SDC may consider that agreeing to such figure renders moot all that occurred following such initial award, such figure is not dramatically different monetarily than what IPG considers to be the lowest figure the SDC could rationalize under its current tack. IPG would be willing to take that figure, less $100,000, but only coupled with an agreeable methodology for the 2014-2017 and future proceedings.

Brian

-----Original Message-----
From: Arnie Lutzker
Sent: Jul 11, 2019 11:47 AM
To: "Brian D. Boydston, Esq."
Cc: "matthew.maclean@pillsburylaw.com"
Subject: RE: 2000-2003 Cable

CONFIDENTIAL SETTLEMENT COMMUNICATION

Brian – In light of the Judges' ruling this week granting the SDC motion for relief from the Mega Case Protective Order, the clock starts ticking with a short fuse for us both to prepare and file a new written direct case in the 2000-2003 Cable Proceeding. Before we both start incurring that expense, we wanted to revisit our proposal for a 70-30/SDC-IPG split for each of the years. We understand your prior reservations, but as I outlined below, we think this offer is eminently fair all things considered, and is now bolstered by the CRB Order. Moreover, a private settlement between the SDC and IPG would certainly speed final distribution of the funds that have long sat at the Copyright Office.
Since we both have serious work to do if there's no settlement, and since we have been down this road before, I simply want to get a quick response from you and Raul, to know if this is feasible. If you have any counter, of course we'll listen, but we don't intend to drag discussions out. Having had a 2010-2013 settlement only after a full briefing and discovery routine, we will prefer to push for CRB order on our terms, if we can't get this done quickly.
To that end, please let me know your current thinking by COB tomorrow. Otherwise, we'll consider the offer withdrawn and we will start on preparing our case.
Arnie

From: Arnold Lutzker
Sent: Wednesday, May 1, 2019 3:37 PM
To: 'Brian D. Boydston, Esq.' <brianb@ix.netcom.com>
Cc: matthew.maclean@pillsburylaw.com
Subject: 2000-2003 Cable

Brian - A few notes regarding what we see going on here in hopes that this clarifies and advances the discussion:

1. A critical difference between the IPG methodology and the SDC methodology is that the SDC methodology has been accepted as the basis for an award, and the IPG methodology has never been accepted. Thus, the percentages you recite bear no semblance to anything we would agree to, nor in our view, would the CRB accept. The CRB has consistently and thoroughly rejected IPG's methodology, so using it as part of a settlement equation is a non-starter for us. The only distinction between the SDC methodology in the 2000-03 case and the methodology adopted by the Judges in the 1999 cable case is that we now have more local ratings data than we had in the 1999 cable case. If we are successful in getting permission to

introduce the MPAA HHVH data as corroborative evidence, then we see no possibility that our methodology will ultimately be rejected.

2. If we are unsuccessful in our effort to gain permission to use the underlying data and if the Judges otherwise reject other evidence of authenticity of the HHVH reports, then we may have no choice but to present an alternative methodology based on established benchmarks, such as the 1999 cable and the 2000-03 satellite awards. Fair warning: a 2000-2003 cable award based on those benchmarks could be far worse for IPG than the 70-30 split we are offering in settlement, and would be far more consistent with prior rulings of the Judges and their predecessors than adoption of any methodology likely to be proposed by IPG would be. Therefore, I do not agree with you that the awards sought in our methodology represent a "best-case scenario" for the SDC.

3. We're also aware that In the 2010-13 distribution case, after an initial flurry, MGC simply adopted the SDC methodology. We took decision to be a wise (albeit belated) effort to save further unnecessary waste of time and money. Given that there was substantially more at issue in that case than in the 2000-03 case, I cannot understand why IPG would choose the 2000-03 case, of all cases, to throw more good money after bad in trying yet another revision of a methodology that has no chance of success. IPG's insistence on seeking additional nuisance value on top of the results of our fair and objective methodology strikes me as the very "arm-wrestling" that Raul has decried. For obvious reasons, we cannot afford to offer nuisance value to a repeat player like IPG, which would do nothing but reward IPG for not entering into a settlement that is fair to all. We are certainly prepared to treat both IPG and MGC fairly under our methodology, but under no circumstances can we agree to give IPG a premium that treats them better than the SDC's treats its own members. If IPG/MGC were to accept that principal, we could see the opportunity for resolving distribution disputes in 2015 and beyond.

4. I have to add that Raul's harkening back to his suggestion that the Devotional category was undervalued is ancient history at this stage. His thought was certainly not novel in my view and actually has had nothing to do with the SDC accomplishments over the years. The 2000-03 [redacted] settlement at the time was absolutely necessary, given the state of the devotional claimants' internal handling of matters back then. It was only several years later, after I was able to organize the SDC into a unified and effective whole, did the game change. As to heavy lifting, actually we did that and more. Your email glosses over an extensive and expensive 2000-03 Cable Phase I case involving all claimant groups against the Canadians, for which the SDC did expend significant sums. Moreover, the Phase I/Allocation cases for 2004-05 Cable, 2010-2013 Cable and now 2010-2013 Satellite have involved a huge commitment of money, time and resources. Frankly, our success had nothing to do with Raul's urging or IPG data, but rather was achieved by the effort, strategy and resources of the SDC, its experts and its legal team. Of course, IPG has been the beneficiary of our on-going efforts without any contribution. We'd certainly welcome

reimbursement of a proportionate share, but I haven't heard that offered. Absent that, I'd suggest you take reasonable stock of what's at stake in yet another round of 2000-03, and view our offer as the reasonable, good faith proposal it is intended to be.

Arnie

Arnold P. Lutzker
Lutzker & Lutzker LLP
1233 20th Street, NW
Suite 703
Washington, DC 20036
Telephone: 202-408-7600 ext. 1
Cell: 202-321-9156
Fax: 202-408-7677
Email: arnie@lutzker.com
Website: www.lutzker.com

Be sure to check out our new firm website – https://www.lutzker.com

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From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Sent: Monday, April 29, 2019 5:26 PM
To: Arnie Lutzker <arnie@lutzker.com>
Cc: MacLean, Matthew J. <matthew.maclean@pillsburylaw.com>
Subject: Re: 2000-2003 Cable

Arnie,

As regards the amounts in the devotional cable pool for 2000-2003, we are not certain where we obtained the numbers that appeared in our first spreadsheet. I suppose it does not really matter because we then found the figures represented by the SDC to be the devotional category figures for 2000-2003, and placed those in the second revised spreadsheet that we sent you. As you state, it

approximates [redacted] per year. If I understand how the CRB allocates, those figures will not be significantly affected by any CRB proceedings or other factors.

Raul already observed on our call that a 70/30 split is exactly what the SDC were proposing under their last methodology (29.98%). It is also a few points less than what the MPAA methodology would dictate (32.50%). Why would IPG ever consider giving up its right to appeal rejection of two different IPG methodologies (one with a blended rate to IPG of 42.49%, the other with a blended rate of 53.27%), or its opportunity to present a new methodology, in exchange for its worst-case scenario? Please be realistic. Such an offer is neither in the spirit of compromise, nor made from a compelling position. If I am overlooking something, please enlighten me. If not, then you need to go back and have a more realistic discussion with your colleagues about the subject of compromise.

Finally, and I only bring it up because you did, but our understanding for 2000-2003 cable was that the SDC, on behalf of all devotionals, simply agreed to the [redacted] figure without participating in any proceedings, based on some prior award. You may not recall, but this was despite the fact that IPG was actively encouraging the devotionals to collectively advocate a distribution methodology that could be applied both to Phase I and Phase II, seeking a substantial percentage more than that figure. IPG's position was based on IPG-acquired data showing a dramatically more significant presence of devotional programming than originally understood. With all due respect, it is therefore ironic that you characterized this as "heavy lifting" in our phone call, or would think that a position contrary to that advocated by IPG would be a means for IPG to rationalize the [redacted] settlement. It really isn't.

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than us typing out emails.

