Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of **Distribution of the 2004, 2005, 2006 2007, 2008 and 2009 Cable Royalty Funds**	**Docket No. 2012-6 CRB CD 2004-2009 (Phase II)**
In the Matter of **Distribution of the 1999-2009 Satellite Royalty Funds**	**Docket No. 2012-7 CRB SD 1999-2009 (Phase II)**

MPAA-REPRESENTED PROGRAM SUPPLIERS'

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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The Motion Picture Association of America, Inc., its member companies and other producers and/or syndicators of syndicated movies, series and specials broadcast by distantly retransmitted television stations who have agreed to its representation ("MPAA-represented Program Suppliers" or "MPAA"), in accordance with 37 C.F.R. § 351.14 and the July 22, 2015 Stipulated Order Amending Procedural Schedule issued by the Copyright Royalty Judges ("Judges"), hereby submit their Proposed Findings of Fact and Conclusions of Law based on the record in the captioned matter.

MPAA-REPRESENTED PROGRAM SUPPLIERS'

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

TABLE OF SECTIONS

GLOSSARY

Term	**Definition**
1999-2009 Satellite Funds	1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009 Section 119 royalty funds collected by the Licensing Division of the Copyright Office
2000-2003 Decision	Distribution Of The 2000, 2001, 2002, And 2003 Cable Royalty Funds, 78 Fed. Reg. 64984 (October 30, 2013)
2000-2009 Satellite Funds	2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009 Section 119 royalty funds collected by the Licensing Division of the Copyright Office; the only satellite royalty years remaining in controversy in this proceeding in the Program Suppliers category
2004-2009 Cable Funds	2004, 2005, 2006, 2007, 2008, and 2009 Section 111 royalty funds collected by the Licensing Division of the Copyright Office
AGICOA	Association de Gestion Internationale Collective des Oeuvres Audiovisuelles (Association For The International Collective Management Of Audiovisual Works)
CARP	Copyright Arbitration Royalty Panel
CCC	Copyright Collective of Canada
CDC	Cable Data Corporation
CRT	Copyright Royalty Tribunal
CRTC	Canadian Radio-television and Telecommunications Commission
CSO	Cable System Operator
D.C. Circuit	U.S. Court of Appeals for the District of Columbia Circuit
Devotional Claimants	Syndicated programs of a primarily religious theme, not limited to those produced by or for religious institutions
DMA	Nielsen Designated Market Area
FCC	Federal Communications Commission

Gray Cable Stations	Sample stations randomly selected by Dr. Gray for the 2004-2009 Cable Funds
Gray Satellite Stations	Sample stations randomly selected by Dr. Gray for the 2000, 2001, 2002, 2003, 2004, 2005, and 2006 satellite royalty funds; a census of all satellite stations that were distantly retransmitted for the 2007, 2008, and 2009 satellite royalty funds
Gray Stations	Gray Cable Stations and Gray Satellite Stations, collectively
IPG	Worldwide Subsidy Group LLC d/b/a Independent Producers Group
Judges	Copyright Royalty Judges
Kessler Cable Stations	Cable stations for the 2000, 2001, 2002, and 2003 royalty years selected by Marsha Kessler of MPAA for the Nielsen Diary Studies
Kessler Satellite Stations	Satellite stations for the 2000, 2001, 2002, and 2003 royalty years selected by Marsha Kessler of MPAA for the Nielsen Diary Studies
Kessler Stations	Kessler Cable Stations and Kessler Satellite Stations, collectively
Librarian	Librarian of Congress
MPAA	Motion Picture Association of America, Inc., and its represented Program Suppliers claimants
MPAA PCL	MPAA Proposed Conclusions Of Law
MPAA PFF	MPAA Proposed Findings Of Fact
MSO	Multiple System Operator
Nielsen	The Nielsen Company
Nielsen Diary Data	Viewing data used for generating national cable and broadcast network ratings collected from Nielsen diaries

	during 2000-2003 for the “sweeps” months of November, February, May, July, and in some cases October and March
Nielsen Diary Studies	Nielsen’s custom analyses of the Nielsen Diary Data of compensable viewing for the Kessler Stations
Nielsen Local Ratings Data	Nielsen local ratings data for the Gray Stations
Nielsen National Household Viewing Data	Nielsen annual aggregated, average minute, metered household tuning by quarter-hour of broadcast stations, network affiliates, and independents nationally for the years 2000-2009
Preliminary Hearing Order	Memorandum Opinion And Ruling On Validity And Categorization Of Claims (March 13, 2015)
Program Suppliers	Syndicated series, specials and movies, other than Devotional Claimants programs as defined below. Syndicated series and specials are defined as including (1) programs licensed to and broadcast by at least one U.S. commercial television station during the calendar year in question, (2) programs produced by or for a broadcast station that are broadcast by two or more U.S. television stations during the calendar year in question, and (3) programs produced by or for a U.S. commercial television station that are comprised predominantly of syndicated elements, such as music video shows, cartoon shows, “PM Magazine,” and locally hosted movie shows
SDC	Settling Devotional Claimants
Section 111	17 U.S.C. § 111
Section 119	17 U.S.C. § 119
SOAs	Statements of Account
SSO	Satellite System Operator
Tribune	Tribune Media Services, Inc.

WDT	Written Direct Testimony of witnesses filed in this proceeding as a part of MPAA, SDC, or IPG's Written Direct Statements on May 9, 2014, and as subsequently amended or corrected
WGNA	WGN-America, a superstation airing throughout the U.S.
WGN-local	WGN's local feed, airing in the Chicago DMA
WRT	Written Rebuttal Testimony of witnesses filed in this proceeding as a part of MPAA, SDC, or IPG's Written Rebuttal Statements on March 26, 2015

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In the Matter of **Distribution of the 1999-2009 Satellite Royalty Funds**	**Docket No. 2012-7 CRB SD 1999-2009 (Phase II)**

INTRODUCTION AND SUMMARY

The purpose of this proceeding is to determine how cable and satellite statutory license royalties collected for the years 2004-2009 and 1999-2009, respectively, should be allocated between claimants within two Phase I claimant categories: the Program Suppliers category and the Devotional category. Within the Program Suppliers category, the Judges must determine how the royalties should be allocated between MPAA and IPG for the 2004-2009 Cable Funds and for the 2000-2009 Satellite Funds.[1]

MPAA directly represents approximately one hundred agents of and producers and distributors of syndicated series, movies, and specials whose programs were broadcast by television stations distantly retransmitted by cable systems and satellite systems during the 2000 through 2009 royalty years. Counting joint claimants, MPAA represents directly and indirectly

[1] Distribution of the 1999 satellite royalty fund within the Program Suppliers category was resolved by settlement, and those funds finally distributed by the Judges in 2013. *See* 78 Fed. Reg. 50114, 50115 (Aug. 16, 2013) (citing Order, Docket No. 2008-5 CRB SD 1999-2000 (June 19, 2013)).

between 3,000 and 4,000 claimants per cable royalty year, and between 900 and 4,000 claimants per satellite royalty year. MPAA's claimants cover a diverse range of genres of programs, including dramas, comedies, children's programming, news, game shows, entertainment shows, talk shows, science shows and sports shows. IPG represents claimants within the Program Suppliers category as well, although its claimants claim significantly fewer programs than MPAA's claimants. While it is true that MPAA represents major producers and syndicators whose programming constitute a large share of compensable programs, MPAA also represents claimants who are in many cases just as small as, or smaller than, some of IPG's claimants. In the end, as the record in this proceeding shows, and as has been shown in prior Phase II proceedings, MPAA's programs are far more voluminous, far more diverse, far more popular, and ultimately, far more valuable than IPG's programs.

I. LEGAL AND DISTRIBUTION STANDARDS

There is no dispute about the legal standard for allocating cable royalties in this proceeding. The Judges must act on the basis of a written record, prior determinations made in other distribution proceedings, and the decisions of the D.C. Circuit.[2] Further, each party seeking a share of the royalties at issue has the burden of persuasion that its requested share is supported by the evidence in the record.[3]

Nor is there a dispute about the distribution standard. Although Congress did not prescribe a standard for allocating royalties, the Judges, the CARP, the Librarian, and the D.C. Circuit all have held that royalty awards in distribution proceedings should be based on the

[2] *See* 17 U.S.C. § 803(a)(1).

[3] *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 270-80 (1994); *Nat'l Mining Ass'n v. Dept. of Labor*, 292 F.3d 849, 871-72 (D.C. Cir. 2002).

relative market value of the programming at issue.[4] What sets MPAA and IPG apart in this case is how each party articulates relative market value.

II. METHODOLOGICAL APPROACH

MPAA's and IPG's methodological approaches are starkly different. MPAA advocates a viewing-based methodological approach. MPAA submits that viewing is particularly appropriate for allocating royalty shares between IPG and MPAA in this Phase II proceeding because of the homogeneity of the programs claimed by both parties, *i.e.*, both parties claim programs within the Program Suppliers program category. The underlying economic principle is that, with homogenous goods, the incremental costs of carrying the same type of programs (syndicated series, movies and specials) and the programs' impact on subscriber growth are assumed to be similar. In addition, viewing is a measure of the popularity of a program and it follows that it is an expression of the program's value. Therefore, using viewing as a measure of value makes economic sense.

To develop its methodology, MPAA first obtained the following information for each of the 2004-2009 cable and 2000-2009 satellite royalty years: (1) CDC carriage data for all types of cable systems, and all satellite systems; (2) Nielsen Diary Studies; (3) Nielsen Local Ratings Data; (4) Nielsen National Household Viewing Data; and (5) Tribune Data.[5] With information from Nielsen Diary Studies, which covered a limited number of months per year during 2000-2003, supplemented by information from the Nielsen Local Ratings Data and Nielsen National Household Data, which covered the entirety of each year for 2000-2009, MPAA then constructed a regression model using all of the foregoing information as inputs into the model. The result of

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[4] *See, e.g.*, 78 Fed. Reg. 64984, 64991 (October 30, 2013); *Program Suppliers v. Librarian of Congress*, 409 F.3d 395, 401 (D.C. Cir. 2005).

[5] *See* MPAA PFF at ¶¶ 11-14, 16-18, 31-33, 39-40, 56; MPAA PCL at ¶¶ 22.

this analysis is a full year (24 hours a day, 365 days a year) estimate of relative viewing between MPAA-claimed and IPG-claimed programs, provided for each of the 2004-2009 cable and 2000-2009 satellite royalty years.[6]

MPAA's methodology is a thorough, thoughtful, and sophisticated endeavor. Each element of the methodology is supported by extremely competent experts and other professionals whose diligence is borne out by their respective testimonies. Accordingly, the regression results form the basis of MPAA's proposed share allocation between MPAA and IPG.

IPG leveled several criticisms against MPAA's methodology, none of which are meritorious. Some of the criticisms are leveled by IPG witness Raul Galaz, who as discussed below, is not qualified to make such criticisms.[7] The other IPG witnesses, Michael Egan and Dr. Laura Robinson, made significant concessions during their testimonies that support MPAA's methodology and undermine IPG's. For example, Mr. Egan conceded that Nielsen viewing data would be "good" and "helpful" information to a CSO in evaluating the relative market value of programming, especially when comparing relatively homogenous programs within a particular program niche.[8] Dr. Robinson conceded that MPAA's regression analysis had merit, and that she would have performed a similar analysis herself if IPG had provided her with access to program-level viewing data.[9]

Again in this proceeding, IPG repeated its attack on MPAA's methodology based on the so-called "zero viewing" issue. MPAA demonstrated the fallacy of this criticism in the 2000-

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[6] MPAA PFF at ¶¶ 74-79; MPAA PCL at ¶ 24.

[7] MPAA PFF at ¶¶ 192-201.

[8] MPAA PFF at ¶¶116, 121-22, 125-27.

[9] MPAA PFF at ¶¶ 174-75, 177, 181.

2003 Cable Phase II Proceeding to the satisfaction of both the Judges and the D.C. Circuit.[10] The record in this proceeding is no different on this issue. MPAA incorporated here the same record evidence addressing zero viewing from the 2000-2003 Cable Phase II Proceeding, and, by stipulation, the written testimony of Mr. Paul Lindstrom of Nielsen.[11] This evidence shows that MPAA thoroughly explained zero viewing and exposed IPG's lack of understanding of the fundamental statistical precepts underlying television audience measurement. Most importantly, MPAA clearly established that if zero viewing is an issue at all, that issue is completely resolved by MPAA's regression analysis which provides a full year (24 hours a day, 365 days a year) estimate of relative viewing between MPAA-claimed and IPG claimed programs.[12] All of the other criticisms leveled against MPAA and its methodology are thoroughly addressed in this pleading.

By contrast, IPG's methodology presented in this proceeding is, once again, a crude approximation of the MPAA methodology. IPG advocates that the allocation of shares between MPAA and IPG should be a function of volume multiplied by a series of shift factors: *Time of Day*, *Fees Paid*, and *Subscriber Count*. Leaving aside IPG's failure to articulate how its methodology relates to relative market value, the most fundamental of its flaws is its deliberate exclusion of actual viewership. Indeed, under IPG's methodology, two different programs with the same shift factors will be accorded the same value regardless of whether anyone watched one, but not the other.[13] There are several other flaws in the execution of the IPG methodology that makes the methodology unreliable. They include the non-random nature of the

[10] *See* 78 Fed. Reg. at 65002; *Independent Producers Group v. Librarian of Congress, et al*, No. 13-1274, slip op. at 20 (D.C. Cir. June 30, 2015).

[11] MPAA Exhibits 364-65, 371-72; Tr. Vol. 1 at 32-33 (Plovnick, Boydston).

[12] MPAA PFF at ¶¶ 34-37, 84-88; MPAA PCL at ¶¶ 35-37.

[13] MPAA PFF at ¶¶ 133-34, 143-53; MPAA PCL at ¶¶ 43-45

methodology's overlap sample stations, exclusion of compensable programs, inclusion of non-compensable programs, and failure to reflect dismissed IPG claimants.[14]

Further, IPG's evidentiary presentation is once again tainted by the participation of Mr. Raul Galaz, who not only testified for IPG, but also prepared data analyses relied on by IPG's expert witness, Dr. Robinson.[15] Mr. Galaz, by his own admission, is not an economist, statistician or an econometrician.[16] He did not profess any field of specialty that makes him qualified to present an economic analysis or to offer opinion testimony evaluating the analyses performed by others.[17] Moreover, Mr. Galaz has lied under oath in statutory license proceedings, and was convicted of a felony involving fraud on the Copyright Office.[18] His testimony therefore deserves no weight.

As the record demonstrates, there are remarkable differences between MPAA's and IPG's presentations and methodological approaches – MPAA's being methodologically sound and IPG's fundamentally flawed, both conceptually and in its application. As more fully articulated below, MPAA urges the Judges to adopt its proposal for allocating the 2004-2009 Cable Funds and 2000-2009 Satellite Funds.

III. SUMMARY OF SECTIONS

This pleading is divided into two major parts. Part I, MPAA's Proposed Findings of Fact, is the substantive summary of the witnesses' testimonies. Part II, MPAA's Proposed Conclusions Of Law, contains the articulation of the relevant law and the application of such law

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[14] MPAA PCL at ¶¶ 47-53.

[15] MPAA PFF at ¶¶ 166, 174, 213-20; MPAA PCL at ¶ 58.

[16] MPAA PFF at ¶ 192.

[17] MPAA PFF at ¶¶ 192-201; MPAA PCL at ¶ 57.

[18] MPAA PFF at 199-201; MPAA PCL at ¶ 57.

to the facts established in this proceeding. Also attached are Appendices A and B, which are charts summarizing the specific IPG claimants dismissed by the Judges during the Preliminary Hearing in this proceeding on a royalty-year basis. MPAA also hereby incorporates by reference MPAA Exhibits 300-361, which the Judges admitted into evidence during the Preliminary Hearing in this proceeding.

IV. PHASE II PROGRAM SUPPLIERS ROYALTY SHARES REQUESTED

Based on the evidence in this proceeding and the record before the Judges, MPAA requests the following share allocations between MPAA and IPG for the 2004-2009 Cable Funds and 2000-2009 Satellite Funds in the Program Suppliers category:

Cable Royalty Year	MPAA Share Of PS Fund (%)	IPG Share Of PS Fund (%)
2004	99.59%	0.41%
2005	99.55%	0.45%
2006	99.32%	0.68%
2007	99.28%	0.72%
2008	99.19%	0.81%
2009	99.39%	0.61%

Satellite Royalty Year	MPAA Share Of PS Fund (%)	IPG Share Of PS Fund (%)
2000	99.65%	0.35%
2001	99.77%	0.23%
2002	99.80%	0.20%
2003	99.61%	0.39%
2004	99.87%	0.13%
2005	99.78%	0.22%
2006	99.73%	0.27%
2007	99.74%	0.26%
2008	99.77%	0.23%
2009	99.58%	0.42%

MPAA PROPOSED FINDINGS OF FACT

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PROPOSED FINDINGS OF FACT

I. Sections 111 and 119 Background

1. Sections 111 and 119 of the Copyright Act establish statutory licenses permitting CSOs and SSOs, respectively, to retransmit broadcast signals outside of their local area of license (that is, on a distant basis) provided that the CSOs and SSOs pay the statutorily-prescribed royalty fees to the Licensing Division of the Copyright Office semi-annually. In the case of Section 111, the prescribed fees are based primarily on the number and type of distant stations each CSO chooses to carry, and in the case of Section 119, the number of satellite subscribers receiving those distant stations. After collecting the royalty payments from CSOs and SSOs, upon authority of the Judges, the Copyright Office distributes the royalties among copyright owners of compensable programs contained in the distant signals (or their representatives), either by agreement reached among the claimants or pursuant to the determination in a cable royalty distribution proceeding held before the Judges. MPAA Exhibit 368, Appendix A at 6-21; MPAA Exhibit 366 (Gray WDT) at 6-7; MPAA Exhibit 367 (Gray WDT) at 6-7.

2. To be considered compensable under Section 111, a program must be: (1) initially transmitted by a broadcast television station that either the FCC or the Canadian or Mexican governments has licensed to a particular community on a specific channel; (2) included in the distant simultaneous retransmission of the broadcast station by a cable system (a station *transmits* and the cable system *retransmits*); and (3) nonnetwork – that is, it is not a program distributed by the ABC, CBS or NBC networks via their affiliated stations. MPAA Exhibit 368, Appendix A at 4.

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3. Compensability under Section 119 is similar to Section 111, however, one key difference is that network programming retransmitted by SSOs is compensable under Section 119, whereas under Section 111, cable network programming is not. MPAA Exhibit 310 (Saunders WDT) at 8.

II. MPAA-represented Program Suppliers' Claim In This Proceeding

4. MPAA-represented Program Suppliers consist of approximately 100 claimants each year for the 2004-2009 Cable Funds and 2000-2009 Satellite Funds. Each MPAA claimant (1) filed a cable or satellite royalty claim for the royalty year at issue, (2) signed a representation agreement with MPAA, and (3) for each royalty year, executed a document certifying its authority to claim cable and satellite royalties attributable to particular programs. Because many of these MPAA-represented claimants filed joint claims, have multiple subsidiaries, and include royalty collection agents, MPAA directly and indirectly represents between 3,000 and 4,000 claimants per cable royalty year, and between 900 and 4,000 claimants per satellite royalty year. Where a MPAA-represented claimant filed a joint Section 111 or 119 claim on behalf of its subsidiaries, or as the agent of copyright owners, the claimant bound the joint claimants to its agreement with MPAA, which specifically authorizes MPAA to represent all entities listed on the joint claim. MPAA Exhibit 309 (Saunders WDT) at 4-5, 8-9; MPAA Exhibit 310 (Saunders WDT) at 4-6, 9-10.

5. MPAA-represented Program Suppliers include not only the major U.S. production studios, but also dozens of smaller producers and syndicators from both the U.S. and many parts of the world – all of whom have filed claims seeking a share of the royalty pool for a particular royalty year. MPAA Exhibit 309 (Saunders WDT) at 5-8; MPAA Exhibit 310 (Saunders WDT) at 5-9.

6. Together, MPAA-represented Program Suppliers represent approximately 68,000 titles and hundreds of thousands of hours of valuable programming retransmitted by CSOs and SSOs for the 2004-2009 cable royalty years and the 2000-2009 satellite royalty years. MPAA-represented Program Suppliers' programs consist of thousands of unique series, movies and specials, including game shows, live action and/or animated series and sitcoms, news magazines, interview and talk shows, sports shows and sporting events, award shows and pageants, health and fitness shows, and animal shows. These shows air in English as well as in Spanish, and many of them were retransmitted multiple times over the relevant royalty years. MPAA Exhibit 309 (Saunders WDT) at 7-8; MPAA Exhibit 310 (Saunders WDT) at 8-9.

7. Historically, MPAA has represented the vast majority of claimed compensable programs at issue within the Program Suppliers category in Phase II proceedings. In each of the prior litigated Phase II proceedings since 1979, MPAA-represented Program Suppliers have received most of the royalties awarded to the Program Suppliers category—on average, 98.4% of each Phase II award in the Program Suppliers category, notwithstanding multiple Phase II claimants within the Program Suppliers category in most of those years. In the most recent Phase II Proceeding addressing the allocation of Program Supplier royalties, the 2000-2003 Cable Phase II Proceeding, MPAA received royalty shares of 98.84% in 2000, 99.69% in 2001, 99.64% in 2002, and 99.77% in 2003. The D.C. Circuit recently affirmed these awards. *See Independent Producers Group v. Librarian of Congress*, No. 13-1274, *et al.*, slip op. at 14-22 (D.C. Cir. June 30, 2015); 78 Fed. Reg. 64984 (Oct. 30, 2013); MPAA Exhibit 366 (Gray WDT) at 8-9; MPAA Exhibit 367 (Gray WDT) at 9-10.

III. IPG's Program Suppliers Claims In This Proceeding

8. IPG originally claimed to represent the interests of 118 entities in the Program Suppliers category as to the 2004-2009 Cable Funds, and 153 entities in the Program Suppliers category as to the 2000-2009 Satellite Funds. *See* Direct Statements Of Independent Producers Group, Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II) at Exhibits IPG-1(May 9, 2014).

9. On March 13, 2015, by their Preliminary Hearing Order, the Judges dismissed 32 IPG Program Suppliers claimants as to some or all of the 2004-2009 Cable Funds, and 83 IPG Program Suppliers claimants as to some or all of the 2000-2009 Satellite Funds. As a result of these dismissals, the list of IPG-represented Program Suppliers claimants for the 2004-2009 Cable Funds shrank to 88 entities in 2004, 88 entities in 2005, 87 entities in 2006, 89 entities in 2007, 88 entities in 2008, and 88 entities in 2009. For the 2000-2009 Satellite Funds, the list of IPG-represented Program Supplier claimants decreased to 101 entities in 2000, 110 entities in 2001, 111 entities in 2002, 112 entities in 2003, 111 entities in 2004, 111 entities in 2005, 110 entities in 2006, 111 entities in 2007, 79 entities in 2008, and 111 entities in 2009. *See* Preliminary Hearing Order at 28-35 and Exhibit A.[19]

10. IPG has been a participant in only two prior Phase II distribution proceedings that addressed the allocation of royalties within the Program Suppliers category: the 1997 Cable Phase II Proceeding, and the 2000-2003 Cable Phase II Proceeding. In the 1997 Cable Phase II Proceeding, the CARP awarded IPG 0.212% of the Program Suppliers fund. The Librarian subsequently vacated that CARP decision pursuant to a settlement among MPAA, IPG and the

[19] Charts showing the specific IPG claimants addressed by the Preliminary Hearing Order and the cable and satellite royalty years affected are attached hereto as Appendices A and B.

Librarian. In the 2000-2003 Cable Phase II Proceeding, the Judges awarded IPG Program Suppliers fund shares of 1.16% in 2000, 0.31% in 2001, 0.36% in 2002, and 0.23% in 2003. *See Independent Producers Group v. Librarian of Congress*, *et al.,* No. 13-1274, slip op. at 14-22 (D.C. Cir. June 30, 2015); 78 Fed. Reg. 64984 (Oct. 30, 2013); 69 Fed. Reg. 23821 (April 30, 2004); 66 Fed. Reg. 66433 (Dec. 26, 2001).

IV. Elements Of MPAA's Methodology

A. CDC Carriage Reports

11. Jonda K. Martin is the President and owner of CDC. CDC collects and analyzes data reported on SOAs that cable and satellite systems file with the Licensing Division of the Copyright Office and then generates both standard and custom reports capturing that data for clients. CDC makes its information available to users by purchase, either on an as-needed basis, or by subscription. CDC is the only company providing such a service. Ms. Martin has worked at CDC for almost 27 years, and oversees all of its operations, including the management and distribution of CDC data. Tr. Vol. 3 at 274-76 (Martin); Exhibit 362 (Martin WDT) at 1; Exhibit 363 (Martin WDT) at 1.

12. Numerous parties involved in the cable and satellite industries rely on data collected by CDC. CDC data is particularly used by participants in cable and satellite royalty distribution proceedings, as well as others involved in the cable and satellite industries, such as television stations, group owners, and cable systems. As a result, CDC data have been presented over the years to the CRT, the CARP, and the Judges in virtually all of the cable and satellite copyright royalty distribution proceedings and rate adjustment proceedings. MPAA Exhibit 362 (Martin WDT) at 2; MPAA Exhibit 363 (Martin WDT) at 2; Tr. Vol. 3 at 276 (Martin).

13. IPG uses CDC cable data, but IPG does not subscribe to CDC satellite data. Tr. Vol. 3 at 276 (Martin).

14. CDC provided MPAA with customized data reports for each of the 2004-2009 cable and 2000-2009 satellite royalty years. For each royalty year, these data reports listed all commercial broadcast stations carried as full-time distant signals by cable and satellite systems, the number of distant subscribers to which each station was available, and CDC's calculation of the distant fees generated by that station. For his analysis, MPAA's expert, Dr. Jeffrey Gray, selected sample stations for each royalty year at issue in this proceeding from these data. Exhibit 362 (Martin WDT) at 3; Exhibit 363 (Martin WDT) at 3.

B. Selection Of Sample Stations Used In The Nielsen Diary Studies

15. Marsha Kessler served as Vice President, Retransmission Royalty Distribution, at MPAA for approximately 28 years. She retired from that position in August of 2010. During her tenure at MPAA, Ms. Kessler was directly responsible for receiving and distributing §§ 111 and 119 compulsory license royalties from cable and satellite systems. Ms. Kessler testified before the CRT, the CARP, the Judges, and the Canadian Copyright Board on numerous occasions. Before joining MPAA, Ms. Kessler served on the original staff of the Copyright Office's Licensing Division, the division responsible for processing compulsory license royalty payments. MPAA Exhibit 368 at 1; MPAA Exhibit 369 at 1.

