

JUN 17 1988
ORIGINAL

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C.

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

ACEMLA'S PHASE II
PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Asociacion de Compositores y Editores de Musica
Latinoamericana ("ACEMLA") hereby submits its Proposed Findings
of Fact and Conclusions of Law in Phase II of the captioned
proceeding.

Preliminary Statement

Phase II of this proceeding has been designated to determine
the percentage of the 1986 jukebox royalty pool which should be
awarded to ACEMLA. ACEMLA has claimed all of that portion of the
copyright royalties paid by jukebox owners in 1986 for the right
to play Spanish-language music. While ASCAP, BMI and SESAC, Inc.
("Settling Parties") have claimed all of the 1986 jukebox
royalties, no evidence has been received from them concerning
their entitlement to royalties paid for the use of Spanish-
language music. Thus, this submission will be limited to the
evidence submitted by ACEMLA and the rebuttal thereto submitted
by the Settling Parties.

Proposed Findings of Fact

A. The Hispanic Population of the United States

1. In March 1985, there were 16.9 million persons of Spanish origin in the United States, representing an increase of about 2.3 million persons (16%) over the 1980 Census figure of 14.6 million. This increase was proportionately larger than that for the overall population (3.3%) and consequently, persons of Spanish origin constituted a larger proportion of the total population in 1985 (7.2%) than they did in 1980 (6.4%) (ACEMLA 1985 J.B. Ex. 4, p. 1). The median age of Hispanics in 1985 was 25.0 years in contrast to the non-Spanish population whose median age was 31.9 years. Id. at p. 2. About three-quarters of the Hispanic population spoke the Spanish language at home in 1980 (ACEMLA 1982/1983 J.B. Ex. 8, pp. 1-2). According to the results of a study by Dicos CBS International, Hispanics purchase more records per capita than non-Hispanics. Of the 20 records and tapes that a typical Hispanic buys each year, 16 are of Spanish-language music. (See Ex. E to ACEMLA's Supplemental Statement and Justification of Claim filed in the 1982 proceeding). In an article titled "Spanish Speaking Market-On-The-Move: The Largest Ethnic Group in the U.S.," Music Video Retailer, New York, it was noted that the Spanish audience "exhibits a fierce allegiance to its homeland. . . [and] to the Spanish speaking person, music is a significant part of his life." Id. at Ex. F.

2. In Phase II of the 1985 Cable Royalty Distribution proceeding, the parties stipulated that 17 Spanish-language

television stations were carried as distant signals by U.S. cable television systems during 1985. The parties also stipulated that these television stations were carried by cable systems with 1,120,070 subscribers as of June 30, 1985 and 1,230,824 subscribers as of December 31, 1985. When measured against the total number of cable television subscribers receiving distant signals during 1985, the number who received Spanish-language distant signals amounted to 1.23% as of June 30 and 1.30% as of December 31. On an annualized basis, the percentage of all cable television subscribers who received Spanish-language distant signals was 1.26%. 1985 Cable Royalty Distribution Phase II Joint Ex. 1B; Joint Table 1.

B. ACEMLA's Entitlement Showing

3. ACEMLA demonstrated that some 61 different recordings of its songs appeared on 28 different long-play albums listed in "Top Latin Album" hit parade charts published in Billboard Magazine in 1986. ACEMLA Direct Case, p. 3; Ex. 1, pp. 1-2; ACEMLA's Response to Tribunal's Request for Additional Documentation, filed May 20, 1988 (hereafter referred to as "ACEMLA's Response of 5/20/88") at p. 4, n.1.

4. ACEMLA demonstrated that during 1986, its songs were played on New York City area Spanish-language radio stations WADO, WKDM, WKSQ and WJIT. ACEMLA's 1986 limited monitoring of those stations demonstrated that its songs were broadcast on 11 different days by WADO, on 15 different days by WKDM, on 11

different days by WKSQ, and on 22 different days by WJIT. ACEMLA Direct Case, p. 3; Ex. 2 (Revised). More than 100 different ACEMLA-controlled songs were played by these stations on the days monitored by ACEMLA. Ibid.

5. Some 44 ACEMLA-controlled songs appeared on singles "Hit Parade" charts prepared by Puerto Rican record stores in 1986. Single records popular in Puerto Rico are routinely available in New York City retail record stores which also supply jukebox operators. Eleven of the 44 ACEMLA songs appearing in Puerto Rican hit parade charts also were played by New York Spanish-language radio stations during ACEMLA's 1986 limited monitoring. ACEMLA Direct Case, pp. 3-4; ACEMLA's Response of 5/20/88 at pp. 2-3.¹

Proposed Conclusions of Law

6. Persons of Hispanic origin constitute more than 7% of the population of the United States. About 1.26% of all cable television subscribers receiving distant signal carriage of

¹ In their rebuttal case, Settling Parties claimed that they held the rights to license 73 songs listed in ACEMLA's Direct Case exhibits. ACEMLA's claims to 30 of these songs were based on its agreement with SPACEM (S.P. Ex. 3R). Conflicting claims to works written by members of SPACEM were litigated in the 1985 jukebox proceeding, but the Tribunal did not resolve the matter in its final determination. 52 Fed. Reg. 46324, 46331 (Dec. 4, 1987). ACEMLA produced copyright registrations for a number of other songs claimed by Settling Parties. See Tr. 72, 84. These matters will be dealt with more extensively in reply findings if the Settling Parties continue to claim ACEMLA works in their proposed findings.

television signals receive Spanish-language television service. Since Spanish-speaking U.S. residents reside primarily in large metropolitan areas which have their own Spanish-language television stations, there is no need for cable systems in those areas to import other Spanish-language television stations as distant signals. Thus, it must be concluded that distant signal cable carriage figures seriously under-represent the true nature of Spanish-language media penetration. For purposes of establishing a rough figure of jukebox use by Spanish-speaking residents of the United States, it is necessary to select a figure between the Census data of 7.2% Hispanic population and the distant signal figure of 1.26%. A meaningful estimate would be that 4% of jukebox play is attributable to Spanish-language music.

7. Once again, the Tribunal is faced with making an award of royalties for Spanish-language music played on jukeboxes based on evidence submitted by only one party, ACEMLA. Although Settling Parties claim all of these royalties, neither this record nor the records of past proceedings contain evidence sufficient to support their claim, even though such evidence appears to be readily available to them. BMI, for example, receives music logs on a regular basis from the Spanish-language radio stations it licenses (Tr. 95). It would appear to be a rather simple task to submit a reasonable sample of these logs to the Tribunal together with a notation of the songs listed thereon which are controlled by the Settling Parties. However, Settling

Parties have studiously avoided submitting this kind of evidence, both in their direct cases and in rebuttal. ACEMLA, on the other hand, has repeatedly demonstrated that its music is popular by showing that it is broadcast on radio stations and listed in hit parade charts.

8. Accordingly, in view of the absence of evidence created by the Settling Parties' reluctance to prove their rights to license any significant amount of Spanish-language music, it would be well within the "zone of reasonableness" approved by the courts for the Tribunal to award ACEMLA 50% of the royalties paid by jukebox owners for the rights to play Spanish-language music, or 2% of the total 1986 jukebox royalty fund. ACEMLA respectfully requests the Tribunal to make such an award.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, S. Anna Lane, do hereby certify that on this 17th day of June, 1988, a copy of the foregoing "ACEMLA's Phase II Proposed Findings of Fact and Conclusions of law" was sent to the following persons by hand delivering copies to the Washington, D.C. offices of Reid & Priest:

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