

JAN 31 1980 RECD

BEFORE THE
COPYRIGHT ROYALTY TRIBUNAL
WASHINGTON, D. C.

In the matter of)
)
Cable Royalty)
Distribution Proceedings)
_____)

PRE-HEARING MEMORANDUM OF
THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

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The National Collegiate Athletic Association ("NCAA") submits this pre-hearing memorandum pursuant to the order of the Copyright Royalty Tribunal dated December 15, 1979. That order directed parties interested in the distribution of statutory cable royalties for 1978 retransmissions to submit memoranda addressing the following matters:

1. Recommendations concerning the form and timing of submissions by claimants of the written statement of their direct cases.
2. The amount of time, number of witnesses and general identification of studies or other exhibits to be required in the presentation of claimants' cases.
3. Identification of matters requiring the production of additional information or claim justification from other claimants.
4. Recommendations concerning the conduct of the evidentiary hearing, including possible division of the hearing into specific phases.
5. Identification of any subjects that require determination by the Tribunal prior to the commencement of the evidentiary hearing.

FORM AND TIMING OF SUBMISSIONS AND
REQUIRED ADDITIONAL INFORMATION

The NCAA proposes that the remainder of these distribution proceedings consist of the following four steps:

1. Submission by all claimants or their authorized representatives of a statement which: (a) identifies the particular programs and secondary transmissions for which the party or parties concerned claim royalties; and (b) establishes their ownership of copyright in the programs concerned.
2. A hearing for the receipt of evidence and testimony with respect to: (a) conflicting claims for particular programming; and (b) distribution formulae or weighting.
3. If necessary, a second phase hearing (or data submission) for the purpose of receiving any further information required by the Tribunal in order to apply its allocation formula and compute the shares of the various claimants.
4. Publication of the proposed reasonable expenses of the Tribunal for deduction from the distributable royalties, and finally, announcement of the royalty distribution.

Step 1

As a first step, each party, as a condition to further participation in the proceedings and the ultimate distribution, would be required to submit a verified statement containing the following information:

- a) The name or names of the specific claimants who have authorized the filing of the statement;

- b) the name or other specific identification of each work which is the subject of its copyright royalty claims for 1978;
- c) the date(s) and time(s) of the broadcast of each work;
- d) the broadcast station(s) which served as the primary transmitter with respect to such work(s); and
- e) a listing of the cable television systems making secondary transmission of the work on a distant basis.

In each case, the claimant also would be required to establish the copyright ownership of the listed works. The submissions would be verified on information and belief by appropriate official(s) of the claiming party.

It is essential that these, or similar, requirements be imposed to define the actual scope of the claims of the various parties to this proceeding. The new Copyright Act provides for the payment of compensation only for specific copyrighted, non-network programming carried by cable television systems on a distant basis. Establishment of the factual basis for each party's claim is, therefore, an essential prerequisite to a royalty distribution by the Tribunal. Moreover, definition of the scope of the claims will permit the Tribunal and the parties to determine which, if any, conflicts among claims are real, and which are only theoretical. Finally, it also will permit the parties to formulate an accurate estimate of the share of the royalty pool to which they believe they are entitled, and to evaluate more accurately the utility and fairness of various distribution formulae.

Step 2

After a reasonable time to permit the parties to assess the statements filed by others in Step 1, the parties would be required to file with the Tribunal prepared direct testimony and proposed exhibits for a hearing before the Tribunal with respect to conflicting claims for particular programming and proposed distribution formulae and weighting. All parties would submit their direct cases at the same time. The parties would be encouraged to agree to stipulate to uncontested matters wherever possible, in order to save time and the Tribunal's deductible expenses. Shortly after the date for submission of direct cases, a hearing would be scheduled for formal introduction of direct testimony, exhibits and cross-examination.

At the conclusion of the hearing, a schedule would be established for the submission of rebuttal evidence and testimony (if necessary), cross-examination of such testimony, and briefing.

Step 2 would conclude with the Tribunal's announcement of a decision with respect to the appropriate distribution formula.

Step 3

Step 3 is an optional step which would consist of the submission, at the Tribunal's direction, of any supplemental evidence or statements required in order to apply the distribution formula which the Tribunal has found to be appropriate, and computation of the percentage shares of the various claimants.

Step 4

At the conclusion of Step 3, the Tribunal will publish its schedule of expenses which it proposes to deduct from the royalty pool in accordance with section 111(d)(3) of the Copyright Act prior to distribution to the claimants. After a reasonable time has been allowed for the submission of any objections or comments by claimants with respect to that schedule, the Tribunal will announce the distribution.

TIME, WITNESSES AND EXHIBITS INVOLVED
IN PRESENTATION OF NCAA'S CASE

Until the proposed Step 1 is completed, the NCAA cannot specify with assurance the amount of time, number of witnesses or identify studies or other exhibits that will be required in the presentation of its Step 2 case. In addition to the evidence and testimony which would be required to establish its right to receive royalties* and to address conflicts (if any) between the specific claims of the NCAA and those of others, the NCAA would anticipate introducing documents and testimony establishing the high relative value of live sports presentations to cable systems as regards attracting subscribers and increasing revenues, as compared with other works potentially subject to cable television royalty distributions.**

* For these purposes, we would introduce an exhibit incorporating the NCAA's Step 1 statement.

** See, H. Rep. No. 1476, 94th Cong., 2d Sess. 97 (1976).

In determining the appropriate distribution, the Tribunal must attempt to ascertain how the royalties paid into the statutory pool would have been allocated by cable systems forced to purchase that programming in an open market. It is obvious that they would not have paid the identical price for all kinds of programming, and that some weighting therefore will be required. For the purpose of allocating appropriate weight to various kinds of programming, evidence with respect to cable audience response and the emphasis placed upon particular types of programming in the advertising and congressional testimony of cable systems and their representatives will provide valuable guidance. We are unable to estimate the length of the hearings until the direct evidence has been prepared and submitted, and the parties have given an indication of the estimated duration of their cross-examination. The NCAA will make every effort to coordinate its presentation with those of others, and thus to keep its individual case (and the time required for its presentation) to a minimum.

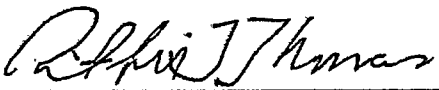
OTHER MATTERS

The above discussion covers virtually all of the points mentioned by the Tribunal's December 15 order. We have only to add, with respect to the fifth item listed, that in our view

there are no further subjects that would require determination by the Tribunal prior to the commencement of the evidentiary hearing.

Respectfully submitted,

THE NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION

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