Brian Boydston

Counsel for Independent Producers Group

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Cc: "MacLean, Matthew J."
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Arnie

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Lutzker & Lutzker LLP
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Washington, DC 20036
Telephone: 202-408-7600 ext. 1
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</arnie@lutzker.com><>

EXHIBIT 2

MacLean, Matthew J.

From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Sent: Thursday, July 18, 2019 2:16 AM
To: MacLean, Matthew J.; Arnie Lutzker
Subject: RE: 2000-2003 Cable
Attachments: WSG and SDC settlement agreement, 2000-2003 cable.doc

Matt and Arnie,

Attached is our proposed settlement agreement.

Brian

-----Original Message-----
From: "MacLean, Matthew J."
Sent: Jul 16, 2019 1:59 PM
To: Arnie Lutzker , "Brian D. Boydston, Esq."
Subject: RE: 2000-2003 Cable

Brian,

I'm glad we are finally bringing this matter to a conclusion after so many years. We think the easiest way to effectuate this agreement will be with a simple joint stipulation and motion for final distribution, along with a proposed order. Here are drafts. Please let us know if this works and, if acceptable, please affix your electronic signature to the joint stipulation and motion.

Matt

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t +1.202.663.8183
matthew.maclean@pillsburylaw.com | website bio

From: Arnie Lutzker <arnie@lutzker.com>
Sent: Tuesday, July 16, 2019 2:23 PM
To: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Cc: MacLean, Matthew J. <matthew.maclean@pillsburylaw.com>
Subject: RE: 2000-2003 Cable

*** EXTERNAL EMAIL ***

Brian – Thanks for your response and the ability to resolve at least one long-standing matter.

We'll draft something in the form of a short settlement agreement with a joint letter to the CRB. Then the CRB will instruct the LD to come up with the right numbers for distribution to IPG and SDC.
Arnie

From: Brian D. Boydston, Esq. [mailto:brianb@ix.netcom.com]
Sent: Tuesday, July 16, 2019 1:18 PM
To: Arnie Lutzker <arnie@lutzker.com>
Cc: matthew.maclean@pillsburylaw.com
Subject: RE: 2000-2003 Cable

Arnie,

IPG accepts the SDC's offer of 31.25% of the 2000-2003 cable royalty pool attributable to the devotional programming category in order to settle the 2000-2003 cable proceeding. We have reached out to the Licensing Division of the Copyright Office in order to determine the exact value of such pool, but suffice it to say that as long as the figures provided to IPG by the SDC previously were accurate when made (figures IPG has been relying on for several years), there will be no issue.

I presume that the parties will jointly submit a document formally informing the CRB of this settlement. I also presume that you will want to have a settlement agreement executed. Do you have a form you would prefer to use?

Brian

-----Original Message-----
From: Arnie Lutzker
Sent: Jul 12, 2019 3:51 PM
To: "Brian D. Boydston, Esq."
Cc: "matthew.maclean@pillsburylaw.com"
Subject: RE: 2000-2003 Cable

CONFIDENTIAL SETTLEMENT COMMUNICATION

Brian,

Without getting into the merits, it appears that there are currently only two proposed methodologies in this case that the Judges have credited in the past: (1) the RODP methodology, which the Judges applied in the 1999 case, which gives IPG an average of 30%, and (2) the HHVH methodology, which the Judges used as a confirmatory measure in the 1999 case, which gives IPG an average of 32.5%. The D.C. Circuit has already affirmed the Judges' use of these methodologies, and the Judges' rejections of IPG's methodologies. There are no other methodologies, period. If 30% is IPG's "worst case scenario," then 32.5% is our "worst case scenario."

Reliance on the RODP methodology would be more consistent with precedent than reliance on the HHVH methodology. Nevertheless, in the hope of reaching an expeditious resolution, we will make this offer – to agree to the average halfway point between the RODP and HHVH methodologies: 31.25% to IPG, and 68.75% to SDC across all four cable royalty years, 2000-03. We will hold this offer open until COB next Wednesday, at which time it will expire.

As to IPG's spreadsheet, I have already told you that your figures are not correct and that I have no clue they come from. Regardless, due to the obstacles that I already brought to your attention, we have no

more ability to confirm the numbers in the devotional pool than you have. You should pursue the information with the Licensing Division if you feel like you need it.

We are open to discussion of an agreed methodology for 2015-17 (as you know, IPG and MGC have no claims for 2014), but we know that will involve a larger discussion and we do not intend to link the two proceedings now. If your position is that the two cases are inexorably tied, please just let me know right away, and we will drop any 2000-03 settlement effort.

Arnie

From: Brian D. Boydston, Esq. [mailto:brianb@ix.netcom.com]
Sent: Friday, July 12, 2019 1:43 PM
To: Arnie Lutzker <arnie@lutzker.com>
Cc: matthew.maclean@pillsburylaw.com
Subject: RE: 2000-2003 Cable

Arnie,

Thanks for the offer, however there may be more at work than you realize. We were somewhat surprised by the CRB's ruling, but particularly that it clearly grants the SDC the opportunity to use certain MPAA data, but not IPG. We aren't certain how that aspect of the ruling could ever be rationalized and, quite possibly, reviewed in light of other possible rulings relating to the discovery sanction in the "Mega Case", all of this may not ultimately turn out the way you expect. Perhaps the Court of Appeals will not care about those rulings, which IPG has always considered extreme and draconian, but perhaps it will view all CRB rulings (including one granting the SDC the right to use particular data, but deny IPG the same right) in a different light. Who knows.

I would also reiterate that the SDC is still offering IPG to accept its worst case scenario, all in exchange for expediting payout of funds that IPG already has not received for over fifteen years. In a prior email you asserted that IPG is pushing to negotiate based on a "nuisance value", but such statement disregards that IPG sees the SDC's position in a similar light. Moreover, what the ruling this week makes clear is that the SDC are presenting distant MPAA data to support local SDC data. As noted in the SDC's prior filings, the MPAA data generates a blended 32.5% award to IPG. Why the CRB would not, at minimum, just accept the results of distant data over local data, seems obvious. Consequently, any starting point for the SDC should logically begin with those MPAA figures.

I would also point out that IPG was willing to discuss an acceptable methodology for the 2014-2017 proceeding, and future proceedings, but the SDC declined. Coming to an ongoing agreement would, obviously, allow both parties to devote their attention to other matters, and make any settlement for 2000-2003 more palatable. Failing to do so results in exactly what you previously stated you wanted to avoid, by giving no assurance to IPG (or the SDC) that it will not be right back here addressing the identical issues.

Finally, you may recall that we were approaching all of this from the standpoint of percentages, but which were evidently influenced by the amounts existent in the devotional programming category. We presented you with a spreadsheet that reflected what the SDC previously reported as being in the 2000-2003

devotional programming royalty pools, but never heard back from you to confirm that those were the correct figures. If you can confirm those, it would expedite any negotiations.

In sum, you have seen our spreadsheet. Your starting point should be to correct or confirm the figures reflected in the devotional programming pool. In light of what is revealed in the spreadsheet, simply offering a 70/30 split is not constructive. IPG was previously willing to accept what the CRB ordered the first time around, and while the SDC may consider that agreeing to such figure renders moot all that occurred following such initial award, such figure is not dramatically different monetarily than what IPG considers to be the lowest figure the SDC could rationalize under its current tack. IPG would be willing to take that figure, less $100,000, but only coupled with an agreeable methodology for the 2014-2017 and future proceedings.

