

Capital District's 'COUNTRY RADIO'

WGNA FM
107.7

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November 14, 1979

Mr. Douglas Coulter
Chairman
Copyright Royalty Tribunal
1111 20th Street, N.W.
Washington, D.C. 20036

RE: WPOW, Inc.
Radio Station WGNA
Albany, New York

Dear Chairman Coulter:

Pursant to Final Rule with Respect to Filing of Claims to Cable Royalty Fees and on behalf of Radio Station WGNA, I respectfully submit the following memorandum on

- (1) Concerning the issue of the broadcast day as a copyright compilation;
- (2) Concerning the issue of programming of which a broadcast station is an exclusive licensee;

and our objections and suggestions in determining the criteria used in producing a formula which the Tribunal would use in distributing royalties

WGNA assembles its broadcast day with live personalities, actualities, information and music mix, that is determined by policies of the licensee. The portion of our broadcast day that is in a fixed form is that which is music and programming recordings played for which fees to ASCAP, BMI, SESAC, and program producers, are continually paid.

The broadcast aired and submitted to the public is in a different form than that provided by the recording industry and the originality of the end product, the format of our station is our final work and our broadcast compilation.

Our authorship in providing this format of original works resides in the policies set by the ownership, overseen by the management and fulfilled by the employer.

It is the position of WPOW, Inc., that WGNA fulfills the criteria as copyright owners of its entire broadcast day as a "compilation," as set forth in Sections 101 and 103 of the Act as represented in the NAB presentation, 17 U.S.C. 101:

a word formed by the collection and assembling of pre-existing materials or of data that are selected, coordinated or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

17 U.S.C. 103:

(a) The subject matter of copyright as specified in Section 102 includes compilations and derivative works, but protection for a work employing pre-existing material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the pre-existing material. The copyright in such work is dependent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of any copyright protection in the pre-existing material.

Thus, WGNA being the copyright owners of its' broadcast day is exclusively entitled to receive royalty fees as stated in Section 111 (d) (4) of the Act, 17 U.S.C. 111 (d) (4), royalty fees collected are to be "distributed...to copyright owners...."

The Tribunal has no other choice but to pay the royalties to the copyright owners, the broadcaster.

WGNA is opposed to the distribution of any portion of these royalties to claimants, other than the broadcaster. It is our position that music licensing companies and the producers of programming services for which fees are assessed or paid by the broadcaster are not entitled to a portion of the royalties produced by the final work of the radio broadcaster. On this matter I believe the "principle of divisibility" as set forth in the NAB presentation is applicable in the transfer of rights to use copyrighted works:

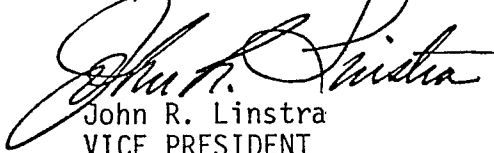
Clause (2) of subsection (d) contains the first explicit statutory recognition of the principle of divisibility of copyright in our law. This provision, which has long been sought by authors and their representatives, and which has attracted wide support from other groups, means that any of the exclusive rights that go to make up a copyright, including those enumerated in section 106 and any subdivision of them, can be transferred and owned separately. The definition of "transfer of copyright ownership" in section 101 makes clear that the principle of divisibility applies whether or not the transfer is "limited in time or place or effect," and another definition in the same section provides that the term "copyright owner," with respect to any one exclusive right, refers to the owner, of that particular right. The last sentence of section 201 (d) (2) adds that the owner, with respect to the particular exclusive right he or she owns, is entitled "to all of the protection and remedies accorded to the copyright owner by this title." It is thus, clear, for example, that a local broadcasting station holding an exclusive license to transmit

a particular work within a particular geographic area and for a particular period of time, could sue, in its own name as copyright owner, someone who infringed that particular exclusive right.

In the Tribunal's determination of a formula for paying out the royalties, it is our suggestion that the gross amount of royalty monies received be divided equally by the number of copyright broadcast owners which make up each individual carrier system of which they are a part.

As to the development of this formula to satisfy all concerned, I only trust that we being one radio station, who's licensee has invested considerable amounts of money to provide a service which is unique, would be fairly represented and in receipt of all allocable benefits due it.

Respectfully submitted,



John R. Linstra
VICE PRESIDENT
&
GENERAL MANAGER

JRL/ba