

APR 23 1980 RECD

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

In the Matter of)
)
DISTRIBUTION OF CABLE)
TELEVISION ROYALTY FEES)

REPLY OF THE JOINT SPORTS CLAIMANTS

The Joint Sports Claimants submit this reply to a document the Program Syndicators styled as "Opposition to Request of Joint Sports Claimants for the Tribunal to Take Official Notice of Material Contained in the Files of the Federal Communications Commission," dated April 18, 1980.^{*/}

On March 24, 1980, as part of its direct case, the Joint Sports Claimants filed with the Tribunal complete copies of a number of documents taken from the official public files of the Federal Communications Commission ("FCC"). In these documents, cable operators and subscribers consistently stated on the public record that

^{*/} All of the materials submitted prior to the hearing have been admitted into the record by the Tribunal. Accordingly, the Program Syndicators' "Opposition" should more appropriately have been styled as a motion to strike.

they place significant value upon distant signal sports programming. The Joint Sports Claimants asked the Tribunal to take official notice of these public documents, make them a part of the record and weight them appropriately in their deliberations as to the proper distribution of the royalty pool. The Tribunal has ruled that these materials -- as is the case with all material tendered by the other parties -- are in the record.

The Program Syndicators now seek to have the official notice document stricken, thus preventing the Tribunal from considering evidence which relates directly to the issues before it. The Syndicators take this position despite the fact that they -- and other parties to this proceeding as well -- have also succeeded in placing in the record for the Tribunal's consideration materials from the files of the FCC and the Copyright Office. Most prominently, the Program Syndicators' witness, Mr. Cooper, in his "Study B;" the Music Claimants (ASCAP and SESAC); and the National Association of Broadcasters rely heavily on information obtained from the FCC's public files and based on documents submitted by broadcast stations throughout

the country. Mr. Cooper's Studies A and B are also based upon cable operators statements filed in the Copyright Office. In addition, the Program Syndicators have presented (1) an index to the formal papers in a case in which WCIX-TV, licensed to General Cinema Corp., is attempting to obtain syndicated exclusivity protection from the FCC; and (2) selected portions of comments filed by the MPAA in the FCC's syndicated exclusivity rulemaking proceeding. Finally, during their cross-examination of the BMI witness, the Program Syndicators also requested the Tribunal to take notice of an FCC document which, relying upon a survey of cable systems, established the minimal carriage of distant radio signals by cable systems.

The documents submitted by the Joint Sports Claimants are certainly no less appropriate for consideration by the Tribunal than materials such as these.

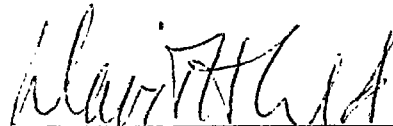
The Joint Sports Claimants have provided the Tribunal with true and complete copies of the official notice documents all filed by cable operators and subscribers in proceedings before the FCC. These documents reveal that cable

operators and subscribers have gone on the public record with their views of the importance of sports programming to them.^{*/} The most significant fact to be drawn from these documents is that cable operators and subscribers have repeatedly made such assertions about their desire for sports programming in public proceedings. That is certainly a matter appropriate for official notice. The Program Syndicators will, of course, have the opportunity to argue, on brief, that because of the nature of the materials they should be weighted only lightly in the Tribunal's deliberation, but the weight to be accorded the materials is an entirely different question than whether they should be stricken from the record at this stage of the case.

*/ The Joint Sports Claimants do not quarrel with the Program Syndicators' assertion that the statements made in these documents were "self-serving:" certainly it served the cable operators' and subscribers' interests to fight long and hard, often at considerable expense, to keep from losing programming that they valued so highly. But the self-serving nature of the statements does not mean that they should be stricken; nor does it mean that the fact that such statements were made should not be the subject of evidentiary material.

Finally, the Program Syndicators' lament their inability to find a case to support their point. We submit that their quest for reported cases dealing with situations similar to this may have been futile because the courts and agencies routinely accept, as the Tribunal already has done, without dispute and therefore without opinion, materials such as those presented here by the Joint Sports Claimants.

