

AGREEMENT OF SETTLEMENT CONCERNING
1985 CABLE ROYALTY INFLATION
ADJUSTMENT

This "Agreement of Settlement Concerning 1985 Cable Royalty Inflation Adjustment" ("Settlement Agreement") is made as of the 8th day of March, 1985, by and among the NATIONAL CABLE TELEVISION ASSOCIATION and the COMMUNITY ANTENNA TELEVISION ASSOCIATION (hereinafter collectively referred to as "Cable Representatives"); and the MOTION PICTURE ASSOCIATION OF AMERICA, INC., MAJOR LEAGUE BASEBALL, the NATIONAL BASKETBALL ASSOCIATION, the NATIONAL HOCKEY LEAGUE, the NORTH AMERICAN SOCCER LEAGUE, the NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, the AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, BROADCAST MUSIC, INC., SESAC, INC, and the NATIONAL ASSOCIATION OF BROADCASTERS (hereinafter collectively referred to as "Copyright Owners").

BACKGROUND

Sections 801(b)(2)(A) & (D) of the Copyright Act of 1976 ("Act") authorize the Copyright Royalty Tribunal ("Tribunal") to adjust for inflation the royalty rates and gross receipts limitations set forth in Sections 111(d)(2)(B)-(D) of the Act. The first such adjustments were made by the Tribunal after a proceeding conducted in 1980. See

NCTA v. CRT, 689 F.2d 1077 (D.C. Cir. 1982). The Copyright Owners and Cable Representatives were the only parties to participate in the 1980 inflation adjustment proceeding. Pursuant to Section 804(a)(2)(A) of the Act, parties with a "significant interest" in the cable royalty rates to be adjusted may petition the Tribunal in 1985 and every fifth year thereafter to make further inflation adjustments.

In order to avoid the costs, uncertainties and delays of litigation and consistent with the approach taken by the Tribunal and Court of Appeals in the 1980 inflation adjustment proceeding, the Cable Representatives and Copyright Owners have entered into a negotiated settlement agreement concerning the 1985 cable royalty inflation adjustments. The complete terms of this agreement are as follows:

ARTICLE I

The Cable Representatives and Copyright Owners will promptly request the Tribunal to commence the 1985 cable inflation adjustment proceeding.

ARTICLE II

The Cable Representatives and Copyright Owners will urge the Tribunal to adjust the rates set forth in Section 111(d)(2)(B) of the Act and Section 308.2(a) of the Tribunal's rules as follows, commencing with the first semi-annual accounting period of 1985 and for each semiannual accounting period thereafter:

(1) .893 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to paragraphs (2) through (4);

(2) .893 of 1 per centum of such gross receipts for the first distant signal equivalent;

(3) .563 of 1 per centum of such gross receipts for each of the second, third and fourth distant signal equivalents; and

(4) .265 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter.

ARTICLE III

The Cable Representatives and Copyright Owners will urge the Tribunal to adjust the gross receipts limitations established by 17 U.S.C. § 111(d)(2)(C) and (D) of the Act

and Section 308.2(b) of the Tribunal's rules as follows, commencing with the first semiannual accounting period of 1985 and for each semiannual accounting period thereafter:

(1) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters total \$146,000 or less, gross receipts of the cable system for the purpose of this subclause shall be computed by subtracting from such actual gross receipts the amount by which \$146,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than \$5,600. The royalty fee payable under this subclause shall be 0.5 of 1 per centum regardless of the number of distant signal equivalents, if any; and

(2) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than \$146,000 but less than \$292,000,

the royalty fee payable under this subclause shall be (i) 0.5 of 1 per centum of any gross receipts up to \$146,000 and (ii) 1 per centum of any gross receipts in excess of \$146,000 but less than \$292,000, regardless of the number of distant signal equivalents, if any.

ARTICLE IV

The Cable Representatives and Copyright Owners agree that the "cut-off" for purposes of determining a cable system's status as a Form 1, Form 2 or Form 3 system will be as follows, commencing with the first semiannual accounting period of 1985 and for each semiannual accounting period thereafter:

"Form 1" systems: \$76,000 or less in semiannual gross receipts from the basic service of providing secondary transmissions;

"Form 2" systems: \$76,000 to \$292,000 in semiannual gross receipts from the basic service of providing secondary transmissions; and

"Form 3" systems: \$292,000 or more in semiannual gross receipts from the basic service of providing secondary transmissions.

The Cable Representatives and Copyright Owners further agree that the semiannual royalty fee payment for Form 1 cable systems shall be \$28.00, commencing with the first semi-annual accounting period of 1985 and continuing for each accounting period thereafter.

ARTICLE V

(A) Cable Representatives and Copyright Owners agree not to seek in the 1985 Inflation Adjustment Proceeding any adjustment to rates currently prescribed in Section 308.2(c) of the Tribunal's rules, relating to rates for distant signals in excess of the former FCC distant signal rules, or in Section 308.2(d) of the Tribunal's rules, relating to rates for elimination of syndicated exclusivity protection.

(B) This Settlement Agreement does not preclude and is without prejudice to the Cable Representatives and Copyright Owners seeking adjustments in the rates specified in paragraph (A) above in any proceeding to change rates in accordance with Section 801(b)(2)(B) and (C) and 804(b) of the Act or in any inflation adjustment proceeding other than the 1985 Inflation Adjustment Proceeding.

ARTICLE VI

(A) The Cable Representatives and Copyright Owners will use their best efforts to persuade the Tribunal and all parties participating in the 1985 Inflation Adjustment Proceeding to adopt the terms of this Settlement Agreement and to have the Tribunal amend its regulations in accordance with this Settlement Agreement.

(B) Each of the Cable Representatives and Copyright Owners states that it has the authority to enter into this Settlement Agreement as an industry representative and is presently unaware of any other person or entity which would oppose this Settlement Agreement.

ARTICLE VII

(A) This Settlement Agreement is made upon the express understanding that it constitutes a negotiated settlement of the 1985 Inflation Adjustment Proceeding. No person shall be deemed to have accepted as precedent, or approved, accepted, agreed to, or consented to any principle underlying, or which may be asserted to underlie, it nor to any principle advanced by Copyright Owners or Cable Representatives as to any of the matters at issue in said proceeding.

(B) This Settlement Agreement is without prejudice to any position, contention, or argument which Copyright Owners or Cable Representatives may take in any proceeding or litigation other than the 1985 Inflation Adjustment Proceeding.

ARTICLE VIII

The Cable Representatives and Copyright Owners agree that the various provisions of this Settlement Agreement are not severable. The parties further agree that, except as may be necessary in connection with jointly seeking approval of this Settlement Agreement before the Tribunal or before a court on judicial review of a Tribunal order approving this Settlement Agreement, it shall be privileged and not admissible in evidence or in any way described or discussed in the 1985 Inflation Adjustment Proceeding or in any other proceeding.

ARTICLE IX

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one Agreement, and a party may execute this Settlement Agreement by signing any such counterpart.

IN WITNESS WHEREOF, the parties to this Settlement Agreement have caused it to be executed by their authorized representatives as of the day and year first above written.

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