

CONFIDENTIAL

Before the
COPYRIGHT ROYALTY TRIBUNAL
1111 20th Street, N.W.
Washington, D.C. 20036

JUN 6 1980 RECD

In the Matter of)
)
Distribution Proceedings)
Concerning Copyright Royalty)
Fees for the Period January 1)
through December 31, 1978)

RESPONSE OF THE PUBLIC BROADCASTING
SERVICE (PBS) TO PARAGRAPH 4 OF THE
TRIBUNAL MEMORANDUM RELEASED MAY 7, 1980

The Public Broadcasting Service (PBS) hereby submits this statement on behalf of its member stations; the licensees of 183 public television stations who filed claims in these proceedings; the Southern Educational Communications Association (SECA), a regional public television network, program producer and program distributor; Children's Television Workshop (CTW), a producer whose programs include Sesame Street and Electric Company; Family Communications, Inc., a producer whose programs include Mr. Roger's Neighborhood; and G.B. Enterprises, Inc., also a program producer.^{1/} For convenience, these public television producers and distributors shall usually be referred to as "PTV Claimants".

Paragraph 4 of the Tribunal's May 7, 1980 memorandum directs joint claimants to submit either:

^{1/} A complete list of the claimants for royalty funds for the year 1978 which are represented by PBS is contained in Appendix A of PTV Exhibit 3.

(a) a percentage listing of how the total share of the joint claimant shall be allocated among the individual eligible claimants, or

(b) a properly authorized statement on behalf of each eligible member of the joint claim that they have authorized the Tribunal to distribute the royalty share of the joint claimants to a common agent, and that all eligible claimants have agreed to a procedure for the distribution of that share among the eligible claimants, or

(c) a statement describing in detail the extent of disagreement among individual members of the joint claim, and identifying those matters that will require consideration by the Tribunal during Phase II.

PBS responds to each of these subparagraphs as follows:

(a) PBS, on behalf of its stations, has already reached an agreement with the two major non-station producers of public television programs, CTW and Family Communications, as to their individual shares and PBS is confident that it can work out a fair and reasonable basis for dividing the public television share among PTV Claimant stations, SECA and G.B. Enterprises since they have already authorized PBS, as their common agent, to recover royalties for them.

(b) On their claim forms, all 183 PTV stations, SECA and G.B. Enterprises specifically designated PBS as their common agent for the joint claim. Both CTW and Family Communications have authorized PBS to represent them, since November 1979. Attached as Appendix 1 is the June 27, 1979 PBS Board of Directors Resolution authorizing

PBS to recover royalties on behalf of its membership. While the PTV Claimants represented by PBS (other than CTW and Family Communications) have not agreed to a specific distribution procedure, all of the PTV Claimants have agreed that PBS can recover the royalties on their behalf for internal distribution so as to avoid participation in Phase II of these proceedings.

(c) PBS is not aware of any disagreement among individual PTV Claimants. To its best knowledge and behalf, no such disagreement exists. Assuming that the Tribunal in Phase I of this proceeding allocates a separate and distinct share of the royalty pool to public television, and resolves the questions that MPAA has raised concerning the status of PBS-distributed and instructional television programs, PBS does not currently perceive any matters that will require consideration by the Tribunal in Phase II of this proceeding.

PTV Claimants constitute a special and unique major group of copyright owners eligible to receive cable copyright royalty fees as provided by 17 USC 111(d)(4), and the Tribunal should allocate a separate and distinct share of the royalty pool to public television in Phase I of this proceeding. Public television should not be thrown into the respective

allocations of other claimant groups, such as commercial broadcasters, commercial syndicators and the several sports claimants. There are compelling reasons for this.

First, public television programs by and large are substantially different than commercial television programs. In almost all cases, there are different producers and different distributors of public television programs. PBS and the PTV Claimants are clearly in a better position to identify these programs and their producers and syndicators than any other claimant group, because these copyright owners are public television stations or producers and distributors who work closely with public television stations and/or PBS.

Second, PTV Claimants have established on the record that they hold copyright interests in approximately 80% of the public television programs that were carried by cable systems on a distant basis in 1978 (PTV Exhibit 3, Appendix F). With regard to the remaining 20% of that programming, the vast majority of the copyright holders are non-profit educational program sources allied with the public television industry; only a small proportion of the copyright holders are commercial program sources such as MPAA members and other commercial syndicators represented by MPAA in this proceeding.^{2/}

^{2/} For handy reference, attached as Appendix 2 are the analyses of PBS-distributed programs and a specimen analysis of non-PBS distributed programs telecast by Station KETC, St. Louis, Missouri. (These are taken from PTV Exhibit 3, Appendices D and E). Categories 1 and 2 are programs for which PTV Claimants hold a copyright interest. Category 3 represents the other programs and, as will be noted, virtually all of these are produced by non-profit education-related entities.