Brian

-----Original Message-----
From: Arnie Lutzker
Sent: Jul 11, 2019 11:47 AM
To: "Brian D. Boydston, Esq."
Cc: "matthew.maclean@pillsburylaw.com"
Subject: RE: 2000-2003 Cable

CONFIDENTIAL SETTLEMENT COMMUNICATION

Brian – In light of the Judges' ruling this week granting the SDC motion for relief from the Mega Case Protective Order, the clock starts ticking with a short fuse for us both to prepare and file a new written direct case in the 2000-2003 Cable Proceeding. Before we both start incurring that expense, we wanted to revisit our proposal for a 70-30/SDC-IPG split for each of the years. We understand your prior reservations, but as I outlined below, we think this offer is eminently fair all things considered, and is now bolstered by the CRB Order. Moreover, a private settlement between the SDC and IPG would certainly speed final distribution of the funds that have long sat at the Copyright Office.
Since we both have serious work to do if there's no settlement, and since we have been down this road before, I simply want to get a quick response from you and Raul, to know if this is feasible. If you have any counter, of course we'll listen, but we don't intend to drag discussions out. Having had a 2010-2013 settlement only after a full briefing and discovery routine, we will prefer to push for CRB order on our terms, if we can't get this done quickly.
To that end, please let me know your current thinking by COB tomorrow. Otherwise, we'll consider the offer withdrawn and we will start on preparing our case.
Arnie

From: Arnold Lutzker
Sent: Wednesday, May 1, 2019 3:37 PM
To: 'Brian D. Boydston, Esq.' <brianb@ix.netcom.com>
Cc: matthew.maclean@pillsburylaw.com
Subject: 2000-2003 Cable

Brian - A few notes regarding what we see going on here in hopes that this clarifies and advances the discussion:

1. A critical difference between the IPG methodology and the SDC methodology is that the SDC methodology has been accepted as the basis for an award, and the IPG methodology has never been accepted. Thus, the percentages you recite bear no semblance to anything we would agree to, nor in our view, would the CRB accept. The CRB has consistently and thoroughly rejected IPG's methodology, so using it as part of a settlement equation is a non-starter for us. The only distinction between the SDC methodology in the 2000-03 case and the methodology adopted by the Judges in the 1999 cable case is that we now have more local ratings data than we had in the 1999 cable case. If we are successful in getting permission to introduce the MPAA HHVH data as corroborative evidence, then we see no possibility that our methodology will ultimately be rejected.

2. If we are unsuccessful in our effort to gain permission to use the underlying data and if the Judges otherwise reject other evidence of authenticity of the HHVH reports, then we may have no choice but to present an alternative methodology based on established benchmarks, such as the 1999 cable and the 2000-03 satellite awards. Fair warning: a 2000-2003 cable award based on those benchmarks could be far worse for IPG than the 70-30 split we are offering in settlement, and would be far more consistent with prior rulings of the Judges and their predecessors than adoption of any methodology likely to be proposed by IPG would be. Therefore, I do not agree with you that the awards sought in our methodology represent a "best-case scenario" for the SDC.

3. We're also aware that In the 2010-13 distribution case, after an initial flurry, MGC simply adopted the SDC methodology. We took decision to be a wise (albeit belated) effort to save further unnecessary waste of time and money. Given that there was substantially more at issue in that case than in the 2000-03 case, I cannot understand why IPG would choose the 2000-03 case, of all cases, to throw more good money after bad in trying yet another revision of a methodology that has no chance of success. IPG's insistence on seeking additional nuisance value on top of the results of our fair and objective methodology strikes me as the very "arm-wrestling" that Raul has decried. For obvious reasons, we cannot afford to offer nuisance value to a repeat player like IPG, which would do nothing but reward IPG for not entering into a settlement that is fair to all. We are certainly prepared to treat both IPG and MGC fairly under our methodology, but under no circumstances can we agree to give IPG a premium that treats them better than the SDC's treats its own members. If IPG/MGC were to accept that principal, we could see the opportunity for resolving distribution disputes in 2015 and beyond.

4. I have to add that Raul's harkening back to his suggestion that the Devotional category was undervalued is ancient history at this stage. His thought was certainly not novel in my view and actually has had nothing to do with the SDC accomplishments over the years. The 2000-03 [redacted] settlement at the time was absolutely necessary, given the state of the devotional claimants' internal handling of matters back then. It was only several years later, after I was able to organize the SDC into a unified and effective whole, did the game change. As to heavy lifting, actually we did that and more. Your email glosses over an extensive and expensive 2000-03 Cable Phase I case involving all claimant groups against the Canadians, for which the SDC did expend significant sums. Moreover, the Phase I/Allocation cases for 2004-05 Cable, 2010-2013 Cable and now 2010-2013 Satellite have involved a huge commitment of money, time and resources. Frankly, our success had nothing to do with Raul's urging or IPG data, but rather was achieved by the effort, strategy and resources of the SDC, its experts and its legal team. Of course, IPG has been the beneficiary of our on-going efforts without any contribution. We'd certainly welcome reimbursement of a proportionate share, but I

haven't heard that offered. Absent that, I'd suggest you take reasonable stock of what's at stake in yet another round of 2000-03, and view our offer as the reasonable, good faith proposal it is intended to be.

Arnie

Arnold P. Lutzker
Lutzker & Lutzker LLP
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Brian Boydston

Counsel for Independent Producers Group

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Arnie

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</brianb@ix.netcom.com><>

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is made and entered into by and between WORLDWIDE SUBSIDY GROUP, LLC (or "WSG"), on the one hand, and Amazing Facts, American Religious Town Hall, Inc., Catholic Communications Corporation, The Christian Broadcasting Network, Inc., Coral Ridge Ministries Media, Inc., Cottonwood Christian Center, Crenshaw Christian Center, Crystal Cathedral Ministries, Inc., Evangelical Lutheran Church in America, Faith For Today, Inc., Family Worship Center Church, Inc. (dba Jimmy Swaggart Ministries), In Touch Ministries, Inc., It Is Written, Liberty Broadcasting Network, Inc., Rhema Bible Church aka Kenneth Hagin Ministries, Joyce Meyer Ministries, Inc. fka Life In The Word, Inc., Oral Roberts Evangelistic Association, Inc., RBC Ministries, Reginald B. Cherry Ministries, Ron Phillips Ministries, Speak the Word Church International, The Potter's House of Dallas, Inc. dba T.D. Jakes Ministries, and Zola Levitt Ministries (collectively, the "SETTLING DEVOTIONAL CLAIMANTS" or "SDC"), on the other hand, with respect to the following facts:

A. The Parties are currently the only participants in that certain proceeding (the "Proceeding") before the Copyright Royalty Board, Docket no. 2008-02 CD 2000-2003(Phase II), relating to 2000-2003 cable retransmission royalties attributable to the "devotional claimants" program category (the "Royalties").

B. On July 16, 2019, the Parties entered into an agreement to settle their claims in connection with the Proceeding, whereby the Parties will jointly notify the Copyright Royalty Board that a settlement has been entered into, and that the Proceeding may be terminated.

C. It is the desire of the parties hereto to fully and finally resolve the claims asserted in the Proceeding, as set forth in Paragraph 2 below.

NOW THEREFORE, in consideration of the foregoing facts and mutual covenants and agreements herein contained, WSG and SDC agree as follows:

1. INCORPORATION OF RECITALS: The foregoing recitals are incorporated herein by reference as if at this point set forth in full.

2. RESOLUTION OF CLAIMS AT ISSUE:

2.1 The Parties agree that all Royalties attributable to the devotional programming category will be divided as follows: 31.25% to WSG, 68.75% to SDC.

2.2 Notwithstanding the foregoing, the Parties acknowledge that the SDC has previously received advance distributions of the Royalties, and that the remainder of the undistributed Royalties have been invested in interest-bearing accounts. The Parties agree to distribute any growth from the undistributed Royalties proportionate to such percentage thereof as remained undistributed to WSG and SDC during such investment period.

2.3 The Parties will jointly request that the remainder of the undistributed Royalties be paid into an account of the SDC's selection. Upon such payment, SDC shall thereafter transfer via wire transfer the Royalties to which WSG is entitled to an account selected by WSG.

2.4 The parties agree that each party will bear its own costs and attorney fees incurred in relation to the Proceeding.

3. RELEASE: For good and valuable consideration, including that set forth above, and except for the terms of this Agreement set forth herein, WSG and SDC do hereby release, waive and forever discharge each other and their assigns, transferees, directors, officers, employees, servants, successors, agents, attorneys and representatives of and from any and all claims related to the Proceeding. The parties also agree that the Royalties received pursuant to Paragraph 2, above, is the full and final payment for any claims related to the Proceeding, and that the parties and their attorneys, agents, or representatives will not seek additional payment therefor from any source.

