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October 28, 1980

BY HAND

Ms. Mary Lou Burg, Chairman  
Copyright Royalty Tribunal  
1111 Twentieth Street, N.W.  
Washington, D.C. 20006

Dear Chairman Burg:

The Joint Sports Claimants are in receipt of NAB's application for a stay pending appeal and the MPAA's opposition to this application and request for a partial distribution. We had not planned to file a response to the NAB's application. However, in view of the MPAA's filing and the possibility that this matter may be considered further by the Court of Appeals, we thought it important to state our views for the record.

While we do not agree with NAB's analysis that it is entitled to a stay, we do respectfully suggest that Section 809 of the Copyright Act precludes distribution of any fees at this time. In our judgment, therefore, no stay is necessary, and the relief which NAB seeks -- retention by the Tribunal of all royalty funds for the present -- is, in essence, automatic.

The MPAA argues that the Tribunal should immediately distribute at least fifty percent of the royalty pool to program syndicators because none of the parties in its Phase I post-hearing brief suggested that the syndicators should receive a smaller award. This argument, however, aside from its inconsistency with Section 809, ignores two fundamental facts. First, there are several issues which, if resolved adversely to MPAA on appeal, might reduce the syndicators' share well beyond that suggested in the Phase I post-hearing briefs; as the Tribunal is aware, the Phase I suggestions cited by MPAA did not take into account such

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issues as compilation, syndicated exclusivity and unclaimed royalties. Second, at least four parties have sought review of the Tribunal's final decision -- the NAB, NPR, ASCAP and Joint Sports Claimants. If each of these parties is completely successful on appeal and thus receives the full award it requested, substantially less than fifty percent of the royalty pool would be left for distribution to the program syndicators. Under these circumstances, it is simply impossible to conclude, as has MPAA, that any specific percentage of the royalty fund is not in controversy on appeal.

In our judgment, the considerations discussed above compel the conclusions (1) that all of the royalty fees are "subject to an appeal" and (2) that none of them may be distributed.

Very truly yours,

*David H. Lloyd*

David H. Lloyd

cc: Parties on Attached List

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