16. Ms. Kessler selected the Kessler Cable Stations and Kessler Satellite Stations whose compensable programming would be the basis for the remuneration of royalties to MPAA-represented claimants. First, Ms. Kessler obtained from CDC a listing of broadcast stations that were retransmitted as distant signals by cable and satellite systems during 2000

through 2003. Second, Ms. Kessler excluded Canadian, Mexican and public television stations. Third, for each delivery system, Ms. Kessler ranked stations according to the number of distant subscribers. She then selected her sample stations based on a combination of fees generated and distant subscribers. Finally, Ms. Kessler performed a county analysis, which is a county-by-county analysis for each of the stations, the end result of which identifies, based on FCC rules, the counties deemed "local" viewing areas for each station. MPAA Exhibit 370 at 114-127; MPAA Exhibit 368 at 11-13 and Appendices D, E, and F; MPAA Exhibit 310 (Saunders WDT) at 10-11 and Appendix C.

17. Ms. Kessler forwarded the Kessler Cable Stations to Nielsen, instructing Nielsen to provide program by program viewing measurements for each station, but to exclude from each such station's measurements, viewing to each station from counties deemed local; Nielsen was to produce only viewing outside the local counties (*i.e.*, distant viewing). Ms. Kessler further instructed Nielsen to organize the viewing results by the eight Phase I program categories. MPAA Exhibit 370 at 114-127; MPAA Exhibit 368 at 13-14.

18. Ms. Kessler also forwarded the Kessler Satellite Stations to Nielsen and requested a similar viewing study be conducted for those stations. MPAA Exhibit 310 (Saunders WDT) at 10-11.

C. Nielsen Viewing Data

19. Mr. Paul B. Lindstrom is a Senior Vice President at Nielsen. He has worked at Nielsen for 36 years, and is in charge of research design and analysis for Nielsen's Strategic Media Research group. Mr. Lindstrom's work at Nielsen includes designing custom research with a particular focus on new television viewing sources and audience measurement of new

services that might compete with television. Mr. Lindstrom has performed custom research for various different forms of media, including cable television, pay-TV, satellite services, over-the-air subscription television, VCRs, PCs, on-line services, the Internet, DVDs, cinema, and most recently, place-based and location-based digital networks. Mr. Lindstrom is currently responsible for all national custom research and all custom research for local cable. MPAA Exhibit 364 (Lindstrom WDT) at 1; Exhibit 365 (Lindstrom WDT) at 1; MPAA Exhibit 371 at 1-2; MPAA Exhibit 372 at 281-287.

20. Mr. Lindstrom has testified in every litigated cable royalty distribution proceeding since 1980, and has testified before the CRT, the CARP and the Judges. MPAA Exhibit 371 at 2; MPAA Exhibit 372 at 287 (Lindstrom); MPAA Exhibit 364 (Lindstrom WDT) at 2; MPAA Exhibit 365 (Lindstrom WDT) at 2.

21. Mr. Lindstrom has been qualified as an expert in the field of market research with an emphasis on television and cable audience measurement. MPAA Exhibit 372 at 287-88 (Lindstrom).

22. The Nielsen name is synonymous with television ratings. Nielsen is a well-regarded and highly used source of audience measurement information in the television industry. Nielsen ratings provide an estimate of television audience size and are a barometer for viewing choices and preferences. MPAA Exhibit 364 (Lindstrom WDT) at 2; MPAA Exhibit 365 (Lindstrom WDT) at 2; MPAA Exhibit 371 at 2; MPAA Exhibit 366 (Gray WDT) at 17; MPAA Exhibit 367 (Gray WDT) at 18; Tr. Vol. 5, at 25 (Robinson); Tr. Vol. 2, at 80-82, 86, 88 (Berlin).

23. Viewing information is important to broadcast networks, local and national syndicated programs, local cable system operators, MSOs, satellite carriers, and interconnects. Interconnects are aggregations of cable systems that cover a particular market or region, thus allowing an agency or advertiser to buy a large area at one time without having to negotiate with many different companies. MPAA Exhibit 364 (Lindstrom WDT) at 2; MPAA Exhibit 365 (Lindstrom WDT) at 2; MPAA Exhibit 371 (Lindstrom WDT) at 2; MPAA Exhibit 366 (Gray WDT) at 14, 17-18; MPAA Exhibit 367 (Gray WDT) at 15-16, 18-20; Tr. Vol. 1 at 241 (Sanders).

24. As more local cable and satellite advertising sellers sell local advertising time on cable channels, they need an agreed upon "currency" in order to maximize the value of their advertising time. Nielsen ratings offer that currency. Nielsen's charter as an independent measurement service is to provide both the buyer and seller of time with unbiased estimates of viewing behavior. MPAA Exhibit 364 (Lindstrom WDT) at 3; MPAA Exhibit 365 (Lindstrom WDT) at 3; MPAA Exhibit 371 at 2.

25. Nielsen ratings are a statistical estimate of the number of homes tuned to a program. Ratings are based not on a count of all television households, but on the count within a sample of television households selected from all television households. The findings within the sample are then "projected" to national totals. A rating measures what percentage of the universe of television households are tuned in to a program. MPAA Exhibit 364 (Lindstrom WDT) at 3; MPAA Exhibit 365 (Lindstrom WDT) at 3; MPAA Exhibit 371 at 3; Tr. Vol 1 at 70 (Erdem).

26. During 2000-2009, Nielsen utilized two basic data collection instruments in syndicated services: meters and diaries. MPAA Exhibit 364 (Lindstrom WDT) at 3-4; MPAA Exhibit 365 (Lindstrom WDT) at 4.

27. A set meter is an electronic device attached to a television set in a particular household that detects the channel to which the television is being tuned. The data from these set meters are then converted into household ratings. Household meter data is collected year-round in a random sample of households in selected geographic markets across the United States, *i.e.*, Nielsen's metered markets, during 2000-2009. MPAA Exhibit 364 (Lindstrom WDT) at 3-4; MPAA Exhibit 365 (Lindstrom WDT) at 4; MPAA Exhibit 366 (Gray WDT) at 18; MPAA Exhibit 367 (Gray WDT) at 20; Tr. Vol. 1 at 69, 111 (Gray).

28. Diaries are paper booklets in which each person in the household records viewing information. During 2000-2003, Nielsen collected diary data in its metered markets for the months of November, February, May, July, and in some cases October and March, which are also known as the "sweeps" ratings periods. Seven-day diaries were mailed to homes randomly selected by Nielsen to keep a tally of programs watched on each television set and by whom, including channel numbers and call letters. Over the course of a four-week sweeps period, diaries were mailed to a new panel of randomly selected homes each week. At the end of each month, all of the viewing data from the individual weeks were aggregated into Nielsen's database. Each sweeps period yielded a sample of approximately 100,000 per sweep period or more than 400,000 households over the course of a year. MPAA Exhibit 364 (Lindstrom WDT) at 4; MPAA Exhibit 365 (Lindstrom WDT) at 4-5; MPAA Exhibit 371 at 4; MPAA Exhibit 366 (Gray WDT) at 17-18; MPAA Exhibit 367 (Gray WDT) at 19; MPAA Exhibit 372 at 290, 296-98, 312 (Lindstrom); Tr. Vol. I at 68-69 (Gray).

29. Viewing, as measured by Nielsen, is the predominant standard by which all television programming is commercially evaluated. Standard Nielsen ratings – which are measured on a county-by-county basis – do not differentiate between distant and local viewing. MPAA Exhibit 368 at 10, 12; SDC Exhibit 633 (Berlin WDT) at 3; SDC Exhibit 634 (Berlin WDT) at 3.

30. MPAA relied on three different types of Nielsen data in this proceeding: (1) Nielsen Diary Studies for the years 2000-2003, (2) Nielsen Local Ratings Data for the years 2000-2009, and (3) Nielsen National Household Viewing Data for the years 2000-2009. MPAA Exhibit 364 (Lindstrom WDT) at 4-5; MPAA Exhibit 365 (Lindstrom WDT) at 5-6.

1. Nielsen Diary Studies

31. MPAA asked Mr. Lindstrom of Nielsen to produce estimates of distant cable and satellite viewing to the Kessler Stations. In response, Nielsen prepared the Nielsen Diary Studies. MPAA Exhibit 371 at 5; MPAA Exhibit 372 at 288.

32. The Nielsen Diary Studies for the Kessler Cable Stations excluded cable viewing to each station from counties that MPAA identified as local in its county analysis, or in other words, only measured distant viewing among cable households. The studies also excluded distant viewing to non-compensable programs, such as distant viewing to ABC, CBS and NBC network programs and programs that were not simultaneously broadcast on WGN-local and WGNA. MPAA Exhibit 371 at 6.

33. Nielsen also performed a custom analysis estimating viewing by satellite households to the Kessler Satellite Stations. While the methodology used for the satellite custom analysis is very similar to the methodology used for Mr. Lindstrom's 2000-2003 cable custom

analysis, the methodology differs in some respects. For the 2000-2003 satellite Nielsen Diary Studies, Nielsen captured all viewing (network and non-network) to each of the Kessler Satellite Stations that occurred within satellite households. MPAA Exhibit 365 (Lindstrom WDT) at 5-6; MPAA Exhibit 310 at 11 and Appendix C.

34. Nielsen's cable and satellite custom analyses showed instances of so-called "zero viewing," or places where zero values appeared in the data. There are reasonable explanations for the presence of zeroes in the Nielsen Diary Studies. First, where noncompensable programs aired, Nielsen's analysis properly reported a zero viewing value. Second, the amount of actual viewing minutes to certain distant signals is very small. Thus, where the viewing minutes to particular distant signal programs were so small as to be statistically insignificant, Nielsen's custom analysis would assign a zero viewing value. MPAA Exhibit 364 (Lindstrom WDT) at 5-6; MPAA Exhibit 365 (Lindstrom WDT) at 6-7; MPAA Exhibit 371 at 6.

35. Third, the label of "zero viewing" is actually a misnomer. Zero viewing data points are instances of relatively small samples where there are observed pockets of no reported distant viewing for a particular broadcast. It does not signify that there is no one actually watching a particular broadcast at a particular time. It is a situation that frequently occurs in sample data, and steps can be taken to address it. Those steps almost always include some sort of aggregation of data. MPAA Exhibit 364 (Lindstrom WDT) at 6; MPAA 365 (Lindstrom WDT) at 7; MPAA Exhibit 372 at 298-99, 408-09 (Lindstrom); Tr. Vol. 1 at 73 (Gray); Tr. Vol. V at 174-75 (Gray).

36. Typically, Nielsen will place a caret (^) or asterisk (*) in its data reports to signify that the audience is too small to be measured, but not a zero character. The zero viewing

instances in the Nielsen Diary Studies prepared for MPAA indicate that there is no reported viewing within that sample of homes during that day and quarter hour. Because MPAA's viewership study required that Nielsen aggregate quarter hours across stations, across time and across sweeps periods, it was necessary for Nielsen to assign a numeric value to such instances. Nielsen assigned a zero numeric value to all instances where there was no reported viewing. Notwithstanding these zero viewing instances, reliable estimates of viewing may be drawn from the aggregate data. MPAA Exhibit 372 at 298-300 (Lindstrom); MPAA Exhibit 364 (Lindstrom WDT) at 6; MPAA Exhibit 365 (Lindstrom WDT) at 7.

37. High levels of zero viewing – in the 70 percent range, or more – are consistent with standard audience measurement across meters and diaries. MPAA Exhibit 372 at 371-73 (Lindstrom).

38. Nielsen is a "fence sitter." While Mr. Lindstrom has testified for MPAA, Nielsen has done work for claimant parties in cable royalty distribution proceedings other than MPAA. MPAA Exhibit 372 at 416 (Lindstrom).

2. Nielsen Local Ratings Data

39. The Nielsen Local Ratings Data were collected by electronic meters attached to television sets in Nielsen metered markets. These data include information on the number and percentage of households in the station's local market tuned to the station for each quarter-hour for every day throughout the year. MPAA Exhibit 364 (Lindstrom WDT) at 5; MPAA Exhibit 365 (Lindstrom WDT) at 6.

3. Nielsen National Household Viewing Data

40. The Nielsen National Household Viewing Data were also collected by electronic set meters attached to television sets, and include aggregated annual national viewing, ratings, and share, reported on a quarter-hour basis. MPAA Exhibit 364 (Lindstrom WDT) at 5; MPAA Exhibit 365 (Lindstrom WDT) at 6.

D. Regression Analysis

41. Dr. Gray is currently the President of Analytics Research Group, LLC. Immediately prior to this position, he was a Principal at Deloitte Financial Advisory Services, LLP, where he served as the National Director of their Economic Statistical Consulting Practice. MPAA Exhibit 366 (Gray WDT) at 2-3; MPAA Exhibit 367 (Gray WDT) at 2-3; Tr. Vol. 1 at 35 (Gray).

42. Dr. Gray is an expert witness in the fields of economics, statistics, and econometrics. Tr. Vol. 1 at 36 (Gray).

43. Dr. Gray served as a consultant to CSOs regarding the value of programming content on channels carried by their cable systems. Tr. Vol. 1 at 67-68 (Gray).

44. The economic standard that Dr. Gray applied to allocate royalties between MPAA and IPG was relative market value. Tr. Vol. 1 at 40-41 (Gray); MPAA Exhibit 366 (Gray WDT) at 10; MPAA Exhibit 367 (Gray WDT) at 10-11.

1. Application Of The Relative Market Value Standard

45. Relative market value corresponds to the price at which the right to retransmit a program carried on a distant broadcast signal would change hands between a willing buyer (a CSO or an SSO) and a willing seller (a copyright owner), neither being under any compulsion to

buy or to sell and both having reasonable knowledge of relevant facts. The "willing buyer" in this hypothetical negotiation is either the CSO or SSO because they choose which distant signal channels to carry. CSOs and SSOs bundle distant signal channels with cable channels, local broadcast channels and pay-per-view channels in different packages. The CSOs and SSOs then offer the packages to existing and potential subscribers at varying prices. While CSOs and SSOs base their channel and bundling decisions on attracting and retaining subscribers, other cost considerations factor into their decisions regarding which distant channels to retransmit and how to bundle them. MPAA Exhibit 366 (Gray WDT) at 10-11; MPAA Exhibit 367 (Gray WDT) at 11-12.

46. CSOs and SSOs' concerns of how to bundle channels are relevant to Phase I Proceedings. However, programming at issue within the Program Suppliers category in this Phase II proceeding is more homogenous than all of the programming at issue in the Phase I proceeding. As a result, the incremental costs to CSOs and SSOs associated with the carriage of Program Suppliers programs and the differential impact on subscriber growth of these programs can reasonably be assumed to be similar. Analysis in the Phase II proceeding should therefore concentrate more on quantifying subscriber viewing patterns in determining relative market value because of the homogenous nature of Program Suppliers' programming. MPAA Exhibit 366 (Gray WDT) at 11, MPAA Exhibit 367 (Gray WDT) at 12-13.

47. The relative market value of a program in this Phase II proceeding ultimately depends upon the consumption of the programming as measured by its level of viewing. As explained by actual Program Suppliers copyright owners, audience size – as measured by viewership – is central when making licensing deals with broadcast stations and cable networks in the world outside the compulsory licensing scheme. Moreover, in an attempt to attract and

retain customers, CSOs and SSOs want to carry programming with high viewership such as syndicated television series that originally attracted a loyal following in their network showing and continue to do so in syndication. CSOs and SSOs also carry genres of first-run syndicated programs that they believe will garner satisfactory audience levels. MPAA Exhibit 366 (Gray WDT) at 11-12; MPAA Exhibit 367 (Gray WDT) at 13.

48. Since this proceeding involves allocating a fixed royalty pool as part of a compulsory licensing scheme, it is entirely appropriate to consider pertinent information concerning the relative economic value of programming, namely program consumption as measured by actual program viewing. Purposefully ignoring actual viewing or ratings could lead to copyright owners of valuable programming receiving disproportionately small royalty awards. MPAA Exhibit 366 (Gray WDT) at 12; MPAA Exhibit 367 (Gray WDT) at 13-14; Tr. Vol. 1 at 41 (Gray).

2. Measuring Relative Market Value

49. Subscriber preferences are revealed by which distant stations and programs they choose to watch. Subscriber preferences may also be revealed by whether they continue to subscribe to the CSO or SSO. MPAA Exhibit 366 (Gray WDT) at 13; MPAA Exhibit 367 (Gray WDT) at 14.

a. Volume

50. Holding costs constant, CSOs and SSOs will choose to carry distant signals with programming that they can add to their lineup to attract and retain as many subscribers as possible. In theory, the economic-optimizing (*i.e.*, rational) CSO or SSO will choose to carry distant signals with the most preferred programming airing at the most preferred times. The total volume of minutes of programming retransmitted by CSOs and SSOs effectively represents the

amount of programming they purchase. Therefore, total program volume represents the economic-optimizing CSO and SSO choices and provides a measure of the relative economic value of the programming to the CSOs and SSOs. MPAA Exhibit 366 (Gray WDT) at 13; MPAA Exhibit 367 (Gray WDT) at 14.

51. While total program volume, or the total number of minutes of programming retransmitted on distant signals, provides useful information concerning the relative value of programming to CSOs and SSOs, that measure alone is not sufficient. In general, programs' values to the CSO and SSOs and their subscribers may differ depending on the time slot during which the programs are shown. A 30-minute program shown during primetime might be more valuable to a CSO or SSO and its subscribers than an hour-long program shown in the middle of the night. Moreover, programs of identical duration shown at the same time of day may have very different values to operators and their subscribers. That is, programming volume alone does not convey a complete picture of the relative value of the programs. MPAA Exhibit 366 (Gray WDT) at 13-14; MPAA Exhibit 367 (Gray WDT) at 15.

b. Viewership

52. Audience size, which is determined through program viewership, is the primary interest of programmers and, therefore, the most direct measure of a program's relative value. From the CSO or SSO's perspective, the more a program attracts subscribers to watch and keep coming back to watch, the more valuable the program is to their net-revenue maximizing goal of retaining and growing subscriber count. From the subscriber's perspective, relatively low viewership of a given program reflects the value ascribed to that program by subscribers, CSOs, and SSOs. Absent the bundling of programs, economic theory implies that a program with no

viewership will most likely not continue to be carried. MPAA Exhibit 366 (Gray WDT) at 14; MPAA Exhibit 367 (Gray WDT) at 15-16.

53. Program viewership as a measure of relative market value is consistent with economic theory: a CSO or SSO's willingness to pay for a particular program is a function of that program's contribution to their ability to attract and retain subscribers and thereby maximize net revenue. MPAA Exhibit 366 (Gray WDT) at 14; MPAA Exhibit 367 (Gray WDT) at 16.

c. Subscriber Count

54. While viewership is proportional to value, a question from the net revenue maximizing CSO or SSO's perspective is whether similar viewership levels of different programs are associated with different levels of subscriber retention and attraction. All else equal, programs that are responsible for more subscriber growth – both retaining current subscribers as well as encouraging new subscribers – are more valuable to CSOs and SSOs than programs promoting less subscriber growth. In this Phase II proceeding, all the MPAA and IPG represented programs at issue are within the syndicated series and movies category. Nonetheless, Dr. Gray statistically examined whether MPAA-represented or IPG-represented programs affected subscriber growth differently. They did not. MPAA Exhibit 366 (Gray WDT) at 15; MPAA Exhibit 367 (Gray WDT) at 16-17.

55. Dr. Gray's methodology applies a three-step approach to determining the relative market value of MPAA and IPG compensable programming. First, he calculated the relative volume of MPAA programming and IPG programming. This provides a good, but imperfect indicator of the relative value of the two sets of programs. Second, he calculated the relative viewership of MPAA programming and IPG programming. This is the most direct measure of relative value: if costs are deemed constant, and without taking subscriber growth into account,

then, the higher subscriber viewership will suggest higher relative market value of the programming. Third, he examines statistically whether MPAA and IPG programming affect subscriber growth differently. Given that this is a Phase II proceeding and the consequent similarity of the type of programming represented by MPAA and IPG, if there is no meaningful difference in how the two sets of programs affect subscriber growth, then viewership share is the most economically sound measure of relative market value. MPAA Exhibit 366 (Gray WDT) at 15-16; MPAA Exhibit 367 (Gray WDT) at 17.

3. Determining The Relative Market Value Of MPAA Programming Versus IPG Programming

56. Dr. Gray relies upon Nielsen ratings data and viewing data in combination with Tribune data to study the volume and viewing information of compensable programs from 2000 through 2009. He also relies upon CDC data that includes information on the number of CSO and SSO subscribers of each distantly retransmitted signal analyzed, and, for his cable analysis, CRTC program logs to determine the country of origin of programs claimed by both IPG and MPAA which aired on Canadian stations. Programming aired on Canadian stations which originated from countries other than the United States are not compensable as Program Suppliers programs. MPAA Exhibit 366 (Gray WDT) at 16-20; MPAA Exhibit 367 (Gray WDT) at 18-22; Tr. Vol. 1 at 103-04 (Gray); MPAA Exhibit 369 at Addendum B.

57. There were over 1,000 stations that were distantly retransmitted by CSOs each year from 2004 to 2009. Due to cost considerations in obtaining Nielsen Local Ratings data and Tribune data for all these stations, Dr. Gray implemented a stratified random sampling methodology to identify a sample of distantly retransmitted stations each year from 2000 to 2009, the Gray Cable Stations. Across the samples there were 1,269 station-year combinations

with 533 unique stations. Each year's random sample included both large and small stations in terms of the number of distant subscribers as well as fees generated. The Gray Cable Stations were given to Nielsen and to Tribune. For all of these stations and years for which data was available, Nielsen provided Local Ratings data and Tribune provided the Tribune data to Dr. Gray. MPAA Exhibit 366 (Gray WDT) at 19-20.

58. The number of stations that were distantly retransmitted by satellite carriers varied each year from only 62 in 2008 to over 650 in 2006. Dr. Gray implemented a stratified random sampling methodology in each year from 2000 to 2006, when there were over 80 distantly retransmitted satellite stations. Dr. Gray requested Nielsen and Tribune data for these randomly selected stations each year as well as data for all distantly retransmitted satellite stations each year from 2007 to 2009. Collectively, these are the Gray Satellite Stations. Each year's list included both large and small stations in terms of the number of distant subscribers as well as fees generated. MPAA Exhibit 367 (Gray WDT) at 21-22.

59. Dr. Gray calculated sampling weights for each of his strata in order to make sure that his sample could be projected out to the entire the population. Tr. Vol. 1 at 45-46 (Gray).

60. Dr. Gray excluded all network programming from his cable analysis because it is non-compensable under Section 111. Dr. Gray also excluded, as non-compensable, programs airing on WGN-local that were not simultaneously broadcast on WGNA. MPAA Exhibit 366 (Gray WDT) at 19; MPAA Exhibit 367 (Gray WDT) at 20-21.

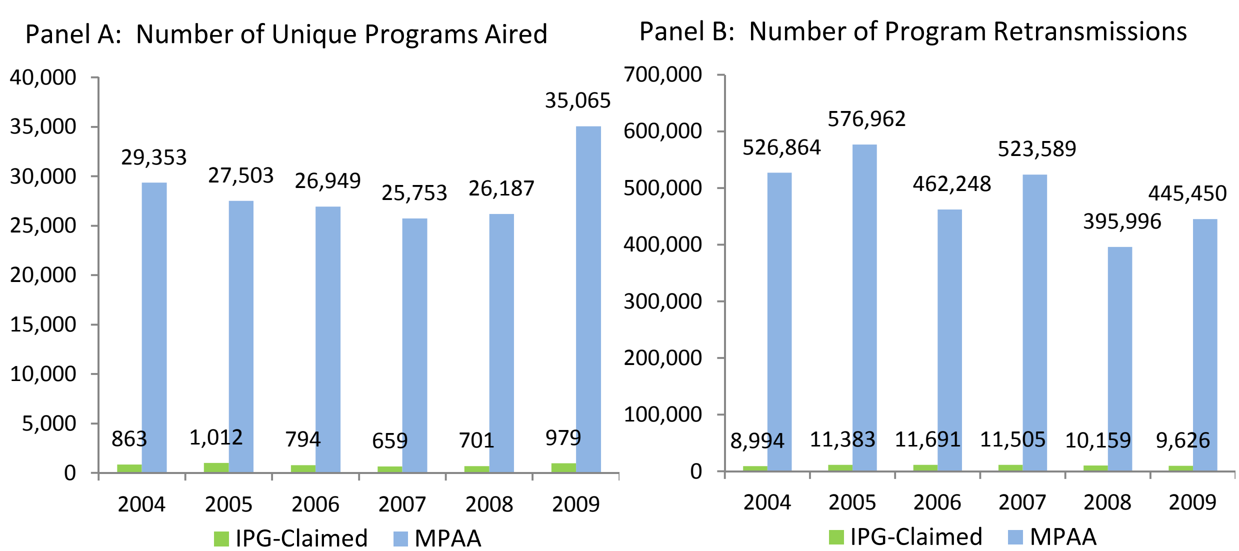
61. To determine the relative market value of compensable Program Suppliers programs that aired on distantly retransmitted stations, it is appropriate to calculate the relative viewing of those programs on a distant basis. To do so, Dr. Gray first calculates the

mathematical relationship between distant viewing levels for the years the data is available and various program characteristics during those years, and then extrapolates that mathematical relationship to estimate distant viewing for compensable programs each cable royalty year from 2004 to 2009, and each satellite royalty year from 2000-2009. MPAA Exhibit 366 (Gray WDT) at 21; MPAA Exhibit 367 (Gray WDT) at 22.

a. Program Retransmissions And Volume Statistics

62. Cable Chart 1 below presents summary statistics concerning the number of MPAA and IPG-claimed compensable programs and associated programming volume that aired on the Gray Cable Stations for each year between 2004 and 2009. MPAA Exhibit 366 (Gray WDT) at 21-22.