4. INTENTION OF THE PARTIES: It is the intention of the parties hereto in executing this Agreement that it shall be effective as a full and final accord and satisfactory release of each and every claim related to the Proceeding. In furtherance of this intention, each party acknowledges that he, she or it is familiar with §1542 of the *Civil Code* of the State of California, which provides as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

As to any claims related to the Proceeding, WSG and SDC waive and relinquish any rights and benefits they may have under §1542 of the *Civil Code* of the State of California to the full extent that they may lawfully waive all such rights and benefits pertaining to the subject matter of this Agreement, as specified in this Paragraph 4. The parties and each of them acknowledge that they are aware that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, but it is their intention hereby to settle and release fully and finally any and all matters, disputes, and differences, known and unknown, suspected and unsuspected, which do now exist, may exist or heretofore have existed between them, to the extent that the claims relinquished are related to the Proceeding. In furtherance of this intention, the releases herein given shall be and remain in effect as full and complete general releases notwithstanding discovery or the existence of any such additional or different facts.

5. REPRESENTATIONS: WSG and SDC do hereby warrant and represent to each other that they have not assigned or transferred or purported to assign or transfer to any person not a party hereto, any matter or any part or portion thereof covered by this Agreement. Each of them agrees to indemnify or hold harmless the other from and against any claim, complaint, damage, debt, liability, account, reckoning, obligation, cost, expense, lien, action or cause of action (including attorneys' fees and costs) based upon or in connection with or arising out of any such assignment or transfer or purported or claimed assignment or transfer.

6. TAX LIABILITY: WSG and SDC recognize and agree that they alone are responsible for any local, state or federal taxes that may be assessed or owing with respect to this Agreement. WSG and SDC therefore agree to make no claim against the other for any payment or non-payment of taxes or regarding or relating to the reporting of the payment described in this Agreement, if any, to any taxing authorities. WSG and SDC acknowledge that the other party has not made any representation about the tax consequences of the payments set forth herein.

7. NO ADMISSION: Nothing herein contained shall be construed as an admission by any party hereto of any liability of any kind to the other party. WSG and SDC acknowledge that this Agreement is simply intended to resolve any underlying disputes in connection with the Proceeding, as specified herein, without admitting any liability. Therefore, this settlement shall not be used as precedent for resolution of any other claim, dispute or lawsuit.

8. CONFIDENTIALITY: As part of this settlement, the parties agree to keep the terms of this settlement confidential and not to communicate same unless compelled to do so as part of the legal process; provided, however, the parties are authorized to disclose in confidence the terms and conditions of this Agreement to their attorneys, accountants, insurers, governmental taxing authorities, or those with business reasons to know. Any breach of this provision shall result in liability for actual damages, costs and attorneys fees associated with the enforcement of such provision.

9. ENTIRE AGREEMENT: This Agreement contains the entire understanding of the parties; there are no representations, covenants or undertakings other than those expressly set forth herein. WSG and SDC acknowledge that no other party or any agent or attorney of any other party has made any promise, representation or warning whatsoever, express, implied or statutory, not contained herein, concerning the subject matter hereof, to induce them to execute this Agreement, and they acknowledge that they have not executed this Agreement in reliance of any such promise, representation or warranty not specifically contained herein.

10. BINDING ON SUCCESSORS: This Agreement and the covenants and conditions herein contained shall apply to, be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, assigns, successors, and agents of the parties hereto.

11. SEVERABILITY: The provisions of this instrument are severable and should any provision be unenforceable for any reason, the balance nonetheless shall remain in full force and effect.

12. CONSTRUCTION: This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California. This Agreement is to be deemed to have been jointly prepared by the parties hereto, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the rules of interpretation of contracts, if any such uncertainty or ambiguity exists.

13. DISPUTE RESOLUTION AND ATTORNEYS' FEES: Each party shall bear its own attorneys' fees and costs in connection with this Agreement. However, in the event that a dispute between the parties hereto arises out of this Agreement, the dispute will be adjudicated by and in accordance with the rules of the American Arbitration Association ("AAA"). The prevailing party in such dispute shall be entitled, in addition to any other relief granted at the Lawsuit, such reasonable attorneys' fees as may be awarded.

14. COUNTERPARTS: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. FAXED/SCANNED SIGNATURES: Faxed or scanned signatures may be used and shall be deemed original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the below stated date.

Worldwide Subsidy Group, LLC

By: ___________________________ Date: ________________________

Its: ___________________________

Settling Devotional Claimants, inclusive of all individuals and entities identified above.

By: ___________________________ Date: ________________________

Its: ___________________________

APPROVED AS TO FORM AND CONTENT
AND AS PARTIES TO THE CONFIDENTIALITY
PROVISIONS OF PARAGRAPH 8:

Pick & Boydston, LLP

By:______________________________ Date: ______________________

Brian Boydston, Esq.
Counsel for Worldwide Subsidy Group, LLC

Pillsbury Winthrop Shaw Pittman LLP

By:______________________________ Date: ______________________

Matthew MacLean, Esq.
Counsel for the Settling Devotional Claimants

EXHIBIT 3

MacLean, Matthew J.

From: MacLean, Matthew J.
Sent: Wednesday, July 24, 2019 4:37 PM
To: Brian D. Boydston, Esq.
Cc: 'Arnold Lutzker' (arnie@lutzker.com)
Subject: RE: 2000-2003 Cable

Brian,

To my knowledge, an interest calculation of the kind that IPG successfully sought has never been a component of any settlement agreement. Although I am no slouch at math, I lack confidence in my own ability, and in yours, to conduct the calculation that the Judges have described, even if we had all the information needed, which we don't. Arnie's settlement offer that IPG accepted was a follow-up to an earlier settlement offer in which he said, "IPG's share of the interest accruing on remaining balances would be in excess of the 30% share, *as the Office will calculate*." (Emphasis added). IPG never objected to Arnie's suggestion that the Licensing Division, and not the parties, would calculate interest, which of course would require us to disclose the distribution. This is exactly why I have to file the entirety of the settlement discussion, and not just the final offer and acceptance, to make clear that your "presumed" terms, in addition to having never been expressed or agreed to, actually conflict with the terms that were discussed.

But the interest calculation is not even close to my "only" objection, nor is it even my principal objection. I don't understand how many times I have to tell you that we will not consent to either SDC or IPG serving as a common agent for distribution. The risk of liability is far too great, given IPG's past conduct and contentions. What if an IPG claimant contends that IPG was not authorized to receive the claimant's funds? That has happened before, and it would put the SDC at risk if the SDC were to disburse funds. Or what if an IPG claimant were to claim that the SDC had a fiduciary duty as common agent not to disburse funds to IPG without first disclosing doubts about IPG's trustworthiness as an agent to IPG's claimants? There is case law that may support such a claim. *Chao v. Merino*, 452 F.3d 174, 182-84 (2d Cir. 2006) ("Knowing—and having expressed the prudent view more than once—that [the agent] could not be trusted, [the trustee] did not exercise reasonable care when she simply proceeded to trust him"). Or what if due to error or some other reason, a clawback of funds becomes necessary, and IPG is unable or unwilling to comply? That has happened before, and it would put the SDC at risk. Or what if an IPG claimant or IPG itself were to claim that IPG's signatory lacked authority to sign the settlement? That has certainly happened before, and it would put the SDC at risk.

No prudent agent would accept the responsibility to disburse funds for IPG to receive on behalf of its claimants, which is why we cannot consent to serve as common agent for distribution. For essentially the same reasons, and others, no prudent business knowing all of the facts would consent for IPG to receive and disburse funds on its behalf, which is why we also cannot consent to IPG serving as common agent for distribution. What you are asking for is impossible, within the range of prudence.

I have told you how we intend to proceed. I do not want to put our settlement discussions on file, but it is the only way I can prove the content of our settlement if you won't agree to a proposed order. If you have an alternative suggestion, we're all ears until tomorrow morning, at which time we will file.

My suggestion is that you give another thought to the proposed order that I originally sent you, which will put an end to this matter on the fair terms to which the parties have already agreed.