Third, PTV Claimants have already agreed to devise, or can reasonably be expected to harmoniously devise, a basis for distribution of the share of the royalty pool allocated to public television. To the extent there may be other claims for a relatively small portion of the public television share (such as commercial suppliers of syndicated programs and copyright owners of sports programs occasionally aired on public television), the PTV Claimants stand ready to deal with these claimants fairly and equitably, making available their proportionate amounts of the public television share computed on whatever basis will be appropriate following and in light of the Tribunal's decision under Phase I of this proceeding.

Fourth, the distinct nature of public television program carriage has been recognized in the formulae of the various parties. The MPAA has provided a specific allocation of the fees generated by the 1/4 DSE payments for the distant carriage of public television stations (approximately 5% of total royalties). The NAB's allocation of royalty dollars on a cable system-by-cable system basis yields a percentage of approximately 6% for local public television program carriage, and a higher percentage for all public television program carriage. The proofs of PBS establish that approximately 12% of all distant cable hours of carriage during the year 1978


constituted public television programs. Whether the Tribunal makes its reference point the fee-generation approach of MPAA, the system-by-system allocation of royalty dollars advocated by the NAB or a time based formula, the allocation of a share of the royalty pool to the distant carriage of public television programs -- as a unit -- is a natural and efficient procedure to follow.

Public television is a homogeneous category of programming which, for the reasons stated above, should be treated as a separate and distinct group in Phase I of this proceeding. If this is done, Phase II of the proceeding should not be particularly difficult or complex in so far as public television is concerned. Moreover, this will serve as a predictable and workable guide for handling public television royalty allocations in future years.

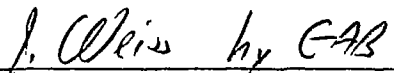
On the other hand, if public television is not treated as a separate group and is required to obtain its share of the royalties from the respective shares allocated to broadcasters, syndicators and the various sports claimants, Phase II of this proceeding will be much more complex and difficult. The PTV Claimants will be required to negotiate and/or litigate with commercial broadcasters regarding a massive intermixture of data concerning commercial and public television local program origination and cable carriage. The PTV

Claimants will be required to negotiate and/or litigate with the MPAA regarding a massive intermixture of data concerning commercial and public television syndicated program origination and cable carriage. So also with regard to an intermixture of data concerning sports programs on commercial and public television stations. PBS and PTV Claimants cannot afford such a Phase II process, financially or administratively, and there is no discernable purpose or benefit that would justify such a cumbersome, burdensome, and quite possibly unworkable method of dealing with the public television interests in this proceeding.

Respectfully submitted,

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Date: June 6, 1980

APPENDIX 1

PUBLIC BROADCASTING SERVICE
BOARD OF DIRECTORS
Los Angeles, California, June 27, 1979

RESOLUTION: CABLE COPYRIGHT ROYALTIES

The Board finds that:

1. Under the new copyright law, public television stations who produce programs that are carried beyond their or a using station's local market by a cable system, are entitled to claim a portion of the royalties paid by cable systems.
2. Negotiations are now being conducted by representatives of claimants to attempt to reach a voluntary agreement for division of the cable copyright royalty pool in order to avoid a potentially complex proceeding before the Copyright Royalty Tribunal.
3. For public television to share to the maximum extent possible in the royalty pool will necessitate (a) that all eligible stations file claims before the Copyright Royalty Tribunal and (b) that their case be strongly and effectively made both in the negotiations and before the Tribunal should such proceedings be necessary.

In light of these findings, the Board resolves:

1. To authorize management to participate fully in the negotiations to ensure a fair share of such royalty pool for public television and to authorize the Ad Hoc Committee on Copyright to review the results of such negotiations and to approve or modify them on behalf of the membership.
2. To authorize management, working with the advice of the Ad Hoc Committee on Copyright to prepare and file before the Copyright Royalty Tribunal on behalf of the stations whatever justifications are necessary to enable the membership to recover its fair share of the cable copyright royalty pool.
3. To authorize the Ad Hoc Committee on Copyright to advise and oversee whatever proceedings will be necessary to ensure recovery of royalties on behalf of the membership.