Cable Chart 1: Unique Compensable Programming and Retransmissions Statistics for Cable Sample Stations



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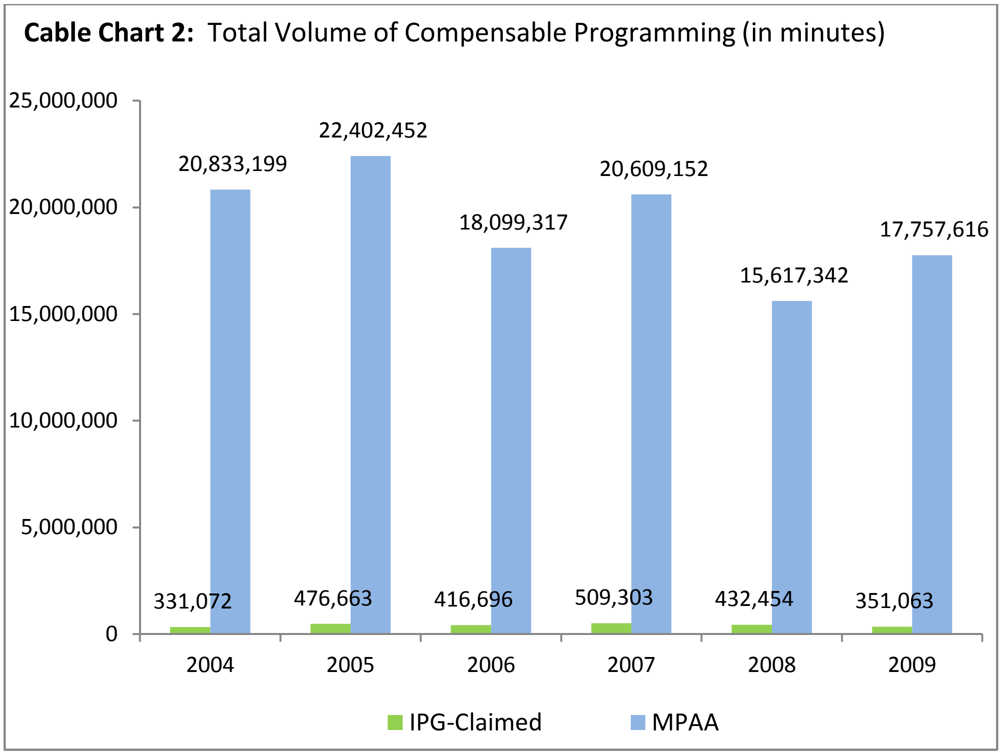
63. Panel A in Cable Chart 1 shows that each year from 2004 to 2009, between 25,753 and 35,065 unique MPAA compensable programs aired on these randomly sampled stations. In contrast, only between 659 and 1,012 unique IPG-claimed compensable programs aired on these stations over the same time period. Therefore, on average, each year from 2004 to 2009, MPAA represented over 34 times as many unique programs as did IPG. MPAA Exhibit 366 (Gray WDT) at 22.

64. In addition to representing the copyright owners of far more programs than IPG, the MPAA-represented programs were retransmitted more often than IPG-represented programs. Panel B in Cable Chart 1 shows that the total number of annual MPAA-represented program retransmissions varied from 395,996 in 2008 to 576,962 in 2005 compared to IPG-claimed retransmissions for the same period which varied from 8,994 in 2004 to 11,691 in 2006. Meaning, on average, each of MPAA's programs was retransmitted approximately 17 times while each IPG-claimed program, on average, was retransmitted approximately 13 times. MPAA Exhibit 366 (Gray WDT) at 23.

65. Cable Chart 2 below demonstrates how MPAA's volume of programming far exceeds IPG's during the 2004 to 2009 cable royalty years. MPAA Exhibit 366 (Gray WDT) at 23-24.



66. Programs varied in duration, from shows less than thirty-minutes to movies and specials several hours long. Cable Chart 2 shows that MPAA compensable programs ranged between 15.6 and 22.4 million minutes of distantly retransmitted air time on the randomly sampled stations from 2004 to 2009. IPG-claimed retransmitted programs covered far less air time, between 331,072 and 509,303 minutes over the same time period. Thus, the total volume of MPAA-represented programming was approximately 45 times greater than the total volume of IPG-represented programming. Based on the number of programs retransmitted, the average duration per retransmitted show was approximately 40 minutes for both MPAA and IPG-claimed programming. MPAA Exhibit 366 (Gray WDT) at 23-24.

67. The satellite charts below present summary statistics concerning the number of MPAA and IPG-claimed compensable programs and associated programming volume that aired on the Gray Satellite Stations for 2000-2009. Satellite Chart 1 shows that each year from 2000 to

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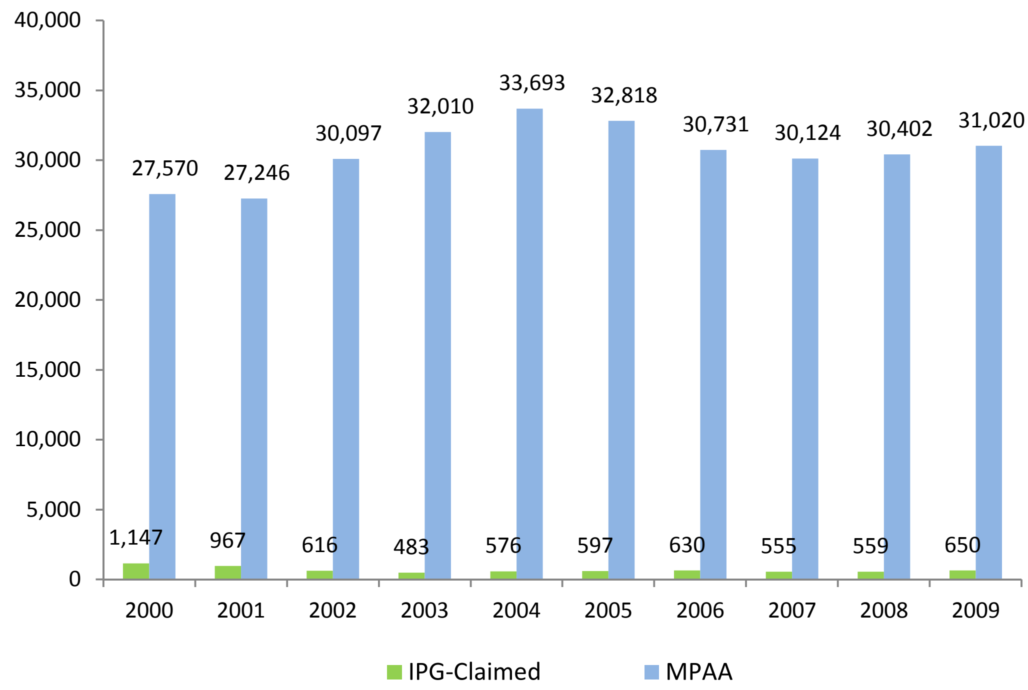
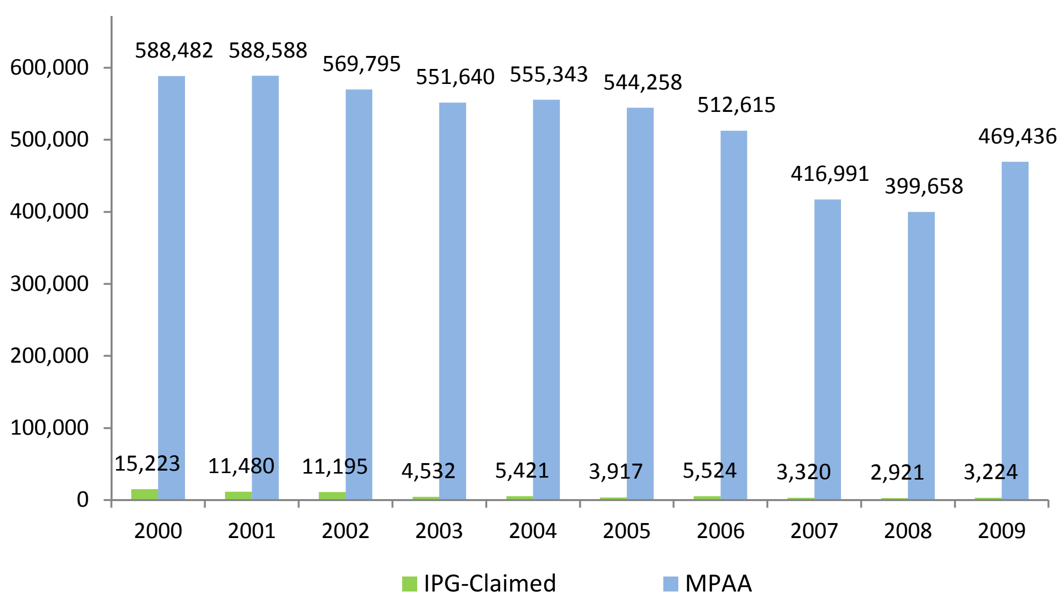
2009, between 27,246 and 33,693 unique MPAA compensable programs aired on the Gray Satellite Stations. In contrast, only between 483 and 1,147 unique IPG-claimed compensable programs aired on these stations over the same time period. Therefore, on average, between 2000 and 2009, MPAA represented approximately 45 times as many unique programs as did IPG. MPAA Exhibit 367 (Gray WDT) at 23-24.

68. In addition, the MPAA-represented programs were retransmitted more often than IPG-represented programs. Satellite Chart 2 below shows that the total number of annual MPAA-represented program retransmissions varied from 399,658 in 2008 to 588,588 in 2001 compared to IPG-claimed retransmissions for the same period which varied from 2,921 in 2008 to 15,223 in 2000. Meaning, on average, each of MPAA's programs was retransmitted approximately 17 times while each IPG-claimed program, on average, was retransmitted approximately 10 times. Satellite Chart 3 below demonstrates how MPAA's volume in minutes of retransmitted programming far exceeds IPG's over the 2000 to 2009 royalty years. MPAA Exhibit 367 (Gray WDT) at 23-26.

Satellite Chart 1: MPAA and IPG-Claimed Unique Compensable Programs Airing on Random Sample of Retransmitted Stations 2000 to 2006 and on All Retransmitted Stations 2007 to 2009



Satellite Chart 2: Compensable Retransmissions on Random Sample of Retransmitted Stations 2000 to 2006 and on All Retransmitted Stations 2007 to 2009



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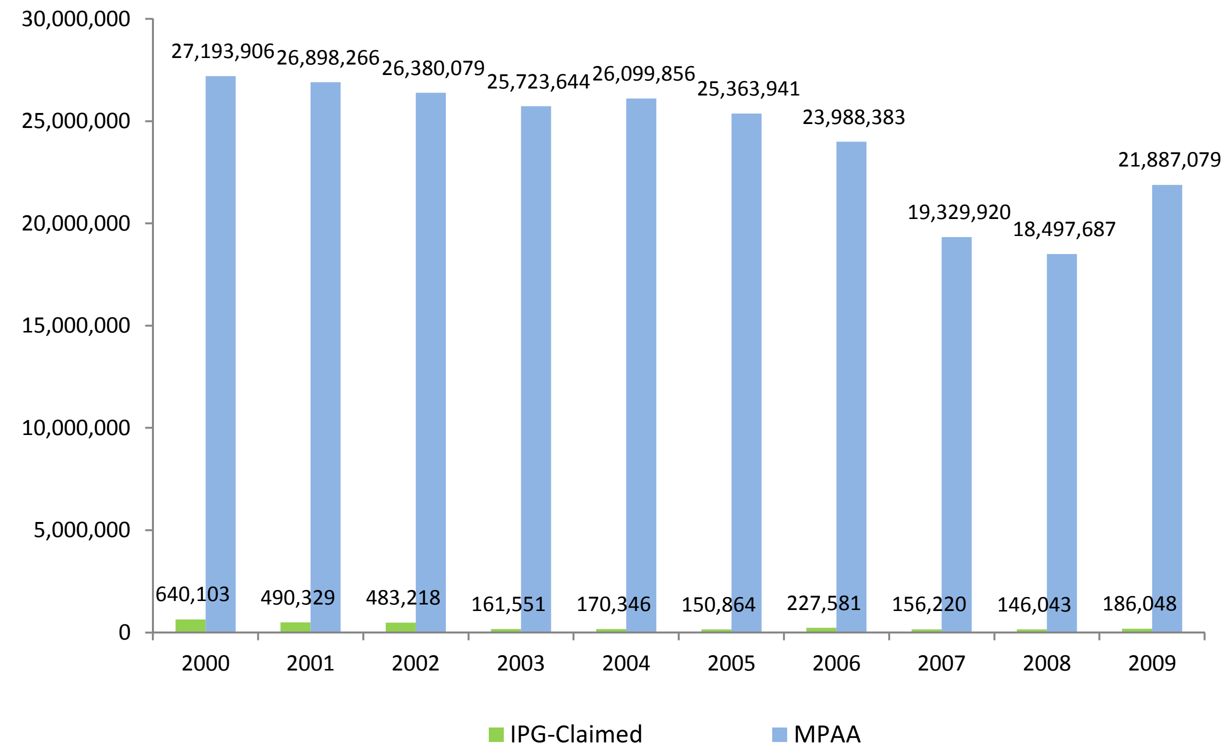
Satellite Chart 3: Total Volume of Compensable Retransmissions on Random Sample of Retransmitted Stations 2000 to 2006 and on All Retransmitted Stations 2007 to 2009 (in minutes)



69. Programs varied in duration, from shows less than thirty-minutes to movies and specials several hours long. Satellite Chart 3 shows that MPAA compensable programs ranged between 18.5 and 27.2 million minutes of distantly retransmitted air time on the randomly sampled stations from 2000 to 2009. IPG-claimed retransmitted programs covered far less air time, between 146,043 and 640,103 minutes over the same time period. Thus, the total volume of MPAA-represented programming was approximately 85 times greater than the total volume of IPG-represented programming. Based on the number of programs retransmitted, the average duration per retransmitted show was approximately 40 minutes for both MPAA and IPG-claimed programming. MPAA Exhibit 367 (Gray WDT) at 26-27.

70. MPAA compensable programming constitutes the vast majority of retransmitted programming in the Program Supplier category. However, the relative minutes, or volume, of programming retransmitted provides an imperfect metric of the relative value of the two sets of programs. The volume measure does not take into account what time of day the retransmission took place, the number of cable subscribers who had access to the distantly retransmitted broadcast, or the number of households who had access that watched the show. The share of viewing minutes provides a superior measure of relative value. MPAA Exhibit 366 (Gray WDT) at 25; MPAA Exhibit 367 (Gray WDT) at 27; Tr. Vol. 1 at 101 (Gray).

71. According to the economic consumer choice theory, program viewership provides a very good measure for the marginal contribution of programming, perhaps the best one where the data is available. Tr. Vol. 1 at 101-02 (Gray).

72. While relative distant viewing provides a reasonable measure of a program's relative economic value in the context of this Phase II Proceeding, direct measures of distant viewing data are not available for all the years at issue in this proceeding. However, distant viewing information is available covering the years 2000 to 2003 in the Nielsen Diary data. The Nielsen Diary data measures all viewing by distant subscribers to the Kessler Cable and Satellite Stations for 24 hours per day during the sweeps months for the years 2000 to 2003. MPAA Exhibit 366 (Gray WDT) at 25-26; MPAA Exhibit 367 (Gray WDT) at 27-28.

b. Program Viewing Statistics

73. In order to determine distant viewing minutes throughout each year from 2004 to 2009 for cable, and 2000-2009 for satellite, Dr. Gray employed multiple regression analysis techniques, relying upon the lists of MPAA and IPG-claimed compensable programs. Dr. Gray

assumed that each program title claimed by both MPAA and IPG is a valid MPAA program. Dr. Gray also assumed that any program title claimed by IPG and not claimed by MPAA constitutes a valid IPG-represented program, unless the program or the IPG-claimant associated with the program was dismissed by the Judges as a part of the Preliminary Hearing Order. MPAA Exhibit 366 (Gray WDT) at 26; MPAA Exhibit 367 (Gray WDT) at 28; Tr. Vol. 1 at 99, 126-127 (Gray); Preliminary Hearing Order at Exhibit A.

74. Dr. Gray's regressions rely upon information during sweeps months in 2000-2003 to calculate the mathematical relationship between distant viewing and (1) local or national ratings for the program, (2) the total number of distant subscribers of that station, (3) the year the program aired, (4) the time of day the program aired by quarter hour, (5) the type of program aired, and (6) the station affiliation the program aired on. The regressions demonstrate that there is a positive and statistically significant relationship between local ratings and distant viewing. The higher the ratings of a particular program on a national or local basis, all else equal, the higher the level of distant viewing. The regressions also show that the total number of a station's distant subscribers, the year the program aired, the time of day the program aired, the type of program aired, and the station affiliation the program aired on, each significantly affect distant viewing. MPAA Exhibit 366 (Gray WDT) at 26; MPAA Exhibit 367 (Gray WDT) at 28-29; Tr. Vol. 1 at 43-44 (Gray).

75. Dr. Gray's methodology is reliable for the years that the data was not contemporaneous. Dr. Gray performed a series of robustness checks with respect to the royalty years at issue in this proceeding, and the results were sufficiently positive to allow him to make projections based on 2000-2003 data for 2004-2009. Tr. Vol. 1 at 107-110 (Gray); Tr. Vol. 5 at 152-53, 161-62 (Gray); MPAA Exhibit 379.

76. Dr. Gray does not expect his calculation of the correlation between distant viewing and local ratings for the years 2000-2003 to change for the years 2004-2009. He also does not expect it to bias either MPAA or IPG to either party's advantage or disadvantage. Tr. Vol. 1 at 114-16 (Gray).

77. Dr. Gray's economic model better predicts distant viewing with separate regressions for WGN and non-WGN stations. This is because, mathematically, WGN is an outlier. In addition, distant viewing to WGN is lower in proportion to the number of distant subscribers than it is for all of the other distant signals The results of Dr. Gray's separate WGN regressions show that for retransmissions of programs on stations other than WGN, holding other factors constant, a one percent increase in a program's local ratings is associated with a 0.547% increase in its distant viewership; for WGN, holding other factors constant, a one percent increase in local ratings is associated with a 0.372% increase in distant viewership. MPAA Exhibit 366 (Gray WDT) at 26, n.35; MPAA Exhibit 367 (Gray WDT) at 29, n.32; Tr. Vol. 1 at 48-51 (Gray).

78. Based on the mathematical relationship between distant viewing during sweeps months and national, or local, ratings as well as the other factors described above, Dr. Gray calculated distant viewership for programs retransmitted by stations in the sample for each quarter hour, for each entire calendar year, from 2004 to 2009 for cable, and for 2000-2009 for satellite. Dr. Gray performed these calculations using three sets of multiple regression analyses. Under each of Dr. Gray's three regression models, MPAA's share of distant viewing is the sum of estimated household viewing of MPAA-represented programs divided by the total level of estimated household viewing of either IPG-claimed or MPAA-represented programs. In each of these models, MPAA's shares of viewing are higher than its shares of total programming

volume, supporting Dr. Gray's conclusion that MPAA-presented programs are more-highly watched and more valuable relative to IPG-represented programs. MPAA Exhibit 366 (Gray WDT) at 27-30; MPAA Exhibit 367 (Gray WDT) at 29-32; Tr. Vol. 1 at 41-43 (Gray).

79. While each of Dr. Gray's regression models provide reasonable estimates of relative program viewing, Dr. Gray relies on Model Three because it takes into account individual program popularity as measured by local ratings and generates estimates of distant viewing for *all* MPAA and IPG-claimed represented programs retransmitted by the randomly sampled stations from all markets, for every day of each cable royalty year. MPAA Exhibit 366 (Gray WDT) at 31; MPAA Exhibit 367 (Gray WDT) at 33-34.

80. Calculation of relative market value predicts distant viewership based upon multiple characteristics of value, including market size (distant subscribers), ratings, quarter-hour, and program type. It is imperative to consider all of these factors together, and simultaneously. Dr. Gray's relative value measure is based on viewership, and viewership is, in turn, based on all of these factors. Tr. Vol. 1 at 116-17, 122 (Gray).

c. Subscriber Growth Analysis

81. Dr. Gray's analysis does not only consider distant viewership as a single factor. Dr. Gray's analysis also looks at other factors, such as the impact of viewership on the number of subscribers and the impact of IPG's programming mix on the number of subscribers. Tr. Vol. 5 at 175 (Gray).

82. Viewership share may not equate exactly to relative market value if viewing of the same amount of MPAA and IPG compensable programming is associated with different levels of subscriber attraction and retention. Unusual "niche" programming could be more

valuable to CSOs or SSOs if the same level of viewing was associated with greater subscriber growth. Based on a statistical analysis of the relationship between the number of cable and satellite subscribers of distantly retransmitted stations and changes in the programming mix on those stations, Dr. Gray's statistical analysis demonstrates that, holding distant viewers constant, an increase in the relative volume of IPG-claimed programming compared to MPAA-claimed programming is not associated with a statistically significant change in the number of subscribers in the following year. MPAA Exhibit 366 (Gray WDT) at 30; MPAA Exhibit 367 (Gray WDT) at 32-33.

83. The large number of programs being claimed by MPAA and IPG in the Program Suppliers category is a factor that would improve the overall accuracy of a sample-based methodology like Dr. Gray's. This is because the aggregation of a greater number of observations generally reduces the standard error. Tr. Vol. 1 at 56-58 (Gray).

4. Addressing So-Called "Zero Viewing"

84. Dr. Gray performed a Poisson regression in order to take account of the extent of zero viewing, which is a commonly-used statistical tool to address zeroes, as well as positive values in a data set. Dr. Gray's regression analysis calculated distant viewing for every single program for every quarter-hour through his regression analysis, thus reducing "zero viewing" to less than 1 percent. Tr. Vol. 1 at 74-75, 77-78, 88 (Gray).

85. The presence of zero values does not affect the reliability of the Nielsen data. Zeros reported in the Nielsen Diary Studies are very useful data because they count among hundreds of thousands of observations of viewing. All of that information, taken together, enables reliable predictions concerning the level of viewing on a quarter-hour basis for each program. Tr. Vol. 1 at 73, 75 (Gray); Tr. Vol. 5 at 201-04 (Gray).

86. The high percentage of incidents of zero viewing in the Nielsen diary data does not indicate a lack of reliability, because (a) there are some stations that are retransmitted by CSOs and SSOs with very few subscribers, and (b) there are hundreds of thousands of observations of positive viewing from which one can make a reliable estimate of distant viewing on a program by program basis. Tr. Vol. 1 at 91-92 (Gray).

87. Zero viewing in the Nielsen Diary Studies does not disfavor IPG. While it is true that IPG has more instances of zero recorded viewing than does MPAA, Dr. Gray's methodology actually estimates viewing for every single quarter-hour, of programming. Tr. Vol. 5 at 176-77 (Gray).

88. About 25% of the volume of IPG's programming occurs between midnight and 6:00AM, whereas less than 7% of MPAA's programming takes place between midnight and 6:00AM. Zero viewing occurs more commonly in the middle of the night than other times of the day. Tr. Vol. 5 at 178-79 (Gray).

5. Royalty Share Allocations And 95% Confidence Intervals

89. Dr. Gray updated his analysis to reflect the Judges' Preliminary Hearing Order on the validity of claims with regard to both cable and satellite. Tr. Vol. 5 at 173 (Gray); MPAA Exhibit 373 (Gray WRT) at 5, 20-22.

90. Dr. Gray's confidence intervals for the final estimates of MPAA and IPG royalty shares show a range of reliability of the overall viewing percentage, and therefore, the royalty share percentages. Tr. Vol. 1 at 98 (Gray).

91. Dr. Gray calculated confidence intervals using the bootstrap methodology. The bootstrap methodology was first developed in the 1970s and is computationally heavy, but it is an amazingly powerful and accurate tool that is now embraced by the statistical community. Dr. Gray's calculation of confidence intervals using the bootstrap methodology attempts to address both standard and relative error concerns related to the Nielsen diary data. Dr. Gray has used the bootstrap methodology previously to determine confidence intervals in the academic community. Tr. Vol. 5 at 223-27 (Gray).

92. Dr. Gray's revised royalty shares for MPAA, and the 95% confidence intervals surrounding those shares, are as follows:

Updated MPAA Cable and Satellite Viewing Shares Applying *Preliminary Hearing Order*		
	Updated MPAA Share of Viewing with 95% Confidence Intervals	
Year	*Cable*	*Satellite*
2000		99.65 (99.64 – 99.67)
2001		99.77 (99.76 – 99.79)
2002		99.80 (99.79 – 99.81)
2003		99.61 (99.59 – 99.63)
2004	99.59 (99.45 – 99.66)	99.87 (99.86 – 99.88)
2005	99.55 (99.34 – 99.56)	99.78 (99.76 – 99.79)
2006	99.32 (99.14 – 99.37)	99.73 (99.72 – 99.74)
2007	99.28 (99.07 – 99.33)	99.74 (99.73 – 99.75)
2008	99.19 (99.13 – 99.24)	99.77 (99.75 – 99.78)
2009	99.39 (99.30 – 99.45)	99.58 (99.57 – 99.60)

MPAA Exhibit 373 (Gray WRT) at 21; *see also* Errata To Written Rebuttal Statement Of MPAA And MPAA Exhibit 373 (filed May 7, 2015).

93. Dr. Gray's regression analysis omitted the indicator variable for the 2000 royalty year. The computer automatically selected which year to omit, so there was no intentional bias in selecting the year 2000 to omit. Moreover, when Dr. Gray's regression methodology was re-run omitting each other year, the results were all within his 95% confidence intervals regardless of which year's indicator variable was omitted. Tr. Vol. 5 at 184-85 (Gray).

IV. Cable Operators And Satellite Carriers Rely On Nielsen Ratings, And Viewership Information Measured By Nielsen, In Making Programming Decisions.

A. John Sanders

94. John S. Sanders is Principal at Bond & Pecaro, Inc., which specializes in the appraisal of communications and media assets. Mr. Sanders has over thirty years of real life experience advising buyers and sellers and licensors and licensees of television programs with regard to the value of those television programs. Tr. Vol. 1 at 242-46 (Sanders); SDC Exhibit 638 (Sanders WDT) at 3; SDC 639 (Sanders WDT) at 3.

95. The most critical aspect of an evaluation of the relative market value of programming is to ascertain whether the public is actually viewing the programs. Both cable operators and satellite carriers care whether or not people are watching because viewers beget subscribers. Tr. Vol. 1 at 241 (Sanders).

96. CSOs and SSOs design their channel line-ups to be attractive to subscribers. System operators will endeavor to offer programs that viewers are most interested in watching. Programs that no one watches, with no meaningful evidence of viewership, are not going to

attract and retain subscribers. Meaningful evidence of viewership is critical to an appraiser in order to quantify and accurately calculate value. Tr. Vol. 1 at 247-49 (Sanders).

97. The most commonly accepted and highly regarded source of viewership data in the industry of media valuation are the quarterly ratings reports compiled by Nielsen. Tr. Vol. 1 at 249 (Sanders).

98. CSOs and SSOs rely on viewership data for their programming decisions. Nielsen ratings are the best reflection of viewership in the industry, and are commonly used by CSOs and SSOs. It is not necessary to subscribe to Nielsen to actually use the data—it is available to CSOs and SSOs through numerous outlets. Tr. Vol. 2 at 17-23 (Sanders).

99. CSOs and SSOs will engage in some type of market research to determine that a particular program or a particular station evidences a meaningful level of viewership before making a decision regarding whether to acquire the program or station. Nielsen data is the most ubiquitous and authoritative source for that data. Nielsen viewership ratings are the best measure for determining the relative marketplace value of retransmitted programming. Tr. Vol. 2 at 22-25 (Sanders).

100. Independent television stations making syndication decisions will value a program based on the money that the program is expected to bring in. The amount of money a program will generate is ascertainable through the number of "eyeballs" the program generates, and the "eyeballs" are manifested through the Nielsen ratings. In Mr. Sanders' experience, Nielsen ratings are the sum and substance of the valuation decision in a syndication deal. Tr. Vol. 2 at 29-33 (Sanders).