Matt

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t +1.202.663.8183
matthew.maclean@pillsburylaw.com | website bio

From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Sent: Wednesday, July 24, 2019 3:04 PM
To: MacLean, Matthew J. <matthew.maclean@pillsburylaw.com>
Cc: 'Arnold Lutzker' (arnie@lutzker.com) <arnie@lutzker.com>
Subject: RE: 2000-2003 Cable

Matt,

You do not have IPG's consent to disclose this information to the CRB in a motion or otherwise.

Bear in mind that Arnie's emails containing the SDC's offers were boldly labeled "CONFIDENTIAL SETTLEMENT DISCUSSIONS" at their heading. Your position and plan to file a motion ignores both those representations and the derivative consequence of those representations, i.e., that the agreement would be confidential.

All this seems unnecessary, as maintaining confidentiality of agreements like this is hardly new, unique or troublesome; on the contrary, it is the norm in these circumstances. Accordingly, I do not understand why the SDC are hostile to confidentiality.

Your only objection seems to be that we would not have the information or resources to make a proper allocation of royalties. Yet I see no reason why we cannot secure this information as surely the SDC knows how much has been paid to it thus far, and how much remains can easily be obtained from the Licensing Division. I am guessing that you have not made any requests for such information, but IPG has done so.

Rather than drag the CRB judges into this, I suggest we simply keep the settlement details confidential, obtain and exchange the relevant dollar numbers, have the funds transferred to either the SDC or IPG as transfer agent, and split them accordingly.

Brian

-----Original Message-----
From: "MacLean, Matthew J."
Sent: Jul 23, 2019 7:20 PM
To: "'Brian D. Boydston, Esq.'"
Cc: "'Arnold Lutzker' (arnie@lutzker.com)"
Subject: RE: 2000-2003 Cable

Brian,

On Thursday morning, I plan to file a motion for final distribution of the 2000-03 cable royalty funds on the ground that the funds are no longer subject to controversy due to the parties' enforceable settlement by email

on July 16, 2019. In support of our motion, and to explain this unfortunate and ridiculous situation to the Judges, I intend to attach the entirety of our email exchange as an exhibit to the motion.

I understand that there may be portions of our discussion that you might prefer to keep confidential. While we have not agreed to confidentiality, it is my general preference not to publicize settlement discussions unless I have to. Therefore, I am willing to limit the email exchange that I file with the Judges to only Arnie's offer on July 12, 2019, and IPG's acceptance on July 16, 2019, if IPG will stipulate that these two emails constitute a complete and enforceable settlement agreement, and that there are no other terms. Otherwise, I will have to file the entirety of the exchange, so as to establish that we have a complete and enforceable agreement and that there are no other terms.

Please let me know by the end of the day tomorrow. Otherwise we will proceed with our filing.

Matt

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t +1.202.663.8183
matthew.maclean@pillsburylaw.com | website bio

From: MacLean, Matthew J.
Sent: Friday, July 19, 2019 11:15 AM
To: 'Brian D. Boydston, Esq.'
Cc: 'Arnold Lutzker' (arnie@lutzker.com)
Subject: RE: 2000-2003 Cable

Brian,

As far as we are concerned, we already have an enforceable settlement agreement, and we will enforce it if necessary. Neither you nor Arnie conditioned the offer and acceptance on execution of any further writing. Confidentiality is not a term of that agreement, and you were not entitled to presume the existence of any material terms that you and Arnie did not expressly agree to. Even after I told you that confidentiality was not a term and that I did not think confidentiality would be practicable, you and I both represented to the Judges that we "have settled all controversies as to distribution of cable royalty fees collected for royalty years 2000 through 2003 that have been allocated to the Devotional category, and that such fees are no longer subject to controversy." That representation was and remains true, and we are prepared to explain that to the Judges.

We really, truly, are not going to agree to serve as common agent for distribution, nor will we agree to appoint IPG to serve as common agent for distribution. We have many reasons for this, none having anything to do with the number of business days it would take to disburse the funds. Not worth getting into, because we are not going to change our minds.

You keep mentioning prior IPG settlement agreements with the SDC. I'm not aware of any, other than the 1998 cable settlement signed by Marion Oshita, which involved disbursement to IPG's client instead of to IPG itself, and which IPG later challenged on appeal. Is that really the model you want to follow? In my view, it is Exhibit 1 as to why we cannot possibly even consider acting as a common agent for distribution. Who knows what claims it might trigger for IPG's claimants if the SDC were the ones to put those claimants' money into IPG's hands? "What if" some IPG claimant were to claim that we mishandled its funds by disbursing them to IPG?

The only other resolution between SDC and IPG/MGC that had some characteristics of a settlement was the 2010-2013 cable case, which we resolved last year by a consent motion for final distribution. MGC and SDC publicly provided the Judges with precisely the kind of information that I proposed initially. You didn't insist on confidentiality, or a common agent, or any of the other release, indemnification, or other "boilerplate" terms that you "presumed" we would include here.

Speaking of which, your proposed release language requires each and every one of the claimants comprising the SDC to release some unspecified "claims" against IPG, but does not similarly require IPG's principals to release claims against the SDC. Your proposed representation and warranty requires all of the SDC to warrant that they have not assigned some kind of "claim," but requires no representation and warranty that IPG actually represents the claimants it claims to represent – a far more relevant consideration, especially when you are asking us to assume responsibility to disburse funds to IPG. Nor does it require IPG's signatory to represent and warrant that he or she has authority to sign, even though we have actually encountered this very situation with IPG. Your indemnification language gives IPG the potential protection of the combined assets of most of the major television ministries in the country, whereas it gives us the protection of a hollowed-out shell. This isn't just "straight-up boilerplate." It is grossly unbalanced, and it doesn't even address the most obvious "what if" scenarios.

I'm trying very hard to work with you. I'm willing to enter into a more formally legalistic-looking document if we can agree to suitable terms (after scrubbing confusing, inapplicable, and unbalanced boilerplate, of course), but obviously not one that imposes duties on us that we are not willing to agree to. If confidentiality were practicable, I would certainly consider it. I'm willing to include practically any agreed language about how the settlement will never, ever, under any circumstances, ever be considered as a precedent for future awards, if that's what you want.

Please let us know if these approaches would answer your concerns, or if you have an alternative approach. The Judges have put us on a 20-day clock to submit a proposed order or status report, and we have every intention of complying with that order. Since the clock is ticking, please get back to us by Monday.

Matt

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t +1.202.663.8183
matthew.maclean@pillsburylaw.com | website bio

From: Brian D. Boydston, Esq. [mailto:brianb@ix.netcom.com]
Sent: Thursday, July 18, 2019 5:50 PM
To: MacLean, Matthew J.
Subject: RE: 2000-2003 Cable

Matt,

As to the issue of the settlement agreement, certain matters are always reasonably presumed, despite not being comprehensively addressed as part of an initial settlement offer. WSG reasonably presumed a document memorializing the agreement would be executed, even though the SDC's offer made no mention thereof. WSG reasonably presumed the notice of the existence of an agreement would be provided to the CRB promptly, even though the SDC's offer made no mention thereof. WSG reasonably presumed that an interest calculation would be made because of the prior advance distributions, even though the SDC's offer made no mention thereof. No differently, WSG reasonably presumed that the settlement agreement would be confidential, as have been 100% of the settlement agreements previously entered into in connection with these proceedings (including those with the SDC), even though the SDC's offer made no mention thereof. From WSG's perspective, confidentiality is a

condition of the agreement, and WSG sees no reason to deviate from this practice at this time. It is, in fact, a condition of agreement, as it has always been.

As to the multiple other matters addressed by the settlement agreement with which you take issue, you are absolutely correct that many are superfluous. However, THAT is the point of settlement agreement, i.e., to cover all bases and preclude the "what if" situations. For example, while we have no reason to suspect that any party has assigned its claim to some other entity that is not identified in the document, and that even if it had done so there would be no ultimate consequence, the boilerplate terms of the settlement agreement address the "what if" situation if that were to occur. Similarly, to say that this is a release of "claims relating to the Proceeding" is straight-up boilerplate, and to object thereto is just inexplicable -- of course the parties all have claims related to the Proceeding, even if it is an administrative proceeding. Of course, the parties are not seeking costs or attorneys fees. Even if superfluous, they impart no harm by clarifying. Frankly, your objection to those boilerplate provisions gives me considerable cause to worry as to why you are objecting.

