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GENERAL COUNSEL
OF COPYRIGHT

FEB 12 1998

February 12, 1998

RECEIVED

VIA TELECOPY

Hon. Lewis Hall Griffith
Hon. Jeffrey S. Gulin
Hon. Edward Dreyfus
c/o Ms. Gina Giuffreda
Copyright Arbitration Royalty Panel
Library of Congress
P.O. Box 70977, Southwest Station
Washington, D.C. 20024

Re: Noncommercial Educational Broadcasting
Compulsory License Docket No. 96-6

Dear Panel Members:

On behalf of BMI, we write to respond to the February 11, 1998 letter on behalf of ASCAP from Philip Schaeffer to the Panel in accordance with the Copyright Office's letter dated February 10, 1998. We also write to designate the order of BMI's witnesses as requested by the Panel at the conference on February 3.

First, BMI does not object to ASCAP's proposal that hearings be held at White & Case in New York, as long as appropriate private rooms, telephone and facsimile services are made available to the other parties to this proceeding while at White & Case. If the Panel is prepared to hold hearings in New York for ASCAP's witnesses, BMI requests that the hearings of its witnesses be held in New York too. In order to facilitate hearings in New York and for the convenience of the Panel, BMI is prepared to have testimony of BMI witnesses at the offices of White & Case as well. Of course, if this is not acceptable to ASCAP, these hearings could instead be held at the offices of Hughes Hubbard & Reed.

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In addition, in accordance with the Panel's request at the conference on February 3, set forth below is a proposed order of witnesses on behalf of BMI and the likely dates of their testimony (assuming that ASCAP's direct case takes place on the dates indicated in Mr. Schaeffer's letter):

Alison Smith (March 16)
Fredric J. Willms (March 16)
Bruce M. Owen (March 16-17)
Michael Bacon (March 17-18)
Janet R. McFadden (March 18)
Roy J. Epstein (March 18)

As to ASCAP's proposed order of witnesses, we were surprised by the proposal to call Dr. Boyle out of turn on March 30, some five hearing days after the end of the rest of ASCAP's direct case, after BMI's case, and seemingly in the midst of the public broadcasters' case. We had understood, as confirmed by ASCAP at the prehearing conference, that the order of proof would be (1) ASCAP; (2) BMI; and (3) the public broadcasters, and that Dr. Boyle would be ASCAP's last witness. We were informed by Mr. Schaeffer this morning that notwithstanding the parties' prior agreement regarding the order of proof, Dr. Boyle was unavailable before March 30. While we certainly are appreciative of witness schedules and the need for the parties and the Panel to be accommodating regarding their scheduling, we had in fact, understood that our case would commence after ASCAP's direct case was over and would proceed without interruption by witnesses of other parties. Notwithstanding the inconvenience to us in ASCAP's proposal to bifurcate its case, we are prepared to honor that request if Dr. Boyle cannot, in fact, appear at any of the scheduled hearings prior to March 30, 1998, and, in that regard, we would not object to Dr. Boyle appearing after the presentation of BMI's direct case, but not during BMI's case.

Finally, BMI does not believe that the employment of a "senior independent legal assistant" is necessary for the purpose of assisting at the hearings. As ASCAP suggests in its letter, it appears that those services could be performed equally well by the proposed court reporters.

Respectfully submitted,



cc: R. Bruce Rich, Esq.
Philip H. Schaeffer, Esq.

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DATE: February 12, 1998
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TO: R. Bruce Rich
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TO: Philip H. Schaeffer, Esq.
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