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Before the  
COPYRIGHT ROYALTY TRIBUNAL  
Washington, D.C.

In the matter of )  
 )  
 ) Docket No. CRT 79-1  
Distribution of )  
Cable Royalty Fees )

REQUEST FOR RULING

The Joint Sports Claimants request that the Tribunal direct each claimant group to provide evidence (documentary material and direct written testimony) on August 13, 1980, before commencement of the Phase II hearings, of the extent to which the qualifying programs within the group's total qualifying programming has actually been claimed.

It is essential to the full and complete factual record which must underlie the decision ultimately reached by the Tribunal that a showing be made of the extent to which programming has actually been claimed within each category. The Tribunal already has a record before it which shows clearly and unequivocally that not all programs within the categories reflected in the Phase I determinations have been claimed. MPAA has acknowledged, for example, albeit in terms which do not allow for any evidentiary findings, that not all motion picture and syndicated

programming has been claimed (Tr.4-9-80 at 29-30); indications are, moreover, that of all commercial telecasters, perhaps as many as half have not even filed copyright claims (See NAB Statement in Response to Paragraph 4 of the Tribunal's Order of May 7, 1980, dated June 6, 1980).

The Tribunal has already reflected that a material issue arises because less than all potential claimants are represented before the Tribunal. Indeed, the Tribunal has solicited and received (on May 23, 1980) briefs from all interested parties on the course to be followed because not all programming within certain categories has been claimed. Some interested parties have admittedly suggested that each claimant group should get the full share assigned it, notwithstanding that half the programming may not have been claimed. Even if the Tribunal were to adopt such an erroneous position, that would not obviate the necessity for a factual record on this critical question.\*/

Indeed, it is difficult to conceive of a circumstance where

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\*/ The Joint Sports Claimants' position on this issue is based on its view of the statutory requirements, as well as the equities presented, and is set forth in its May 23 filing. Generally, the Joint Sports Claimants contend that there must ultimately be a reallocation of the pool, taking account of the degrees to which there are unclaimed portions within each claimant group.

such information would be viewed as inessential, particularly given the need for a record which will allow for meaningful judicial review.\*/

The Joint Sports Claimants have asserted throughout this case that the Copyright Revision Act provides compensation only for qualifying programming as to which claims have been filed. The Joint Sports Claimants have therefore advanced and maintain the proposition that each generic group must prove the extent to which the group's theoretical claims were lawfully perfected. In its January 31, 1980, prehearing submission that preceded the Phase I hearings, for example, the Joint Sports Claimants urged the Tribunal to require detailed proof of each telecast claimed. At the February 14, 1980, hearing conference, the Tribunal announced that it would not require such proof, but the clear implication was simply that Phase I was not regarded as the appropriate time for such proof. According to the Chair:

"The next announcement the Chair has concerns how we are going to conduct Phase One. The Tribunal has determined that it will not order the production during the current phase of

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\*/ Although the Tribunal early on disposed of three legal issues in a fashion adverse to NAB, the Tribunal nevertheless provided for an evidentiary record to be compiled respecting those issues. (See Orders of December 15, 1979, and May 7, 1980.)

the evidentiary hearing of the detailed program information requested by the joint sports claimants." (Tr. 4-14-80 at 6; emphasis added.)

A further indication that the Tribunal recognizes the need for facts from each claimant on this issue, but regarded Phase I as an inappropriate vehicle for the receipt of such facts, came during the Phase I hearings when the Joint Sports Claimants sought general information from the syndicated program interests as to the extent to which their programming has been claimed.\*/ An MPAA witness had acknowledged the existence of a study which had some information in it bearing upon the extent of syndicators' claims versus the entirety of syndicated programming. When the Joint Sports Claimants sought the study, the Tribunal deferred the request, suggesting not that the inquiry was not relevant but, rather, that it was then premature:

"CHAIRWOMAN BURG: Mr. Lloyd, this phase, you are restricted to certain areas. Your request I think might be more appropriate at another time. It is not appropriate now." (Tr. 4-9-80 at 100-101.)