Moreover, making the SDC the common agent was intended to streamline this. As you pointed out, there has to be a common agent if we are to keep this matter confidential, and a common agent has existed for all prior WSG/SDC settlements. If the SDC will not perform this task (which lasts for one business day, from receipt of the monies from the Copyright Office until wire transferring them to the other party), then WSG will perform this task. As such, I have revised the settlement agreement for WSG to accept this task. Various other changes were also made [for example, para. 2.2 substituted the language from the prior CRB Order which was the same concept as already appeared therein.], and attached hereto is a clean and a redline version of the document that attempts to address your articulated concerns as best as possible, but I simply do not accept the SDC's rejection of a boilerplate provision because you do not consider it necessary.

Finally, the reality of this situation is that even when presented a settlement, the CRB often takes months to issue distributions. Licensing Division personnel are more than willing to provide the information necessary to calculate interest, and because we are not addressing a particularly complex situation, I cannot fathom that the calculation that you state we do not have the tools to perform could take much more than a short amount of time.

Please review the settlement agreement and get back to me.

Brian

-----Original Message-----
From: "MacLean, Matthew J."
Sent: Jul 18, 2019 8:34 AM
To: "Brian D. Boydston, Esq." , Arnie Lutzker
Subject: RE: 2000-2003 Cable

Brian,

While we truly appreciate all of your hard work that went into this document, I'm afraid this approach is not going to work for us. As you say in paragraph B of the recitals, the parties already reached a settlement on July 16, 2019. Having said that, I scarcely see the purpose in anything that follows, other than to appoint the SDC as a common agent for distribution, which is a duty that we are unwilling to

undertake. Can we please consider reverting to my original proposal to ask the Judges to enter an order for a final distribution directly to the SDC and IPG separately?

My more particular concerns follow:

Para. 2.1: This is the distribution agreed to, and it is the only material term in our settlement.

Para. 2.2: We do not object to an interest calculation consistent with the Judges' ruling on IPG's motion with regard to final distribution in the Program Suppliers category, in which the Judges ruled:

> [T]he Copyright Office will allocate accrued interest to MPAA and IPG, respectively, as if the distribution allocation the Judges ordered had been applied to each year's fund from the date funds were deposited until the date any portion of those funds was disbursed (or from which Copyright Office expenses were deducted). Interest ceases to accrue on funds when they are disbursed. In this regard, in completing the final distribution of Program Suppliers funds, the Copyright Office will review the dates and amounts of any partial distributions in determining an appropriate pro rata allocation of accrued interest.

Restricted Order Directing Accounting of 2000-2003 Cable Royalties Disbursed to the Program Suppliers Category, No. 2008-02 CRB CD 2000-03 (Phase II) (Nov. 25, 2015).

In subsequent final distribution orders, the Judges have directed similar (although not identical) terms, "After accounting for administrative fees, the Copyright Office Licensing Division shall distribute remaining funds, together with interest accrued on each fund balance, in such a way as to effect these distribution percentages as if they had been determined on the day following each royalty deposit and continuing until the date of each partial distribution." *See, e.g.,* Final Distribution Determination, Nos. 2012-6 CRB CD 2004-09 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II), 84 Fed. Reg. 16038, 16039 (Apr. 17, 2019). This is why I incorporated this language into my draft proposed final distribution order, so that IPG will get the benefit of whatever interest calculation is appropriate.

Your proposed language for interest is framed differently, and I am unable to decipher whether or not it is consistent with what the Judges have previously ruled. Additionally, I am doubtful that we have the information necessary to conduct this calculation on our own, either under your formulation or the Judges' formulation. Even if we had the information necessary to perform the calculation, the SDC are unwilling to undertake the responsibility to do so.

Para. 2.3: As noted above, the SDC are unwilling to accept the duty of receiving and disbursing funds as a common agent for distribution.

Para. 2.4: This paragraph is unnecessary, as neither the SDC nor IPG claims a right to recover costs or attorneys' fees from the other. It also introduces ambiguity, because you have listed each of the claimants comprising the SDC separately in the preamble, and the SDC already have their own agreement among themselves as to payment of costs and attorneys' fees.

Para. 3: We are unwilling to agree to a general or special release of "claims," because this is not a civil litigation and we do not understand what "claims" are being released.

Para. 4: Again, we are not agreeing to a release of "claims," because this is not a proceeding involving "claims" against each other. Moreover, we do not understand why California law would apply in any event.

Para. 5: We do not understand the purpose of this representation and warranty, and we will not agree to any indemnification.

Para. 6: I would only see a purpose in reaching an agreement as to tax liability if we were to agree to appointment of a common agent for distribution, which we will not do.

Para. 7: Although we see it as unnecessary, we would agree to incorporate your proposed "no admission" language into an agreement or a proposed order.

Para. 8: Confidentiality is not a term of the settlement we entered into on July 16, 2019. We do not object to confidentiality in principle, and we were willing to consider a proposal as to how it could be implemented, but we do not see how it can be implemented in practice without an appointment of a common agent for distribution. Even in some other instances where a settlement agreement with a confidentiality provision has existed, it has been necessary to partially break confidentiality for the purpose of facilitating a final distribution, to allow the Licensing Division to calculate the distribution.

Para. 9: No objection to your integration clause, although we believe that the settlement we entered into on July 16, 2019, is already fully integrated.

Para. 10: We do not understand the purpose of a successors clause, because the parties will have no remaining obligations to each other after final distribution is ordered.

Para. 11: We see no reason to agree to severability. The agreement contains only a single material term.

Para. 12: We see no reason why California law should govern the agreement. The settlement relates wholly to a proceeding pending in an agency located in the District of Columbia.

Para. 13: We will not agree to arbitration.

Para. 14: No objection to execution in counterparts.

Para. 15: No objection to fax/scanned signatures. But we believe that the applicable Uniform Electronic Transactions Act would apply as a matter of law to the parties' signatures by email.

On the whole - with the arguable exception of your "no admission" language, which we are willing to incorporate into a proposed order - none of this seems necessary. Aside from confidentiality, what is it that you are trying to accomplish in this agreement? Can we simplify things by reverting to my original proposal of a simple proposed order?

Matt

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t +1.202.663.8183
matthew.maclean@pillsburylaw.com | website bio

From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Sent: Thursday, July 18, 2019 2:16 AM

To: MacLean, Matthew J. <matthew.maclean@pillsburylaw.com>; Arnie Lutzker <arnie@lutzker.com>
Subject: RE: 2000-2003 Cable

Matt and Arnie,

Attached is our proposed settlement agreement.

Brian

-----Original Message-----
From: "MacLean, Matthew J."
Sent: Jul 16, 2019 1:59 PM
To: Arnie Lutzker , "Brian D. Boydston, Esq."
Subject: RE: 2000-2003 Cable

Brian,

I'm glad we are finally bringing this matter to a conclusion after so many years. We think the easiest way to effectuate this agreement will be with a simple joint stipulation and motion for final distribution, along with a proposed order. Here are drafts. Please let us know if this works and, if acceptable, please affix your electronic signature to the joint stipulation and motion.

Matt

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t +1.202.663.8183
matthew.maclean@pillsburylaw.com | website bio

From: Arnie Lutzker <arnie@lutzker.com>
Sent: Tuesday, July 16, 2019 2:23 PM
To: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Cc: MacLean, Matthew J. <matthew.maclean@pillsburylaw.com>
Subject: RE: 2000-2003 Cable

*** EXTERNAL EMAIL ***

Brian – Thanks for your response and the ability to resolve at least one long-standing matter. We'll draft something in the form of a short settlement agreement with a joint letter to the CRB. Then the CRB will instruct the LD to come up with the right numbers for distribution to IPG and SDC.
Arnie

From: Brian D. Boydston, Esq. [mailto:brianb@ix.netcom.com]
Sent: Tuesday, July 16, 2019 1:18 PM
To: Arnie Lutzker <arnie@lutzker.com>
Cc: matthew.maclean@pillsburylaw.com
Subject: RE: 2000-2003 Cable

Arnie,

IPG accepts the SDC's offer of 31.25% of the 2000-2003 cable royalty pool attributable to the devotional programming category in order to settle the 2000-2003 cable proceeding. We have reached out to the Licensing Division of the Copyright Office in order to determine the exact value of such pool, but suffice it to say that as long as the figures provided to IPG by the SDC previously were accurate when made (figures IPG has been relying on for several years), there will be no issue.

