

ORIGINAL

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Before the  
COPYRIGHT ROYALTY TRIBUNAL  
Washington, D.C.

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In the Matter of :  
1990 SATELLITE CARRIER : Docket No. 91-5-90SCD  
ROYALTY DISTRIBUTION PROCEEDING :  
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COMMENTS ON EXISTENCE OF A CONTROVERSY,  
NOTICE OF INTENT TO PARTICIPATE, AND  
COMMENTS ON CONSOLIDATION OF THE 1989 AND  
1990 DISTRIBUTION PROCEEDINGS, OF THE AMERICAN  
SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS,  
BROADCAST MUSIC, INC. AND SESAC, INC.

The American Society of Composers, Authors and  
Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI") and  
SESAC, Inc. ("SESAC") (collectively, the "Music Claimants")  
submit these joint comments in response to the Copyright  
Royalty Tribunal's Notice of August 7, 1991, 56 Fed. Reg.  
37,530.

I. COMMENTS ON EXISTENCE OF A CONTROVERSY

The Tribunal first asked for comments "concerning  
whether a controversy exists with regard to the distribution  
of the 1990 satellite carrier royalty fees."

As we noted in our Joint Comments filed on June  
24, 1991 in the 1989 Satellite Carrier Royalty Distribution  
Proceeding (Docket No. 91-1-89SCD), we presume that the  
Tribunal will conduct satellite carrier royalty distribution  
proceedings in two phases, as it conducts cable royalty  
distribution proceedings. Phase I will determine the shares

of categories of claimants with similar interests; Phase II will determine the shares of individual claimants within each category. We further presume that the Tribunal will designate Music as one of the Phase I categories.

A. Phase I

The Music Claimants have not reached agreement regarding settlement of Phase I of the 1990 satellite carrier royalty distribution proceeding with other Phase I claimant groups. Consequently, as of this date, a Phase I controversy exists.

B. Phase II

ASCAP and BMI have reached agreement with SESAC regarding settlement of SESAC's Phase II claims within the Music category to 1990 satellite carrier royalties. ASCAP and BMI have not reached agreement among themselves regarding settlement of their Phase II claims. We are unaware of any other claimants within the Music category. Consequently, as of this date, a Phase II controversy exists within the Music category between ASCAP and BMI, but no controversy exists regarding SESAC.

C. Declaration of a Controversy

In their Comments Concerning Existence of a Controversy dated June 24, 1991 in the 1989 Satellite Carrier Royalty Distribution Proceeding, the Program

Suppliers noted that, because "the parties appear to be desirous of resolving this matter by settlement, rather than by litigation," and because of the parties' efforts involved in the preparation of their cases in the pending 1989 Cable Royalty Distribution Proceeding, "the [Tribunal's] best course would be to delay any decision as to whether a controversy exists [in the 1989 Satellite Carrier Royalty Distribution Proceeding]." We agree with that view, and believe that it applies equally to the 1990 Satellite Carrier Royalty Distribution Proceeding.

## II. NOTICE OF INTENT TO PARTICIPATE

ASCAP, BMI and SESAC each individually hereby gives notice of intent to participate in any Phase I controversy in the 1990 Satellite Carrier Royalty Distribution Proceeding. ASCAP and BMI each individually hereby give notice of intent to participate in any Phase II controversy within the Music category in the 1990 Satellite Carrier Royalty Distribution Proceeding.

## III. CONSOLIDATION OF 1989 AND 1990 PROCEEDINGS

The Tribunal also requested comments "concerning the advisability of consolidating the 1990 distribution proceeding with the 1989 distribution proceeding." We

believe such a consolidation is desirable and proper. Consolidation would accomplish administrative efficiency, reduce the costs of litigation and allow time for continued settlement attempts. In addition, consolidation would allow scheduling of proceedings which would not conflict with the pending 1989 Cable Royalty Distribution Proceeding.


We also would note that, in any consolidation, the Tribunal should be aware of certain considerations: First, the parties must be free to advance different claims for each year involved. Because the evidence may vary from year to year, it is possible that a claimant may prove entitlement to different awards for 1989 and 1990. As the Copyright Law envisions that distributions will be made on a year-by-year basis (see the references to claims and distributions for "each year" in 17 U.S.C. §119(b)(4)(A) and (B)), and as the size of the royalty fund, the mix of signals carried and programming contained on those signals all vary from year to year, claimants must be free to advocate entitlement to different awards for 1989 and 1990, if the evidence supports such claims.

Second, there is the possibility that some parties have reached settlements (either in Phase I or Phase II) for one year, but not the other. Indeed, that is the case within the Music category: for 1989, ASCAP, BMI and SESAC


have settled Phase II claims; for 1990, while ASCAP and BMI have settled Phase II claims with SESAC, they have not settled those claims with each other. Although such circumstances certainly do not preclude consolidation, they will have to be taken into account in any consolidated proceeding. And, notwithstanding these concerns, we believe that consolidation is desirable.

Respectfully submitted

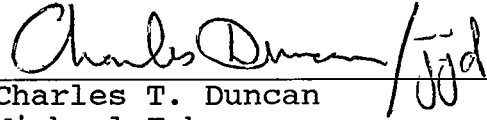
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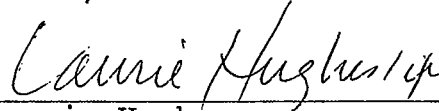
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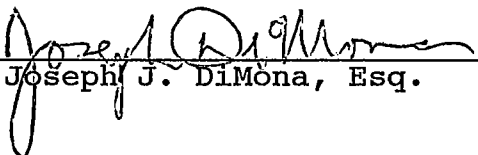


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Dated: September 6, 1991

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on this 6th day of September 1991, via first-class mail, postage prepaid, to each of the parties on the official service list.

  
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