101. It is the highest-rated programs in a station's broadcast day that will drive a CSO or SSO to make the decision to carry the station. Tr. Vol. 2 at 36-38 (Sanders).

102. A CSO or SSO will make a decision to carry a station based on the popularity of the few shows on the station that have the highest ratings, and thus are most likely to engender viewership and subscriber loyalty. There are typically a handful of highly-rated programs that drive the CSO or SSO's decision to retransmit a particular station, because those programs will generate the largest audience and the most subscribers for the system. Tr. Vol. 2 at 45-48, 55-56 (Sanders).

103. A CSO values a local station in a retransmission consent negotiation by evaluating the programming that aired during certain key portions of the station's broadcast day that drive viewers and subscribers, and what that means for the cable system. Tr. Vol. 2 at 56-57 (Sanders).

104. In recent years, retransmission consent deals are no longer negotiated by individual stations and local cable operators in most cases. Many MSOs have developed blanket agreements with cable systems so that they can avoid engaging in negotiations over the ability to carry every station. Tr. Vol. 2 at 58-59 (Sanders).

B. Toby Berlin

105. Ms. Berlin was a Vice President of Programming Acquisitions at DirecTV. She worked in that capacity from October of 1998 through July of 2013, and was responsible for making content acquisition decisions for DirecTV. One of Ms. Berlin's responsibilities was deciding which out-of-market broadcast signals DirecTV would carry. Although Ms. Berlin

worked for DirecTV, a SSO, she is also familiar with the cable industry. Tr. Vol. 2 at 61-64 (Berlin); SDC Exhibit 633 (Berlin WDT) at 3; SDC Exhibit 634 (Berlin WDT) at 3.

106. While working at DirecTV, Ms. Berlin relied on Nielsen ratings information for her program acquisition decisions. Nielsen ratings were an important single driver in her decision to carry or retransmit a station. Ms. Berlin believes this is consistent with the very simple paradigm that satellite operators value programs that people watch and do not value programs that people do not watch. SDC Exhibit 633 (Berlin WDT) at 7; SDC Exhibit 634 (Berlin WDT) at 7.

107. Ms. Berlin also relied on Nielsen ratings within specific niche or specialty genres of programming in order to determine which stations to carry. Nielsen ratings are what everyone in the industry uses to determine the popularity of programming, and Ms. Berlin considered them to provide the best indicator of the popularity of stations. Tr. Vol. 2 at 78-81 (Berlin); SDC Exhibit 633 (Berlin WDT) at 6-7; SDC Exhibit 634 (Berlin WDT) at 6-7.

108. When making a decision to retransmit a particular station out of market, Ms. Berlin would look at the Nielsen ratings both for the originating market and also the outside market. She found that both were good indicators of popularity. When Ms. Berlin did not have Nielsen ratings information available for a particular station, she would look at the Nielsen ratings information for the particular DMA in which the station resided. Ms. Berlin found the Nielsen data very valuable in her decision-making. Tr. Vol. 2 at 81-82, 84-86 (Berlin); SDC Exhibit 633 (Berlin WDT) at 6-7; SDC Exhibit 634 (Berlin WDT) at 6-7.

109. Within a particular sub-genre, such as Devotional programming, Ms. Berlin considered the content to be reasonably homogenous, and relied on Nielsen ratings information

to inform her regarding what was popular in a particular DMA, or out-of-market DMA. Tr. Vol. 2 at 82-83 (Berlin).

110. In making programming decisions for DirecTV, Ms. Berlin would consider both Nielsen ratings for a particular station, and also for particular programs on the station so that she could ascertain what was driving the value for the station. Tr. Vol. 2 at 89-90, 111-12 (Berlin).

111. During Ms. Berlin's tenure at DirecTV, DirecTV did not have a subscription directly with Nielsen for ratings data. However, DirecTV would have access to Nielsen ratings through a number of different research, marketing, and advertising sources. DirecTV would typically have access to, and consider, Nielsen ratings for everything possible within a DMA, including ratings for every broadcaster and every cable network. DirecTV also looked at national and regional Nielsen ratings. Tr. Vol. 2 at 125-27 (Berlin); SDC Exhibit 633 (Berlin WDT) at 6; SDC Exhibit 634 (Berlin WDT) at 6.

C. Michael Egan

112. Michael Egan does not have recent experience working for a CSO. He worked for a cable system called Cablevision Industries ("CVI") from 1980 until 1996. When Mr. Egan joined CVI in 1980 it was a small cable system in upstate New York with about 38,000 subscribers. When Mr. Egan left in 1996, CVI had grown to almost a million three subscribers, which, at that time, was the eighth largest privately-owned cable system in the country. However, much has changed since 1996, including widespread cable system consolidation. By today's standards, CVI would not be a very large cable system. Tr. Vol. 3 at 107-08 (Egan).

113. When Mr. Egan worked at CVI, his primary responsibility was to negotiate the terms of carriage for these cable networks. He also worked with pay-per-view programming. Tr. Vol. 3 at 108-09 (Egan).

114. In January of 1996, CVI was sold to Time Warner Cable, and at that time Mr. Egan left CVI to form a new company called Renaissance Media Holdings, which acquired eight cable systems. Mr. Egan then left Renaissance Media in 1999 to start his own business as a consultant. He has not been employed directly by a cable system since 1999, more than fifteen years ago. Tr. Vol. 3 at 109-111, 157-58 (Egan).

115. In Mr. Egan's experience, the primary goals of a CSO in making programming decisions are maximizing subscriber attraction and retention. CSOs are also concerned with the concept of "subscriber satisfaction," which is an evaluation of whether adding a particular station is going to please the system's subscribers. Tr. Vol. 3 at 118-19 (Egan).

116. Mr. Egan testified that, when he worked as a cable operator in the 1980s and 1990s, CSOs typically relied on information gleaned from their subscribers through word of mouth in making their programming decisions. However, Mr. Egan testified that, when he was working as a CSO, if he had access to ratings information, it would be "good" and "helpful" information in making programming decisions. Tr. Vol. 3 at 133-41 (Egan).

117. CSOs make programming decisions concerning what stations to carry at the regional corporate level, and not at the local level. Tr. Vol. 3 at 158-59 (Egan).

118. When CSOs make programming selections concerning broadcast stations, they are deciding whether or not to import the entire station. Tr. Vol. 3 at 159 (Egan).

119. CSOs select entire broadcast channels to place in bundles which contain other broadcast channels and other cable networks. The bundles would be marketed to cable subscribers as a package. In Mr. Egan's experience working as a CSO, 100% of the broadcast signals he offered to his subscribers were offered as a part of a bundle containing multiple stations. None of the broadcast signals were offered a la carte. Tr. Vol. 3 at 187-89 (Egan).

120. Cable networks, like MTV and TNT, and broadcast stations live and die by advertising revenue. Ratings information is critically important to them in making programming decisions. Tr. Vol. 3 at 162-63 (Egan).

121. In making a programming decision between two homogenous programs within a particular niche, if ratings information were available, it would be useful in determining which program was better at attracting and retaining subscribers. Tr. Vol. 3 at 165-68 (Egan).

122. Demographic ratings for the areas covered by a cable system would be useful in making programming decisions if such information were available. Ratings information would be useful to a cable operator in constructing a balanced bundle of stations to offer subscribers. For example, if a cable system's channel line-up is "top heavy" on programming for men, demographic ratings information would be useful to help the CSO identify particular programming that would add value to the cable system by catering to a different subscriber demographic, such as 18-34 year-old women. Tr. Vol. 3 at 166-68 (Egan).

123. In making programming decisions, CSOs are primarily concerned with what programming will add value to the package that they sell to subscribers. Tr. Vol. 3 at 168 (Egan).

124. In the current regulated market, when a CSO retransmits a broadcast signal out of market, he or she must retransmit the signal in its entirety, and cannot alter it. CSOs are not permitted to sell advertising time on retransmitted broadcast signals in the regulated market. However, the purpose of this proceeding is to allocate royalties based on the fair market value of the retransmitted works in an unregulated market. In a hypothetical market, absent regulation, it would be possible for CSOs to sell advertising time on retransmitted broadcast signals. Tr. Vol. 3 at 171-73 (Egan).

125. If Mr. Egan were given Nielsen ratings during a transaction or a pitch, he would look at them and consider them in his decision making. Tr. Vol. 3 at 173-78 (Egan).

126. In the 1998-99 Cable Phase I Proceeding, Mr. Egan testified as follows:

> MR. EGAN: There are definitely circumstances where I would look at ratings. What would be an example? Let's say that—let's say that somebody came in and wanted to pitch us on the Puppy Channel and say, "This is something you really should carry." You know, my first reaction would be, you know, "You've got to be kidding." Now, if that person hauled out some ratings books that showed that every time there was a show on television about puppies, you know, they got 40 shares and 25 ratings, you know, I'd say exactly what you just said, "Gee, I had no idea." So, in that case, you know, it would be, but generally people don't come in from the Puppy Channel with ratings like that. What they come in with and say is, "Well, we don't have any ratings. I don't have any ratings data to show you, but I can tell you this is going to be the greatest thing since sliced bread."
> For instance, MTV. I remember the first time I ever heard about MTV. I said, "That is just the worst idea I ever heard," you know, because there were no—
>
> JUDGE VON KANN: Showing your infallible instincts.
>
> MR. EGAN: I should have asked for the ratings. You know, they didn't have any evidence, but they knew. That was Warner Brothers. They're a music company. And they knew that this—people would respond to this. So they understood. And so it generally isn't a question of ratings. It's a question of perceived value. You know,

> what is this channel going to offer to my cable system that I don't already have in some form or another? And does it have customer demand behind it? Is it something people have been asking for? And that's generally how a cable operator will—in a free market completely free of any other constraints, that's generally how a cable operator will look at a programming decision like that. The ratings will be helpful information, but, you know, if he's carrying Animal Planet already and they've got a whole bunch of shows about dogs and puppies, the fact that the Puppy Channel comes in and says, you know, "In the Los Angeles market, we ran three specials on puppies. And they outgrew everything else," the guy is going to say, "So what? I already carry Animal Planet. I've got all the puppy programming I want on there. I don't perceive much value that you're bringing to my customers. And I certainly don't perceive value commensurate with a ten-cent license fee that you want to charge me, or whatever."

MPAA Exhibit 376 at 45-47 (Egan).

127. In this proceeding, Mr. Egan expanded upon his testimony from the 1998-99 Phase I Proceeding in response to questions from Judge Strickler:

> JUDGE STRICKLER: Excuse me, Ms. Plovnick. Going over your Puppy Channel versus Animal Planet example that goes back to this prior testimony, you point out at the bottom of page 46 of Exhibit 376, you say with regard to the cable system, if he's—quote, "if he's carrying Animal Planet already, and they've got a whole bunch of shows about dogs and puppies, the fact that the Puppy Channel comes in and says, you know, in the LA market we ran three specials on puppies and they're up through everything else." But what about the hypothetical where you have to choose—you don't have Animal Planet on already. So you have to choose between the Puppy Channel and Animal Planet. You've got no animal channels at all. Here comes these adorable puppies, here comes the other adorable animals. Now you've got to figure out which channel you want. Are ratings more important in that situation than if you already had one on already and had already satisfied that niche in your mind?
>
> MR. EGAN: Yes, they would be more important in that situation, because I don't have, you know, that on. But again, Your Honor, I want to stress, so it's not taken out of context as this was attempted to be, I would be looking at a number of considerations. I would ask you what are you going to charge me, you know, and a lot of other questions about you as a content provider, and I would want to know do I have any, you know, research internally, whether it's people

> telling me or customer satisfaction research, that's telling me is there a demand for puppy or Animal Planet programming and so on and so forth. So it would now, in that situation that you just described, yes, it would be information that would be helpful. It wouldn't be determinative, I would look at a bunch of things, all the things we just talked about.
>
> JUDGE STRICKLER: Thank you.
>
> MS. PLOVNICK: But there are circumstances where it would be helpful information for you?
>
> MR. EGAN: Yes.

Tr. Vol. 3 at 184-86 (Egan).

128. All programs shown in the same daypart do not have equal value to a CSO. All things being equal, and assuming similar ratings, a program airing in prime time is more valuable than a program airing in the middle of the day. Tr. Vol. 3 at 197-200 (Egan).

129. Each program on a particular station is not equally valuable to a CSO. Tr. Vol. 3 at 204-05 (Egan).

V. IPG's Methodological Flaws

130. Raul Galaz does not propose an allocation methodology or royalty shares in this proceeding. Tr. Vol. 5 at 163 (Gray).

131. Dr. Robinson's analysis, the Robinson Methodology, is flawed, both conceptually and in its application, such that the shares she calculates for both MPAA and IPG are unreliable. Tr. Vol. 5 at 163-64 (Gray).

A. Conceptual Flaws In IPG's Methodology.

132. For each year, Dr. Robinson calculates three shift factors — *Time of Day, Fees Paid*, and *Subscriber Count* — which she then multiplies against her calculation of IPG's

volume to arrive at three independent royalty share calculations. Each of Dr. Robinson's calculations is incomplete and unreliable. Dr. Robinson's volume calculation is also unreliable because it is based on a non-random sample. Tr. Vol. 5 at 164, 166-170 (Gray); MPAA Exhibit 373 (Gray WRT) at 6-9, 11-16.

133. Dr. Robinson's *Time of Day* shift factors are not based on the relative viewing levels of specific programs. Rather, her shift factors are based on estimates of the relative total number of television viewers for each quarter hour throughout the day. She obtains the estimates of the total number of television viewers by quarter hour from Nielsen data produced in discovery by MPAA. She weights these estimated quarter-hour total average viewership levels by the percentage of IPG and MPAA programming that occurred in each quarter hour of the day to arrive at a time of day viewership metric for IPG and MPAA. The ratio of IPG's time of day average to MPAA's time of day average is the IPG *Time of Day* shift factor. In the Robinson WDT filed prior to the Preliminary Hearing Order, she determined that between 2004 and 2009, IPG's *Time of Day* shift factor averaged 74.03% for Cable. For Satellite, Robinson calculated two *Time of Day* shift factors based on two different measures of total U.S. quarter-hour viewing. Dr. Robinson found that between 2000 and 2009 IPG's *Time of Day #1* shift factor, based on Nielsen Satellite Diary data, averaged 86.51% and IPG's *Time of Day #2* shift factor, based on Nielsen National Viewing data, averaged 84.73%. MPAA Exhibit 373 (Gray WRT) at 6.

134. Each of these *Time of Day* shift factors are less than 100%, reflecting that in addition to having fewer total programming hours, IPG's programming tended to air and be retransmitted during quarter hours with lower average television viewership. Dr. Robinson makes no adjustment to any of these shift factors for whether, or to what extent, any IPG programming was actually viewed. That is, Dr. Robinson ignores the Nielsen data measuring the

viewing levels of each individual program. As a result, Dr. Robinson's proposed royalty shares based on the *Time of Day* shift factors do not measure the relative market value of the individual IPG and MPAA programs that are retransmitted. MPAA Exhibit 373 (Gray WRT) at 7.

135. Dr. Robinson's *Fees Paid* shift factors, calculated only for her cable analysis, are based on CDC data of retransmission fees paid by CSOs. Separately for IPG and MPAA, Dr. Robinson weights CSOs' fees paid by the relative volume of claimants' programming carried by the CSOs. The ratio of IPG's to MPAA's average fees paid by CSOs that distantly retransmitted the stations on which IPG and MPAA programs were broadcasted is the IPG *Fees Paid* shift factor. Dr. Robinson calculated that IPG's *Fees Paid* shift factor averaged 213.08% between 2004 and 2009, implying that IPG's programming tended to be broadcasted and retransmitted by CSOs with greater fees paid in the sample Dr. Robinson analyzed. Dr. Robinson makes no adjustment for whether, or to what extent, the programming was distantly viewed. MPAA Exhibit 373 (Gray WRT) at 7.

136. Dr. Robinson's *Subscriber Count* shift factors are based on CDC data of the number of subscribers to CSOs, and an analysis of satellite SOA data performed by Mr. Galaz. Separately for IPG and MPAA, Dr. Robinson weights the number of subscribers of each cable or satellite system by the relative volume of claimed programming carried by the CSO or SSO. The ratio of IPG's to MPAA's average subscriber count by the operators which distantly retransmitted the stations on which IPG and MPAA programs were broadcasted are the IPG *Subscriber Count* shift factors. MPAA Exhibit 373 (Gray WRT) at 7-8.

137. IPG's *Subscriber Count* shift factor averaged 194.83% for Cable between 2004 and 2009 and 142.22% for Satellite between 2000 and 2009, implying that IPG's programming

tended to be broadcasted on stations carried by CSOs and SSOs with more subscribers. Again, Dr. Robinson makes no adjustment for whether, or to what extent, the distantly retransmitted programming was viewed by subscribers. MPAA Exhibit 373 (Gray WRT) at 8.

138. Dr. Robinson applies these three types of shift factors to her calculation of IPG's volume share measure to arrive at three distinct royalty share estimates for cable and for satellite for each year. None of Dr. Robinson's calculations incorporates measures of subscriber demand as measured by viewing choices. Rather, each Dr. Robinson royalty share estimate is a supply-side measure because each is based on IPG's share of programming volume: one royalty share estimate is based on IPG volume share adjusted by the relative time-of-day the programming aired; the second royalty share estimate is based on IPG's volume share adjusted by the relative fees paid by CSOs carrying the programming; and the third royalty share estimate is based on IPG volume share adjusted by the relative subscriber count of CSOs carrying the programming. MPAA Exhibit 373 (Gray WRT) at 8.

139. The table below presents Dr. Robinson's royalty share estimates reported in the Robinson WDT. While these royalty share estimates do not reflect application of the Preliminary Hearing Order, the estimates do highlight the variability in Dr. Robinson's proposed royalty shares *within* each cable and satellite royalty year. These differences are most pronounced between estimates based on Dr. Robinson's *Time of Day* shift factors and estimates based on Dr. Robinson's *Fees Paid* or *Subscriber Count* shift factors.

Robinson Royalty Share Estimates as Reported in her Initial Testimony and Attachments						
	Cable IPG Volume/Royalty Share Estimates By Shift Factor Adjustment			Satellite IPG Volume/Royalty Share Estimates By Shift Factor Adjustment		
Royalty Year	*Time of Day*	*Fees Paid*	*Subscriber Count*	*Time of Day #1*	*Time of Day #2*	*Subscriber Count*
2000				5.43%	5.28%	6.76%
2001				5.19%	4.96%	6.41%
2002				4.84%	4.60%	6.70%
2003				3.09%	3.26%	5.46%
2004	3.63%	8.10%	7.93%	2.49%	2.63%	5.53%
2005	3.73%	8.29%	8.11%	3.20%	3.33%	5.66%
2006	4.03%	11.93%	11.07%	3.52%	3.61%	7.76%
2007	4.25%	12.33%	11.69%	3.93%	3.80%	7.86%
2008	3.74%	12.45%	11.46%	3.92%	3.76%	6.64%
2009	3.19%	10.71%	7.32%	3.50%	3.37%	5.22%
Note: Dr. Robinson reports range of shares in Robinson WDT Table 9, at p.22. Dr. Gray calculated each of Dr. Robinson's proposed royalty shares applying her methodology to the data presented in Robinson WDT Tables 5-7.						

MPAA Exhibit 373 (Gray WRT) at 8-9; IPG Exhibits 288 and 288a.

140. The Robinson Methodology contains both conceptual and application flaws which render its calculated IPG royalty shares biased, unreasonable, and unreliable. MPAA Exhibit 373 (Gray WRT) at 9.

141. Contrary to Dr. Robinson's testimony, the number of distant subscribers and/or fees paid by the CSO or SSO carrying a distantly retransmitted program, and the time-of-day the program aired, are, at best, flawed indicia of economic value. This is because the number and type of distant signals carried by CSO/SSOs are a function of the regulatory scheme. Insofar as broadcast time-of-day, subscriber count, and fees paid are associated with higher distant viewership opportunities, each index is associated with higher *potential* relative market value. For example, a program retransmitted at a time of day when more people are viewing television,

such as prime time, would be available to a larger audience and therefore would have an *opportunity* for more viewing than a program broadcast and retransmitted in the middle of night. Similarly, a program carried by a SSO or CSO with more subscribers, and therefore greater fees paid, has an *opportunity* for greater viewing than a program carried by SSOs or CSOs with few subscribers and low fees paid. Because each of Dr. Robinson's proposed measures of a program's value only measures the program's *opportunity* for viewing, each is, at best, an indirect and incomplete measure of a program's actual viewing. In measuring the relative market value of programming, it is critical to assess whether opportunities for greater viewing are in fact associated with more viewing. That is, it is critical to examine the underlying subscriber demand for the distantly retransmitted programs as measured by the viewing choices subscribers make. None of Dr. Robinson's measures do this. MPAA Exhibit 373 (Gray WRT) at 9-10.

142. Dr. Robinson's discussion of the motivation for her analysis repeatedly uses the qualifying phrase "*ceteris paribus,*" meaning all else equal or holding other pertinent factors constant. For example, she argued that, all else equal, programs broadcasted and retransmitted at the time of day with higher average total viewership can be ascribed greater value. First, Dr. Robinson's inference is not axiomatic as a program airing during peak average viewing times may not necessarily have anyone viewing the retransmission. Conversely, programs airing off-peak may in fact have significant demand in distant markets. Secondly, if broadcast time of day is an economic indicator of value, as Dr. Robinson argues, then Dr. Robinson's royalty share estimates based on IPG's *Fees Paid* and *Subscriber Count* shift factors are incomplete and unreliable. Dr. Robinson's estimates based on IPG's *Fees Paid* and *Subscriber Count* shift factors do not take the time of day a program is broadcast into account. Thus, each of those

royalty share estimates for both cable and satellite, by Dr. Robinson's own admission, is in and of itself incomplete. MPAA Exhibit 373 (Gray WRT) at 10-11.

143. Similarly, according to her own testimony, Dr. Robinson's royalty share estimates, based on the *Time of Day* shift factors, suffer from the same flaw – they are incomplete. None of Dr. Robinson's royalty share estimates based on IPG's *Time of Day* shift factors take into account the varying customer reach of cable systems or satellite systems, as measured by CSO and SSO fees paid or subscriber count. Dr. Robinson's reported royalty share allocations based on the IPG *Time of Day* shift factors would suggest that programs airing at the same time of day with vastly different subscribers should have the same royalty share allocation. Therefore, Dr. Robinson's royalty share estimates based on the *Time of Day* shift factors are also incomplete and unreliable. MPAA Exhibit 373 (Gray WRT) at 11.

144. In each of the cable and satellite royalty years at issue, none of IPG's proposed royalty shares takes into account all three indicia of economic value Dr. Robinson highlights. MPAA Exhibit 373 (Gray WRT) at 12-13.

145. Dr. Robinson's *Time of Day* factor affords the same value to all programs shown on a particular time of day, and does not make a distinction based on the viewership or ratings of any particular program. For example, IPG's *Time of Day* factor would afford the same value to the Super Bowl as well as whatever program that broadcasts opposite it. Tr. Vol. 5 at 103-04 (Robinson).

146. Although Dr. Robinson would expect viewing on the weekends to differ from viewing during the week, her methodology does not take these different viewership levels into account. Tr. Vol. 5 at 105-06 (Robinson).

147. The lack of reliability of each of Dr. Robinson's shift factors and resulting royalty share estimates is underscored by the fact that each measure of IPG's share can *increase* when a program is eliminated. This can happen if the eliminated program had been retransmitted (1) during a time of day with relatively fewer average total subscribers, or (2) by an SSO or CSO with lower average fees paid, or by an SSO or CSO with lower average total subscribers. When a purported measure of program value can move inversely to the addition or subtraction of a claimant, the measure is of minimal assistance in determining relative market value. In contrast, when relying upon a viewing-based measure for allocating royalties, adding a claimant of programming that has positive viewing can only lead to an increase in relative market value. Conversely, deleting a claimant that has positive viewing can only lead to a decrease in relative market value. MPAA Exhibit 373 (Gray WRT) at 11-12.

148. Dr. Robinson reports her three proposed royalty shares in a highest and lowest "range" and reports the midpoint of the range. There is no evidence in the record showing the economic motivation for why the midpoint of two incomplete and unreliable royalty share calculations is itself a reasonable or appropriate royalty share calculation. Moreover, none of the weaknesses in any one of Dr. Robinson's shift factors are corrected through consideration of the other shift factors. MPAA Exhibit 373 (Gray WRT) at 12; Tr. Vol. 5 at 170-71 (Gray).

149. Dr. Robinson's midpoint calculation is a basic mathematical computation of the midpoint between two numbers. Tr. Vol. 5 at 7-8 (Robinson).

150. Furthermore, each of Dr. Robinson's proposed royalty shares is based only on supply side metrics that measure viewership *opportunities* and ignores subscriber consumption choices as measured by actual program viewing. By ignoring subscriber demand, Dr.

Robinson's methodology cannot fully gauge the relative market value of the programming at issue. For example, two programs with vastly different consumer demand that aired at about the same time of day and were carried by system operators with a similar number of subscribers would have similar royalty shares under the Robinson Methodology. At the extreme, this would be the case if one of the programs had zero demand and zero distant viewing, and the other program had high subscriber demand as demonstrated by high program viewing. By ignoring subscriber demand for individual programs, Dr. Robinson's statistics cannot measure the relative economic value of programing at issue and should not be used in establishing appropriate IPG and MPAA royalty shares. MPAA Exhibit 373 (Gray WRT) at 12-13.

151. The table below illustrates the flaw in Dr. Robinson's methodology with three sets of examples. In each set are two programs, one claimed by IPG and the other by MPAA. The programs aired at the same time of day and on the same station – and therefore with the same number of distant subscribers and fees generated. Yet, in each example, the viewing of the two programs is substantially different.

Robinson Methodology Yields Identical Royalty Shares for Programs with Disparate Viewing

Year	*Quarter Hour*	*Station*	*Distant Subscribers*	*Program Title*	*Local Ratings*	*Distant Viewing*	*Claimed Representative*
2004	68	KMBC	193,413	Main Floor	0.71	380	IPG
2004	68	KMBC	193,413	Oprah Winfrey	14.72	2,065	MPAA
2004	90	CBET	856,401	Kenny vs. Spenny	0.22	1,006	IPG
2004	90	CBET	856,401	XXVII Summer Olympics	2.60	13,009	MPAA
2006	67	WDRB	129,774	Steel Dreams	0.28	95	IPG
2006	67	WDRB	129,774	NASCAR Racing	11.10	4,688	MPAA

MPAA Exhibit 373 (Gray WRT) at 13.