I presume that the parties will jointly submit a document formally informing the CRB of this settlement. I also presume that you will want to have a settlement agreement executed. Do you have a form you would prefer to use?

Brian

-----Original Message-----
From: Arnie Lutzker
Sent: Jul 12, 2019 3:51 PM
To: "Brian D. Boydston, Esq."
Cc: "matthew.maclean@pillsburylaw.com"
Subject: RE: 2000-2003 Cable

CONFIDENTIAL SETTLEMENT COMMUNICATION

Brian,

Without getting into the merits, it appears that there are currently only two proposed methodologies in this case that the Judges have credited in the past: (1) the RODP methodology, which the Judges applied in the 1999 case, which gives IPG an average of 30%, and (2) the HHVH methodology, which the Judges used as a confirmatory measure in the 1999 case, which gives IPG an average of 32.5%. The D.C. Circuit has already affirmed the Judges' use of these methodologies, and the Judges' rejections of IPG's methodologies. There are no other methodologies, period. If 30% is IPG's "worst case scenario," then 32.5% is our "worst case scenario."

Reliance on the RODP methodology would be more consistent with precedent than reliance on the HHVH methodology. Nevertheless, in the hope of reaching an expeditious resolution, we will make this offer – to agree to the average halfway point between the RODP and HHVH methodologies: 31.25% to IPG, and 68.75% to SDC across all four cable royalty years, 2000-03. We will hold this offer open until COB next Wednesday, at which time it will expire.

As to IPG's spreadsheet, I have already told you that your figures are not correct and that I have no clue they come from. Regardless, due to the obstacles that I already brought to your attention, we have no more ability to confirm the numbers in the devotional pool than you have. You should pursue the information with the Licensing Division if you feel like you need it.

We are open to discussion of an agreed methodology for 2015-17 (as you know, IPG and MGC have no claims for 2014), but we know that will involve a larger discussion and we do not intend to link the two proceedings now. If your position is that the two cases are inexorably tied, please just let me know right away, and we will drop any 2000-03 settlement effort.

Arnie

From: Brian D. Boydston, Esq. [mailto:brianb@ix.netcom.com]
Sent: Friday, July 12, 2019 1:43 PM
To: Arnie Lutzker <arnie@lutzker.com>
Cc: matthew.maclean@pillsburylaw.com
Subject: RE: 2000-2003 Cable

Arnie,

Thanks for the offer, however there may be more at work than you realize. We were somewhat surprised by the CRB's ruling, but particularly that it clearly grants the SDC the opportunity to use certain MPAA data, but not IPG. We aren't certain how that aspect of the ruling could ever be rationalized and, quite possibly, reviewed in light of other possible rulings relating to the discovery sanction in the "Mega Case", all of this may not ultimately turn out the way you expect. Perhaps the Court of Appeals will not care about those rulings, which IPG has always considered extreme and draconian, but perhaps it will view all CRB rulings (including one granting the SDC the right to use particular data, but deny IPG the same right) in a different light. Who knows.

I would also reiterate that the SDC is still offering IPG to accept its worst case scenario, all in exchange for expediting payout of funds that IPG already has not received for over fifteen years. In a prior email you asserted that IPG is pushing to negotiate based on a "nuisance value", but such statement disregards that IPG sees the SDC's position in a similar light. Moreover, what the ruling this week makes clear is that the SDC are presenting distant MPAA data to support local SDC data. As noted in the SDC's prior filings, the MPAA data generates a blended 32.5% award to IPG. Why the CRB would not, at minimum, just accept the results of distant data over local data, seems obvious. Consequently, any starting point for the SDC should logically begin with those MPAA figures.

I would also point out that IPG was willing to discuss an acceptable methodology for the 2014-2017 proceeding, and future proceedings, but the SDC declined. Coming to an ongoing agreement would, obviously, allow both parties to devote their attention to other matters, and make any settlement for 2000-2003 more palatable. Failing to do so results in exactly what you previously stated you wanted to avoid, by giving no assurance to IPG (or the SDC) that it will not be right back here addressing the identical issues.

Finally, you may recall that we were approaching all of this from the standpoint of percentages, but which were evidently influenced by the amounts existent in the

devotional programming category. We presented you with a spreadsheet that reflected what the SDC previously reported as being in the 2000-2003 devotional programming royalty pools, but never heard back from you to confirm that those were the correct figures. If you can confirm those, it would expedite any negotiations.

In sum, you have seen our spreadsheet. Your starting point should be to correct or confirm the figures reflected in the devotional programming pool. In light of what is revealed in the spreadsheet, simply offering a 70/30 split is not constructive. IPG was previously willing to accept what the CRB ordered the first time around, and while the SDC may consider that agreeing to such figure renders moot all that occurred following such initial award, such figure is not dramatically different monetarily than what IPG considers to be the lowest figure the SDC could rationalize under its current tack. IPG would be willing to take that figure, less $100,000, but only coupled with an agreeable methodology for the 2014-2017 and future proceedings.

Brian

-----Original Message-----
From: Arnie Lutzker
Sent: Jul 11, 2019 11:47 AM
To: "Brian D. Boydston, Esq."
Cc: "matthew.maclean@pillsburylaw.com"
Subject: RE: 2000-2003 Cable

CONFIDENTIAL SETTLEMENT COMMUNICATION

Brian – In light of the Judges' ruling this week granting the SDC motion for relief from the Mega Case Protective Order, the clock starts ticking with a short fuse for us both to prepare and file a new written direct case in the 2000-2003 Cable Proceeding. Before we both start incurring that expense, we wanted to revisit our proposal for a 70-30/SDC-IPG split for each of the years. We understand your prior reservations, but as I outlined below, we think this offer is eminently fair all things considered, and is now bolstered by the CRB Order. Moreover, a private settlement between the SDC and IPG would certainly speed final distribution of the funds that have long sat at the Copyright Office.
Since we both have serious work to do if there's no settlement, and since we have been down this road before, I simply want to get a quick response from you and Raul, to know if this is feasible. If you have any counter, of course we'll listen, but we don't intend to drag discussions out. Having had a 2010-2013 settlement only after a full briefing and discovery routine, we will prefer to push for CRB order on our terms, if we can't get this done quickly.
To that end, please let me know your current thinking by COB tomorrow. Otherwise, we'll consider the offer withdrawn and we will start on preparing our case.
Arnie

From: Arnold Lutzker
Sent: Wednesday, May 1, 2019 3:37 PM
To: 'Brian D. Boydston, Esq.' <brianb@ix.netcom.com>

Cc: matthew.maclean@pillsburylaw.com
Subject: 2000-2003 Cable

Brian - A few notes regarding what we see going on here in hopes that this clarifies and advances the discussion:

1. A critical difference between the IPG methodology and the SDC methodology is that the SDC methodology has been accepted as the basis for an award, and the IPG methodology has never been accepted. Thus, the percentages you recite bear no semblance to anything we would agree to, nor in our view, would the CRB accept. The CRB has consistently and thoroughly rejected IPG's methodology, so using it as part of a settlement equation is a non-starter for us. The only distinction between the SDC methodology in the 2000-03 case and the methodology adopted by the Judges in the 1999 cable case is that we now have more local ratings data than we had in the 1999 cable case. If we are successful in getting permission to introduce the MPAA HHVH data as corroborative evidence, then we see no possibility that our methodology will ultimately be rejected.

