

(1)

§ 118 NCBA - 2/3/93

- Meeting w/ arbitrators 10:05 am

Moving hearing to NY

- ordered to do so
- logistic concerns
  - technical support
  - administrative support
  - court reporter

- Bottom line: yes - to move but parties will have to make certain arrangements

Background

- proceedings should take place every 5 yrs; 1st should be held in 1997
- FR 10/18/76
- date have expired; Rates set by this panel will be for next 5 yrs.
- Proceeding postponed b/c of various difficulties
- last time litigated - 1982 by CRT; also hearing of last-minute settlement
- Parties wanted CO to ensure ~~that~~ rates set by panel would be retroactive; CO refused b/c no authority for retroactive rule making
  - Parties stated that they will treat rates set by panel as being effective as of 1/1/93
  - Right now, probably paying old rates

Substantive Background - § 118

Lawrence established in 1976 b/c PBS came to Congress & told them if difficulty negotiating with © owners & need guaranteed access to works b/c if not also of revenues

- license allows public media (TV, etc.)

\* publicly perform works (mechanistic musical work - no statutory definition) (pictorial, graphic, sculptural → settled as)

public performance  
transmission  
by program

- not really issue here unless panel happens to set rates by categorizing works  
- will prevent remuneration of work

(3)

⑥ reproduce works, i.e., put them into programs

- moving results for putting on audio-visual or tape etc.  
Hampden & SESAC policies - only worry = performance

⑦ Speech rights (especially, some other of program)

- ASCAP & BMI

- big 2 for performing rights

- SESAC

- include SESAC

- similar to ASCAP & BMI, rights society; mostly represent composers  
South America - @ access - but have been using some ASCAP/BMI conditions

vs. PBS / NPR

- will be making royalty payments

- atty for PBS & ASCAP/BMI long history

- ASCAP/BMI rates monitored by S.D.I.Y. (American Society of Music)  
BMI rates used to follow ASCAP/BMI rates

- ASCAP/BMI may also market licenses not <sup>in</sup> air-ings/

licens.

Circular 96

Get copy of rules

Panel

- will be meeting with the panel

- main battle will be on radio

(3)

### Expectations of Panel

- (1) To be in a job of administrative calculations
- (2) Web-minimal demands.

### Next up this year

- (1) Distributor agreement
- (2) Scheduling of proceedings
- (3) Resolution of preliminary matters
- (4) Set submission

### Post-accept

- One more assigned to panel 3
- Involvement of Jon Luninggard
- a legal history of § 118
- WP2 raised conflict with PLCB's firm represent NLR in E1050

(1)

2/3/98 - 1:30 § 118

Initial meeting

I. Introduction of panelists & attorneys

A. Philip Schaeffer - White & Case → ASCAP

Norman Klinberg - BMI

Bruce Lick - Weil Gotshal - PBS/NPR/CBS

Jonathan Weiss

Sam

Beverly Willet

?

Ann Beedel

Kathleen Cox

Jean McGivern - ASC

Jocelina - BMI

Michael Seligman -

Mark Stein

Adam Oppenheimer } NPR

Ruth O'Leary }

II. Payment of Arbitrators

A. Parties have discussed payment w/o resolution

1. Schaeffer - separate checks or central payer

2. Lick - procedure not issue but division among parties

B. Arbs Proposal

1. A's submit to © office monthly statements thru 25<sup>th</sup> day of month

2. Invoicing forwarded to parties

3. Rule requires payment within 30 days but A's request within 10 days

4. Checks payable to A's

C. Division of fees

1. Problem lies w/ division of fees to be split b/w ASCAP/BMI vs. PBS/NPR

2. B4 report issued → A v. B → split 50/50 - Proposal of A's

- PBS/NPR not happy w/ 50/50 split

they can raise payment later

← - consulting w/ client → agree to pay 1/2 forward interim payment

- after report issued - final assessment of fees & costs

(2)

D. Rates of Arbitrators

- ① LG - 200
  - ED 275
  - JG 200
- } + expenses

III. Possible Conflict w/ ED

- A. His prior association w/ Bender of White & Case
- B. home had problem

IV. Scheduling

A. Location

- 1. Judge willing to go to NY
  - a. ED → from NJ
  - b. JG → Baltimore
  - c. LG → McLean, VA
- 2. Rich → strong preference for PBS/NPIR case to be in DC
  - ∴ Split hearings at NY & DC

3. Site ⇒ law firms on rotating basis

B. Schedule

1. Direct cases → 14 days

Proposed by parties {

- a. Opening statements - 2/26 - proposed
- b. 3/9, 3/12-13, 3/16 (whole week) & 3/30 (whole week)
- c. Ending 4/3

2. Submittal

a. ASCAP → 4/13

b. Rich ⇒ electronic data - parties may want to perform discovery & underlying docs & attempt to replicate

(3)

- c. Shuffler - still start on 4/13 and allow for ~~more~~ <sup>more</sup> time if needed
- d. Julia - think week too short of time
- 2. Nick -> any writer rebuttal cases on their side 2 weeks from 4/3 & could do expedited discovery.

- ii. 4/15 for writer rebuttal
- i. ~~possibility of testimony for rebuttal at starting on 4/27~~
- iii. 4/24 - requests for <sup>discovery</sup> motions

5/4 - proposed for rebuttal testimony

6/11 - writer PPF & CL

6/12 - final argument

5/26 - reply briefs due

5/18 - PPF & CL

### Schedule - ED

Opening statement - 2/26 (plus ASCAP <sup>witness</sup> - Rogers ~~Amayla Braunger~~)

Direct case - 3/16 - 20 ~~3/19~~ 3/19, 3/12-13

Continuation of above -> 3/30 -> 4/3

Writer rebuttal -> 4/15

Parties will let A's know when hearings

Rebuttal testimony -> 4/27 - 4/30

will be in New York

Sub PPF & CL -> 5/22

Reply Briefing -> 6/1

7/28/95 - Report due

Final Argument -> 6/16  
oral

### Moving to NY

- Transportation & storing of material -> law firms can provide
- Court reporter - they can take care of

### Other matters

- Opening Statements P-A-B
- Direct Case A-B-P

(4)

- Order of witnesses due 2/10
- Confidential portions of hearings - also 2/10
- ~~Re~~ Status of Baumgartner
  - one of earlier witnesses but not on 2/26
  - deliberation status by 2/20

[Ship direct case via UPS]

- Rich → discovery
  - 1/29 - 40 million records from ASCAP in electronic form
- Re Dr. Bayle {
  - economists working w/ data
  - ASCAP offered someone from ASCAP to help understand
  - do not sure if will be able to cross Dr. Bayle
- in timeframe:
  - Shaffer - Dr. Bayle will be last witness → <sup>statistical</sup> expert

Hearings start at 10 am; lunch 1-2; end by 5 pm

Meeting adjourned

Send Files to

Edward Dreyfus  
181 Acorn Dr.

CLARK, NJ 07066

Tel: 732-382-5308

Home Fax: 732-382-6880

Feb 20 - Panel Decides Baumgarten <sup>MOTION!</sup>  
Feb 26 - Opening State, + witness(es)

Mar 9, 12, 13

Mar 16 → 20

Mar 30, 31, Apr. 1, 2, (3?)

~~Mar~~ Apr 15 ————— written Rebuttal

~~Mar~~ Apr 27, → 30 ————— Rebut. Test.

May 22 ————— File written Find. & concl.

June 1 ————— File reply Find. & concl.

June 16 ————— Oral Arg.

July 28 File Report.