152. In the first example in the table above, IPG-claimed program *Main Floor* had a local Nielsen rating of 0.71 and 380 households distantly viewing whereas MPAA's claimed Program *Oprah Winfrey* had local ratings and distant viewing of 14.72 and 2,065, respectively. In the next example, *Kenny vs. Spenny,* a Canadian television show, had a rating of 0.22 in local markets with 1,006 households distantly viewing whereas the XXVII Summer Olympics claimed by MPAA was viewed by approximately 12 times as many households with a 2.6 local rating and 13,009 distant viewing. The final example shows that *Steel Dreams* had a 0.28 local rating and was watched distantly by 95 households. Airing on the same station at the same time of day, *NASCAR Racing* had an 11.10 local rating and was watched distantly by 4,688 households. Because the Robinson Methodology does not account for the relative value of the program based on actual viewing its resulting royalty share allocations could cause copyright owners of valuable programming to receive disproportionately small royalty awards. MPAA Exhibit 373 (Gray WRT) at 14.

153. *Kenny vs. Spenny* is a Canadian-originated program broadcasted on a Canadian station, and, as a result, it is compensable only in the Canadian Claimants Group category, which is not at issue in this proceeding. Nevertheless, Dr. Robinson inappropriately treats such non-compensable IPG-claimed programs as compensable in the Robinson Methodology. *See* MPAA Exhibit 373 (Gray WRT) at 14, n.18.

154. The conceptual flaws of the Robinson Methodology render its reported royalty shares incomplete and unreliable. This would be the case even if the Robinson Methodology did not have any errors or flaws in its application. However, Dr. Gray identifies numerous application flaws in Dr. Robinson's analysis as well. MPAA Exhibit 373 (Gray WRT) at 14.

B. Application Errors And Flaws In IPG's Methodology

1. Dr. Robinson Relies On A Non-Random Sample

155. In her amended WDT, Dr. Robinson relied only on the stations from her sample that overlapped with Dr. Gray's stratified random sample. The resulting overlap sample was a non-random sample. Moreover, because the majority of the overlapping stations were larger stations rather than smaller stations, Dr. Robinson's use of the overlapping stations improperly inflated IPG's volume share. Tr. Vol. 5 at 165-66 (Gray); MPAA Exhibit 373 (Gray WRT) at 15.

156. The bias in Dr. Robinson's overlap sample in favor of larger stations is evidenced in the sample means reported in the Robinson WDT. In the Robinson random samples, IPG-represented retransmitted broadcasts were carried on stations with an average 213,834 distant subscribers for cable and 5,376,976 distant subscribers for Satellite. However, in her non-random cable and satellite overlap samples, Dr. Robinson calculated that IPG-represented retransmitted broadcasts were carried on stations with an average of 672,514 distant subscribers for cable and 7,677,011 distant subscribers for satellite. Because the Robinson Methodology is based on a non-random sample, its use is limited. MPAA Exhibit 373 (Gray WRT) at 15; Tr. Vol. 1 at 45-46 (Gray); Tr. Vol. 3 at 67-70, Vol. 4 at 247 (Robinson).

157. Dr. Robinson initially testified that the "overlap" stations she used were representative of 85% of the royalty fees paid for the overall population. However, on cross-examination, she admitted that the overlap stations were actually only representative of between 68.9 and 80.3% of the population. Dr. Robinson also confirmed that because the overlap stations were not a random sample, there is no way for her to extrapolate her findings to the whole

population. Tr. Vol. 3 at 69-70, 93-94, 100-101 (Robinson); Tr. Vol. 4 at 89-91, Tr. Vol. 4 at 248-49 (Robinson); IPG Exhibit 255'.

158. Dr. Robinson's non-random sample is biased to IPG's advantage, producing results that are inflated and unreliable. It was possible to calculate the direction of the bias, but it was impossible to calculate the magnitude of the bias because Dr. Robinson's sample is non-random. Tr. Vol. 5 at 190-93 (Gray).

159. Dr. Robinson did not apply sampling weights by strata in constructing her original stratified random sample for her cable analysis. Tr. Vol. 5 at 120-21 (Robinson).

160. If sampling weights are not used in a stratified random sample, then the final estimate may not be representative of the population. Tr. Vol. 1 at 48 (Gray).

161. Dr. Robinson did not calculate any confidence intervals for the valuation results presented in her methodology. Tr. Vol. 5 at 14-15 (Robinson).

2. Dr. Robinson Incorrectly Applies IPG's Time Period Restrictions And Incorrectly Attributes Titles To IPG

162. In discovery, IPG provided MPAA a list of claimants and associated program titles that it claims to represent in this proceeding. This program list included information regarding years of claimed IPG representation. However, for many of IPG's claimed programs, Robinson does not correctly apply the time restriction indicated in IPG's documents. For example, for cable, IPG claims the program title *Three Stooges* only for the years 2007 through 2009. Yet, the Robinson Methodology counted each of the 942 retransmissions of *Three Stooges* from 2004 through 2006 as IPG-represented compensable retransmissions. Similarly, for satellite, IPG claims the series *General Hospital* only for the year 2000 and not for any year from

2001 through 2009. Yet, the Robinson Methodology counted each of these unclaimed 16,766 retransmissions of *General Hospital* from 2001 through 2009 as IPG-represented compensable retransmissions. MPAA Exhibit 373 (Gray WRT) at 16.

163. The table below presents the top retransmitted program titles not claimed by IPG, but attributed to IPG under the Robinson Methodology due to her time restriction mistake, after excluding those IPG-claimed program titles that the Judges deemed invalid in the Preliminary Hearing Order.

Robinson time restriction error materially overstates IPG's claims.			
Program Title	*Cable Retransmissions Incorrectly Claimed*	*Program Title*	*Satellite Retransmissions Incorrectly Claimed*
The Three Stooges	942	General Hospital	16,766
The Abbott & Costello Show	295	Lost	2,076
Lassie	241	Blind Date	1,151
In Too Deep	24	Sir Arthur Conan Doyle's The Lost World	876
The Scorpio Factor	5	America's Black Forum	807
Wicked	4	The Three Stooges	575
Solitaire for 2	3	Tempur Pedic	410
War Dogs	2	Flashpoint	320
Inside the Goldmine	1	Bowflex	237
Mutant on the Bounty	1	Bloomberg on the Markets	194
Prisoners of the Sun	1	Galidor: Defenders of the Outer Dimen..	152
Sleeping With Strangers	1	*All Other Titles*	*2,221*

Total	**1,520**	**Total**	**25,785**

MPAA Exhibit 373 (Gray WRT) at 16-17.

164. Dr. Robinson failed to properly apply the time-period restrictions that IPG admitted existed as to many of its represented claimants, according IPG credit for titles claimed by these entities for royalty years in which IPG did not claim to represent them. Moreover, due to the relatively small number of programs and associated retransmissions claimed by IPG, Dr. Robinson's time restriction mistake overstates the resulting IPG shares. MPAA Exhibit 373 (Gray WRT) at 16-18; Tr. Vol. 5 at 172 (Gray).

165. Dr. Robinson improperly includes the program *Tomorrow's World* that aired on WGN as a claimed IPG-represented program for each royalty year. IPG's documents indicate that BBC Worldwide is the IPG claimant associated with that title. Although BBC Worldwide produced a television series on new developments in science and technology called *Tomorrow's World*, that program aired on BBC1 and went off the air in 2003. The program, *Tomorrow's World*, which aired on WGN, and which Dr. Robinson erroneously attributes to IPG, is a religious program that IPG does not represent. Dr. Gray testified that this erroneously attributed program is produced by the Living Church of God, and causes Dr. Robinson's royalty share calculation to be biased in favor of IPG. MPAA Exhibit 373 (Gray WRT) at 18.

166. Dr. Robinson is unaware whether the particular broadcasts for *Tomorrow's World* she credited to IPG were actually owned by an IPG-represented claimant. Dr. Robinson was given the title *Tomorrow's World* by IPG, so she used it. She did not engage in any vetting to verify the accuracy of data she received from IPG. Tr. Vol. 4 at 96, Vol. 5 at 57-60 (Robinson).

3. Dr. Robinson Incorrectly Calculates Program Length For MPAA Programs

167. In the Tribune data Dr. Gray relied on, a program of length "100" referred to an hour long broadcast, a program of length "200" referred to a two-hour long broadcast. However, in both her cable and satellite analyses, Dr. Robinson treated such lengths as minutes, thus overstating the volume of many programs and incorrectly calculating total volume. MPAA Exhibit 373 (Gray WRT) at 18.

4. Dr. Robinson Counts Non-Compensable Titles As Compensable

168. Dr. Robinson treats all IPG-claimed programming aired on Canadian stations as compensable, including programming which originated from countries other than the United States. In contrast, in Dr. Gray's analysis, programming on Canadian stations which originated outside the U.S. are *not* designated as compensable programming. Such programs are compensable only in the Canadian Claimants Group category, which is not at issue in this proceeding. In the Robinson Methodology, Dr. Robinson relied on the broadcasts of MPAA compensable programming identified by Dr. Gray (which properly excluded programming on Canadian stations that originated outside the U.S.) while simultaneously relying on program title information supplied by IPG that did not exclude those noncompensable broadcasts for IPG. This unequal treatment of similar programming leads Dr. Robinson's volume share and royalty share calculations to be biased. MPAA Exhibit 373 (Gray WRT) at 18-19.

5. Dr. Robinson Makes No Adjustment For WGN.

169. The Robinson Methodology makes no adjustment for WGN. As a result, the handful of IPG-claimed programs that aired on WGN have an inappropriately large impact on

Dr. Robinson's subscriber count and fees paid royalty measures. This programming includes the incorrectly attributed program *Tomorrow's World*. MPAA Exhibit 373 (Gray WRT) at 20.

6. Dr. Robinson Failed To Properly Reflect The Preliminary Hearing Order in IPG Exhibits 253'-283'.

170. At the time of Dr. Gray's oral rebuttal testimony he had not yet had time to fully analyze the data underlying Dr. Robinson's purportedly corrected IPG Exhibits 253'-283'. However, his initial review of the data underlying IPG Exhibits 253'-283' suggested that Dr. Robinson had failed to correct all of the errors he identified in her analysis. Dr. Gray confirmed this conclusion following a thorough review of the discovery that IPG produced as underlying IPG Exhibits 253'-283' following the Distribution Hearing. Tr. Vol. 5 at 197-98 (Gray); MPAA-represented Program Suppliers' Motion to Strike Provisionally-Accepted Exhibits at 6 and Exhibit A, ¶ 5 (May 13, 2015).

171. Documents underlying IPG Exhibits 253'-283' show that the exhibits still attribute 997 cable retransmissions and 3,931 satellite retransmissions of conflicting titles to IPG that should have been attributed to MPAA as directed in the Preliminary Hearing Order. As a result of these misattributions, Dr. Robinson's calculation of IPG's cable and satellite programming volume shares and, necessarily, all of the calculations reported in IPG Exhibits 253'-283' related to IPG are overstated, while MPAA's are understated. MPAA-represented Program Suppliers' Motion to Strike Provisionally-Accepted Exhibits at 6 and Exhibit A, ¶ 5 (May 13, 2015).

VI. IPG's Own Witnesses Do Not Support The Royalty Awards IPG Seeks In This Proceeding

A. Dr. Laura Robinson's Concessions

172. Dr. Robinson performed a valuation analysis in connection with her testimony in another proceeding that required her to analyze several months' worth of confidential negotiations between Fox and *American Idol* and the expected outcome of those negotiations. One of the factors that Dr. Robinson considered in conducting this analysis was viewership. Tr. Vol. 4 at 240-41 (Robinson).

173. Dr. Robinson also performed a valuation of the James Bond film franchise in connection with a dispute between MGM and Sony. One of the factors that Dr. Robinson considered in that valuation was viewership. Tr. Vol. 4 at 243-44 (Robinson).

174. Dr. Robinson got all of the data she used for the Robinson Methodology from counsel for IPG. Dr. Robinson was not involved in helping to select any of the data sets that would be used for her analysis, and was unaware that some of the data sets she was provided were generated by Mr. Galaz, a person with a criminal record of fraud related to copyright royalty proceedings. Tr. Vol. 5 at 57-61 (Robinson).

175. Dr. Robinson testified that if she had been provided with program level Nielsen viewing data by IPG, she would have used it in her analysis. Dr. Robinson did not have control over what data was provided to her by IPG. If she had been given access to the same Nielsen data that Dr. Gray had, she would have performed both the analysis that is included in her Amended Direct Testimony, as well as an additional analysis similar to Dr. Gray's. Tr. Vol. 5 at 112-15 (Robinson).

176. MPAA produced the Tribune data, Nielsen diary data, and Nielsen local ratings data to IPG as a part of its initial document production, and prior to the deadline for filing Amended Written Direct Statements. Dr. Robinson conceded that she could have merged those data sets for use in her own analysis submitted as a part of IPG's Amended Written Direct Statement, but decided that it was impractical for her to do so within the time allotted. Tr. Vol. 5 at 115-17 (Robinson).

177. Dr. Robinson agrees with Dr. Gray that Dr. Gray's methodology is more reliable for allocating royalties in the Program Suppliers category than Dr. Erdem's methodology. Tr. Vol. 3 at 91 (Robinson).

178. Dr. Robinson testified that it was reasonable for Dr. Gray to use 2000-2003 distant viewing data to establish a correlation between distant viewing and local ratings, and then use that correlation to project distant viewing for 2004-2009. As an overarching principle, the concept of using data from another period to predict or estimate data in another period is a reasonable thing to do, and one of the reasons we have statistics and econometrics. Tr. Vol. 4 at 103-04, 129-30, Vol. 5 at 48-49 (Robinson).

179. Dr. Robinson understands, from review of aggregated Nielsen data in the course of her work, that prime time gets more viewership than the wee hours of the morning, and there is some consistency over the years with respect to the basic viewership patterns related to time of day. Tr. Vol. 4 at 105-06 (Robinson).

180. While Dr. Robinson does not think that viewership is a direct measure of value in a hypothetical negotiation between a copyright owner and a cable operator, she believes that

viewership does relate to things that matter in that hypothetical negotiation. Accordingly, Dr. Robinson believes it is sensible to look at viewership data. Tr. Vol. 4 at 113-14 (Robinson).

181. Dr. Robinson agrees that Dr. Gray's analysis "has some merit." Tr. Vol. 4 at 129 (Robinson).

182. Dr. Robinson testified that she believes cable royalty fees and subscribers are related, because it is her understanding that the amount of Section 111 royalty fees paid by cable systems are based on the number of subscribers to the system. Tr. Vol. 3 at 62-64 (Robinson).

183. Dr. Robinson applied IPG's share of volume for each royalty year to three metrics—*Time of Day*, *Fees Paid*, and *Distant Subscribers*—to produce share estimates for IPG. These are the same valuation measures that IPG relied on in both the 1999 Cable Phase II Proceeding and the 2000-2003 Cable Phase II Proceeding. Tr. Vol. 4 at 249-55 (Robinson).

184. Dr. Robinson was inconsistent and confusing as to the reliability of her individual metrics. Dr. Robinson initially testified that each IPG royalty share estimate could be looked at in isolation or together. She then changed her testimony and asserted that if the Judges choose to consider any one of IPG's three valuation metrics independently, it should be "in the context" of the results obtained by applying IPG's other valuation factors. Tr. Vol. 4 at 261-65, Vol. 5 at 10-13 (Robinson); IPG Exhibit 260'.

185. Dr. Robinson's calculations presented in her WRT do not make any revisions with regard to the treatment of conflicting title claims between MPAA and IPG. Dr. Robinson testified that she did not make any revisions to the treatment of these claims because she was "not informed to do so." Tr. Vol. 3 at 89 (Robinson); IPG Exhibit 289.

186. Dr. Robinson offers no support for her criticism of the incidence of zeroes in the Nielsen distant viewing data. She does not articulate a benchmark for what amount of zeroes in the data would be acceptable; she does not state what amount of zeroes should be considered high or low; and she is not aware of any industry standard that establishes what amount of zeroes is typical in Nielsen distant viewing data. Moreover, although Dr. Robinson has used Nielsen data in other contexts, she has never used Nielsen distant viewing data in any other proceeding or analysis. Dr. Robinson also made no attempt to talk to anyone at Nielsen about the presence of zeroes in the Nielsen distant viewing data in preparation for her testimony. Tr. Vol. 5 at 24-30 (Robinson).

187. Dr. Robinson did not analyze the incidents of zero viewing in the Nielsen diary data to see if there was any kind of relationship between the presence of zeroes and the time of day, or any correlation between zero values and the placement of a particular station on a cable system's channel line-up. Dr. Robinson also did not do an analysis to determine whether there was a correlation between the occurrence of zero viewing and the simultaneous airing of the same program in the same local market. Tr. Vol. 5 at 30-34 (Robinson).

188. Dr. Robinson did not perform an analysis of zero viewing in the local ratings data provided by MPAA. Tr. Vol. 5 at 35 (Robinson).

189. Dr. Robinson looked at the proportion of IPG titles versus MPAA titles at different times of the day, and concluded that IPG programs generally are aired at times of the day that have fewer viewers watching. However, Dr. Robinson did not perform any analysis to determine whether the incidence of zero values in the Nielsen diary data was correlated with this. Tr. Vol. 5 at 37-40 (Robinson).

190. Dr. Robinson testified as follows in response to questions from Judge Strickler:

> JUDGE STRICKLER: A question for you, Dr. Robinson. Excuse me, counsel. Viewership to a CSO, a cable system operator or a satellite system operator, isn't it also not only a form of advertising in that, if I'm a CSO, I want individuals, subscribers or would-be subscribers, to view programs, like the programs, want to view my programs again, and, therefore, subscribe so that viewership is important because I want eyeballs on my program so I can get future subscriptions or retain existing subscriptions, hence more money?
>
> DR. ROBINSON: Yes, and I think that goes, again, to this issue of how do we model that relationship between viewership and subscribership? So what is it that, you know, some viewers are worth more because they are stickier, right? Some shows are worth more because people will subscribe just on the basis of being able to see that show. So there's a whole kind of complexity to model this relationship, but, as an overarching principle, without knowing what happens inside that black box, viewership is in there and, ceteris paribus, everything else equal, viewership up probably means that everything in that black box is going to suggest a higher value.
>
> JUDGE STRICKLER: I understand there's a level of complexity, no doubt, to what's in that black box. But would you agree that viewership, the difference between what a cable system operator or a satellite system operator, how they perceive viewership and how and advertiser on a broadcast station perceives viewership, the distinction that we've been making is not really so clear-cut because both of them want eyeballs on the program. If I'm advertising my car dealership, I want people to view it and have some of those people come down to my dealership and buy a car from me. If I'm a cable system operator, I want some people to watch my program that I've decided to transmit or, in this case, retransmit, so that they continue to be subscribers so they come on down not to my car dealership next month but they come on over to my cable system and subscribe next month and I can keep charging their credit card. So the distinction is, from an economic point of view, a bit artificial, isn't it?
>
> DR. ROBINSON: I think that's a very good point and I do think that that dynamic is there. Essentially, what you're saying is, as I understand it, is that the cable system operator is advertising its own shows by virtue of showing its shows.

> JUDGE STRICKLER: Isn't that the very nature of an experience good? When you experience good, you want somebody to consume so that they can experience it and buy more of it.
>
> DR. ROBINSON: Exactly. But what I would say then is that it's not equal, kind of order of magnitude proportions, so that the advertiser cares who's selling cars. The only thing that they care about is viewers, whereas in the cable system operator it's more complicated. That's a piece of it but—
>
> JUDGE STRICKLER: Because the viewer is simultaneously consuming and paying for that consumption and using that consumption to make a decision about whether to consume in the future.
>
> DR. ROBINSON: Exactly.
>
> JUDGE STRICKLER: It's that future determination that's parallel to the automobile dealer. When I watch a car dealer or when I watch a commercial for an automobile dealership, I'm not paying to take a spin around the block.
>
> DR. ROBINSON: Exactly.

Tr. Vol. 5 at 99-103 (Robinson).

B. Mr. Galaz's Lack Of Credibility

191. Mr. Galaz practiced law full-time from 1988 until 1998, and part-time from 1998-2000. He is no longer authorized to practice law in any jurisdiction in the United States. Tr. Vol. 2 at 277 (Galaz).

192. Mr. Galaz has no expertise in the fields of economics, econometrics, or statistics. Tr. Vol. 2 at 257 (Galaz).

193. Mr. Galaz has never been involved in negotiations for carriage of a broadcast station by either a cable or satellite company Tr. Vol. 2 at 278 (Galaz).

194. Mr. Galaz's exposure to negotiations for the acquisition of programming by broadcast stations is limited to reviewing form contracts that were to be used for producer-to-station licensing at some point in his legal career. Mr. Galaz was not directly involved in any negotiations related to these business transactions. Tr. Vol. 278-79 (Galaz).

195. Mr. Galaz is not a cable industry expert or a communications law expert. Tr. Vol. 2 at 279-80 (Galaz).

196. Mr. Galaz has no formal training in audience measurement techniques, consumer research, or any areas of research designed to determine consumer preferences. Tr. Vol. 2 at 280-81 (Galaz).

197. Mr. Galaz is not an expert with regard to Canadian retransmission royalties or the allocation standards utilized in Canada for distribution of royalties. Tr. Vol. 2 at 307 (Galaz).

198. Mr. Galaz contends that the Judges should adopt a distribution methodology that compensates all programs that can be shown to have been distantly retransmitted by either a cable system or a satellite carrier, and contends that the IPG methodology was designed to compensate all eligible programming. However, the methodology that IPG proposed in this proceeding does not compensate all eligible programming, only eligible programming that aired on the stations in IPG's station sample. Tr. Vol. 2 at 282-85 (Galaz).

199. Mr. Galaz testified before the CARP in the 1997 Cable Phase II Proceeding. Mr. Galaz has not testified in any other CARP proceedings. Tr. Vol. 2 at 282 (Galaz).

200. In the 1997 Cable Phase II Proceeding, Mr. Galaz lied under oath. He subsequently pled guilty to mail fraud, arising from his participation in a scheme to steal

royalties from MPAA by using a fictitious name. In connection with such fraud, Mr. Galaz made material misrepresentations to the Copyright Office. He served time in jail from February 2003 to May 2004 for such fraud and was ordered to pay restitution to MPAA in the amount of approximately three hundred twenty five thousand dollars. MPAA Exhibit 354, MPAA and IPG Stipulation Regarding Undisputed Facts, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) (October 22, 2012) at 17-18, ¶ 159.

201. The Judges have already found that Mr. Galaz perjured himself *again* during the Preliminary Hearing in this proceeding when he lied about filing a non-defective 2008 satellite royalty claim on IPG's behalf, and about how the copy of IPG's 2008 satellite claim that IPG produced in discovery came from the Judges. *See* Preliminary Hearing Order at 7-8 and 20, n.26.

202. CCC is a copyright collective in Canada that distributes retransmission royalties for programming similar to that categorized in the Program Suppliers category in the United States. Mr. Galaz testified that CCC's royalty distribution methodology does not consider viewership ratings. Mr. Galaz also testified that the CCC had often represented to him that their distributions to affiliate program owners are based on the number of program broadcasts, duration, number of cable system subscribers, and the cable operators who re-transmit a broadcast, and not program viewership ratings. Mr. Galaz further testified that CCC allocates royalties based on a day part viewing factor. Each of these statements is contradicted by Ms. Saunders' testimony regarding the royalty distribution practices of the CCC. Tr. Vol. 2 at 300-04 (Galaz); IPG Exhibit 163; Tr. Vol. 3 at 222-66 (Saunders).

203. AGICOA is a European collective which distributes retransmission royalties for programming similar to that categorized in the Program Suppliers category in the United States.

Mr. Galaz testified that viewership ratings is not mentioned as a criteria for distribution on the AGICOA website. Mr. Galaz also testified that AGICOA allocates royalties based on a day per diem factor. Each of these statements is contradicted by Ms. Saunders' testimony regarding the royalty distribution practices of AGICOA. Tr. Vol. 2 at 304-06, 308-09 (Galaz); IPG Exhibit 152; Tr. Vol. 3 at 222-66 (Saunders).

204. Ms. Saunders is responsible for managing MPAA's retransmission royalty program, both in the United States and internationally. Her international work involves working with all the different countries in Europe and also with Canada. Ms. Saunders supervises the CCC and is also a member of the Executive Board of AGICOA. Tr. Vo. 3 at 222-23 (Saunders).

205. Through her position on AGICOA's Executive Board and from her days on that collective's Identification Commission, Ms. Saunders is aware that AGICOA relies on program viewing for its methodology. Ms. Saunders is also aware, as a member of the AGICOA Finance Committee, that AGICOA purchases program viewing information wherever possible and uses it in its allocation methodology. The program viewing information that AGICOA acquires is enormously expensive, and is used in connection with AGICOA's royalty allocations. Tr. Vol. 3 at 239-41, 260-61 (Saunders).

206. AGICOA's website makes reference to its allocation of royalties "on the basis of duration and audience." The use of the term "audience" in this context is referring to viewership. Tr. Vol. 3 at 242-44 (Saunders); IPG Exhibit 152.

207. It is not surprising or unusual that the AGICOA website would use the term "audience" rather than "ratings," although AGICOA does rely on per program ratings in its

methodology. The website was originally written by people speaking French or another language, and then later translated into English. Tr. Vol. 3 at 257 (Saunders).

208. CCC relies on program viewership ratings for its methodology. Tr. Vol. 3 at 237-40, 247, 262-65 (Saunders); IPG Exhibit 163.

209. CCC's use of the term "viewing" or "viewership" in its distribution methodology was just a matter of word choice. Ms. Saunders understands that the terms "viewing" and "viewership" are equivalent to ratings. Tr. Vol. 3 at 257-58 (Saunders); IPG Exhibit 163.

210. Ratings are a subset of viewership, and the terms are often used interchangeably. Tr. Vol. 2 at 296-99 (Galaz).

211. Mr. Galaz has not had frequent communications with anyone at CCC regarding its royalty distribution practices or policies. The last time that Mr. Galaz had a conversation with anyone at CCC regarding how CCC applies Article 8 of its Distribution Rules was in 2000, about fifteen years ago. Mr. Galaz has not had any conversations with CCC regarding how they apply Article 8 of their Distribution Rules since calendar year 2000. Tr. Vol. 3 at 17-20 (Galaz).

212. Ms. Medeiros, the Executive Director of CCC, is responsible for putting together, reviewing, and approving the CCC budget, not Ms. Saunders. Tr. Vol. 3 at 260 (Saunders).

VII. Lack of Credibility of IPG Exhibits Authored By Mr. Galaz

213. IPG Exhibit 150 was prepared by Mr. Galaz, and purports to be a comparative analysis between CDC satellite data and summaries of satellite SOAs for the 1999-2009 satellite royalty years prepared by Mr. Galaz. Mr. Galaz's satellite SOA summaries and IPG Exhibit 150 contained numerous IPG errors. IPG Exhibit 252 (Galaz WRT) at 4-5; Exhibit 150; Tr. Vol. 2 at 310 (Galaz); Tr. Vol. 3 at 277-78, 288 (Martin); IPG Exhibit 150; MPAA Exhibit 378.

214. Mr. Galaz's summaries of satellite SOAs were prepared over time, some as many as ten years ago. Mr. Galaz made no attempt to contact CDC concerning the purported discrepancies he found between the IPG summaries of satellite SOAs he prepared and CDC's satellite data. Tr. Vol. 2 at 310-12 (Galaz).