Respectfully submitted,

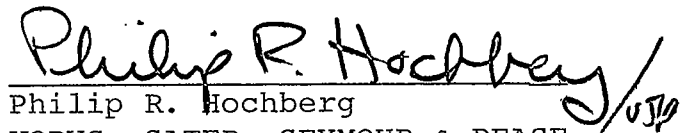


James F. Fitzpatrick
David H. Lloyd
Robert A. Garrett
Vicki J. Divoll

ARNOLD & PORTER
1229 Nineteenth Street, N.W.
Washington, D. C. 20036
(202) 872-6878

Of Counsel:

Alexander H. Hadden
Office of the Commissioner of Baseball
15 West 51st Street
New York, New York 10019
(212) 586-7400



Philip R. Hochberg
VORYS, SATER, SEYMOUR & PEASE
1800 M Street, N.W.
Suite 800 South
Washington, D. C. 20036
(202) 296-2929

Dated: April 23, 1980

Counsel for Joint Sports Claimants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply of the Joint Sports Claimants was served upon the parties by mailing a copy, first class mail, postage prepaid, this 23rd day of April, 1980, to:

Arthur Scheiner, Esq. */
Richard H. Waysdorf, Esq.
Wilner & Scheiner
2021 L Street, N.W.
Washington, D. C. 20036
Counsel for Program
Syndicators

Gene A. Bechtel, Esq.
Arent, Fox, Kintner, Plotkin
& Kahn
1815 H Street, N.W.
Washington, D. C. 20036
Counsel for Public Broad-
casting Service

Gordon T. King, Esq.
Coudert Brothers
200 Park Avenue
New York, New York 10017
Counsel for National Associa-
tion of Broadcasters

Jacqueline Weiss, Esq.
Public Broadcasting Service
475 L'Enfant Plaza West, S.W.
Washington, D.C. 20024

James J. Popham, Esq.
National Association of
Broadcasters
1771 N Street, N.W.
Washington, D. C. 20036

Bernard Korman, Esq.
American Society of Composers,
Authors and Publishers
One Lincoln Plaza
New York, New York 10023

Richard Dannay, Esq.
Schwab, Goldberg, Price
& Dannay
1185 Avenue of the Americas
New York, New York 10036
Counsel for Graphic, Pictorial
and Cultural Claimants

Edward W. Chapin, Esq.
Broadcast Music, Inc.
320 West 57th Street
New York, New York 10019

Albert E. Ciancimino, Esq.
SESAC, Inc.
10 Columbus Circle
New York, New York 10019


Vicki J. Divoll

*/ Mr. Scheiner was served by hand.

APR 23 1980 - 1980

ARNOLD & PORTER

1229 NINETEENTH STREET, N. W.

WASHINGTON, D. C. 20036

TELEPHONE: (202) 872-6700

CABLE: "ARFOPO"

TELEX: 89-2733

VICKI J. DIVOLL

DIRECT LINE (202) 872-8755

April 23, 1980

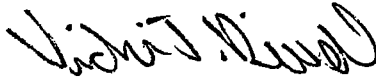
BY HAND

Ms. Mary Lou Burg
Chairman
Copyright Royalty Tribunal
1111 - 20th Street, N.W.
Fourth Floor
Washington, D. C. 20036

Dear Commissioner Burg:

Please find enclosed an original and seven copies of the Reply of the Joint Sports Claimants to the April 18, 1980 Opposition of the Program Syndicators.

Sincerely,



Vicki J. Divoll

Enclosures



American Society of Composers, Authors and Publishers
ASCAP Building—One Lincoln Plaza, New York, N.Y. 10023 Area Code (212) 595-3050

Office of General Counsel

I. Fred Koenigsberg
Attorney

May 5, 1980

Chairman Mary Lou Burg
Copyright Royalty Tribunal
1111 20th Street, N.W.
Washington, D.C. 20036

RE: Cable Royalty Distribution Proceedings

Dear Chairman Burg:

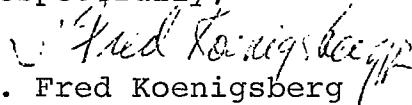
I am writing to request that the Joint Sports Claimants furnish to ASCAP all information regarding the methodology and findings of their alleged "survey" of music performances in baseball telecasts, and thereafter provide an appropriate witness for cross-examination.

At the Tribunal's cable distribution hearings of April 24, 1980, Bowie Kuhn, testifying for the sports interests, claimed they had made a "survey" of music performances in a week's telecasts of major league baseball games. See transcript, pp. 28-30. None of the sports interests' written submissions had previously even mentioned such a "survey," let alone disclosed any of its methodology or findings.

During my cross-examination of Commissioner Kuhn, I requested that the sports interests provide all details of the alleged "survey," so as to allow ASCAP to examine it, and to provide appropriate witnesses for cross-examination thereafter. You asked that I put the request in writing. See transcript, p. 79.

Charles Duncan, Esq., BMI's counsel, has asked me to advise you that he joins in this request.

Respectfully,


I. Fred Koenigsberg

IFK:R

cc: Charles Duncan, Esq.
James Fitzpatrick, Esq.