

ORIGINAL

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DAVID H. LLOYD

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July 2, 1980

VIA TELECOPIER AND MAIL

Gordon T. King, Esquire
Coudert Brothers
200 Park Avenue
New York, New York 10166

Dear Mr. King:

On May 22, 1980 we requested that you identify those "flagship stations" which the NAB is authorized to represent and which are claiming the royalties attributable to the telecasts of the Major League Baseball, NBA, NHL and NASL clubs. Your letter of June 18, 1980 lists those television stations on whose behalf "NAB is authorized to assert a claim for 1978 cable royalties." I will assume, unless I hear otherwise from you, that each of these stations has also authorized the NAB to claim the royalties attributable to the professional sports telecasts carried on the station.

During the hearings the Joint Sports Claimants established that their games were broadcast over 66 different "flagship stations." According to your June 18 letter, NAB is authorized to represent only 27 of these stations. (Please note that the now-defunct Cincinnati Stingers (WXIX) was a member of the World Hockey Association and is not represented by the Joint Sports Claimants.) Your June 18 letter also establishes that the NAB is no longer disputing the royalty claims of the following clubs whose contracts you had earlier "designated:" Houston Astros, Milwaukee Brewers and Philadelphia Flyers. We have not yet heard from you concerning the Detroit Pistons and Station WKBD.

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We have now examined each of the television contracts covering calendar year 1978 of the clubs identified in your June 18 letter with the following exceptions: Buffalo Braves, Boston Bruins, Detroit Red Wings, Detroit Express, Philadelphia Fury and Dallas Tornado. (In the case of the Denver Nuggets, Detroit Pistons, Houston Rockets and Milwaukee Bucks we have reviewed the television contracts covering the 1978-79 season.) None of the contracts we have reviewed specifically provides that the cable royalty fees shall be distributed to the broadcaster. Nor does any such contract provide that the broadcaster is the copyright owner of the telecasts. In some instances copyright ownership is vested specifically in the club. In most cases, however, the contract does not contain any specific provision dealing with copyright ownership or entitlement to royalties. Under these circumstances we believe that, in accordance with the law and the Tribunal's December 15, 1980 ruling, the clubs are entitled to receive the cable television royalties attributable to their telecasts.

Moreover, certain of the clubs and television stations identified in your June 18 letter have entered into agreements in which the broadcasters specifically recognize the clubs' copyright ownership in and entitlement to royalties from telecasts made after 1978. For example, the June 27, 1979 letter agreement between WOR and the New York Mets provides:

"It is hereby recognized that the Mets are the original owner of the copyright in each telecast or transmission made pursuant to this Agreement and, as such original owner, possess all rights afforded the copyright owner by the Copyright Revision Act of 1976 (Pub. L. No. 94-553) with respect to these telecasts and transmissions, including without limitation the rights to receive royalties

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distributed pursuant to Section 111 of such Act and to sue for infringement under Chapter 5 of such Act, provided, however, that the Mets shall not charge WOR any royalty or other fee which is not expressly provided for in this agreement."

Virtually identical language is contained in other agreements between broadcasters and our clubs, although some clubs have agreed to share the cable royalties with their broadcasters.

We believe that such contractual language, as a matter of law, estops the flagship station from asserting copyright ownership of or cable royalty entitlement to any of their clubs telecasts, regardless of the year of the telecasts. In any event, we find it disturbing that the NAB and certain of the stations it purports to represent have persisted in raising an issue before the Tribunal with respect to the 1978 royalties when this issue has been resolved by the parties for subsequent years (and, in every case of which we are aware, in favor of the club).

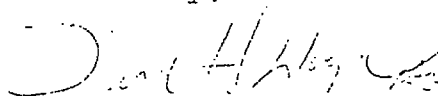
Finally, as you will recall, our request that you identify the stations which the NAB represents and which are claiming the sports royalties was made on May 22, 1980. We presumed that since the NAB had raised the sports issue with the Tribunal last Fall, the identities of these stations could be made available to us in a most expeditious fashion. However, your response of nearly a month later (June 18) has come at a time when our full attention must be directed to complying with the Tribunal's deadline for filing proposed findings of fact and conclusions of law. Thus, we find it is not possible to narrow the issue any further before submission of the proposed findings and conclusions.

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Under the circumstances, we have no objection to your placing in the record each of the contracts of the clubs and flagship stations identified in your June 18, 1980 letter -- provided, however, that the contracts are submitted in their entirety (with the exception of any provisions that may be considered of a confidential nature). If these contracts are placed in evidence, we, of course, reserve our right to submit any additional relevant material, such as subsequent agreements between the clubs and stations.

Sincerely,

A handwritten signature in dark ink, appearing to read "David H. Lloyd". The signature is fluid and cursive, with a large initial "D" and "L".

David H. Lloyd

cc: Members of the Copyright Royalty
Tribunal