We respectfully submit that the Tribunal can delay no further in calling for evidence on this critical issue. Each

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\*/ The Joint Sports Claimants were not then seeking the specific detailed information which they contended in their January 31, 1980 memorandum (and still contend) is required.

claimant group should be directed to provide to all parties all of its direct evidence establishing the extent to which claims within its group have been filed, and they should be directed to do so at the time witness lists are exchanged on August 13.\*/ This approach will enable all parties to adequately prepare cross-examination and, should they wish to do so, rebuttal evidence, so that the evidentiary hearings are not unduly delayed. If such evidence is not received at the time requested, it cannot be received and properly accounted for in the final decision at all.

The Joint Sports Claimants are on record as to the kind of showing we believe is required by the Copyright Revision Act in this respect. Certain parties may, of course, seek to prove their cases by either less specific or more expansive evidence than that which we believe is required. Given the lateness of the hour, we suggest that the Tribunal allow each party discretion as to how it proves the extent of its claims, with each party assuming the risk that its showing will be found to be unpersuasive.\*\*/

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\*/ As already shown, all parties have been on notice for some time that they would be called upon in Phase II to present such information.

\*\*/ The syndicators may, for example, wish only to present the study previously testified to; the broadcasters may wish to do nothing more than identify the stations which have filed claims, without an identification of programs.

In view of the foregoing, and taking account of the requirements of the Copyright Revision Act and the prior rulings in this case, the Joint Sports Claimants respectfully urge that the Tribunal issue promptly an Order clearly stating:

1. In Phase II, each claimant group must prove the extent to which the qualifying programming encompassed within its category has actually been claimed.

2. The Tribunal will not dictate the nature of the evidence required, but each group is on notice that it has the burden of proof respecting its claims. The risk lies with the claimant group that the Tribunal will, based upon all record evidence, make specific findings on this question at odds with any such proof found to be incomplete or lacking in probative value.

3. Each claimant group must provide all of its documentary evidence and direct written testimony on this question to the Tribunal and to the other parties on or before August 13.

4. Any party desiring to submit documentary evidence or testimony in rebuttal to any such showing should be prepared to do so at the conclusion of the other Phase II testimony presently scheduled for August 18, 1980.

Respectfully submitted,

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August 5, 1980

CERTIFICATE OF SERVICE

I hereby certify that, on this 5th day of August, 1980, copies of the foregoing Request for Ruling were served upon parties to this proceeding at the addresses shown, by hand in the cases indicated by an asterisk or by first class mail, postage prepaid:

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

In the Matter of )  
 )  
DISTRIBUTION OF ) DOCKET 79-1  
CABLE ROYALTY FEES )

RESPONSE TO REQUEST FOR RULING

The Motion Picture Association of America, Inc., its member companies, and other companies engaged in the production and/or distribution of programming exhibited by television broadcast stations<sup>1/</sup> (Program Syndicators) submit their response to the Joint Sports Claimants (JSC) request for ruling filed on August 5, 1980. Joint Sports Claimants request that each claimant category be required to file, by August 13, 1980, evidence "of the extent to which the qualifying programs within the group's total qualifying programming has actually been claimed."

The issue of unclaimed funds (i.e., those categories of claimants not fully represented by all eligible claimants) has surfaced repeatedly throughout this proceeding. Its fullest exposition resulted from the Tribunal's order of May 7, 1980, directing briefs to be filed on the applicable legal standards. The briefs were submitted on May 23, 1980, but to date the Tribunal

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<sup>1/</sup> The member companies and other program producer/distributor companies are listed in Attachment A.

has not ruled on the legal issue. Until such ruling is made, it would be premature to rule on the Joint Sports Claimants request because the Tribunal's ruling may obviate any need for evidentiary hearings on this matter.

Contrary to the JSC assertions, it is not "difficult to conceive of a circumstance where [the proposed evidentiary showing] would be viewed as inessential ...". Program Syndicators believe that if our position -- distribution of unclaimed funds should remain within the same category -- is adopted, no evidentiary hearing will be necessary, thus rendering the proposed evidentiary inessential. Under Program Syndicators' position, the percentage allocation to each category specified by the Tribunal's July 25, 1980, notice would be applied to the total amount available for distribution. Each category's resulting monetary allocation would then be divided among the individual claimants within that category according to an agreement among them or to the Tribunal's determination after litigation in Phase II. Because each category is allocated its full share as specified by the Tribunal's July 25, 1980, ruling, no need would exist to determine the amount of unclaimed fund. Program Syndicators will not reiterate the legal and equitable arguments contained in our brief of May 23, 1980, which fully support distribution of the unclaimed fund within the same category other than to state they justify the distribution procedure outlined above.<sup>2/</sup>

