

THE HONOURABLE MARY LOU BURG
CHAIRMAN
COPYRIGHT ROYALTY TRIBUNAL
1111 20TH STREET N W
WASHINGTON DC 20036
USA

Original 2
JAN 31 1980 REC'D

URGENT

FOLLOWING IS THE TEXT OF THE SUBMISSION TO BE DELIVERED PROMPTLY TO THE ABOVE CHAIRMAN OF THE COPYRIGHT ROYALTY TRIBUNAL ON OR BEFORE JANUARY 31ST, 1980, AS PREVIOUSLY ARRANGED. WE WOULD APPRECIATE CONFIRMATION BY TELEPHONE AFTER DEPOSIT WITH THE CHAIRMAN.

THE ONTARIO EDUCATIONAL COMMUNICATIONS AUTHORITY (OECA) WISH TO MAKE THE FOLLOWING SUBMISSION WITH REGARD TO THE NOTICE SET OUT IN VOLUME 44 FEDERAL REGISTER 75201 DATED DECEMBER 19TH 1979:

1. THE OECA HAS NO COMMENT WITH RESPECT TO THE FORM AND TIMING OF SUBMISSIONS.
2. THE OECA IS PREPARED TO FILE A NUMBER OF DOCUMENTS TO SUPPORT ITS COPYRIGHT OWNERSHIP IN THE PROGRAMS BROADCASTED OVER ITS ONTARIO TELEVISION NETWORK DURING THE TWO ACCOUNTING PERIODS OF 1978 WHICH CONSTITUTE THE 1978 CALENDAR YEAR. THE DOCUMENTS WOULD INCLUDE EXCLUSIVE LICENCE AGREEMENTS FOR SPECIFIC PROGRAMS, INTERNAL DOCUMENTS WHICH WOULD FULFILL THE REQUIREMENT OF FIXATION IN ACCORDANCE WITH 17, USC COPYRIGHTS, BROADCAST SCHEDULES AND PROGRAM PUBLICATIONS AND OTHER CONTRACTS OR DOCUMENTS EVIDENCING THE OECA'S OWNERSHIP OF COPYRIGHT IN THE BROADCAST PROGRAMS.
3. THE OECA RESPECTFULLY SUGGESTS THAT A MINIMUM STANDARD BE DEVELOPED BY THE TRIBUNAL FOR DETERMINATION OR PROOF OF COPYRIGHT OWNERSHIP BY A LEGAL ENTITY FOR A PROGRAM WHICH HAS BEEN BROADCAST DURING THE 1978 CALENDAR YEAR. SUCH MINIMUM STANDARD FOR COPYRIGHT CLAIM JUSTIFICATION COULD THEN APPLY TO SUBSEQUENT YEARS.

THE OECA ALSO WISHES TO RESERVE ITS PRIVILEGE TO REQUEST ADDITIONAL INFORMATION OR PROOF OF CLAIM SHOULD THE TRIBUNAL DECIDE ON CERTAIN STANDARDS FOR COPYRIGHT CLAIM DETERMINATION OR SHOULD COMPETING CLAIMS BE PRESENTED BY OTHER PARTIES.

4. THE OECA HAS NO PROPOSALS AT THIS TIME WITH RESPECT TO THE CONDUCT OF THE EVIDENTIARY HEARING.
5. THE OECA WISHES TO SUPPORT THE COMMENTS OF THE CANADIAN BROADCASTING CORPORATION WITH RESPECT TO THE ERRORS AND OMISSIONS CONTAINED IN THE DATA FILED BY THE CABLE SYSTEMS WITH THE REGISTER OF COPYRIGHTS FOR THE CALENDAR YEAR 1978, PURSUANT TO 17 USC 111 (D) (2).

THE AUTHORITY RESPECTFULLY OBSERVES THAT THE SECOND OF FOUR POINTS MADE IN THE ABOVE NOTICE DOES NOT CLEARLY ADDRESS THE ISSUE OF EXCLUSIVE LICENSEES BEING THE OWNERS OF A COPYRIGHT IN A TELEVISION PROGRAM. WE BELIEVE THAT SOME CONFUSION ARISES BECAUSE OF THE STATEMENT MADE IN THE SECOND POINT. MORE SPECIFICALLY WE REFER TO THE DEFINITION OF COPYRIGHT OWNER IN 17 USC, CHAPTER 1, SECTION 101 WHICH STATES THAT, 'COPYRIGHT OWNER, WITH RESPECT TO ANYONE OF THE EXCLUSIVE RIGHTS COMPRISED IN A COPYRIGHT, REFERS TO THE OWNER OF THAT PARTICULAR RIGHT.' THIS DEFINITION TAKEN IN CONJUNCTION WITH THE FOLLOWING DEFINITION APPEARS TO UNEQUIVOCALLY RECOGNIZE THAT AN EXCLUSIVE LICENCE AS TO TERRITORY, TIME AND USE (TELEVISION BROADCAST) CONSTITUTES A COPYRIGHT OWNERSHIP: 'A TRANSFER OF COPYRIGHT OWNERSHIP IS AN ASSIGNMENT, MORTGAGE, EXCLUSIVE LICENCE, OR ANY OTHER CONVEYANCE, ALIENATION, OR HYPOTHECATION OF A COPYRIGHT OR OF ANY OF THE EXCLUSIVE RIGHTS COMPRISED IN A COPYRIGHT, WHETHER OR NOT IT IS LIMITED IN TIME OR PLACE OF EFFECT, BUT NOT INCLUDING A NON-EXCLUSIVE LICENCE'. A FURTHER REINFORCEMENT OF THE CONCEPT OF EXCLUSIVE LICENCE BEING A TYPE OF COPYRIGHT OWNERSHIP THAT CAN BE DIRECTLY ENFORCED AGAINST AN INFRINGER AND BY THE SAME TOKEN ENJOYED BY AN OWNER WITH REGARD TO SECONDARY TRANSMISSIONS MADE BY A CABLE COMPANY IS DEMONSTRATED IN 17 USC CHAPTER 5, SECTION 501 (B) INFRINGEMENT OF COPYRIGHT 'THE LEGAL OR BENEFICIAL OWNER OF AN EXCLUSIVE RIGHT (EMPHASIS ADDED) UNDER A COPYRIGHT IS ENTITLED, SUBJECT TO THE REQUIREMENTS OF SECTIONS 205 (D) AND 411, TO INSTITUTE AN ACTION FOR ANY INFRINGEMENT OF THAT PARTICULAR RIGHT COMMITTED WHILE HE OR SHE IS THE OWNER OF IT.'

THUS WE WOULD RESPECTFULLY SUGGEST THAT AN EXCLUSIVE LICENCE HELD BY A BROADCASTER FOR A PROGRAM, BEING EXCLUSIVE FOR BROADCAST PURPOSES OR USE IN A GEOGRAPHIC TERRITORY AND FOR A SPECIFIC PERIOD OF TIME IS A LEGAL COPYRIGHT, CONFERRED ON THE HOLDER IN ACCORDANCE WITH 17 USC COPYRIGHTS, AND THAT SUCH COPYRIGHT HOLDER SHOULD HAVE THE FULL CAPACITY TO ENJOY, ENFORCE AND PROTECT THAT RIGHT AS AGAINST ALL OTHER CLAIMANTS.

ALL OF THE ABOVE IS RESPECTFULLY SUBMITTED FOR YOUR CONSIDERATION.

YOURS VERY TRULY

JOHN P PELLETIER
LEGAL SERVICES
OECA
TORONTO ONTARIO
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