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November 13, 1992

re 1992 Noncommercial Broadcasting  
Rate Adjustment Proceeding  
CRT Docket No. 92-2-PBRA

Hon. Cindy Daub  
Copyright Royalty Tribunal  
Suite 918  
1825 Connecticut Avenue, N.W.  
Washington, DC 20009

Dear Chairman Daub:

This letter is being submitted on behalf of the American Society of Composers, Authors & Publishers ("ASCAP") in lieu of submission of Reply Findings of Fact and Conclusions of Law in the above proceeding, pursuant to the Tribunal's Order of October 30, 1992.

We write so that the record will be clear as to one point raised in the Direct Case and Proposed Rates and Supporting Proposed Findings of Fact and Conclusions of Law of the Public Broadcasting Service ("PBS") and National Public Radio ("NPR") (collectively, "Public Broadcasting"), concerning the voluntary agreement between ASCAP and Public Broadcasting, specifically that the ASCAP-Public Broadcasting agreement specifies a license fee for a 5-year term, and does not contain annual license fees.

PBS and NPR propose fees to be paid for the performance of copyrighted musical compositions which are not owned by members of ASCAP or affiliates of the other performing rights licensing organizations with which Public Broadcasting has voluntary agreements ("nonaffiliated music"). ASCAP has no comment on those proposals.

However, in making those proposals, both PBS and NPR characterize their agreement with ASCAP in a way which

might be misleading. The affidavit of Paula A. Jameson, Esq. of PBS states that it proposes to increase the rates for performance of nonaffiliated music "in a manner consistent with the voluntary license agreements negotiated by Public Broadcasting with respect to music performing rights for the 1993-1997 period" (at. p. 5). PBS further characterizes the ASCAP-Public Broadcasting agreement as follows:

The proposed rates effectively mirror the rate increases negotiated at arms' length with the two major performing rights organizations, ASCAP and BMI. Similarly, providing for equivalent, flat annual rates over the course of the 1993-1997 license term is consistent with all of the voluntary performing rights license agreements reached by Public Broadcasting. The proposed schedule thus represents a rate schedule and structure that representatives of both copyright owners and public broadcasting entities have found to be fair and adequate compensation to copyright owners.

(At p. 6, emphasis added.)

Similar statements characterizing the ASCAP-Public Broadcasting agreement are found in the affidavit of Theodore A. Miles, Esq. of NPR:

Under the new voluntary agreement with ASCAP, the equal, flat annual amounts payable to ASCAP reflect, in comparison to the fees payable under the voluntary license agreement covering the prior 1988-1992 license term, a fifteen percent increase over the term of the license.

(At p. 2.)

These statements are then repeated in Public Broadcasting's Proposed Rates and Supporting Proposed Findings of Fact and Conclusions of Law dated November 9, 1992, at ¶ 12, pp. 6-7.

PBS and NPR thus may give the impression that the ASCAP-Public Broadcasting agreement provides for annual license fees of equal amount for the five year term of the license. That is incorrect. The license agreement provides for a single license fee, of \$14.95 million, for the full five year term of the license. See, ASCAP-Public

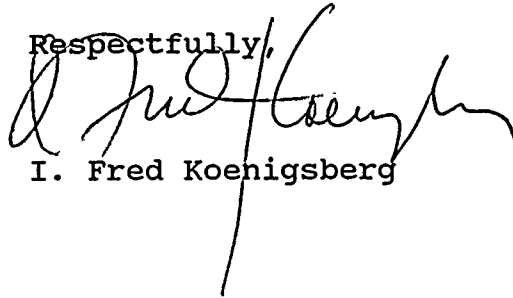
Hon. Cindy Daub

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Broadcasting Agreement, ¶ 3(a). That this fee is payable in equal annual installments under the agreement does not mean that those installments represent annual license fees.

We make this point to ensure that the Tribunal is not under a misapprehension as to the nature of the ASCAP-Public Broadcasting agreement when it considers the rates for nonaffiliated music, and so that the record is clear should the point arise in future proceedings.

Respectfully,

A handwritten signature in cursive script, appearing to read "I. Fred Koenigsberg". The signature is written in dark ink and is positioned above the printed name.