APPENDIX 2

PBS Distributed Programs

February 1978

November 1978

Category 1

Adams Chronicles	Adams Chronicles
Alfred I. Dupont	Advocates
Anyone For Tennyson?	Arms For South Africa
Austin City Limits	Black Perspective On The News
Black Perspective On The News	Captioned ABC Evening News
Bookbeat	Cinema Showcase (22 minutes)
Brontes	Cinematic Eye
Captioned ABC Evening News	Congressional Outlook
Coal Hearings	Consumer Survival Kit
Consumer Survival Kit	Crockett's Victory Garden
Crockett's Victory Garden	Economically Speaking
Daniel Foster, M.D.	Election '78 Preview
Electric Company	Electric Company
Evening At Symphony	Evening At Symphony
Firing Line	Firing Line
French Chef	Freestyle
Hard Times	Geraldine Fitzgerald At Reno Sweeney
Lilias, Yoga and You	Global Papers
Live From Lincoln Center (42 minutes)	Great Performances (50 minutes)
Lowell Thomas Remembers	Julia Child and Company
MacNeil/Lehrer Report	Lilias, Yoga and You
Masterpiece Theater (3 minutes)	MacNeil/Lehrer Report
Mister Roger's Neighborhood	Masterpiece Theater (3 minutes)

February 1978

November 1978

Category 1

Music Is	Mister Roger's Neighborhood
New Hampshire Town Meeting	Music Is
Nova (30 minutes)	Nova (30 minutes)
Originals	Over Easy
Over Easy	Rebop
Patrick Henry: Give Me Liberty Or Give Me Death	Sesame Street
Rebop	Show On The Road
Sesame Street	Sneak Previews
Soundstage	Soundstage
Studio See	Studio See
Theater In America	Turnabout
Turnabout	Visions
Wall Street Week	Wall Street Week
Washington Week In Review	Washington Week In Review
World (30 minutes)	We Interrupt This Week
Zoom	Zoom

Category 2

Dick Cavett Show	Cinema Showcase (1 hour 55 minutes)
Live From Lincoln Center (1 hour 20 minutes)	Cousteau: Oasis In Space
Masterpiece Theater (57 minutes)	Dick Cavett Show
National Geographic Specials	Feeling Free
Nova (30 minutes)	Great Performances (1 hour 40 minutes)

February 1978

November 1978

Category 2

Of Race And Blood

Long Search

Once Upon Classic

Marie Curie

Paint Along With Nancy Kominsky

Masterpiece Theater (57 minutes)

Royal Heritage

National Geographic Specials

World (30 minutes)

Nova (30 minutes)

Once Upon A Classic

PBS Movie Theater

Portrait Of A Nurse

Scenes From A Marriage

Category 3

Infinity Factory

Infinity Factory

Que Pasa, USA?

Soccer Made In Germany

Soccer Made In Germany

Villa Alegre

Villa Alegre

INFINITY FACTORY

Program Type: Series

Program Producer: Education Development Center, Inc.

Copyright Owner: non-PTV produced & copyright owner
ESAA agreement with non-exclusive cable license

The INFINITY FACTORY is a series of half-hour TV programs using a magazine format and targeted to 8-to-11 year olds with special emphasis on Blacks and Latinos. Each show is made up of short segments that address the same mathematical and cultural goals in different ways.

The series avoids an abstract approach to mathematics by using characters and settings familiar to many Black and Latino children. Stories reveal people using mathematics as a tool to solve realistic problems in comfortable ways, stressing ties between mathematics and real life -- especially the real lives of minority people

In addition to its mathematical objectives, "Infinity Factory" explores certain ethnic and cultural concerns. Programs stress ethnic confidence and pride; present positive roles for females as well as males; show how minority people have contributed importantly to the American past; and, cooperation, equality, self-respect, and respect for others.

QUE PASA, U.S.A.?

Program Type: Series

Program Producer: WPBT/BCTV

Copyright Owner: ESAA agreement - non-exclusive license

Que Pasa, U.S.A.? is America's first bi-lingual situation comedy. The sometimes heartwarming, always humorous series follows the Penas, an immigrant Cuban family, as they discover the new and often perplexing ways of life in Miami's Little Havana.

The Penas are a typical three-generation Cuban-American family. They suffer from a common malady known as the generation gap, but they have an added problem to face: learning to reconcile their Cuban heritage with life American-style.

Most of the action of Que Pasa, U.S.A.? takes place in the Pena residence, located in Miami's Little Havana section, where a substantial portion of South Florida's Cuban-American population live.

The story line of each episode is carefully developed to promote intercultural understanding after extensive research in Miami's Cuban-American community by Manuel Mendoza, sociology professor at Miami-Dade Community College, who conceived the series working with WPBT program development staff.

SOCCER MADE IN GERMANY

Program Type: Series

Program Producer: KQED/German ETV

Copyright Owner: Foreign acquisition

SOCCER MADE IN GERMANY began as an experiment in televised soccer. Presented by KQED, San Francisco, in cooperation with the German Educational Television Network, 13 programs of one-hour highlights from the West German Professional First Division were shown weekly. SOCCER MADE IN GERMANY was a hit! In thousands of letters, viewers praised the quality of the games, the splendid camera work, the expertise of announcer Toby Charles, and especially the continuity of non-commercial programs.

In these broadcasts, the viewer has the best seat in the stadium. With as many as eight cameras, the game is recorded both in its close actions and in wide angles showing the strategic positions of the players. Repeats in slow motion enable viewers to savor the goals and spectacular moments of the game. And there are no commercial breaks.

