

MAY 23 1980

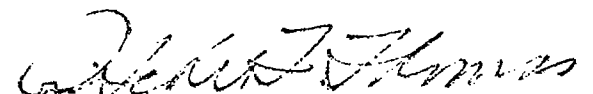
BEFORE THE
COPYRIGHT ROYALTY TRIBUNAL
WASHINGTON, D.C.

In the matter of)
Cable Royalty)
Distribution Proceedings)

PHASE I REBUTTAL OF
THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Pursuant to the Copyright Royalty Tribunal's May 7, 1980 directive to the effect, among other things, that interested parties file by May 23, 1980 a statement of any rebuttal matter to be submitted by them in connection with Phase I of these proceedings, the National Collegiate Athletic Association ("NCAA") submits the attached affidavit of Mr. Thomas C. Hansen, Assistant Executive Director of the NCAA.

Respectfully submitted,



Ritchie T. Thomas
Judith Jurin Semo

Squire, Sanders & Dempsey
21 Dupont Circle, N.W.
Washington, D.C. 20036

Counsel to the National Collegiate
Athletic Association

Dated: May 23, 1980

AFFIDAVIT OF THOMAS C. HANSEN

County of Johnson)
State of Kansas)

Thomas C. Hansen, being first duly sworn, deposes and states as follows:

1. That he is presently and has been since 1971 Assistant Executive Director of the National Collegiate Athletic Association ("NCAA"), with overall responsibility for communications matters and specific responsibility for providing staff support to the NCAA Television Committee. In that capacity he has become generally familiar with the television broadcasting patterns of both intercollegiate and professional sports events in the United States.

2. That he has reviewed the statement of Mr. Allen R. Cooper, vice-president of the Motion Picture Association of America ("MPAA"), prepared for submission in the Cable Royalty Distribution Proceedings before the Copyright Royalty Tribunal, and the transcript of Mr. Cooper's testimony at the April 9, 1980, hearing before the Tribunal. At the hearing, Mr. Cooper testified with respect to a study that the MPAA made of several days of programming carried on selected television broadcast stations during 1978 and stated that:

Very few entries we(re) made in terms of college sports. Primarily, in college sports it seemed to be distributed on the partof (sic) network programs.

Tr. at 148 (April 9, 1980). In his prepared statement Mr. Cooper represented that the study was based on a "sample" of stations that would be fully representative of all stations that have generated royalty fees so as to produce a statistically reliable basis for the distribution of cable royalties." Cooper statement at 16.

3. That either Mr. Cooper is mistaken in his recollection of the extent of college sports telecasts shown by the data sheets used in preparing the MPAA study; the preparation of the data sheets was defective; or the MPAA's sampling system produced an unrepresentative sample as regards the amount and extent of college sports telecasts.

4. That, contrary to Mr. Cooper's statement, the preponderance of college sports events telecast in 1978 were nonnetwork telecasts, and that there was a large number of such telecasts. In calendar year 1978, more than 750 intercollegiate athletic events were broadcast on a nonnetwork basis by television stations carried as distant signals by Form 3 cable systems alone. These included more than 150 college football contests and 550 college basketball contests, as well as college baseball games, hockey games and wrestling meets. They

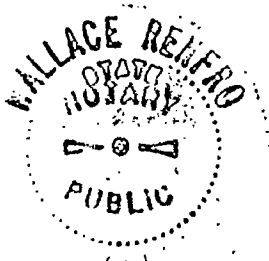
included telecasts by the collegiate conferences listed in Attachment A and by the individual colleges and universities listed in Attachment B.

Thomas C Hansen
Thomas C. Hansen

Sworn and subscribed to before me on this 22nd day of May, 1980.

Wallace Ruffo
Notary Public

My commission expires February 20, 1982



Intercollegiate Athletic Conferences
Sponsoring Conference Telecasts in 1978

Atlantic Coast Conference ("ACC")

Big Eight Conference

Intercollegiate Conference of Faculty Representatives
(Big Ten Conference)

Eastern College Athletic Conference ("ECAC")

Metropolitan Collegiate Athletic Conference

Missouri Valley Conference

Pacific Coast Athletic Association

Pacific-10 Conference ("PAC-10")

Southeastern Conference

Southern Conference

Southwest Athletic Conference

Sun Belt Conference

Western Athletic Conference

Colleges and Universities Having Telecasts in 1978

Alabama, University of
Arizona State University
Arizona, University of
Assumption College
Bloomsburg State University
Boise State University
Boston College
Boston University
Bradley University
Brigham Young University
California, University of (Los Angeles)
Cincinnati, University of
Connecticut, University of
Davidson College
Dayton, University of
De Paul University
Florida State University
Florida, University of
George Mason University
Georgetown University
Grand Valley State University
Hawaii, University of
Holy Cross College
Illinois, University of
Indiana State University

Attachment B - Page 2

Indiana University

Iowa, University of

Kansas State University

Kansas, University of

Kentucky, University of

Lehigh University

Loyola University (Illinois)