I. Fred Koenigsberg

cc: Hon. Edward Damich  
Hon. Bruce Goodman  
Linda Bocchi, Esq.  
Service List

Before the  
COPYRIGHT ROYALTY TRIBUNAL  
WASHINGTON, D.C.

ORIGINAL

NOV 09 1992

In the Matter of:

1992 Public Broadcasting  
Rate Adjustment Proceeding

CRT Docket No. 92-2-PBRA

PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW OF BROADCAST MUSIC, INC.

I. INTRODUCTION

Broadcast Music, Inc. ("BMI") hereby submits its Proposed Findings of Fact and Conclusions of Law, in accordance with the Copyright Royalty Tribunal's Order of October 30, 1992 in this proceeding.

II. BACKGROUND OF THIS PROCEEDING

On June 30, 1992, the Tribunal published a notice of commencement of the 1992 Adjustment of the Public Broadcasting Royalty Rates and Terms, which ordered the parties to file their notices of appearance by August 14, 1992 and direct cases on September 21, 1992. 57 Fed. Reg. 29066. On August 13, 1992, the Tribunal extended the date for submission of direct cases until October 19, 1992, at the request of the Public Broadcasting Service ("PBS") and National Public Radio ("NPR"), in order to permit additional time for possible settlement. 57 Fed. Reg. 37149. On September 15, 1992, the Tribunal issued an Order which described the procedure for the filing of direct cases. Direct cases were filed on October 19, 1992. They consisted principally

of joint proposals or settlement agreements. By order of October 30, 1992, the Tribunal noted that no objection to a "paper" disposition of this proceeding had been received and that no further evidence had been submitted by the parties. Therefore, the record was closed and the parties were directed to file Proposed Findings of Fact and Conclusions of Law on November 9, 1992.

In its direct case, BMI notified the Tribunal that BMI had reached an agreement with PBS and NPR with respect to the compulsory royalty payments to be paid by PBS and NPR for the years 1993-97. A redacted copy of the agreement was provided to the Tribunal.

BMI supported the Joint Proposal of the American Society of Composers, Authors and Publishers ("ASCAP") and the American Council on Education ("ACE"), that the Tribunal continue the rate schedule in 37 C.F.R. §304.5(c) for the Colleges and Universities, subject to an annual cost-of-living adjustment. BMI stated that a continuation of the present royalty rate for BMI works contained in 37 C.F.R. §304.5(c), subject to an annual cost-of-living adjustment, was acceptable to ACE.

BMI also reached an agreement with the National Religious Broadcasters Noncommercial Radio Music License Committee ("NRB") and the National Federation of Community Broadcasters ("NFCB") for the compulsory royalty rates to be paid for BMI works by the Unaffiliated Radio Stations.

Similar agreements were adopted in the final rules in

the 1987 Adjustment of the Public Broadcasting Royalty Rates and Terms. 52 Fed. Reg. 249.

III. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

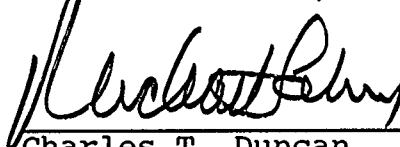
The compulsory royalty payments in the voluntary agreement between BMI and PBS and NPR apply in lieu of the rates and terms in 37 C.F.R. §304.4. The rates for BMI and ASCAP works should continue to be the same in 37 C.F.R. §304.5(c), with respect to the performance of musical compositions by public broadcasting entities licensed to the Colleges and Universities. Finally, the compulsory royalty rates for the Unaffiliated Radio Stations in the Joint Proposal of BMI, NRB, and NFCB should be adopted by the Tribunal in 37 C.F.R. §304.6(c).

IV. CONCLUSION

For the foregoing reasons, the royalty rates proposed by the parties as described above should be approved by the Tribunal for the years 1993-97.

Respectfully submitted,

BROADCAST MUSIC, INC.



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Charles T. Duncan  
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(202) 508-4000

Of counsel: Marvin L. Berenson

November 9, 1992

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Proposed Findings of Fact and Conclusions of Law of Broadcast Music, Inc." was served on each party on the attached list, via first-class mail, postage prepaid, this 9th day of November, 1992.

*Minaksi Bhatt*

Minaksi Bhatt

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