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

In the Matter of )  
 )  
Cable Royalty ) Docket No. 79-1  
Distribution Proceeding )

OPPOSITION TO MOTION TO STRIKE

The Motion Picture Association of America, Inc., its member companies, and other companies engaged in the production and/or distribution of movies and series programs exhibited by television broadcast stations ("Program Syndicators") hereby oppose the Motion to Strike filed with the Tribunal on July 1, 1980, by the American Society of Composers, Authors and Publishers ("ASCAP").

1. On May 7, 1980, the Tribunal issued its Order containing the following directive:

2. On May 23 interested parties shall submit a brief on the legal issues applying to the situation of those categories of claimants not fully represented by its total number of eligible claimants.

2. On May 23, 1980, the date specified by the Tribunal, Program Syndicators filed its "Brief on the Issue of Categories of Claimants Not Fully Represented." In that brief it was asserted that ASCAP, BMI, and SESAC have not been authorized to file claims on behalf of music interests, and thus that there are no eligible music claimants before the Tribunal. The Program

Syndicators' contention was made in the context of ASCAP's repeated, unsupported assertion that 100% of the eligible claimants in the music category have properly filed claims for royalties, and that thus music is unique in this regard.

3. ASCAP was careful to point out that its motion "is not directed to the merits," but instead was based on the asserted ground that the Program Syndicators' position should be stricken as "late." While the Program Syndicators fully appreciate ASCAP's reluctance to address the merits of our contention, ASCAP's procedural objections are totally unfounded. ASCAP's convoluted argument ignores the fact that Program Syndicators were responding directly to the Tribunal's May 7, 1980, Order. Additionally, Program Syndicators' legal contentions regarding the propriety of music's representation by ASCAP, BMI, and SESAC in the filing of claims, have absolutely nothing to do with the Syndicators' own royalty claims; thus the paragraph quoted by ASCAP from the May 7 Order pertaining to "testimony by claimants in justification of their claim on the basis of any theory or evidence excluded from presentation during Phase I ..." clearly is inapplicable to the legal matter raised by Program Syndicators.


4. Further, the question of whether a category of claimants is fully represented is clearly a Phase II, not a Phase I, matter. In Phase I, a share is to be allocated to music, as well as to every other major claimant group, regardless of what percentage of that group's eligible copyright owners have properly filed claims for royalties. Thus, as is evident from Program Syndicators' Findings and Conclusions filed July 7, 1980, a specific share should be


allocated to music in Phase I regardless of whether all the music copyright owners have filed claims or not, just as a specific share should be allocated to all other claimants whether or not all eligible owners in that group have filed. It is only later, in Phase II, that it will be determined how many eligible copyright owners within each group have filed claims, and how these unclaimed funds should be distributed. Because these issues are totally irrelevant to Phase I, it is ludicrous for ASCAP to suggest that some sort of "direct case" on these questions should have been presented during Phase I. For all these reasons, ASCAP's Motion to Strike should be denied.

Respectfully submitted,

MOTION PICTURE ASSOCIATION OF  
AMERICA, INC.  
ITS MEMBER COMPANIES  
OTHER PRODUCERS AND DISTRIBUTORS

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July 9, 1980

CERTIFICATE OF SERVICE

I, Shirley Roach, a secretary in the law firm of Wilner & Scheiner, hereby certify that copies of the foregoing Opposition to Motion to Strike have been sent by first-class United States mail, postage prepaid, to the attached list on this 9th day of July, 1980.

  
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