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<sup>2/</sup> In this regard, it is important to note that the cases cited in Program Syndicators' brief supported the proposition that the [Footnote continued on following page]

For the reasons discussed here and in our earlier brief, Program Syndicators believe the Tribunal should decline to rule upon the Joint Sports Claimants request until after the Tribunal has ruled upon the legal issues relating to the unclaimed fund. To grant the request at this stage would require the parties to file extensive testimony and documentation and the Tribunal to hear the presentation plus cross-examination unnecessarily and at a large waste of time and resources, when the Tribunal may ultimately decide that as a legal matter the issue can and should be resolved by distributing the unclaimed funds within the same category. This possibility of unnecessary and inessential testimony is complicated further by issues implicitly or not raised by the JSC request: the burden of proof and the distribution of the unclaimed fund. The JSC pleading is less than a model of clarity on what burden of proof it is suggesting be applied. Further development of this issue will be required to establish guidelines. Second, and more complex, Joint Sports Claimants address only how the size of the unclaimed fund

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2/ [Footnote continued from preceding page]  
primary concern in class action cases was resolution of the group claims, rather than resolution of individual claims. Thus courts have approved settlements where individual class members have received awards dramatically larger than what the parties or the court expected on the basis that the award was fair and reasonable for the group. Similarly, the major concern of the Tribunal has been the allocation among categories; keeping unclaimed funds within the same category would be consistent with this goal. This would apply regardless of the exact size of the unclaimed fund given the apparent fact that in each category, at a minimum, a substantial portion of eligible claimants has filed claims.

is to be established; they do not address how it should be distributed. Should the Tribunal rule, contrary to our position, that the unclaimed fund must be established and distributed in some fashion, it is likely that more than one method of distribution will be offered. This will require further evidence and further hearings to determine what method should be used. These complications were not discussed by the JSC request, but they will have to be dealt with should the Tribunal agree that the proposed evidentiary submissions should be made. Again, these problems are obviated by a ruling that distribution within the same category is proper.

WHEREFORE, Program Syndicators urge the Tribunal to deny Joint Sports Claimants' request and to issue a ruling that, as a matter of law, the unclaimed funds can and should be distributed within the same category.

Respectfully submitted,

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

By



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August 6, 1980

Member Companies of Motion Picture Association of America, Inc.

Avco Embassy Pictures Corp.  
Columbia Pictures Industries, Inc.  
Walt Disney Productions  
Filmways Pictures, Inc.  
Metro-Goldwyn-Mayer Inc.  
Paramount Pictures Corporation  
Twentieth Century-Fox Film Corporation  
United Artists Corporation  
Universal Pictures, a Division of Universal City Studios, Inc.  
Warner Bros. Inc.

Other Program Producer/Distributor Companies

Celebrity Productions, Inc.  
Filmways Enterprises Inc.  
Filmways Feature Productions, Inc.  
Filmways International, Ltd.  
Filmways Motion Pictures, Inc.  
Filmways TV Productions, Inc.  
Goodson-Todman Enterprises, Ltd.  
G-T Programs, Inc.  
Hanna-Barbera Productions  
Heatter-Quigley Distribution Corp.  
Heatter-Quigley, Inc.  
ITC Entertainment, Inc.  
Lakeside Television Company  
Marvel Comics Group, a Division of Cadence Industries Corporation  
MTM Enterprises, Inc.  
Panel Productions, Inc.  
Price Productions, Inc.  
Q-M Productions  
Rhodes Productions Company  
Ruby-Spears Productions, Inc.  
T.A.T. Communications Company  
Tandem Productions, Inc.  
Viacom International  
Lassie Television, Inc.  
Lone Ranger Television, Inc.

CERTIFICATE OF SERVICE

I, Shirley Roach, a secretary in the law firm of Wilner & Scheiner, hereby certify that copies of the foregoing "Response to Request for Hearing" have been sent by first-class United States mail, postage prepaid, to the attached list on this 6th day of August, 1980.

  
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