215. Ms. Martin identified three different categories of IPG errors in IPG Exhibit 150: (1) missing SOAs, (2) general typographical errors and omissions, and (3) methodological differences in compiling the data. Ms. Martin was able to identify these errors by comparing IPG Exhibit 150 with the CDC data and the original SOAs that were filed with the Licensing Division of the Copyright Office. Tr. Vol. 3 at 278-79 (Martin); IPG Exhibit 150.

216. IPG failed to capture data from SOAs for Galaxy Latin America in 1999, DirecTV Latin America in 2000, 2001, and 2002, and DirecTV for the second half of 2003 in IPG Exhibit 150. Ms. Martin was able to determine that these SOAs were not included because IPG failed to identify them in the top header section for each of the affected royalty years in IPG Exhibit 150. Ms. Martin's CDC data included information from these SOAs, while IPG Exhibit 150 did not. Tr. Vol. 3 at 280-84 (Martin); IPG Exhibit 150.

217. One example Ms. Martin provided of a typographical error in IPG Exhibit 150 was Mr. Galaz's undercounting of 1 million DirecTV subscriber instances for station WAU in 2005. IPG Exhibit 150 reported 121,000 subscribers for WAU in the first half of 2005, when the reported number on DirecTV's SOA was 1,212,112. This was not the only typographical error or omission in IPG Exhibit 150. Ms. Martin found more than forty typographical errors and omissions in IPG Exhibit 150, across all royalty years. Tr. Vol. 3 at 277-78, 285-88 (Martin); IPG Exhibit 150; MPAA Exhibits 377-78.

218. The methodological differences Ms. Martin identified focused on different approaches taken by Mr. Galaz and CDC in reporting the data taken from multiple feeds of a single broadcast station. CDC reported multiple feeds separately, but Mr. Galaz aggregated them. This methodological difference was responsible for approximately 80% of the purported CDC errors identified on the first page of IPG Exhibit 150. Tr. Vol. 289-94 (Martin); IPG Exhibit 150; MPAA Exhibit 377.

219. In the 2004 section of IPG Exhibit 150, Ms. Martin identified twelve to thirteen IPG errors associated with the Satellite Communications SOA for the 2004-2 accounting period. Satellite Communications has never carried superstations at all, and has never carried WGN, however IPG credited them with superstation subscribers instances in IPG Exhibit 150. In one particular example, Mr. Galaz double-counted 959,000 subscriber instances for WGN, crediting them both to Satellite Communications and EchoStar Communications for the same accounting period, when they should have only been credited to EchoStar. Tr. Vol. 4 at 8-15, 23-24 (Martin); IPG Exhibit 140-50; SDC Exhibit 645.

220. IPG provided Dr. Robinson with Mr. Galaz's analysis of satellite SOAs for her to use in connection with the analysis she performed for IPG. IPG did not provide Dr. Robinson with CDC satellite SOA data, and therefore she did not rely on it in the Robinson Methodology. Instead, Dr. Robinson utilized the analysis of satellite SOA data prepared by Mr. Galaz. Dr. Robinson was not aware that some of the data she was provided by IPG was generated by Mr. Galaz, a person with a criminal history of fraud in connection with cable royalty proceedings. Tr. Vol. 2 at 267-68 (Galaz); Tr. Vol. 5 at 57-61 (Robinson).

MPAA PROPOSED CONCLUSIONS OF LAW

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PROPOSED CONCLUSIONS OF LAW

I. Purpose Of Proceeding

1. Pursuant to Sections 111 and 119 of the Copyright Act, the Office collects royalties from cable systems and satellite carriers on a semi-annual basis.[1] The Phase I allocation of the 2004-2009 Cable Funds was based on a determination of the Judges as to the 2004 and 2005 cable royalty funds, followed by a confidential Phase I settlement.[2] The Phase I allocation of royalties for the 1999-2009 Satellite Funds was determined by a confidential Phase I settlement.[3] The purpose of this proceeding is to determine the Phase II allocation of the 2004-2009 Cable Funds and the 1999-2009 Satellite Funds within two of these mutually-exclusive Phase I claimant categories: the Program Suppliers category and the Devotional category.

2. The Program Suppliers Phase I category is defined as follows:

> "**Program Suppliers**." Syndicated series, specials and movies, other than Devotional Claimants programs as defined below.
>
> Syndicated series and specials are defined as including (1) programs licensed to and broadcast by at least one U.S. commercial television station during the calendar year in question, (2) programs produced by or for a broadcast station that are broadcast by two or more U.S. television stations during the calendar year in question, and (3) programs produced by or for a U.S. commercial television station that are comprised predominantly of syndicated elements, such as music video shows, cartoon shows, "PM Magazine," and locally hosted movie shows.[4]

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[1] *See* 17 U.S.C. §§ 111 and 119.

[2] *See* 75 Fed. Reg. 57063, 57079 (Sept. 17, 2010); *Order On Motions For Distribution*, Docket Nos. 2007-3 CRB CD 2004-2005, 2008-4 CRB CD 2006, 2009-6 CRB CD 20078, 2010-6 CRB CD 2008, 2011-7 CRB CD 2009, 2010-2 CRB SD 2004-2007, 2010-7 CRB SD 2008, 2011-8 CRB SD 2009 (Feb. 17, 2012) ("Order On Motions For Distribution").

[3] *See* Order On Motions For Distribution.

[4] *See* MPAA PFF at ¶¶ 1-10; MPAA Exhibit 369 at Addendum B.

3. The Devotional Phase I category is defined as follows:

> "**Devotional Claimants**." Syndicated programs of a primarily religious theme, not limited to those produced by or for religious institutions.[5]

4. MPAA reached a Phase II settlement with all parties, including IPG, as to the Phase II allocation of the 1999 satellite royalty fund within the Program Suppliers category, and those funds were finally distributed in 2013.[6] As a result, Phase II controversies remain outstanding in the Program Suppliers category only as to the 2000-2009 Satellite Funds.

5. Before the Judges commenced this proceeding, MPAA reached confidential Phase II settlements with the National Association of Broadcasters, Home Shopping Network, and USA Broadcasting Productions, Inc., InterActive Corp. (formerly USA Interactive) and Studios USA) (collectively, "USA/IAC") as to the 2004-2009 Cable Funds, and with the Broadcaster Claimants Group and USA/IAC as to the 2000-2009 Satellite Funds. But for the settlements, these parties would be participating in this proceeding. As a result of these settlements, the aforementioned parties relinquished any further claims to the 2004-2009 Cable Funds and the 2000-2009 Satellite Funds.[7] However, MPAA was unable to reach a Phase II settlement with IPG as to the 2004-2009 Cable Funds or the 2000-2009 Satellite Funds.

6. In this proceeding, the Judges must make a Phase II royalty allocation between MPAA and IPG as to the 2004-2009 Cable Funds and the 2000-2009 Satellite Funds for the Program Suppliers category. For the Devotional category, the Judges must make a Phase II

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[5] MPAA PFF at ¶¶ 1-10; MPAA Exhibit 369 at Addendum B.

[6] *See* 78 Fed. Reg. 50114, 50115 (Aug. 16, 2013) (citing Order, Docket No. 2008-5 CRB SD 1999-2000 (June 19, 2013)).

[7] The Judges also dismissed Petitions to Participate filed by David Powell, holding that he had failed to demonstrate a significant interest in this proceeding. *See* Orders Dismissing Petition To Participate (Phase II), Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II) at 1-2 (April 18, 2014).

royalty allocation in this proceeding for the 2004-2009 Cable Funds and the 1999-2009 Satellite Funds between SDC and IPG.

7. MPAA directly represents the interests of approximately one hundred Section 111 and 119 claimants for each of the royalty years at issue in this proceeding.[8] Each of these MPAA claimants (1) filed a cable or satellite royalty claim for the royalty year at issue, (2) signed a representation agreement with MPAA, and (3) executed written certifications specific to the particular royalty year verifying its authority to claim cable and satellite royalties as to particular programs.[9] Considering the claims filed as joint claims, MPAA also indirectly represents between 3,000 and 4,000 claimants for each of the cable royalty years, and between 900 and 4,000 claimants for each of the satellite royalty years at issue in this proceeding.[10] Where a MPAA-represented claimant filed a joint Section 111 or 119 claim on behalf of its subsidiaries, or as the agent of copyright owners, the claimant represented to MPAA that it had authority to bind all of the joint claimants listed on its claim to representation by MPAA. The claimant further bound the joint claimants to MPAA representation by virtue of the MPAA representation agreement, which specifically authorizes MPAA to represent all entities listed on the joint claim.[11]

8. IPG originally claimed to represent the interests of 118 entities in the Program Suppliers category as to the 2004-2009 Cable Funds, and 153 entities in the Program Suppliers

[8] *See* MPAA PFF at ¶ 4.

[9] *See id.*

[10] *See id.*

[11] MPAA PFF at ¶¶ 4-6.

category as to the 1999-2009 Satellite Funds.[12] On March 13, 2015, the Judges issued their Preliminary Hearing Order. In the Preliminary Hearing Order, the Judges dismissed 32 IPG Program Suppliers claimants as to some or all of the 2004-2009 Cable Funds, and 83 IPG Program Suppliers claimants as to some or all of the 2000-2009 Satellite Funds.[13] As a result of these dismissals, the list of IPG-represented Program Suppliers claimants for the 2004-2009 Cable Funds decreased to 88 entities in 2004, 88 entities in 2005, 87 entities in 2006, 89 entities in 2007, 88 entities in 2008, and 88 entities in 2009.[14] For the 2000-2009 Satellite Funds, the list of IPG-represented Program Supplier claimants decreased to 101 entities in 2000, 110 entities in 2001, 111 entities in 2002, 112 entities in 2003, 111 entities in 2004, 111 entities in 2005, 110 entities in 2006, 111 entities in 2007, 79 entities in 2008, and 111 entities in 2009.[15]

II. Legal Standards For Allocating Cable And Satellite Royalties

9. Section 803(a)(1) of the Copyright Act provides that:

> The Copyright Royalty Judges shall act in accordance with this title, and to the extent not inconsistent with this title, in accordance with subchapter II of chapter 5 of title 5, in carrying out the purposes set forth in section 801. The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, copyright arbitration royalty panels (to the extent those determinations are not inconsistent with a decision of the Register

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[12] *See* Direct Statements Of Independent Producers Group, Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II) at Exhibits IPG-1(May 9, 2014); MPAA PFF at ¶ 8.

[13] *See* Preliminary Hearing Order at 28-35 and Exhibit A. A chart showing the specific IPG claimants addressed by the Preliminary Hearing Order and the cable or satellite royalty years affected is attached hereto as Appendices A and B.

[14] *See* Preliminary Hearing Order at 28-25 and Exhibit A; *see also* MPAA PFF at ¶¶ 8-9 and Appendices A and B, *infra*.

[15] *See id.*

> of Copyrights. . . and the Copyright Royalty Judges . . . and decisions of the court of appeals under this chapter before, on, or after the effective date of the Copyright Royalty and Distribution Reform Act of 2004.[16]

10. Subchapter II of chapter 5 of title 5 of the U.S. Code sets forth the terms and procedures applicable to agency proceedings. Cable and satellite royalty distribution proceedings under 17 U.S.C. §§ 801(b)(3)(B) and 804(b)(8) fit within the meaning of "adjudication" under 5 U.S.C. § 551(7) and are subject to the procedures set forth in 5 U.S.C. § 554. Further direction for the conduct of such hearings is provided in 5 U.S.C. § 556. In particular, § 556(d) provides that "the proponent of a rule or order has the burden of proof." This provision has been interpreted to mean that the proponent has the burden of persuasion, not simply the burden of production.[17] In the instant proceeding, this means that each party seeking specific Phase II distribution shares of the 2004-2009 Cable and 2000-2009 Satellite Funds has the burden of persuasion that its requested share is adequately supported in the record to be adopted as the appropriate distribution award by the Judges.

III. The Distribution Standard – Relative Marketplace Value

11. Congress did not set forth a statutory standard for cable and satellite royalty allocations. However, past decisions of the Judges, the CARP, the Librarian and the D.C. Circuit have held that the royalty shares awarded should reflect the relative marketplace value of the programming at issue, *i.e.*, the relative amounts of royalties that each claimant would receive for its programming in a free market, absent compulsory licensing.[18] Relative market value

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[16] 17 U.S.C. § 803(a)(1).

[17] *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 270-80 (1994); *Nat'l Mining Ass'n v. Dept. of Labor*, 292 F.3d 849, 871-72 (D.C. Cir. 2002).

[18] *See* 2000-2003 Decision at 64986 ("Relative marketplace value is the preeminent consideration for allocating shares of royalties to programs or groups of programs."); *Program Suppliers v. Librarian of Congress*, 409 F.3d

corresponds to the price at which the right to retransmit a program carried on a distantly retransmitted broadcast signal would change hands between a willing buyer (a CSO or a SSO) and a willing seller (a copyright owner), neither being under any compulsion to buy or to sell, and both having reasonable knowledge of the relevant facts.[19] That is, assuming the compulsory license did not exist, relative market value is the price at which the CSO or SSO, or their representative, would pay the copyright owner, or the copyright owner's representative, for the right to distantly retransmit the program.[20] Relative market value remains a reliable basis for royalty distribution, and is the standard by which the Judges should allocate the royalties at issue in this proceeding.[21]

IV. Prior Phase II Decisions In The Program Suppliers Category Consistently Ruled That Distant Viewership Is Probative Evidence Of Relative Market Value.

12. There is a long history of litigated Phase II proceedings regarding allocation of royalty awards among claimants within the Program Suppliers category. MPAA has been an active participant in all of these proceedings, all but three of which involved three or more Phase II Participants.[22] Below is a chart of past Phase II cable awards in the Program Suppliers category:

395, 401 (D.C. Cir. 2005) ("We detect nothing arbitrary or capricious about using relative market value as the key criterion for allocating awards. Indeed, it makes perfect sense to compensate copyright owners by awarding them what they would have gotten relative to other owners absent a compulsory licensing scheme.").

[19] *See* 2000-2003 Decision at 64991-92 (quoting *U.S. v. Cartwright*, 411 U.S. 546, 551 (1973)).

[20] MPAA PFF at ¶ 45; 2000-2003 Decision, 78 Fed. Reg. at 64992-93.

[21] MPAA PFF at ¶¶ 44-47.

[22] All of the Phase II Proceedings in the Program Suppliers category involved three or more Phase II Program Suppliers participants, with the exception of the 1985 Cable Phase II Proceeding, which involved only MPAA and Multimedia Program Productions, Inc. ("Multimedia"), and the 1997 Cable and 2000-2003 Cable Phase II Proceedings, which involved only MPAA and IPG. But for MPAA settlements with other Phase II Program Suppliers participants discussed *supra*, this proceeding would have involved more than two parties in the Program Suppliers category and would have resulted in even lower proposed shares for IPG.

MPAA-represented Program Suppliers' Litigated Phase II Cable Awards

Cable Royalty Year	MPAA Phase II Award (%)	Aggregate Phase II Awards to All Other PS Parties (%)	Federal Register Citation
1979[23]	96.300	3.700	49 Fed. Reg. 20048 (May 11, 1984)
1980	96.900	3.100	48 Fed. Reg. 9552 (Mar. 7, 1983)
1981	96.900	3.100	49 Fed. Reg. 7845 (Mar. 2, 1984)
1982	97.500	2.500	49 Fed. Reg. 37653 (Sept. 24, 1984)
1983	98.200	1.800	51 Fed. Reg. 12792 (Apr. 15, 1986)
1984	98.475	1.525	52 Fed. Reg. 8408 (Mar. 17, 1987)
1985	99.175	0.825	53 Fed. Reg. 7132 (Mar. 4, 1988)
1986	98.500	1.500	54 Fed. Reg. 16148 (Apr. 21, 1989)
1997	99.788	0.212	66 Fed. Reg. 66433 (Dec. 26, 2001)[24]
2000	98.840	1.160	78 Fed. Reg. 64984 (Oct. 30, 2013)
2001	99.690	0.310	78 Fed. Reg. 64984 (Oct. 30, 2013)
2002	99.640	0.360	78 Fed. Reg. 64984 (Oct. 30, 2013)
2003	99.770	0.230	78 Fed. Reg. 64984 (Oct. 30, 2013)

13. What is clear from this history is that MPAA consistently received the lion's share of the Program Suppliers category royalties in every prior litigated Phase II proceeding. Apart from the significant royalty share awarded to MPAA, the next highest individual Phase II royalty share ever awarded in the thirty-year history of the Program Suppliers category was the 1.6% share attributed to Multimedia in the 1979 Cable Phase II Proceeding.[25] Multimedia's share of the Program Suppliers royalties declined over time. In the 1986 Phase II Proceeding litigated before the CRT, the last Phase II proceeding in which Multimedia participated,

[23] In the 1979 Distribution Proceeding, the programming now represented by the Devotional Claimants was included in the syndicated programming category, thereby reducing the MPAA-represented Program Suppliers' Phase II percentage share of the syndicated programming fund by the amount attributable to devotional programming. *See* 49 Fed. Reg. at 20048, 20051 (May 11, 1984).

[24] The CARP decision in the 1997 Cable Phase II Proceeding was not adopted by the Librarian, who remanded for a new CARP proceeding. *Order*, Docket No. 2000-2 CARP CD 93-97, 66 Fed. Reg. 66433 (Dec. 26, 2001). The Librarian subsequently vacated that decision. *See* 69 Fed. Reg. 23821 (April 30, 2004).

[25] *See* 49 Fed. Reg. at 20051.

Multimedia's royalty share decreased to 0.825%.[26] All of the CRT Phase II awards relied "primarily on the basis of the special Nielsen study of cable household viewing of distant signals," which the CRT found "demonstrated the marketplace value" of Program Suppliers programming.[27]

14. The only Phase II Proceeding in the Program Suppliers category held under the CARP system was the 1997 Cable Phase II Proceeding, which took place in 2001. That proceeding involved only MPAA and IPG, and IPG's sole witness in that proceeding was Raul Galaz. Although the Librarian determined in that proceeding that "viewing of programs is probative in assessing their value in a Phase II proceeding,"[28] based on the record in that proceeding, the Librarian refused to adopt the CARP report and remanded the matter for a new proceeding with a different panel of arbitrators.[29]

15. Both MPAA and IPG appealed the Librarian's 1997 Cable Phase II determination (issued on December 26, 2001) to the D.C. Circuit. While that appeal was pending, Mr. Galaz pled guilty to and was convicted of felony mail fraud in connection with cable royalties fraudulently obtained from MPAA while posing as a legitimate compulsory license claimant.[30] In the course of that criminal proceeding, Mr. Galaz admitted that he had lied under oath during his testimony before the CARP in the 1997 Cable Phase II Proceeding.[31] Following Mr. Galaz's

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[26] *See* 54 Fed. Reg. 16148 (awarding 0.825% to Multimedia, 0.675% to the National Association of Broadcasters, and the remaining 98.5% to MPAA).

[27] *See id.*

[28] *See* 66 Fed. Reg. 66433, 66451 (December 26, 2001).

[29] *See* 66 Fed. Reg. at 66454.

[30] *See* MPAA PFF ¶¶ 199-200; MPAA Exhibit 354 at 17-18, ¶ 159.

[31] *See id.*

conviction and imprisonment, MPAA, IPG, and the Librarian negotiated a three-party settlement resolving the pending appeal of the 1997 Cable Phase II decision, as well as other issues.[32] As a part of that settlement, the Librarian vacated the 1997 Cable Phase II decision on April 30, 2004.[33] Because the decision was vacated by the Librarian, it has no precedential value in this proceeding.[34]

16. The last litigated Phase II Proceeding in the Program Suppliers category was the 2000-2003 Cable Phase II Proceeding, which was also between only MPAA and IPG. In that proceeding, the Judges confirmed that while there is no single formula or source for allocating royalties, "actual measured viewing is significant to determining relative marketplace value," and "viewing data compiled by [Nielsen] are a useful starting point for determination of actual viewership."[35] In the 2000-2003 Cable Phase II Proceeding, the Judges credited the testimony of Dr. Gray, who performed a regression analysis using Nielsen diary data and local ratings data, along with other data sets, to project estimated distant viewing for each and every MPAA and IPG program on the stations in his random sample for each day of the entire 2000-2003 royalty period. The Judges agreed with Dr. Gray that viewership, measured by Nielsen, can be "a reasonable and directly measureable metric for calculating relative market value in cable distribution proceedings."[36] The Judges relied on Dr. Gray's regression analysis as the basis for

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[32] *See Order Granting In Part Motion For Final Distribution Of The 1998 And 1999 Cable Royalty Funds And The 1999 Satellite Royalty Funds*, Docket No. 2008-1 CRB CD 98-99 (Phase II), et al. (January 31, 2013).

[33] *See* 69 Fed. Reg. 23821, 23822 (April 30, 2004).

[34] *See id.*; *see also Order Denying Independent Producers Group's Motion For Partial Distribution*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) at 3, n.2 (Jan. 17, 2012) (explaining that the CARP's award to IPG in the 1997 Cable Phase II Proceeding was not adopted by the Librarian, and that the Librarian's vacation of the December 26, 2001 Order means "that there is no final determination with respect to IPG for any cable royalties").

[35] 2000-2003 Decision at 64986.

[36] 2000-2003 Decision at 64995-96.

the allocation of 2000-2003 cable royalties between MPAA and IPG in the Program Suppliers category, subject to some minor adjustments.[37] In contrast, the Judges ruled that IPG's methodology was "seriously deficient," and could not be used to establish the parameters of the zone of reasonableness for the allocation of royalties within the Program Suppliers category.[38] The D.C. Circuit recently affirmed these findings.[39]

17. In the instant proceeding, MPAA and IPG present essentially the same methodologies they presented in the 2000-2003 Cable Phase II Proceeding, but modified to apply to a different set of cable and satellite royalty funds: the 2004-2009 Cable Funds and the 2000-2009 Satellite Funds.[40] MPAA's viewing-based methodology remains a direct and reasonable means for determining the relative market value of programs in the Program Suppliers category. IPG's methodology remains seriously deficient.

V. MPAA's Evidence Establishes The Relative Marketplace Value Of Both MPAA And IPG Programming In The Program Suppliers Category.

A. Viewership As A Measure Of Market Value

18. Dr. Gray established that, as a matter of economic theory, viewing is an acceptable measure of relative market value of MPAA and IPG programming. Programming represented by MPAA and IPG is homogenous as all such programs are within the same program

[37] 2000-2003 Decision at 64995-98, 65002. The Judges determined that the "zone of reasonableness" in the Program Suppliers category corresponded with the 95% confidence intervals that Dr. Gray computed for MPAA's proposed distribution allocation, and made royalty awards to MPAA and IPG for the 2000-2003 cable royalty years within those confidence intervals for each year. *See id.* at 65003.

[38] 2000-2003 Decision at 64999-65002.

[39] *See Independent Producers Group v. Librarian of Congress*, *et al.*, No. 13-1274, slip op. at 14-22 (D.C. Cir. June 30, 2015).

[40] MPAA PFF at ¶¶ 41-93. Although IPG's methodology in this proceeding was sponsored by Dr. Robinson instead of Mr. Galaz, it was still based on the same unreliable shift factors that IPG advocated in the 2000-2003 Cable Phase II Proceeding. *See* MPAA PFF at ¶¶ 132-40; 2000-2003 Decision at 64999-65002.

category. Thus, the incremental costs of carrying such programs and their differential impact on subscriber growth are assumed to be similar.[41] Moreover, Dr. Gray tested and confirmed that neither MPAA nor IPG's programming mix affected subscriber growth differently during the period 2000 through 2009.[42] For these reasons, it is logical to focus on quantifying viewing of the parties' claimed programs to determine their relative market value.

B. Dr. Gray's Regression Analysis

19. To determine relative viewing levels between MPAA and IPG programming, Dr. Gray performed a regression analysis for use as the basis for his proposed royalty allocation in this proceeding.[43]

20. Regression analysis is a powerful statistical tool which is used to understand the relationship among several variables, *i.e.*, how one or more factors (independent variables) affect or explain another factor (dependent variable).[44] Both Dr. Gray and IPG's witness, Dr. Robinson, agreed that regression analysis is an appropriate statistical tool to determine the allocation of royalties in this proceeding.[45] Moreover, the predictive nature of the regression model is particularly useful here because it allowed Dr. Gray to estimate viewing levels for periods where pertinent viewing data is not available.[46]

21. Dr. Gray's analysis is based on the Gray Stations, stratified random samples of distantly retransmitted broadcast stations carried by Form 1, 2, and 3 cable systems during the

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[41] MPAA PFF at ¶¶ 45-48, 54-55.

[42] MPAA PFF at ¶ 82.

[43] MPAA PFF at ¶¶ 55-81.

[44] MPAA PFF at ¶ 61, 73-79.

[45] MPAA PFF at ¶¶ 73; 178.

[46] MPAA PFF at ¶ 74-79

2004-2009 cable royalty years, and by satellite carriers during the 2000-2006 satellite royalty years.[47] For the 2007-2009 satellite royalty years, Dr. Gray relied on a census of all stations distantly retransmitted by satellite carriers, rather than a random sample.[48] As Dr. Gray explained, using a random sample is important because it allows for inferences to be drawn about the entire population of cable systems and satellite systems during the time period applicable to this proceeding. The ability to project the results of a sample to the population is critical in assessing relative market value, and thus in developing royalty allocation shares in this proceeding.[49]

22. Dr. Gray's regression analysis relies on five data sets, which, when taken together, allow Dr. Gray to project estimated distant viewing for each and every MPAA and IPG program on the Gray Stations for each day of the entire 2004-2009 cable and 2000-2009 satellite royalty period.[50] These data sets are:

(1) CDC custom reports, which provide information about each broadcast station distantly retransmitted by a cable system during 2004 through 2009, and by satellite carriers during 2000-2009, including the number of distant subscribers, and the corresponding Section 111 or 119 royalty fees generated.[51]

(2) Nielsen Diary Studies, custom analyses presented by Paul Lindstrom for both cable and satellite, which shows the distant viewing to a selection of distantly-

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[47] MPAA PFF at ¶ 57-59.

[48] MPAA PFF at ¶ 58-59.

[49] MPAA PFF at ¶¶ 59, 156-60.

[50] MPAA PFF at ¶¶ 74-79.

