

11/13/1988

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C.

In the Matter of)
)
1986 JUKEBOX ROYALTY DISTRIBUTION) Docket No. 88-1-86JB
PROCEEDING)

ACEMLA'S REPLY FINDINGS

Asociacion de Compositores y Editores de Musica Latinoamericana ("ACEMLA") hereby replies to the Proposed Findings of Fact and Conclusions of Law submitted in this proceeding by the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI"), and SESAC, Inc., hereinafter collectively referred to as the "Settling Parties."

The Settling Parties' Performance Surveys of ACEMLA's Works Are An Unreliable Basis for a Tribunal Award

Once again, the Settling Parties argue that their self-serving surveys of ACEMLA-claimed titles should serve as the most important factor in the Tribunal's award to ACEMLA. In the first place, their surveys are fatally flawed because they include only a miniscule portion of musical selections in ACEMLA's repertory. In the 1985 proceeding, ASCAP witness Paul Adler testified that when that organization determines payment credits for its members, every composition in a member's catalogue is surveyed to a member's credits. In this case, however, Settling Parties restricted their surveys to fewer than 600 ACEMLA titles, even

though ACEMLA has claimed ownership to tens of thousands of titles. See, e.g., the catalogues of music ACEMLA submitted as Exhibits A and B to its 1983 Justification Statement.

Moreover, BMI witness Arhold testified that the BMI survey of ACEMLA songs was based on the assumption that ACEMLA was a publisher, and therefore results of the BMI survey yielded only one-half of the credits earned by ACEMLA's songs. Obviously, ACEMLA claims all of the royalties earned by its songs for jukebox play in 1986 in this proceeding. Thus, it is apparent that Settling Parties radio surveys cannot be used as a basis for calculating ACEMLA's award.

**Settling Parties' Claims
to ACEMLA's Titles Cannot Be Credited**

While Settling Parties concede that the Tribunal does not have the authority to settle conflicting claims of copyright ownership, they nevertheless urge the Tribunal to consider the number of ACEMLA songs whose ownership has been contested by the Settling Parties in determining ACEMLA's award. This proposition is ridiculous. It, in effect, suggests that while the Tribunal cannot resolve controversies over ownership of music, it can reduce one party's claim on the basis of such controversies. ACEMLA submits that Settling Parties' position is no different than resolving the ownership conflicts in favor of Settling Parties. Therefore, it cannot be employed by the Tribunal.

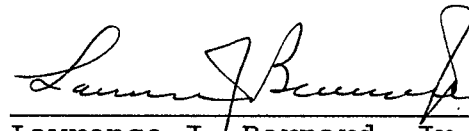
Conclusion

ACEMLA believes that its own proposed findings and the record in this proceeding require that it be awarded about 2% of the royalties paid by jukebox owners in 1986. The Proposed Findings and Conclusions of Settling Parties have failed to rebut ACEMLA's position.¹ Accordingly, the Tribunal is respectfully requested to adopt ACEMLA's proposed findings of fact and conclusions of law as the basis for its decision in this proceeding.

Respectfully submitted,

ASOCIACION DE COMPOSITORES
EDITORES DE MUSICA LATINOAMERICANA

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June 24, 1988

¹ The fact that ACEMLA has not directly addressed each and every proposed finding and conclusion submitted by the Settling Parties cannot be taken as a concession as to the accuracy or probity of any part of their submission.

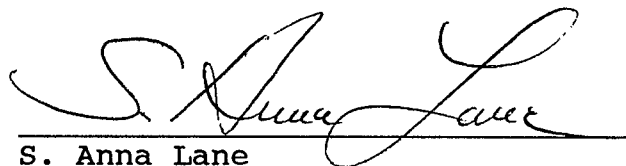
CERTIFICATE OF SERVICE

I, S. Anna Lane, do hereby certify that on this 24th day of June, 1988, a copy of the foregoing "ACEMLA's Reply Findings" was sent to the following persons by hand delivering copies to the Washington, D.C. offices of Reid & Priest:

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