

Before The  
COPYRIGHT ROYALTY TRIBUNAL  
Washington, D.C. 20036

In the Matter of )  
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Distribution of Cable )  
Television Royalty Fees )

MEMORANDUM OF THE JOINTS SPORTS CLAIMANTS  
IN RESPONSE TO THE TRIBUNAL'S  
OCTOBER 17, 1979 NOTICE

Major League Baseball, the National Basketball Association, the National Hockey League and the North American Soccer League ("Joint Sports Claimants"), by their attorneys, submit the following memorandum in response to the Copyright Royalty Tribunal's request for a "legal brief or memorandum" concerning:

- 1) the issue of the broadcast day as a copyright compilation;
- 2) the issue of programming of which a broadcast station is an exclusive licensee;
- 3) the objections raised as to the standing of certain or all sports claimants;
- 4) any other questions of copyright ownership as it affects a claim or right to any of the cable television royalties.

See 44 Fed. Reg. 59930 (October 17, 1979). The Joint Sports Claimants are filing a separate brief which addresses in detail the "objections raised as to the standing of certain or all sports claimants."

1. Compilation

The Joint Sports Claimants have already stated for the record their position that the broadcasters are not entitled to any Section 111 royalties based upon the National Association of Broadcaster's (NAB's) "compilation theory." The Joint Sports Claimants understand that the Motion Picture Association intends to present an exhaustive brief on this issue. Thus, rather than burden the Tribunal with any additional matter, the Joint Sports Claimants simply reserve their right to file any appropriate reply comments on this issue.

The Joint Sports Claimants do note, however, that many of the broadcasters licensed to present sports telecasts are contractually forbidden from recording (and therefore "fixing") these telecasts. Since no lawful fixation may be made of their telecasts, these broadcasters are unable to

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meet a fundamental prerequisite to compilation -- fixation of the entire day's programming.

2. Exclusivity

The NAB's exclusivity theory appears to be a matter which affects only the broadcast and movie interests, and not sports. The Joint Sports Claimants, therefore, believe that the parties directly affected should be left to the briefing of this issue.

3. Sports

As noted, the Joint Sports Claimants are filing a separate brief which discusses in detail their entitlement to Section 111 CATV royalties. Two additional points, however, need to be emphasized:

First, with but two exceptions, the Joint Sports Claimants are not aware of any broadcaster who filed a claim in July 1979 specifically identifying any of the programming for which the Joint Sports Claimants have sought royalties. <sup>\*/</sup>

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<sup>\*/</sup> One of these broadcasters does not itself produce the sports telecasts for which it has claimed, but simply re-broadcasts the telecasts produced by another station and club. Thus, under the NAB's own theory, this broadcaster is ineligible to claim the CATV royalties attributable to these telecasts. See NAB Suggested Broadcaster's Justification 18 (July 1979). The other broadcaster has specifically agreed with the club concerned that the club is the copyright owner and proper Section 111 claimant for royalties attributable to the club's 1979-82 telecasts.

In certain cases the claims filed are simply ambiguous. In other cases, however, the broadcasters' failure to specify certain sports programming represents a conscious decision not to claim this programming -- such as where the sports club and broadcaster have entered into a specific agreement.

For the reasons set forth in their accompanying brief the Joint Sports Claimants strongly believe that they are the copyright owners and are entitled to receive the Section 111 royalty fees for all of the programming which they have claimed. While there may be some question as to the body with the authority to resolve the ownership question, this issue should be considered only in the context of bona fide conflicting claims, and not in response to a hypothetical controversy. Until the Tribunal requires the claimants to identify specifically the programming for which a claim has been made, the existence of any conflicting claims cannot be properly ascertained.

Second, the Tribunal has requested only a "legal brief or memorandum" on the sports issue. While the

Joint Sports Claimants believe that this issue may be resolved in their favor as a matter of law, they have not, in light of the Tribunal's limited request, sought to burden the Tribunal with the type of extensive factual information which they are prepared to submit, if necessary and appropriate. The Joint Sports Claimants specifically reserve their rights in this regard.

4. Additional Matters

It is apparent from a review of the July 1979 filings that there are a number of unresolved matters with respect to the entitlement of various claimants to the royalties which they have sought. For example, as the Joint Sports Claimants have noted in the past, certain syndicators have filed conflicting claims for the same specific programing. Other parties have filed claims for their contributions to programing which has been produced and perhaps copyrighted by different claimants. The non-commercial educational stations have stated that all of their programming is "non-network" and therefore compensable under Section 111 -- notwithstanding the fact that

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Congress presumably considered only one quarter of the educational stations' programming to be "nonnetwork" within the meaning of Section 111.<sup>\*/</sup> In addition, while the syndicators and broadcast groups have sought to make claims based upon the total amounts of their respective industry's programming, it is clear that only a portion of that programming has in fact been properly claimed.

Given the current state of the record, including the absence of specific identification of all programming by the claimants, it is not possible to resolve each of the above and similar issues at this time. The Joint Sports Claimants expect, however, that such a resolution will be necessary in the context of any distribution proceeding.

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<sup>\*/</sup> For purposes of computing "distant signal equivalents" under Section 111, Congress assigned a value of "1" to independent stations and "1/4" to both network and educational stations. 17 U.S.C. § 111(f). Congress noted:

"Different values are assigned to independent, network, and educational stations because of the different amounts of viewing of non-network programming carried by such stations. For example, the viewing of non-network programs on network stations is considered to approximate 25 percent." H. R. Rep. No. 94-1476, 94th Cong., 2d Sess. 90 (1976).

Respectfully submitted,

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