[51] MPAA PFF at ¶¶ 11-14.

retransmitted stations during Nielsen's "sweeps" periods for each year during 2000 through 2003. Marsha Kessler sent the Kessler Stations to Nielsen for analysis of distant viewing to produce the Nielsen Diary Studies.[52]

(3) Nielsen Local Ratings Data for each of the distantly retransmitted Gray Stations, which provides ratings data for every broadcast on those stations 24 hours a day, for every day of the year during the entire 2004-2009 cable and 2000-2009 satellite time period.[53]

(4) Nielsen National Viewing Data for each of the distantly retransmitted Gray Stations, which provides information on the number and percentage of households watching television broadcasts over fifteen-minute intervals throughout the day, on a weekday and weekend basis for the 2004-2009 cable and 2000-2009 satellite time period.[54]

(5) Tribune Data, which provides detailed program information for each broadcast carried by the stations in both the Gray Stations and the Kessler Stations.[55]

23. Because the Nielsen Diary Studies provided data only for selected time periods ("sweeps" months during the 2000-2003 period), Dr. Gray needed to estimate viewing levels for all months of each royalty year in question.[56] To do so, Dr. Gray identified those stations

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[52] MPAA PFF at ¶¶ 16-18, 31-33.

[53] MPAA PFF at ¶ 39.

[54] MPAA PFF at ¶ 40.

[55] MPAA PFF at ¶ 56.

[56] MPAA PFF at ¶¶ 61, 74-78.

common to both the Gray Stations and the Kessler Stations for cable and satellite.[57] Dr. Gray then analyzed programming on these overlapping stations to establish a statistical correlation between measured distant viewing and local ratings.[58] With such correlation established, Dr. Gray then moved forward with all of the datasets identified above to perform regression analyses to estimate distant viewing for each MPAA and IPG program distantly retransmitted on the Gray Stations.[59]

24. Although the level of actual distant viewing during the non-sweeps months is unknown, the following information is known for the non-sweeps months: (a) when a program aired, (b) the type of program that aired, (c) the title of the program that aired, (d) the station and station affiliation the program aired on, (e) the total number of distant subscribers for that station, and (f) the local ratings for that program.[60] With this information, Dr. Gray calculated the mathematical relationship between viewership and the foregoing characteristics, and used the mathematical relationship to estimate distant viewing levels for each program, each quarter-hour time slot, each day, and each station in the Gray Stations.[61] With these estimates, Dr. Gray determined the relative viewing between MPAA-claimed and IPG-claimed programs.[62]

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[57] MPAA PFF at ¶¶ 74-75, 78.

[58] MPAA PFF at ¶¶ 74-79

[59] *See id.*

[60] MPAA PFF at ¶¶ 74-75.

[61] MPAA PFF at ¶¶ 74-79.

[62] *See id.*

25. After adjusting for the IPG entities that were dismissed by the Judges as a result of the Preliminary Hearing,[63] Dr. Gray's recommended allocation shares and the confidence interval associated with those shares are as follows:[64]

2004-2009 Cable Royalties		
Royalty Year	**MPAA Share Of PS Fund (%)**	**95% Confidence Intervals For MPAA Share (%)**
2004	99.59	99.45 – 99.66
2005	99.55	99.34 – 99.56
2006	99.32	99.14 – 99.37
2007	99.28	99.07 – 99.33
2008	99.19	99.13 – 99.24
2009	99.39	99.30 – 99.45

2000-2009 Satellite Royalties		
Royalty Year	**MPAA Share Of PS Fund (%)**	**95% Confidence Intervals For MPAA Share (%)**
2000	99.65	99.64 – 99.67
2001	99.77	99.76 – 99.79
2002	99.80	99.79 – 99.81
2003	99.61	99.59 – 99.63
2004	99.87	99.86 – 99.88
2005	99.78	99.76 – 99.79
2006	99.73	99.72 – 99.74
2007	99.74	99.73 – 99.75
2008	99.77	99.75 – 99.78
2009	99.58	99.57 – 99.60

C. Dr. Gray's Regression Analysis Is Reliable.

26. Dr. Gray's regression analysis, alone, is a metric for determining relative marketplace value in the Program Suppliers category. However, Dr. Gray also performed multiple independent, comparative analyses of MPAA and IPG programming—the number of unique programs aired, the number of compensable program retransmissions, and the total

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[63] MPAA PFF at ¶¶ 9, 73, 89; *see also* Appendices A and B.

[64] MPAA PFF at ¶ 92.

volume of compensable programming, which corroborate his conclusion that MPAA programming is significantly superior to IPG's in both cable and satellite.[65] The results of these comparative analyses are shown below:

Gray Comparative Analyses Of MPAA And IPG Cable Programming

	Number Of Unique Programs Aired		Number of Compensable Program Retransmissions		Volume Of Compensable Program Minutes	
Royalty Year	MPAA	IPG	MPAA	IPG	MPAA	IPG
2004	29,353	863	526,864	8,994	20,833,199	331,072
2005	27,503	1,012	576,962	11,383	22,402,452	476,663
2006	26,949	794	462,248	11,691	18,099,317	416,696
2007	25,753	659	523,589	11,505	20,609,152	509,303
2008	26,187	701	395,996	10,159	15,617,342	432,454
2009	35,065	979	445,450	9,626	17,757,616	351,063

Gray Comparative Analyses Of MPAA And IPG Satellite Programming

	Number Of Unique Programs Aired		Number of Compensable Program Retransmissions		Volume Of Compensable Program Minutes	
Royalty Year	MPAA	IPG	MPAA	IPG	MPAA	IPG
2000	27,570	1,147	588,482	15,223	27,193,906	640,130
2001	27,246	967	588,588	11,480	26,898,266	490,329
2002	30,097	616	569,795	11,195	26,380,079	483,218
2003	32,010	483	551,640	4,532	25,723,644	161,551
2004	33,693	576	555,343	5,421	26,099,856	170,346
2005	32,818	597	544,258	3,917	25,363,941	150,864
2006	30,731	630	512,615	5,524	23,988,383	227,581
2007	30,124	555	416,991	3,320	19,329,920	156,220
2008	30,402	559	399,658	2,921	18,497,687	146,043
2009	31,020	650	469,436	3,224	21,887,079	186,048

[65]MPAA PFF at ¶¶ 62-72.

D. Dr. Robinson's Criticisms Of Dr. Gray's Analysis Are Immaterial.

27. Dr. Robinson, an expert witness testifying on behalf of IPG, offered several criticisms of Dr. Gray's regression analysis, but these criticisms lack merit and do not impact reliability of Dr. Gray's methodology for measuring relative market value of the competing programs. MPAA addresses the most seemingly substantive of these criticisms below.

1. Dr. Gray's Relative Value Metric Is Not Conceptually Flawed.

28. Dr. Robinson argued that Dr. Gray's relative market value metric was conceptually flawed because it relies wholly on relative viewership of claimed broadcasts, and does not sufficiently link viewership with subscribership.[66] Dr. Robinson's assessment is wrong, as Dr. Gray's viewership analysis is complex and does not simply rely on viewership as a "single factor." Indeed, Dr. Gray's calculation of relative market value predicts distant viewership based upon multiple characteristics of value, including market size (which Dr. Gray testified was synonymous with distant subscribership), ratings, the quarter hour of the program, and the program type. Moreover, Dr. Gray's analysis considered the impact of viewership on the number of subscribers and the impact of IPG's programming mix on the number of subscribers.[67] Dr. Robinson's criticism of Dr. Gray's conceptual approach in this regard has no merit.

29. Even accepting as true Dr. Robinson's criticism of Dr. Gray's analysis as based singularly on viewing, because programs within a particular Phase I category are relatively homogenous, "a rational CSO would not be as concerned with whether different programs would

[66] IPG Exhibit 289 at 19-20.

[67] MPAA PFF at ¶¶ 74, 81-82.

attract different audience segments" and "would rely to a greater extent on absolute viewership levels."[68] Multiple witnesses in the instant proceeding confirmed this conclusion, as they testified that viewing information would be important information for a cable operator or satellite carrier to consider when making a carriage decision between two homogenous programs within the same niche.[69] Dr. Gray's reliance on a viewership-based metric in his relative value analysis is consistent with these principles.

2. Dr. Gray's Regression Model Is Not Flawed in Its Application.

30. Dr. Robinson also argues that Dr. Gray's regression model is flawed in its application, because there are flaws (1) in the choices Dr. Gray made about what type of data to include in his analysis, and (2) in Dr. Gray's regression model specifications.[70] Regarding the first criticism, Dr. Robinson makes an overly broad generalization that Dr. Gray relied on a limited sample of flawed data to make his projections.[71] In fact, Dr. Gray used all the data provided to him (and, indeed, all the data that was available) for both his cable and satellite analyses.[72] Although Dr. Gray would have preferred to have contemporaneous Nielsen diary data for all of the royalty years at issue in this proceeding, Nielsen was unable to provide that data to him due to an internal change in their system structure that prevented them from accessing the data. Nevertheless, Dr. Gray performed a series of robustness checks on his

[68] 2000-2003 Decision, 78 Fed. Reg. at 64996; *see also* 80 Fed. Reg. 13423, 13437 (March 13, 2015).

[69] MPAA PFF at ¶¶ 95-102, 106-11, 116, 121-22, 125-27.

[70] IPG Exhibit 289 at 20-21.

[71] *See id.* at 20, 32.

[72] Tr. at 179:9-22, 180:1-5 (Gray).

analysis and confirmed the reasonableness of using the 2000-2003 cable and satellite Nielsen Diary Studies to make projections for the entire 2000-2009 time period.[73]

31. Dr. Robinson's second criticism regarding Dr. Gray's regression specifications is also without merit. In particular, Dr. Robinson focuses on Dr. Gray's omission of the year 2000 indicator variable when running his main regression analysis.[74] However, omission of the 2000 indicator variable was a computer automated exercise, not a manual one. Notwithstanding, Dr. Gray reexamined his analysis for bias in light of the criticism and found that the royalty estimates that he arrived at when re-running the regression and omitting each of the other years were all within his 95% confidence intervals.[75]

32. Dr. Robinson was also critical of Dr. Gray's decision to use IPG's share of total distant broadcasts from the prior year to explain the number of distant subscribers in a given year in his subscriber regression.[76] However, such use of broadcast data from the prior year was appropriate because the entire structure of Dr. Gray's subscriber regression was designed to analyze how the prior year's change in viewing affects the next year's subscribers. Dr. Gray found a relationship between viewing in the prior year and subscribership the following year (*i.e.*, the more viewing that there was last year, the more subscribers there are in the year immediately thereafter). Dr. Gray also analyzed both the MPAA and IPG programming mixes and determined that neither set of programming represented any particular niche programming in a prior year that was driving subscriber growth in the following year. Dr. Gray explained that

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[73] Tr. Vol. 1 at 105:18-22, 106:1-19, 107:2-22, 108:1-8 (Gray).

[74] IPG Exhibit 289 at 21-22; MPAA PFF at ¶¶ 75-76.

[75] MPAA PFF at ¶ 93.

[76] IPG Exhibit 289 at 30-32.

consideration of the "lag" from the prior year was critical to determine the relationship between viewing and subscribership.[77]

3. The Appearance Of So-Called "Zero Viewing" In The Nielsen Diary Data.

33. Dr. Robinson suggested that the appearance of "zero" values in the raw Nielsen Diary Data undermines its reliability.[78] However, she could not explain the basis for reaching such a conclusion. Nor could she articulate the threshold of zero values that would be expected to appear in Nielsen diary data.[79]

34. IPG's so-called "zero viewing" argument is not new. In the 2000-2003 Cable Phase II Proceeding, IPG made identical arguments, suggesting that the presence of zero values in the raw Nielsen diary data for the 2000-2003 cable royalty years somehow undermined its reliability. However, both the Judges and the D.C. Circuit rejected these arguments, finding that MPAA "'provided adequate evidence to demonstrate, to the satisfaction of the [Board], that the incidence of so-called 'zero viewing' does not preclude the [Board's] reliance' on viewership data, 'subject to adjustments in the allocations to acknowledge some imprecision arising out of the 'zero viewing' sample points.'"[80] Moreover, in affirming the Judges' placement of substantial weight on MPAA's methodology in the 2000-2003 Decision, the D.C. Circuit found that MPAA's evidentiary presentation on the zero viewing issue was "convincing evidence" that

[77] Tr. at 180:18-22, 181:1-22, 182:1-21 (Gray).

[78] To be clear, the zero viewing instances touted by IPG are a mere tabulation of individual quarter hour observations of the Nielsen Diary Data where Nielsen indicates that there is no recorded viewing. MPAA PFF at ¶¶ 34-37.

[79] MPAA PFF at ¶¶ 186-88.

[80] *Independent Producers Group v. Librarian Of Congress*, Nos. 13-1274, *et al.*, slip op. at 20 (D.C. Cir. June 30, 2015) (citing 2000-2003 Decision, 78 Fed. Reg. at 64995).

the presence of zero values in the 2000-2003 Nielsen Diary Studies did not undermine the reliability of MPAA's methodology.[81]

35. MPAA's evidentiary presentation in this proceeding explaining the presence of zero values in the Nielsen Diary Studies is identical to the evidence presented in the 2000-2003 Cable Phase II Proceeding. Once again, MPAA offered expert testimony, both by Mr. Lindstrom of Nielsen, an expert in market research with an emphasis on television and audience measurement, and by Dr. Gray, an expert economist, statistician, and econometrician, regarding why the so-called "zero viewing issue" is, indeed, a non-issue. Both Mr. Lindstrom and Dr. Gray explained that the appearance of so-called "zero viewing" in the raw Nielsen Diary Data is consistent with their expectations in a statistical study, and has no impact on the reliability of Dr. Gray's regression results.[82]

36. Mr. Lindstrom explained that the appearance of zero values in the Nielsen Diary Studies does not mean that no one was watching a particular station during a particular quarter hour on a particular day. Rather, the appearance of a zero value in a particular circumstance merely reflects that viewing was too low to be captured for that particular quarter hour observation.[83] In addition, Mr. Lindstrom explained that the numeric "0" is utilized in the data report prepared for MPAA rather than the symbols asterisk (*) or caret (^) in order to allow for manipulation and aggregation of the data, which is not possible to do with symbols.[84] Most

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[81] *See id.*; *see also Settling Devotional Claimants v. Copyright Royalty Board*, No. 13-1276, slip op. at 9 (D.C. Cir. Aug. 14, 2015).

[82] MPAA PFF at ¶¶ 34-37, 83-88.

[83] MPAA PFF at ¶¶ 34-37.

[84] *See id.*

importantly, a single observation of zero value is simply a single data point when attempting to estimate national distant viewing. It is the aggregate of all observations—recorded and non-recorded—that is useful.[85]

37. Dr. Gray explained that while he does not believe that so-called zero viewing is problematic or inconsistent with his expectations,[86] his regression analysis cures any potential adverse impact associated with the appearance of so-called zero viewing instances. Dr. Gray's analysis does so first by considering all of the data in the Nielsen Diary Studies in the aggregate, and then by using his regression model to estimate for *all* compensable programs, 24 hours a day, for each day of each cable royalty year at issue here.[87] Moreover, with his use of the regression model, Dr. Gray was able to reduce the instance of estimated distant viewing to less than 1% of programs on distantly retransmitted signals.[88] Accordingly, again in this proceeding, MPAA has adequately explained both the meaning of "zero viewing" and its non-impact on the reliability of Dr. Gray's methodology as a reliable basis for allocating royalties in this proceeding.

VI. IPG's Evidence Does Not Establish A Reliable Basis For Allocating Royalties In The Program Suppliers Category.

A. The Robinson Methodology

38. The Robinson Methodology entails calculating for each year, separately, for cable and satellite, three factors: *Time of Day*, *Fees Paid*, and *Subscriber Count*. Each of these factors

[85] *See id.*

[86] MPAA PFF at ¶ 83-88.

[87] *See id.*

[88] *See id.*

is applied to Dr. Robinson's calculated volume share of IPG programming to obtain three separate estimates for IPG's royalty share.[89] Specifically, Dr. Robinson's first royalty share estimate is based on IPG's volume share adjusted by the relative time-of-day the programming aired.[90] Her second royalty share estimate is based on IPG's volume share adjusted by the relative fees paid by the CSOs or SSOs carrying the programming.[91] Her third royalty share estimate is based on IPG's volume share adjusted by the relative subscriber count of CSOs or SSOs carrying the programming.[92] Dr. Robinson reports her results in a range and calculates the mathematical midpoint of each range. Dr. Robinson does not offer any explanation as to why she calculated the midpoint of her range, or what significance should be drawn from this calculation.[93]

39. Each of Dr. Robinson's royalty share estimates is flawed and unreliable.[94] The three royalty share estimates calculated by Dr. Robinson do not measure, independently or collectively, the relative value of IPG and MPAA programs that are retransmitted. Moreover, none of Dr. Robinson's calculations incorporate measures of subscriber demand as measured by viewing choices. Rather, each of Dr. Robinson's royalty share estimates is a supply-side measure because each is based on IPG's share of programming volume. As a result, the range

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[89] MPAA PFF at ¶¶ 132.

[90] MPAA PFF at ¶¶ 132-34, 138, 145-47.

[91] MPAA PFF at ¶¶ 132, 135, 138.

[92] MPAA PFF at ¶¶ 132, 136-38.

[93] MPAA PFF at ¶¶ 148-49.

[94] MPAA PFF at ¶¶ 132-52.

and midpoint calculations do not provide a sound basis for allocating royalties in this proceeding.[95]

B. The Robinson Methodology Is Unreliable.

40. The Robinson Methodology is flawed, both conceptually and in its application.[96]

41. The Robinson Methodology is conceptually flawed because it relies on flawed indicia of value and ignores one of the important elements of a program's market value—its actual viewership.[97] The Robinson Methodology is flawed in its application because it relies on a non-random sample, which renders the results unreliable for the purpose of projecting its results to the universe of distantly retransmitted stations. The Robinson Methodology also improperly attributes programs to IPG for royalty years in which IPG is either not asserting a claim, or is not entitled to claim; incorrectly calculates program length for MPAA programs; and, despite Dr. Robinson's multiple attempts at corrections, *still* is not in conformance with the Judges' Preliminary Hearing Order regarding the treatment of conflicting title claims.[98] Accordingly, the Robinson Methodology should be afforded no weight by the Judges.

1. The Robinson Methodology Is Flawed Conceptually.

a. Robinson Relies On Flawed Indicia Of Economic Value.

42. Dr. Robinson's three shift factors, *Time of Day*, *Fees Paid*, and *Subscriber Count*, are incomplete and flawed metrics. As an initial matter, Dr. Robinson's metrics are incompatible with the hypothetical, unregulated market that the Judges are obliged to construct and apply in this proceeding. Two of the inputs Dr. Robinson utilizes, the number and type of distant signals

[95] MPAA PFF at ¶¶ 148-50.

[96] MPAA PFF at ¶¶ 131, 132-71.

[97] MPAA PFF at ¶¶ 132-53.

[98] MPAA PFF at ¶¶ 155-71.

carried by CSOs and SSOs, and the royalty fees paid by CSOs and SSOs, are a function of the regulatory scheme. As a result, they are at best flawed indicia of value. Further, Dr. Robinson's shift factors are associated only with the *opportunity* for viewership, and thus are each associated only with higher *potential* relative market value.[99] The Robinson Methodology fails to examine whether opportunities for greater viewing are, in fact, associated with more viewing. By ignoring subscriber demand, the Robinson Methodology cannot fully gauge the relative market value of the programming at issue.[100]

b. Dr. Robinson Ignores Actual Viewership.

43. As explained by actual Program Suppliers copyright owners who license their programs routinely, audience size – as measured by viewership – is central when making licensing deals with broadcast stations and cable networks in the world outside the compulsory licensing scheme.[101] Moreover, in order to attract and retain subscribers, CSOs and SSOs want to carry programming with high viewership, such as syndicated television series that originally attracted a loyal following in their network showing and continue to do so in syndication.[102] Therefore, the higher the viewership of a program, the more valuable it is to a CSO, because it leads to higher subscriber retention and attraction.[103] The Robinson Methodology ignores the effect of program viewership and, therefore, higher program relative market value.

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[99] MPAA PFF at ¶¶ 141-42, 150-54.

[100] MPAA PFF at ¶¶ 141, 150.

[101] *See* MPAA Exhibit 366 at 12 (citing Docket No. 2001-8 CARP CD 98-99, Written Direct Testimony of Babe Winkelman, p.7 (filed December 2, 2002) and Docket No. 2007-3 CRB CD 2004-2005, Written Direct Testimony of Alex Paen, pp. 11-12 (filed June 1, 2009)).

[102] *See id.* (citing Written Direct Testimony of Alex Paen, p. 12).

[103] MPAA PFF at ¶¶ 50-52, 95-99, 102, 106-11, 115-16, 121-23, 125-27.

44. Although Dr. Robinson testified that she considered her methodology to be based on viewership,[104] Dr. Robinson's *Time of Day* shift factors are not based on the relative viewing levels of specific programs. Rather, the *Time of Day* shift factors are based on estimates of the relative total number of television viewers for each quarter hour throughout the day, weighted by the percentage of IPG and MPAA programming that occurred in each quarter hour of the day.[105] Dr. Robinson makes no adjustments to any of her *Time of Day* shift factors for whether, and to what extent, any IPG programing was actually viewed. Instead, Dr. Robinson ignores the Nielsen data produced by MPAA in discovery measuring the viewing levels of each individual program.[106] As a result, Dr. Robinson's proposed royalty shares based on the *Time of Day* shift factors do not measure the relative market value of the individual IPG and MPAA programs that are retransmitted.[107]

45. By ignoring subscriber demand, the Robinson Methodology cannot fully gauge the relative market value of the programming at issue. For example, under the Robinson Methodology, two programs with vastly different measured distant viewing that aired at about the same time of day and were carried by system operators with a similar number of subscribers would have similar royalty shares.[108] Dr. Robinson's statistics completely ignore the subscriber demand for individual programs, and her resulting royalty share allocations could cause copyright owners of valuable programming to receive disproportionately small royalty awards.[109]

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[104] Tr. Vol. 3 at 65-67, Vol. 4 at 249-50 (Robinson).

[105] MPAA PFF at ¶¶ 133-34.

[106] MPAA PFF at ¶¶ 143-53.

[107] *See id.*

[108] *See id.*

[109] *See id.*

46. For all of these reasons, the Robinson Methodology is conceptually flawed, and should be afforded no weight by the Judges.

2. The Robinson Methodology Is Flawed In Its Application.

47. In addition to the conceptual flaws discussed above, Dr. Gray also identified numerous flaws in Dr. Robinson's application of the Robinson Methodology. Each of the flaws identified by Dr. Gray caused IPG's proposed royalty share to be improperly inflated.[110] These flaws are discussed in turn below.

a. Dr. Robinson Uses A Non-Random Sample.

48. The Robinson Methodology presented in the Robinson WDT is based on an *overlap* of two stratified random samples—the samples selected by Dr. Robinson, where the strata are based on CSO and SSO fees generated, and the samples selected by Dr. Gray, where the strata are based on CSO and SSO subscriber counts. This overlap is not, itself, a random sample and not representative of the population of stations carried by CSOs or SSOs during the royalty years at issue in this proceeding.[111] Instead, Dr. Robinson's overlap sample is a non-random sample that is biased towards including larger stations. Because the Robinson Methodology is based on the non-random overlap sample, its use is limited.[112]

b. Dr. Robinson Incorrectly Attributed Titles To IPG, Improperly Inflating IPG's Royalty Shares.

49. The Robinson Methodology improperly credited IPG with programs for royalty years outside of the particular years for which IPG's own testimony and exhibits indicated IPG

[110] MPAA PFF at ¶¶ 154-55.

[111] MPAA PFF at ¶¶ 155-61.

[112] MPAA PFF at ¶¶ 156-60.

was pursuing a claim.[113] This happened for thousands of broadcasts. In fact, in some cases, the Robinson Methodology attributes titles to IPG as to all royalty years where IPG's authority to claim the titles was limited to a single royalty year.[114] Further, there was at least one program airing on WGN that Dr. Robinson erroneously attributed to IPG where that program was not even claimed by IPG.[115] These misattributed broadcasts inflated Dr. Robinson's calculation of IPG's volume of compensable broadcasts. Because each of Dr. Robinson's three royalty share metrics requires the application of IPG's volume to Dr. Robinson's three shift factors,[116] the misattributed retransmissions identified by Dr. Gray undermine all of her calculations.

c. Dr. Robinson Incorrectly Calculated The Program Length For MPAA Programs.

50. In analyzing the Robinson Methodology, Dr. Gray found that Dr. Robinson made incorrect assumptions regarding the program length values reported in the Tribune data she relied on for her analysis. Specifically, in the Tribune data a program length value of "100" referred to an hour long broadcast, and a program length of "200" referred to a two-hour long broadcast. However, Dr. Robinson improperly treated these numerical values as program minutes, thus overstating the volume of many programs and incorrectly calculating total volume.[117] Once again, because the Robinson Methodology relies on Dr. Robinson's total volume calculations, Dr. Robinson's mistakes in her volume calculation negatively impact the reliability of her entire analysis.

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[113] MPAA PFF at ¶¶ 162-66.

[114] *See id.*

[115] MPAA PFF at ¶ 165-66 (describing Dr. Robinson's erroneous attribution of the program *Tomorrow's World*, produced by the Living Church of God, to IPG in the Robinson Methodology).

[116] MPAA PFF at ¶¶ 164-65.

[117] MPAA PFF at ¶¶ 166.

d. Dr. Robinson Treats Non-Compensable Titles As Compensable.

51. Unlike Dr. Gray, Dr. Robinson treated all IPG-claimed programming on Canadian stations as compensable, including programming which originated from countries other than the United States.[118] However, under the cable program category definitions that were adopted during Phase I of this proceeding, programming on Canadian stations which originated outside the United States is not compensable in the Program Suppliers' category. Such programs are, instead, compensable only in the Canadian Claimants Group category, which is not at issue in this Phase II proceeding.[119] By failing to exclude IPG programs that are not compensable in the Program Suppliers category, Dr. Robinson's volume measure for IPG is further inflated. Moreover, when Dr. Robinson imported MPAA-represented broadcasts into her analysis to make a relative value comparison between IPG and MPAA, she utilized broadcast data provided by Dr. Gray, which excluded any MPAA-claimed programming that originated outside the United States. The Robinson Methodology, therefore, treated IPG and MPAA-represented programming disparately on this issue, with the resulting volume inflation inuring to IPG's favor, and MPAA's detriment.[120]

e. Dr. Robinson Did Not Fully Incorporate The Judges' Preliminary Hearing Order On Conflicting Program Claims In Her Rebuttal Testimony And Exhibits.

52. In the Preliminary Hearing Order, the Judges ruled, clearly, that all conflicting program title claims between IPG and MPAA would be awarded to MPAA.[121] Notwithstanding

[118] MPAA PFF at ¶ 168.

[119] MPAA PFF at ¶¶ 56, 168; MPAA Exhibit 369 at Addendum B.

[120] MPAA PFF at ¶ 168.