VILLA ALEGRE

Program Type: Series

Program Producer: Bilingual Children's Television

Copyright Owner: Bilingual Children's Television

VILLA ALEGRE is an entertaining, educational, multi-cultural television series for youngsters of all social backgrounds. Spanish and English are used interchangeably to stimulate bilingual learning.

Because of its wide-ranging educational thrust, the series is designed for all children from the ages of four through ten -- including all ethnic, social and economic identification. The 30-minute shows in the series are a fast moving kaleidoscope of scripted real-life situations, instructive songs, lively animation, and sensitive films. The series uses language and culture to present a curriculum that explores five main themes: Human Relations, Natural Environment, Communication, Energy and Human-Made Objects.

VILLA ALEGRE received a daytime Emmy Award from the National Academy of Television Arts and Sciences for "Outstanding Individual Achievement in Children's Programming."

KETC, St. Louis

Attachments

Classification of programs, February week.

Category #1: PTV Claimant Produced
Category #2: Other PTV Claimable
Category #3: Other Programs

Program schedule, February week, with notations.

Classification of programs, November week.

Program schedule, November week, with notations.

Fact sheets concerning individual programs, including identity of producer, assembled in alphabetical order.

FEBRUARY - KETC

Category #1

Letter People	Local
Wordsmith	AIT
All About You	AIT
Celebrate	Local
Where in the World	Local
Dragons, Wagons & Wax	ITV Coop
Other Families, Other Friends	AIT
Cover to Cover	ITV Coop
Common Cents	Local
Universe & I	AIT
Out of Order	IPBN
About St. Louis	Local
Treehouse	Local
Marketplace	Local
G.E.D.	Ky. ETV
Matter of Fact	AIT
Magic Teapot	Local
Sing a Little Sunshine	Local
Through the Arch	Local
Matter of Fiction	AIT
Diamond's Dungeon	Local
XPO 6	IPBN
Truly American	GPN
Cookin' Cajun	SECA
Bob Chase Reports	Local

Category #2

Inside/Out	AIT
Bread & Butterflies	AIT
Self Incorporated	AIT
Images & Things	AIT
Mainly Math	GPN
Animals & Such	AIT
Two Cents Worth	AIT

Category #3

Math That Counts	Encyclopedia Britannica
Dragons, Wagons & Wax	ITV Coop
Potpourri	Encyclopedia Britannica
It's All Up to You	AIT
Toute La Bande	Scholastic Magazine
Creative Dramatics	AIT
Classics of World Literature	Enc. Brit.
Vegetable Soup	N.Y. State
Japan: Living Tradition	University of Mid-America
Psychology of Exceptional Individuals	University of Mid-America
The Prisoner	ITC
Fawlty Towers	Time-Life
Ernie Kovak	Time-Life
Rivals of Sherlock Holmes	Taffner
Monty Python	Time-Life

NOVEMBER - KETC

Category #1

South by Northwest	KWSU
Letter People	Local
Cover to Cover	ITV Coop
Becoming Me	GPN
Wordsmith	AIT
Common Cents	Local
Growing Together	Local
Under the Blue Umbrella	AIT
Where in the World	Local
Treehouse	Local
Metric System	GPN
Universe & I	AIT
Matter of Fact	AIT
Celebrate	Local
Life World 2000	Local
Magic Teapot	Local
Matter of Fiction	AIT
All About You	AIT
Cover to Cover 2	ITV Coop
Diamond's Dungeon	Local
Tell Me What You See	GPN
Truly American	GPN
Getting to Know Art	KLRN
Ourstory	WNET
Cover to Cover 1	ITV Coop
XPO 5	IPBN
Wordsmith	AIT
Other Families, Other Friends	AIT
Farm Digest	MCPB
Postscript	KETC
Midweek	KETC
Watch Your Mouth	CEN
Filmmakers	EEN

Category #2

Inside/Out	AIT
Self Incorporated	AIT
Two Cents Worth	AIT
Images & Things	AIT
Matter and Motion	AIT
Rights & Responsibilities	AIT
Trade-Offs	AIT
Bread & Butterflies	AIT
Animals & Such	AIT

Category #3

Withit	Latham Foundation
Math that Counts	Encyclopedia Britannica
Math Patrol	OECA
Potpourri	ITV Center of Broward County
Mulligan Stew	4-H Clubs/University of Mo.
Toute La Bande	Scholastic Magazine

CERTIFICATE OF SERVICE

I, Karen T. Foster, do hereby certify that I have, this 6th day of June, 1980, sent copies of the foregoing "Response of the Public Broadcasting Service (PBS) to Paragraph 4 of the Tribunal Memorandum Released May 7, 1980," by first class United States mail, postage prepaid, to the parties on the attached list.


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