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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)

OPPOSITION OF THE
JOINT SPORTS CLAIMANTS

The Joint Sports Claimants submit the following opposition to the "Motion of the National Association of Broadcasters for a Declaratory Ruling," filed with the Tribunal on August 8, 1980 ("Motion").

The most recent effort of NAB to revisit again the issue of sports programming copyright ownership must be rejected because (1) it is premised solely on a self-serving and erroneous claim that the Tribunal has issued "conflicting rulings" (Motion, p.2); (2) it is out-of-order as essentially a request that the Tribunal deal once more with a question it already has decided on three occasions; (3) it distorts the position of the Tribunal and the Joint Sports Claimants by obliterating the distinctions between Phase I and Phase II; and (4) because procedural fairness and the interests of

expedition would not be served by affording NAB the opportunity to present additional evidence of a type it has already submitted.

Shortly after the Tribunal declared the existence of a controversy NAB tendered, and advocated for early consideration assertedly to simplify matters, the sports programming copyright ownership issue. NAB did not assert that individual contracts were the key nor did its argument distinguish between sports represented by the Joint Sports Claimants and others -- NAB claimed ownership for the broadcasters as a matter of law. On December 15, 1979, the Tribunal ruled against NAB on the merits. NAB fruitlessly appealed this decision and sought an administrative stay which occasioned a further look by the Tribunal at the question because of NAB's "likelihood of success" arguments. The Tribunal obviously remained unpersuaded by NAB's position and, for a second time, ruled that the sports interests were the proper claimants.

NAB was then afforded the opportunity, by the Tribunal's May 9 order, to address with evidence in Phase I the issue of sports ownership as though it had never been decided. In response, NAB introduced evidence on the very points it

now says it wants the Tribunal to consider. Indeed, NAB's witness Wadler talked about the stations' role in the production of sports telecasts (Tr. 5/22 at 147-49); about copyright notices (Tr. 5/22 at 156-57; 161-62); about the terms of individual contracts (Tr. 5/22 at 149-59); and about broadcasters' carriage of games performed by teams other than those represented by the Joint Sports Claimants (Tr. 5/22 at 150-55) -- the very matters NAB says it wants to go into again (Motion pp. 4-5).

The Phase I decision of the Tribunal took account of this evidence, which it did not have on December 15, 1979. The Tribunal decided the sports issue a third time, ruling that if NAB can show that a broadcaster has a specific contractual right to royalties from certain sporting events, it may show that right -- in Phase II -- otherwise the sports interests are the proper copyright claimants.

NAB's instant motion confuses what the Tribunal invited the NAB to do and what NAB tried to do in Phase I -- i.e., address the general issue -- with what an individual broadcaster might do now in Phase II -- show a specific contractual right to royalties. NAB is simply attempting

to encumber the Phase II record with material already accounted for in the decisional process.

The Tribunal should, we submit, rule again (as it ruled in response to NAB's August 1 request for a declaratory ruling) that NAB is out of order. Obviously NAB would like to try again to prove something it failed to prove in Phase I, but that is not the way adjudicative proceedings work. Understandably, NAB wishes it had done a better job, but it had its chance and is bound by the record it made. NAB had its day and the time has come to move on to other matters.^{*/}

Furthermore, if NAB's distorted view of Phase II were to prevail, this aspect of the case would be complicated

^{*/} NAB's suggestion that the Joint Sports Claimants have consented to "further evidentiary consideration of the sports question" (Motion p.3) is a grave distortion. More than a month ago (and three weeks before the Phase I conclusions issued) the Joint Sports Claimants indicated that they would not object to the placing of certain contracts into the record. The NAB, however, did absolutely nothing in response and the Tribunal thus resolved the "sports question," as the NAB calls it, in its Phase I decision on the basis of the record that had been made.

enormously^{*/} In Phase I the value of the professional sports telecasts was demonstrated. The Joint Sports Claimants also reported that there were no disputes between the constituent sports leagues represented by them or the teams within these leagues as to how the royalties are to be divided. But what becomes of such agreements if a broadcaster now secures an entitlement to a portion of the sports share? Will the broadcaster be bound by those underlying agreements? May the Joint Sports Claimants show, in such a case, that the particular telecasts are only minimally seen on distant cable and thus to be lightly valued?

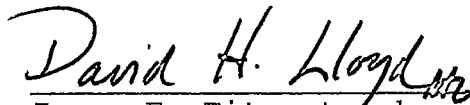
We submit that the general conclusion of Phase I is the correct one: the sports interests are the proper claimants

^{*/} In their July 2, 1980 correspondence with the NAB, the Joint Sports Claimants noted that certain of the broadcasters purportedly represented by the NAB had entered into agreements covering years after 1978 in which they specifically recognized the clubs as the copyright owners of the sports telecasts. These agreements estop the broadcasters from asserting copyright ownership of or cable royalty entitlement to any of their clubs telecasts, regardless of the year of the telecasts. If the NAB is allowed to re-open the record on this matter, the Joint Sports Claimants must also have the opportunity to present relevant rebuttal evidence such as these agreements.

before the Tribunal. NAB has had every opportunity to present both argument and evidence to urge a contrary result. The present motion is procedurally defective and fatally lacking in substance. It should summarily be denied.

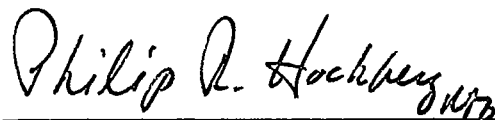
Respectfully submitted,

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August 11, 1980

CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of August, 1980, copies of the foregoing Opposition of the Joint Sports Claimants were served upon parties to this proceeding at the addresses shown, by first class mail, postage prepaid:

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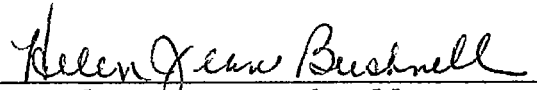
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