[121] Preliminary Hearing Order at 25; Order Denying In Part And Granting In Part MPAA Motions Relating To IPG Testimony And Exhibits at 3 (July 20, 2015) ("MPAA July 20 Order").

this ruling, Dr. Robinson failed to attribute all conflicting program title claims to MPAA in the Robinson WRT and associated IPG Exhibits 253'-283'.[122] On July 20, 2015, the Judges denied MPAA's motion to exclude portions of Dr. Robinson's WRT and IPG Exhibits 253'-283' from evidence, ruling that "inclusion of superfluous calculations by Dr. Robinson does not warrant excluding all of her testimony," and that the Judges "are capable of accepting and weighing only those calculations that conform to their [Preliminary Hearing Order] conclusions."[123]

53. IPG submitted IPG Exhibits 253'-283' as so-called "replacement" exhibits in the middle of the Distribution Hearing, and neither MPAA counsel nor its expert witness, Dr. Gray, were afforded an opportunity to review them or any underlying discovery related to them before the Distribution Hearing concluded.[124] Following the conclusion of the Distribution Hearing, Dr. Gray and his staff reviewed IPG Exhibits 253'-283' and the underlying discovery data that IPG produced related to those exhibits while the hearing was ongoing. Dr. Gray found that documents underlying IPG Exhibits 253'-283' show that the exhibits still attributed 997 cable retransmissions and 3,931 satellite retransmissions of conflicting titles to IPG that should have been attributed to MPAA as directed in the Preliminary Hearing Order. As a result of these misattributions, Dr. Robinson's calculation of IPG's cable and satellite programming volume shares and, necessarily, all of the calculations reported in IPG Exhibits 253'-283' related to IPG are overstated, while MPAA's are understated.[125] Accordingly, all of the calculations in IPG

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[122] MPAA July 20 Order at 3, 4-5.

[123] MPAA July 20 Order at 3.

[124] MPAA July 20 Order at 4-5; MPAA PFF at ¶¶ 170-71.

[125] *See* MPAA-represented Program Suppliers' Motion to Strike Provisionally-Accepted Exhibits at 6 and Exhibit A, ¶ 5 (May 13, 2015); MPAA PFF at ¶¶ 170-71.

Exhibits 253'-283' are not in conformance with the Preliminary Hearing Order, and should be afforded no weight by the Judges.

VII. MPAA's And SDC's Witnesses Are Credible, While IPG's Witnesses Are Not.

A. MPAA's Witnesses Provided Reliable Evidence To The Judges.

54. MPAA presented five witnesses in this proceeding, either through live testimony or through written submissions and prior designated testimony: Jane Saunders, Jonda Martin, Paul Lindstrom, Dr. Jeffrey Gray, and Marsha Kessler. Each of MPAA's witnesses has substantial experience in his or her field, and brought that knowledge to bear when testifying before the Judges.[126] Moreover, Mr. Lindstrom and Dr. Gray explained the analyses they performed for this proceeding in great detail.[127] Without question, MPAA's witnesses have provided the Judges with convincing evidence for adopting MPAA's proposed royalty shares in the Program Suppliers category for the 2004-2009 cable and 2000-2009 satellite royalty years.

B. SDC's Witnesses Provided Reliable Evidence To The Judges Regarding How CSOs And SSOs Make Programming Decisions.

55. SDC presented three witnesses in this proceeding, John Sanders, Toby Berlin, and Dr. Erkan Erdem. Two of SDC's witnesses, Mr. Sanders and Ms. Berlin, testified about the particular factors that CSOs and SSOs consider in making programming decisions. Mr. Sanders has had more than thirty years of real-life experience advising the buyers and sellers of television programs regarding the value of those programs.[128] Ms. Berlin served as the Vice President of Programming Acquisitions at DirecTV for more than a decade, and during all of the royalty years at issue in this proceeding. Both Mr. Sanders and Ms. Berlin confirmed that CSOs and

[126] MPAA PFF at ¶¶ 11-93.

[127] MPAA PFF at ¶ 94.

[128] MPAA PFF at ¶ 105.

SSOs rely on meaningful evidence of viewership, such as Nielsen ratings, to make programming decisions.[129] Indeed, Ms. Berlin testified that Nielsen ratings were an important single driver in her own decisions to carry or retransmit stations while at DirecTV, and that Nielsen ratings were especially important when making programming decisions within a particular programming niche or sub-genre.[130] Further, Ms. Berlin confirmed that both station ratings and program level ratings were important to her in making programming decisions for DirecTV, because they allowed her to ascertain what was driving the value for the station.[131] Mr. Sanders and Ms. Berlin's testimonies about the preeminence of Nielsen viewing information in CSO and SSO programming decisions are credible and reliable evidence based on their respective experiences working in the industry, and should be given substantial weight by the Judges.

C. IPG's Witnesses Lack Credibility And Made Significant Concessions.

56. IPG presented three witnesses in this proceeding, Raul Galaz, Dr. Laura Robinson, and Michael Egan. Mr. Galaz's testimony lacked credibility altogether, and should be completely disregarded by the Judges. Moreover, Dr. Robinson and Mr. Egan made significant concessions during their oral testimony that undermines IPG's methodology, and supports MPAA's methodology.

1. Raul Galaz

57. Mr. Galaz's credibility as a witness in this proceeding is certainly in question, for numerous reasons:

- Mr. Galaz testified that he was previously convicted of a felony for mail fraud in connection with fraudulently obtaining cable retransmission royalties from

[129] MPAA PFF at ¶¶ 95-102; 106-11.

[130] MPAA PFF at ¶ 106.

[131] MPAA PFF at ¶¶ 107-11.

MPAA, and he remains under a restitution obligation to MPAA for his criminal acts.[132]

- Mr. Galaz lacks personal knowledge about IPG operations during some of the royalty years at issue because he was incarcerated for a portion of the royalty years implicated by this proceeding.[133]
- Mr. Galaz admitted that he lied under oath in the 1997 Cable Phase II Proceeding.[134]
- Mr. Galaz provided false testimony again in the Preliminary Hearing for this proceeding.[135]
- Mr. Galaz conceded that he has no training in economics, statistics, econometrics, or television audience measurement, and he conceded that he is not an expert in any field, including international copyright law or the practices of foreign royalty collectives.[136]
- Mr. Galaz was once an attorney, but is no longer admitted to the bar in any state.[137]

58. Taken together, these facts undermine Mr. Galaz's credibility as a witness in this proceeding, and compel the Judges to afford no weight to Mr. Galaz's testimony. Moreover, in light of the testimony offered in this proceeding documenting the numerous errors and omissions

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[132] MPAA PFF at ¶ 200.

[133] *See id.*

[134] MPAA PFF at ¶¶ 199-200.

[135] MPAA PFF at ¶ 201.

[136] MPAA PFF at ¶¶ 192-96.

[137] MPAA PFF at ¶ 191.

made by Mr. Galaz in his own work product prepared in connection with this proceeding, the Judges should also afford no weight to any of the IPG Exhibits or analyses, such as the Robinson Methodology, that are reliant in part on data inputs prepared by Mr. Galaz.[138]

2. Dr. Laura Robinson

59. IPG's expert witness, Dr. Laura Robinson, made numerous concessions while on the witness stand. Dr. Robinson testified that she relied on Nielsen viewing data in valuation analyses she had performed in the past related to television and films, and she confirmed that she would have used program level Nielsen data in her analysis in this proceeding if it had been available to her.[139] However, IPG chose not to provide Dr. Robinson with program level Nielsen data.[140]

60. During Dr. Robinson's testimony the Judges learned that IPG did not involve Dr. Robinson in helping to select any of the data sets that would be used for her analysis in this proceeding. Dr. Robinson testified that she got all of the data she relied on for the Robinson Methodology from counsel for IPG and that she had no control over what data IPG provided her. Moreover, she was unaware that some of the data sets provided to her were generated by Mr. Galaz, who lacks credibility.[141] Dr. Robinson also testified that she did not adjust her methodology to attribute conflicting program titles to MPAA rather than IPG, as the Preliminary Hearing Order required, because she "had not been informed to do so" by IPG.[142] By limiting

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[138] MPAA PFF at ¶¶ 166, 174, 213-20.

[139] MPAA PFF at ¶¶ 172-75.

[140] MPAA PFF at ¶ 175.

[141] MPAA PFF at ¶¶ 174-76.

[142] MPAA PFF at ¶ 185.

Dr. Robinson's access to data and closely controlling any adjustments Dr. Robinson could make to her calculations, IPG compromised the integrity of the Robinson Methodology.

61. Dr. Robinson conceded that Dr. Gray's analysis had merit, and that she would have done an analysis similar to his analysis if she had program level viewing data available to her.[143] But later in the hearing, Dr. Robinson admitted that MPAA produced the raw Nielsen data underlying its analysis to IPG in discovery prior to the filing of the Amended Robinson WDT.[144] According to Dr. Robinson, although she had the data available, and could have merged the raw Nielsen viewing data with Tribune data for use in her own analysis, she failed to do so.[145] Essentially, Dr. Robinson admitted that she could have performed an analysis for this proceeding that resembled Dr. Gray's and submitted it as a part of the Robinson WDT, but chose not to do so.

62. Clearly, the Robinson Methodology is not the methodology that Dr. Robinson would have preferred to utilize to estimate the relative market value of IPG and MPAA programming. Instead, it is merely a product of the limited data sets IPG provided Dr. Robinson, and convenience. Moreover, despite Dr. Robinson's unexplained suggestion that her methodology in this proceeding is somehow different, it is clear that the Robinson Methodology applied the same valuation metrics that IPG relied on (and which the Judges rejected as unreliable measures of relative market value) in both the recent 1999 Cable Phase II Proceeding and the 2000-2003 Cable Phase II Proceeding.[146] Dr. Robinson provided the Judges with no reason to embrace IPG's flawed methodology now after twice rejecting it.

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[143] MPAA PFF at ¶¶ 175, 178, 181.

[144] MPAA PFF at ¶ 176.

[145] *See id.*

[146] MPAA PFF at ¶ 183.

63. The problems with the Robinson Methodology, and Dr. Robinson's concessions concerning those problems do not, however, stop there. Dr. Robinson wavered throughout the hearing on the reliability of the Robinson Methodology and how its results should be interpreted. Initially, Dr. Robinson testified that the results of her three valuation metrics could be looked at in isolation or together. At that time, Dr. Robinson suggested that she was not enthusiastic about any of the data used in her valuation metrics, but based on her review of Dr. Gray's methodology she would advocate exclusive reliance on IPG's *Time of Day* factor, which incorporates an attenuated measurement of viewership.[147] When Dr. Robinson returned to the witness stand the following day, she changed her testimony, asserting that her valuation metrics should only be considered together or "in the context" of one another.[148] It remains unclear from the record the level of confidence that Dr. Robinson has in either the range or midpoint calculations presented in her testimony.

64. Even worse, Dr. Robinson admitted that the "overlap" stations that she relied on were not themselves a random sample, and therefore there is no way for her to extrapolate her findings to the whole population. Dr. Robinson conceded that, following corrections to the Robinson Methodology made in IPG Exhibit 253'-283', the overlapping stations used in her analysis were actually only representative of between 68.9% and 80.3% of the population. Because the Robinson Methodology does not rely on a random sample, it has limited utility. Moreover, Dr. Robinson admitted that she did not calculate any confidence intervals for her calculations.[149] At bottom, Dr. Robinson's wavering confidence in, and concessions about, the

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[147] MPAA PFF at ¶ 184; Tr. Vol. 4 at 261-64, Vol. 5 at 10-13 (Robinson).

[148] *See id.*

[149] MPAA PFF at ¶¶ 157-61.

lack of reliability of the Robinson Methodology prevent the Judges from affording it any weight in this proceeding.

65. Dr. Robinson also made significant concessions that undermine her critiques of Dr. Gray's methodology in this proceeding. For example, she conceded that the difference between how CSOs and SSOs perceive viewership and how an advertiser on a broadcast station perceives viewership is, from an economic perspective, somewhat artificial. This is because both want eyeballs on the programs. Cable operators are, essentially, advertising their own shows by virtue of showing them to their subscribers. Dr. Robinson agreed that programs on a cable system are a variety of an experience good – a good that you want someone to consume so that they can experience it, and then buy more of it. Cable subscribers, or viewers, are simultaneously consuming, paying for that consumption by virtue of their cable subscription, and using that consumption to make a decision about whether to subscribe in the future.[150] Dr. Robinson also articulated, clearly, that consideration of viewing is important to determining the relative market value of programming.[151]

66. Dr. Robinson also made significant concessions that undermine her criticisms of MPAA's Nielsen Diary Studies in this proceeding. Dr. Robinson testified that she thinks so-called "zero-viewing" in the Nielsen Diary Studies is a problem, but she was unable to articulate any particular benchmark or threshold for what particular level of zero viewing she would expect to see in distant viewing data, or to explain how her limited critique of zero viewing in the Nielsen Diary Data was not addressed by Dr. Gray's regression analysis.[152] Dr. Robinson also failed to analyze the Nielsen Diary Studies to determine whether there was any relationship to

[150] MPAA PFF at ¶ 190.

[151] MPAA PFF at ¶¶ 175, 177-78, 180.

[152] MPAA PFF at ¶¶ 186-89.

the presence of zero values and the time of day that the programs aired, or to the placement of a particular station on a cable system's channel line-up.[153] At bottom, Dr. Robinson's criticism of the zero values in the Nielsen Diary Studies amounts to mere discomfort that zeros exist in the raw data *at all*. However, Dr. Robinson admitted that she had made no effort to contact Nielsen to ask questions about the presence of zero values in its distant viewing data, or to investigate any industry standards governing the issue.[154] Dr. Robinson also admitted that she had never used Nielsen distant viewing data in any other proceeding or analysis.[155]

3. Michael Egan

67. IPG's rebuttal witness, Michael Egan, also made several significant concessions on the witness stand. As an initial matter, Mr. Egan conceded that, in contrast to other testifying industry witnesses such as Ms. Berlin, his experience as a CSO was dated, as he had not been directly employed by a CSO since 1999, more than fifteen years ago.[156] Mr. Egan also testified that the cable systems that he worked at during the 1980s and 1990s would be considered small cable systems by today's standards, as there has been widespread cable system consolidation during the intervening years.[157] Indeed, the significant time-lag since Mr. Egan's direct experience working as a CSO is revealed through his testimony that, in his experience, cable operators would rely on one-on-one, personal interactions with subscribers and word-of-mouth feedback regarding program popularity as a primary source of their decision-making.[158]

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[153] *See id.*

[154] MPAA PFF at ¶ 186.

[155] *See id*.

[156] MPAA PFF at ¶ 114. In sharp contrast to Mr. Egan, Ms. Berlin was responsible for programming decisions at DirecTV was from October of 1998 to July of 2013. *See* MPAA PFF at ¶ 105.

[157] MPAA PFF at ¶¶ 112-14.

[158] MPAA PFF at ¶ 116.

Moreover, Mr. Egan's testimony about personal interactions with cable subscribers driving programming decisions is also inconsistent with his admission that, today, CSOs make programming decisions concerning what stations to carry at the regional corporate level, and not at the local level.[159]

68. While IPG called Mr. Egan to the stand purportedly to rebut Ms. Berlin's testimony that CSO and SSOs rely on Nielsen viewing information in making programming decisions, Mr. Egan actually confirmed that viewing information would be useful and helpful information for a CSO to consider in making a programming decision, especially in the context of making a programming decision between two homogenous programs within a particular niche or sub-genre.[160] Moreover, while Mr. Egan testified that he thought it was unlikely that CSOs would subscribe directly to Nielsen ratings, if he was given access to Nielsen ratings during a transaction or a pitch, he would look at them and consider them in his decision making.[161] Mr. Egan also conceded that Nielsen ratings information, particularly demographic ratings, would be useful to a CSO in constructing a balanced bundle of stations to offer to subscribers.[162]

69. Mr. Egan conceded that when CSOs make programming decisions concerning broadcast stations in the current regulated market, they are deciding whether or not to import the entire station.[163] In the regulated market CSOs are unable to make any changes to the broadcast signals that they retransmit, and are thus unable to sell advertising time on them.[164] In Mr.

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[159] MPAA PFF at ¶¶ 116-17.

[160] MPAA PFF at ¶¶ 116, 121-22, 125-27.

[161] MPAA PFF at ¶¶ 125, 126-27.

[162] MPAA PFF at ¶ 122.

[163] MPAA PFF at ¶ 118.

[164] MPAA PFF at ¶ 124.

Egan's experience as a CSO working within the regulated market, 100% of broadcast stations are provided to cable system subscribers as a part of a bundle containing multiple stations, and none of them were ever offered to cable subscribers a la carte.[165] In making programming decisions in the regulated market, CSOs are primarily concerned with what programming will add value to the bundle, or package that they sell to subscribers.[166] However, Mr. Egan agreed that the purpose of this proceeding is to allocate royalties based on the fair market value of the retransmitted works in a hypothetical market, absent regulation. In a hypothetical, unregulated market, it would be possible for cable operators to sell advertising time on retransmitted broadcast signals, or to make a la carte offerings.[167] Mr. Egan was unable to explain how his dated observations regarding CSO practices within the regulated market were transferrable to the hypothetical market that the Judges must construct for allocation of royalties in this proceeding.

70. Mr. Egan also made several admissions that run directly contrary to assumptions underlying the Robinson Methodology. For example, Mr. Egan agreed that every program on a particular station is not equally valuable to a CSO.[168] He also agreed that all programs shown in the same daypart do not have equal value to a CSO, and assuming similar ratings, a program airing in prime time is more valuable than a program airing in the middle of the day.[169] These statements further undermine the credibility of Dr. Robinson's shift factors, while bolstering the conceptual validity of Dr. Gray's analysis.

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[165] MPAA PFF at ¶ 119.

[166] MPAA PFF at ¶¶ 118-19, 122-23.

[167] MPAA PFF at ¶ 124.

[168] MPAA PFF at ¶ 129.

[169] MPAA PFF at ¶ 128.

VIII. Conclusion

71. MPAA has presented convincing, reliable evidence justifying the following share allocations between MPAA and IPG for each of the 2004-2009 Cable and 2000-2009 Satellite royalty years:

Cable Royalty Year	MPAA Share Of PS Fund (%)	IPG Share Of PS Fund (%)
2004	99.59%	0.41%
2005	99.55%	0.45%
2006	99.32%	0.68%
2007	99.28%	0.72%
2008	99.19%	0.81%
2009	99.39%	0.61%

Satellite Royalty Year	MPAA Share Of PS Fund (%)	IPG Share Of PS Fund (%)
2000	99.65%	0.35%
2001	99.77%	0.23%
2002	99.80%	0.20%
2003	99.61%	0.39%
2004	99.87%	0.13%
2005	99.78%	0.22%
2006	99.73%	0.27%
2007	99.74%	0.26%
2008	99.77%	0.23%
2009	99.58%	0.42%

Respectfully submitted,

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August 17, 2015

APPENDIX A

IPG CLAIMANTS DISALLOWED PER PRELIMINARY HEARING ORDER (CABLE)

KEY TO ABBREVIATIONS

X: Royalty years for which the Judges disallowed IPG's claim in the Preliminary Hearing Order.
N/A: Royalty years for which IPG has indicated it is not pursuing a claim for this claimant. *See* IPG Exhibit 124.

IPG -REPRESENTED PROGRAM SUPPLIERS--CABLE	2004	2005	2006	2007	2008	2009
Ardent Productions	X	X	X	X	X	X
Aviva International	X	X	X			
BBC Worldwide / TEAM Communications	X	X	X	X	X	X
*BBC Worldwide Americas, Inc. (BBCWA)					X	N/A
Big Events Company	X	X	X	X	X	X
Big Feats Entertainment, L.P.	X	X	X	X	X	X
Carol Reynolds Productions Inc.	X	X	X	X	X	X
Devillier Donegan Enterprises	X	X	X	X	X	X
Direct Cinema Ltd.	X	X	X	X	X	X
Distraction Formats	X	X	X	X	X	X
Feed the Children, Inc.	X	X	X	X	X	X
Firing Line (dba for National Review, Inc.)	X	X	X	X	X	X
Global Response LLC			X			
Golden Films Finance Corporation	X	X	X	X	X	X
Great Plains National Instructional Library (cka Restructure Holding)	X	X	X	X	X	X
Greenlight Entertainment	X	X	X	X	X	X
King Motion Picture Corporation	X	X	X	X	X	X
Les Distributions Rozon, Inc./Just for Laughs	X	X	X	X	X	X
Les Productions Videofilms Limitee	X	X	X	X	X	X
Lipscomb Entertainment	X	X	X	X	X	X
Mentorn Barraclough Carey	X	X	X	X	X	X
Multimedia Group of Canada	X	X	X	X	X	X
Nelson Davis Productions	X	X	X	X	X	X
NTS Program Sales	X	X	X	X	X	X
Pacific Family Entertainment	X	X	X	X	X	X
Salem Baptist Church of Chicago, Inc.	X	X	X	X	X	X
Showtime Networks	X	X	X	X	X	X
Splendid Film Gmbh	X	X	X	X	X	X
TEAM Communications	X	X	X	X	X	X
Today's Homeowner	X	N/A	N/A	N/A	N/A	N/A
Urban Latino TV, LLC (cka American Latino)	X	X	X	X	X	X
Worldwide Pants, Inc.	N/A	N/A	X	X	X	X

*BBCWA was disallowed only after July 1, 2008.

APPENDIX B

IPG CLAIMANTS DISALLOWED PER PRELIMINARY HEARING ORDER (SATELLITE)

KEY TO ABBREVIATIONS

X: Royalty years for which the Judges disallowed IPG's claim in the Preliminary Hearing Order.

N/A: Royalty years for which IPG has indicated it is not pursuing a claim for this claimant. *See* IPG Exhibit 124.

IPG -REPRESENTED PROGRAM SUPPLIERS--SATELLITE	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Adler Media, Inc.	X	N/A	X	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ardent Productions	X	X	X	X	X	X	X	X	X	X
Aviva International	X	X	X	X	X	X	X			
BBC Worldwide / TEAM Communications	X	X	X	X	X	X	X	X	X	X
*BBC Worldwide Americas, Inc.							X	X	X	N/A
Beacon Communications Corp.	X	X	X	X	N/A	N/A	N/A	N/A	N/A	N/A
Beyond International, Ltd.	X	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Breakthrough Films	X									
Big Events Company	X	X	X	X	X	X	X	X	X	X
Big Feats Entertainment, L.P.	X	X	X	X	X	X	X	X	X	X
Carol Reynolds Productions Inc.	X	X	X	X	X	X	X	X	X	X
Cinemaginaire Inc.	X									
Cirque du Soleil Images Inc.	X									
Cogeco Radio-Television	X									
Cottage County Television (2000) Inc.	X									
Devillier Donegan Enterprises	X	X	X	X	X	X	X	X	X	X
Direct Cinema Ltd.	X	X	X	X	X	X	X	X	X	X
Distraction Formats	X	X	X	X	X	X	X	X	X	X
Envoy Productions	N/A	X	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Federation Internationale de Football Association	X	X	X	X	X	X	X	X	X	X
Feed the Children, Inc.	X	X	X	X	X	X	X	X	X	X
Firing Line (dba for National Review, Inc.)	X	X	X	X	X	X	X	X	X	X
Fitness Quest, Inc.	N/A	X	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Golden Films Finance Corporation					X	X	X	X	X	X
Great Plains National Instructional Library (cka Restructure	X	X	X	X	X	X	X	X	X	X
Greenlight Entertainment	X	X	X	X	X	X	X	X	X	X
GTSP Records									X	
HLB Productions									X	
Home Enterprises									X	
Image Entertainment, Inc.									X	
InCA Productions									X	
Integrity Global Marketing									X	
IWV Media Group, Inc.	N/A	N/A							X	
JCS Entertainment II									X	
K2 Media Group, Inc.									X	
Kid Friendly Productions									X	

APPENDIX B

IPG CLAIMANTS DISALLOWED PER PRELIMINARY HEARING ORDER (SATELLITE)

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X: Royalty years for which the Judges disallowed IPG's claim in the Preliminary Hearing Order.

N/A: Royalty years for which IPG has indicated it is not pursuing a claim for this claimant. *See* IPG Exhibit 124.

IPG -REPRESENTED PROGRAM SUPPLIERS--SATELLITE	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
King Motion Picture Corporation	N/A	X	X	X	X	X	X	X	X	X
Knight Enterprises									X	
Lawrence Welk Syndication									X	
Les Distributions Rozon, Inc./Just for Laughs	N/A	X	X	X	X	X	X	X	X	X
Les Productions du Verseau	X									
Les Productions Videofilms Limitee	N/A	X	X	X	X	X	X	X	X	X
Link Television Entertainment									X	
Lipscomb Entertainment	X	X	X	X	X	X	X	X	X	X
Magus Entertainment									X	
Mansfield Television Distribution Co.	E								X	
Mark Anthony Entertainment									X	
Mentorn Barraclough Carey	X	X	X	X	X	X	X	X	X	X
Meredith Corporation									X	
Midwest Center for Stress & Anxiety									X	
MoneyTV.net, Inc.	N/A	N/A	N/A						X	
Multimedia Group of Canada	X	X	X	X	X	X	X	X	X	X
National Academy of Television Arts and Sciences									X	
Nelson Davis Productions	N/A	N/A	N/A	X	X	X	X	X	X	X
Network Programs International									X	
NTS Program Sales		X	X	X	X	X	X	X	X	X
Nu/Hart Hair Clinics, Inc.	X	X	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Pacific Family Entertainment	X	X	X	X	X	X	X	X	X	X
Paradigm Pictures Corporation	X									
Productions Point de Mire	X	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Psychic Readers Network	X									
Showtime Networks	X	X	X	X	X	X	X	X	X	X
Slim Goodbody Corporation	X	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Splendid Film Gmbh	N/A	N/A	N/A	N/A	X	X	X	X	X	X
TEAM Communications	X	X	X	X	X	X	X	X	X	X
TF1 International	X	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Today's Homeowner	X	X	X	X	X	N/A	N/A	N/A	N/A	N/A
TV Guide									X	
TV Matters cka Film Matters									X	
Twin Cities Public TV									X	
United Negro College Fund									X	
United States Olympic Committee	X	X	X	X	N/A	N/A	N/A	N/A	N/A	N/A

APPENDIX B

IPG CLAIMANTS DISALLOWED PER PRELIMINARY HEARING ORDER (SATELLITE)

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N/A: Royalty years for which IPG has indicated it is not pursuing a claim for this claimant. *See* IPG Exhibit 124.

IPG -REPRESENTED PROGRAM SUPPLIERS--SATELLITE	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Urban Latino TV, LLC (cka American Latino)	X	X	X	X	X	X	X	X	X	X
Vendome Television	X	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Venevision International	N/A	X	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Video Media Distribution, Inc.									X	
Video Tours, Inc.									X	
Watercourse Road Productions LLC									X	
West 175 Enterprises									X	
Whidbey Island Films, Inc.	N/A								X	
Willie Wilson Productions, Inc.									X	
World Events Productions									X	
Worldwide Pants, Inc.	X	X	X	N/A	N/A	N/A	X	X	X	X

*BBCWA was disallowed only after July 1, 2008.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2015, a copy of the foregoing pleading was sent by Federal Express overnight mail to the parties listed on the attached service list.

Lucy Holmes Plovnick

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