

NOV 16 1992

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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

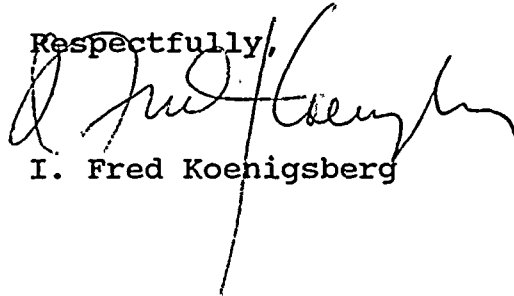
Hon. Cindy Daub

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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", written over the typed name.

I. Fred Koenigsberg

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

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November 6, 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 Proposed Findings of Fact and Conclusions of Law in the above proceeding, pursuant to the Tribunal's Order of October 30, 1992.

As we have advised the Tribunal, ASCAP has reached negotiated agreement with the Public Broadcasting Service ("PBS") and National Public Radio ("NPR") regarding performances of copyrighted musical compositions in the ASCAP repertory by PBS, NPR, and their member stations. There is therefore no controversy concerning the compulsory license fee for such performances, 17 U.S.C. § 118(b)(1), (b)(2) and (c). Accordingly, no Proposed Findings of Fact and Conclusions of Law need be filed regarding this license.

ASCAP has submitted a Joint Proposal with the National Federation of Community Broadcasters and the National Religious Broadcasters Noncommercial Radio Music License Committee for compulsory license fees to be paid by noncommercial "community" radio stations. As that Joint Proposal has not been the subject of any opposition or testimony, no Proposed Findings of Fact and Conclusions of

Law need be filed regarding it, and we urge the Tribunal to adopt it.

ASCAP has also submitted a Joint Proposal with the American Council on Education ("ACE") for compulsory license fees to be paid by noncommercial "college" radio stations. As that Joint Proposal has not been the subject of any opposition or testimony, no Proposed Findings of Fact and Conclusions of Law need be filed regarding it, and we urge the Tribunal to adopt it. We additionally note only that Broadcast Music, Inc. ("BMI") has commented in its "Summary of Direct Case" filed October 19, 1992, that it "supports" the ASCAP-ACE Joint Proposal and asks that, "[t]he rates for BMI and ASCAP works should continue to be the same in 37 C.F.R. § 304.5(c)." If the Tribunal so concludes with respect to BMI works, we respectfully note that our Joint Proposal with ACE specifically states, and requests that the Tribunal note explicitly in adopting the Joint Proposal (as it has done in the past), that "[t]he annual compulsory license fee proposed is arbitrary, and does not reflect any assessment by any party of the absolute or relative value of the right of performance of music in the ASCAP repertory by college radio stations."

Finally, as none of the other submissions to the Tribunal which we have received affect compulsory license fees for performance of copyrighted musical compositions in the ASCAP repertory, we file no Proposed Findings of Fact and Conclusions of Law concerning those submissions. We reserve the right to submit replies to any Proposed Findings of Fact and Conclusions of Law, as appropriate.

Respectfully,


I. Fred Koenigsberg

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