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

Pre-Hearing Memorandum of CBS Inc.

The Tribunal on December 15, 1979 directed interested parties in the matter of cable royalty distribution to submit a pre-hearing memorandum not later than January 31, 1980 on, among other things:

5. Identification of any subjects that require determination by the Tribunal prior to the commencement of the evidentiary hearing.

CBS Inc. ("CBS") hereby identifies such a subject.

Syndicated Programming of which the Broadcaster is the Copyright Owner by Virtue of Transfers to the Broadcaster of Copyright Ownership

On December 15, 1979, the Tribunal made a single decision about syndicated programming, that the "Copyright Act does not provide for the payment of royalty fees to broadcaster claimants who have acquired rights in syndicated programming in a market, which rights are exclusive against other broadcasters in that market, when the syndicated programming is included in distant broadcasts which are transmitted into the broadcaster's market" (emphasis added).

That decision is being appealed to the United States Court of Appeals by the National Association of Broadcasters on behalf of various broadcasting stations.*

If the decision survives the appeal, the decision, nevertheless, will not dispose of a major subject, because the decision does not address it.

The decision addresses a factual setting in which the broadcaster has acquired no more than exclusive rights against other broadcasters in its market.

The decision does not address the entire pertinent factual setting constituting the basis for CBS' claims for syndicated programming. Those claims are based not only on exclusive rights against other broadcasters in the market of its station, but also exclusive rights there against cable system transmission. And the exclusive rights against cable system transmission are rights derived not from the Federal Communications Commission, but from copyright transfers under the copyright law to CBS from the original copyright owners or their successors. After

* Memorandum to the Copyright Royalty Tribunal of the National Association of Broadcasters In Support of Application for Stay and a Continuance.

those transfers were made, the syndicators no longer held exclusive cable television rights in the market of transfer, for they had agreed they would not transmit or authorize the transmission by cable. After the transfers, either the transferrer or the transferee could prevent the cable transmission. After the transfers, it would take both the transferrer and the transferee to license the cable transmission.

The fact that the Copyright Act of 1976 grants a compulsory license for cable transmission of the kind we are dealing with does not alter those conclusions. If so, no one, neither the syndicators nor the broadcasters, would be able to share in the cable royalty fund because no one would be the exclusive owner of the rights in question, i.e., the copyright owner. When the Act speaks of "copyright owners" in this context it plainly means those who would be copyright owners absent the compulsory license.

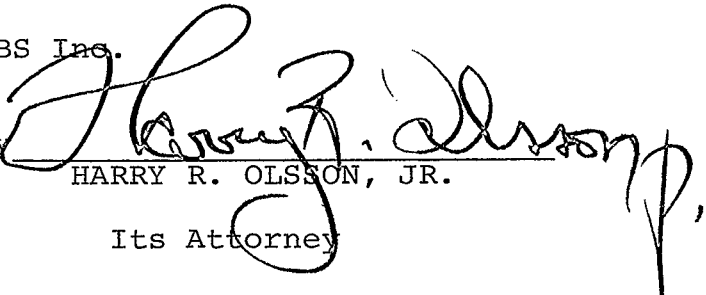
CBS is informed and believes that many other broadcasters have similar cable transmission exclusivity provisions in their syndicated programming copyright transfer agreements.

Therefore, we respectfully submit that this important question is a subject which requires determination by the Tribunal prior to the commencement of the evidentiary hearing.

Respectfully submitted,

CBS Inc.

By


HARRY R. OLSSON, JR.

Its Attorney

51 West 52 Street
New York, New York 10019

January 31, 1980

UNDERSIZED DOCUMENTS

CBS

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(212) 975-4035

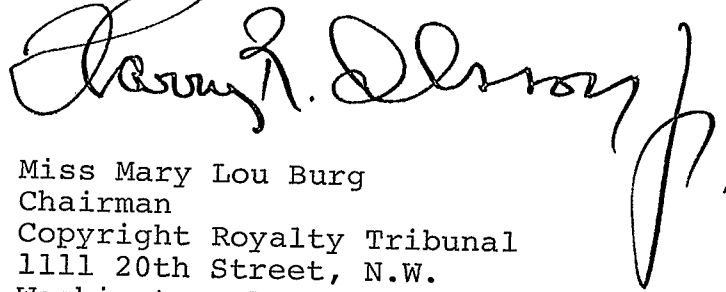
Harry R. Olsson, Jr., General Attorney

Dear Miss Burg:

January 29, 1980

Enclosed please find 10 copies of the pre-hearing memorandum of CBS Inc. in the cable royalty distribution matter.

Sincerely,



Miss Mary Lou Burg
Chairman
Copyright Royalty Tribunal
1111 20th Street, N.W.
Washington, D.C. 20036