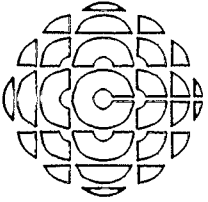


30 January 1980



Honorable Mary Lou Burg  
Chairman  
Copyright Royalty Tribunal  
1111 20th Street NW  
Washington, DC 20036  
USA

Dear Miss Burg:

This submission to The Copyright Royalty Tribunal is in response to the notice in 44 FR 75201 dated December 15, 1979.

The Canadian Broadcasting Corporation (CBC) notes the basis and subjects on which this pre-hearing memorandum must be submitted, but as a preliminary comment respectfully suggests that the second of the four points in the said notice leaves unanswered the line of argument developed, and the conclusion reached, in item 2 of CBC's letter to The Copyright Royalty Tribunal dated 14 November 1979.

CBC demonstrated that when CBC acquires an exclusive license to broadcast a program, CBC becomes the owner of that exclusive right under The Copyright Act at the time the right is acquired by exclusive license. Accordingly, as copyright owner, CBC is entitled to claim a share of the copyright royalties paid by the cable systems pursuant to 17 USC 111 (d) when CBC signals containing the said exclusively licensed program are given simultaneous secondary transmission within the compulsory licensing zone.

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The foregoing comment is based on the assumption that CBC's position with respect to the copyright ownership vested in the holder of an exclusive license to broadcast has not been rejected by The Copyright Royalty Tribunal.

The following comments refer to the five subjects set out in 44 FR 75201, and have the same numbers for identification.

1. The Canadian Broadcasting Corporation has no comment with respect to the form and timing of submissions.
2. During the 1978 calendar year CBC produced, and is the copyright owner of, more than 5,000 hours of television programming and more than 35,000 hours of radio programming. In addition, CBC is the copyright owner, as exclusive licensee, of more than 2,000 hours of television programming. In the case of every broadcast of every radio and television program, the requirement of fixation under The Copyright Act has been complied with.

CBC proposes to file with the Tribunal a set of documents to establish the details of its radio and television broadcasting during the two accounting periods of 1978. These would include internal documents showing when and where the programs were broadcast, program guides prepared by CBC for public distribution, and other relevant sources of information. Some of these documents were prepared pursuant to Canadian statute law and to the requirements of the Canadian Radio-Television and Telecommunications Commission (CRTC), the licensing authority established under the Broadcasting Act (RSC 1970, Chapter B11) to regulate and supervise the Canadian broadcasting system.


With respect to exclusively licensed programs, CBC is prepared to file copies of the relevant contracts.

CBC proposes to file proof of the secondary transmission of programs of which CBC is the copyright owner, beyond the local service area of the primary transmitter, by documents in form acceptable to the Tribunal, prepared by bi Associates Inc. However, if oral testimony is necessary CBC would be prepared to provide corporate officers who have informed themselves as to the relevant facts. The amount of time would be that amount required to table the documents more or less in bulk. The documents would be filed as part of a deposition of a senior CBC officer identifying and explaining each document.

3. In view of the conclusions of the Tribunal, as set out in 44 FR 75201, CBC does not at this time see the need for the production of additional information or claim justification from other claimants, but wishes to reserve its privilege to request additional information or claim justification in the event of a subsequent statement by the Tribunal or of claims which compete with or duplicate those filed by CBC.
4. CBC has no comment with respect to the conduct of the evidentiary hearing.
5. By letter dated July 29, 1979 CBC drew the attention of the Tribunal to the errors and omissions in the data filed by the cable systems.

It seems likely that the total amount of the royalty fees deposited by the cable systems with the register of copyrights for calendar year 1978, pursuant to 17 USC 111 (d) (2), should be substantially higher than it is. In addition, proper distribution of the funds in accordance with a final decision of the Tribunal will be hampered, if not made impossible, by incorrect identification of some broadcasts as network or non-network, local or distant.

Yours truly,

  
D.E. Lytle  
Director  
Corporate Program Services

P.O. Box 8478  
Ottawa, Ontario  
K1G 3J5  
Canada

DEL/da