2. If we are unsuccessful in our effort to gain permission to use the underlying data and if the Judges otherwise reject other evidence of authenticity of the HHVH reports, then we may have no choice but to present an alternative methodology based on established benchmarks, such as the 1999 cable and the 2000-03 satellite awards. Fair warning: a 2000-2003 cable award based on those benchmarks could be far worse for IPG than the 70-30 split we are offering in settlement, and would be far more consistent with prior rulings of the Judges and their predecessors than adoption of any methodology likely to be proposed by IPG would be. Therefore, I do not agree with you that the awards sought in our methodology represent a "best-case scenario" for the SDC.

3. We're also aware that In the 2010-13 distribution case, after an initial flurry, MGC simply adopted the SDC methodology. We took decision to be a wise (albeit belated) effort to save further unnecessary waste of time and money. Given that there was substantially more at issue in that case than in the 2000-03 case, I cannot understand why IPG would choose the 2000-03 case, of all cases, to throw more good money after bad in trying yet another revision of a methodology that has no chance of success. IPG's insistence on seeking additional nuisance value on top of the results of our fair and objective methodology strikes me as the very "arm-wrestling" that Raul has decried. For obvious reasons, we cannot afford to offer nuisance value to a repeat player like IPG, which would do nothing but reward IPG for not entering into a settlement that is fair to all. We are certainly prepared to treat both IPG and MGC fairly under our methodology, but under no circumstances can we agree to give IPG a premium that treats them better than the SDC's treats its own members. If IPG/MGC were to accept that principal, we could see the opportunity for resolving distribution disputes in 2015 and beyond.

4. I have to add that Raul's harkening back to his suggestion that the Devotional category was undervalued is ancient history at this stage. His thought was certainly not novel in my view and actually has had nothing to do with the SDC accomplishments over the years. The 2000-03 [redacted] settlement at the time was absolutely necessary, given the state of the devotional claimants' internal handling of matters back then. It was only several years later, after I was able to organize the SDC into a unified and effective whole, did the game change. As to heavy lifting, actually we did that and more. Your email glosses over an extensive and expensive 2000-03 Cable Phase I case involving all claimant groups against the Canadians, for which the SDC did expend significant sums. Moreover, the Phase I/Allocation cases for 2004-05 Cable, 2010-2013 Cable and now 2010-2013 Satellite have involved a huge commitment of money, time and resources. Frankly, our success had nothing to do with Raul's urging or IPG data, but rather was achieved by the effort, strategy and resources of the SDC, its experts and its legal team. Of course, IPG has been the beneficiary of our on-going efforts without any contribution. We'd certainly welcome reimbursement of a proportionate share, but I haven't heard that offered. Absent that, I'd suggest you take reasonable stock of what's at stake in yet another round of 2000-03, and view our offer as the reasonable, good faith proposal it is intended to be.

Arnie

Arnold P. Lutzker
Lutzker & Lutzker LLP
1233 20th Street, NW
Suite 703
Washington, DC 20036
Telephone: 202-408-7600 ext. 1
Cell: 202-321-9156
Fax: 202-408-7677
Email: arnie@lutzker.com
Website: www.lutzker.com

Be sure to check out our new firm website – https://www.lutzker.com

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From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Sent: Monday, April 29, 2019 5:26 PM
To: Arnie Lutzker <arnie@lutzker.com>
Cc: MacLean, Matthew J. <matthew.maclean@pillsburylaw.com>
Subject: Re: 2000-2003 Cable

Arnie,

As regards the amounts in the devotional cable pool for 2000-2003, we are not certain where we obtained the numbers that appeared in our first spreadsheet. I suppose it does not really matter because we then found the figures represented by the SDC to be the devotional category figures for 2000-2003, and placed those in the second revised spreadsheet that we sent you. As you state, it approximates [redacted] per year. If I understand how the CRB allocates, those figures will not be significantly affected by any CRB proceedings or other factors.

Raul already observed on our call that a 70/30 split is exactly what the SDC were proposing under their last methodology (29.98%). It is also a few points less than what the MPAA methodology would dictate (32.50%). Why would IPG ever consider giving up its right to appeal rejection of two different IPG methodologies (one with a blended rate to IPG of 42.49%, the other with a blended rate of 53.27%), or its opportunity to present a new methodology, in exchange for its worst-case scenario? Please be realistic. Such an offer is neither in the spirit of compromise, nor made from a compelling position. If I am overlooking something, please enlighten me. If not, then you need to go back and have a more realistic discussion with your colleagues about the subject of compromise.

Finally, and I only bring it up because you did, but our understanding for 2000-2003 cable was that the SDC, on behalf of all devotionals, simply agreed to the [redacted] figure without participating in any proceedings, based on some prior award. You may not recall, but this was despite the fact that IPG was actively encouraging the devotionals to collectively advocate a distribution methodology that could be applied both to Phase I and Phase II, seeking a substantial percentage more than that figure. IPG's position was based on IPG-acquired data showing a dramatically more significant presence of devotional programming than originally understood. With all due respect, it is therefore ironic that you characterized this as "heavy lifting" in our phone call, or would think that a position contrary to that advocated by IPG would be a means for IPG to rationalize the [redacted] settlement. It really isn't.

In sum, if the SDC can make a good faith offer for 2000-2003, we are all ears. However, to offer what the SDC already wanted to be adopted by the CRB, offers nothing that IPG could not effectively obtain at any time. We had also reached out to you about 2014-2017 proceedings, in order to discuss a collectively accepted methodology for the devotional claimants, but you indicated that it was

premature before a 2000-2003 settlement. I disagree, and think that the two are very different.

In any event, rather than try to schedule endless conferences, or engage in endless emails, I would ask that you, Arnie, just communicate directly with Raul, at 210-789-9084, and I fully authorize you to do so as counsel for IPG. I think you guys will make far more headway speaking

than us typing out emails.

Brian Boydston

Counsel for Independent Producers Group

-----Original Message-----
From: Arnie Lutzker
Sent: Apr 29, 2019 11:21 AM
To: "Brian D. Boydston, Esq."
Cc: "MacLean, Matthew J."
Subject: 2000-2003 Cable

Brian – As we previously discussed, the numbers for the 2000-2003 Growth of Funds are off from what we were expecting, esp. in 2000 (too high) and 2003 (too low). Plus I'm not sure 2001-2002 are right. I did contact the Licensing Division, but I don't have anything definitive to date, except its indication that the balances shown in current reports don't necessarily reflect the Devotional share. I don't know that we'll have a confirmation before the CRB instructs the Copyright Office to make a distribution.

As you know, for 2000-2003 the Devotional Category share was about [redacted], which means the average annual amount was about [redacted]. SDC received 50% partials (not 75%) each year. If we can agree on the 70-30 SDC-IPG split as we proposed, we can move forward and get this matter resolved reasonably quickly (subject to the Copyright Office clearly up the annual discrepancy issues). As with 1999, IPG's share of the interest accruing on remaining balances would be in excess of the 30% share, as the Office will calculate. As we also indicated, the 70-30 split is a reasonable settlement, given both the data we have been working with, and with the recognition that SDC shouldered all of the Phase I expenses for this proceeding, which included active participation in the hearing involving the Canadian Claimant Group's claims. Absent a settlement, I'm afraid we are well into 2020 before either side will see a final determination.

Matt and I are happy to set up a call to talk this out with you and Raul if that makes sense. Please let us know your thinking.

Arnie

Arnold P. Lutzker
Lutzker & Lutzker LLP
1233 20th Street, NW
Suite 703
Washington, DC 20036
Telephone: 202-408-7600 ext. 1
Cell: 202-321-9156
Fax: 202-408-7677
Email: arnie@lutzker.com
Website: www.lutzker.com

Be sure to check out our new firm website – https://www.lutzker.com

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</brianb@ix.netcom.com><>

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</arnie@lutzker.com><>

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</arnie@lutzker.com><>

Proof of Delivery

I hereby certify that on Thursday, July 25, 2019, I provided a true and correct copy of the Motion for Final Distribution Under 17 U.S.C. § 801(b)(3)(A) to the following:

Independent Producers Group (IPG), represented by Brian D Boydston, served via Electronic Service at brianb@ix.netcom.com

Signed: /s/ Matthew J MacLean