Maine, University of

Marquette University

Maryland, University of

Massachusetts, University of

Memphis State University

Miami, University of

Michigan State University

Michigan, University of

Minnesota, University of

Mississippi State University

Morris Brown College

Nebraska, University of

New Hampshire, University of

New Mexico State University

New Mexico, University of

Northwestern University

Northern Michigan University

Notre Dame University

Ohio State University

Old Dominion University

Oregon State University
Oregon, University of
Pennsylvania State University
Pennsylvania, University of
Princeton University
Providence College
Purdue University
Rhode Island, University of
Rutgers University
Saint Bonaventure University
San Diego State University
San Francisco, University of
Siena College
South Carolina, University of
Southern California, University of
Stanford University
Syracuse University
Texas Tech University
Texas, University of (Austin)
Texas, University of (El Paso)
Toledo, University of
Tulane University
Utah, University of
Washington State University
Washington, University of
Wichita State University

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Wisconsin, University of
West Virginia, University of
Xavier University

CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of May, 1980, copies of the foregoing Phase I Rebuttal were served upon parties to this proceeding by messenger or first class mail, postage pre-paid, addressed to each of the following:

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Judith Jurin Semo

MAY 25 1980

Revised

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

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

NPR offers the following response to certain issues raised in the Tribunal's notice of May 6, 1980. There will be no oral testimony by NPR in the rebuttal portion of Phase I.

DISTRIBUTION TO CATEGORIES OF CLAIMANTS

NPR acknowledges the observation of the Tribunal that not every potential claimant within a class has chosen to participate in this proceeding either individually or represented as a joint claimant. NPR believes, however that from a legal and practical standpoint, the Tribunal has no alternative but to allocate the available funds only to those claimants actually participating.

If the Tribunal determines that a given category of claimants is entitled to a certain percentage of the total, that percentage must be distributed among the eligible claimants represented in that category even if all the potential claimants in that category have not filed claims. No sound legal basis has been advanced which would justify reducing the percentage entitlement of a given class of claimants and prorate it among others, simply because

not all of the potential claimants in that class chose to make a claim and participate in the proceeding.

NPR believes that it was entirely proper for the Tribunal to have established mandatory filing deadlines and procedures which all claimants were to meet in order to establish their eligibility to share in the funds and further to encourage participation by class in these proceedings.

REBUTTAL OF PHASE I SUBJECT MATTER

Various Phase I claims are based on fee generated formulas, however NPR feels that distant signal equivalent computations do not reflect Congressional intent to provide cable access to works used in distant signal carriage. The House Report explains the purpose of dividing cable systems into three classes based on percentage of gross receipts:

Because many smaller cable systems carry a large number of distant signals, especially those located in areas where over-the-air television service is sparse, and because smaller cable systems may be less able to shoulder the burden of copyright payments than larger systems, the Committee decided to give special considerations to cable systems with semiannual gross subscriber receipts of less than \$160,000 (\$320,000 annually).¹

The legislative intent to encourage distant signal carriage by smaller systems in no way reflects a lesser value to works accessible to those systems.

¹ H. Rept., No. 1476, 94th Congress, 2nd Session 96 (1976).

Compulsory licenses for cable systems provide access to all programming somewhat like repertory licensing. The classification of cable systems by revenue was never suggested by Congress as relevant to the royalty distribution to the claimants return for cable access to their works.

Moreover, revenues generated from basic service charges do not necessarily reflect distant signal carriage. While basic service may vary within an accounting period, system payments may not be prorated within that period. In addition, every system pays an initial rate for the privilege of retransmitting distant non-network programming. The purpose of this scheme "is to establish a basic payment whether or not a particular cable system elects to transmit distant non-network programming."²

Finally, NPR has found no legal basis to support the proposition that the method used to generate fees from aural signals are entitled to less or no royalties, simply because they are not used as a basis for calculating distant signal equivalency fees under the statute.

In conclusion, NPR bases its claims on program access afforded to cable systems rather than fee generated formulas.

² Id.

TOTAL SHARE OF 1978 NPR CABLE ROYALTY CLAIM

In response to the Tribunal's request to show the allocation among the individual eligible claimants within the total NPR joint share, NPR has devised the following formula on behalf of the National Program Service and 61 NPR member stations.

1,470 (NPR pgm hrs)	-	+	4,023 (sta pgm hrs)
x 213 (stas brdcstg in '78)			x 61 (stas filing in '78)
<u>313,110</u> (NPR pgm hrs brdcst)			<u>245,403</u> (filing stas pgm hrs)

313,110 (= 56%)
<u>245,403</u> (= 44%)
558,513 (= 100% of pgm hrs in NPR claim)

According to 1978 CPB statistics, the average NPR station broadcast 1,470 hours of NPR programming and 4,023 hours of original station programming. Since our broader claim is based on percentage of program access to cable systems, we have devised the above formula to represent the percentage of each claimant's share. This formula will allow actual allocations to be based on the total percentage of accessible program hours produced and broadcast by each claimant who files.

Respectfully submitted,

Janice F. Hill
Janice F. Hill

Carol A. Moody
Carol A. Moody

cc: Commissioner Brennan
Commissioner Coulter
Commissioner James
Commissioner Garcia

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