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October 28, 1980

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

Dear Chairman Burg:

Program Syndicators are in receipt of the letter filed with you today on behalf of the Joint Sports Claimants, the purpose of which is "to state [JSC's] views for the record." While it is unclear exactly what the Tribunal is to do with these views, it is apparent Joint Sports Claimants oppose any distribution of the fund at this time and that they seek to have the Tribunal rule accordingly. Because of this, Program Syndicators are compelled to respond.

Joint Sports Claimants "suggest" that Section 809 provides an automatic stay provision without analysis or support for this assertion. Program Syndicators have set forth a response to NAB's analysis of this section showing why Section 809 cannot operate as an automatic stay in this proceeding, but rather requires distribution of any amount not subject to an appeal immediately. Quite simply, the last sentence of the section would have no purpose in the section--other than to require such distribution. Joint Sports Claimants' bald assertion that distribution is precluded is in error. This is completely dispositive of the claims regarding an automatic stay.

As to grounds supporting the traditional criteria for granting a stay, Joint Sports Claimants is equally off-target. Program Syndicators is well aware that NAB's claim as to exclusivity, compilation, contracts with sports clubs, and its share for local broadcasting amounted to approximately 135% of the fund and, thus, in the extreme, could call all portions, and then some, into dispute. We assume that exclusivity and compilation would account for a very large portion of this. Neither of these are, however, the questions before the Tribunal at this stage.

The question here is: does the Tribunal believe NAB is likely to prevail on the merits. In light of the Section 809 mandate to distribute the fund, a party requesting that a portion of the fund not be distributed has an affirmative duty to show that a particular portion of the fund is subject to an appeal. This duty can be likened to a showing that a party is likely to prevail on the merits under traditional stay requirements. On claims of exclusivity and compilation, the Tribunal has ruled several times, as a legal matter and as a factual matter, in the course of this proceeding that NAB's

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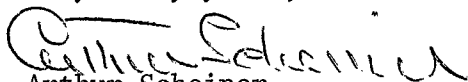
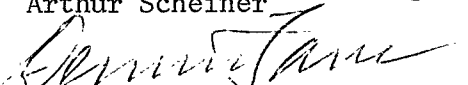
claims were unfounded. In these circumstances, and in the absence of any new showing, it is impossible for the Tribunal to switch its position by granting a stay of distribution which would, in effect, be saying NAB is now likely to prevail on the merits even though the earlier rulings were completely and consistently against them.

As to unclaimed funds, the Tribunal "determined it was neither necessary nor feasible to establish an 'unclaimed fund' for the 1978 cable distribution." (Final Determination, Advance Copy, p. 72.) This determination was based upon the lack of any objective evidence on which to form a judgment and the decision that the present allocation was equitable. The lack of evidence on the point compels a finding that a party would be unlikely to prevail on this issue. Mere assertions that the entire fund is subject to an appeal cannot prevail where the Tribunal has already determined that movants' claims are entirely without merit and where absolutely nothing new has been submitted. Accordingly, the Tribunal must find that movants' positions are unlikely to prevail on the merits.

The mere assertion that if each party is completely successful upon appeal greater than 50% of the fund will be subject to an appeal cannot prevail. Program Syndicators have placed before the Tribunal an argument with supporting data as to why 50% of the fund should be distributed immediately, including a possible method for redressing any imbalance should the Court of Appeals require more than 50% of the fund go to claimant categories other than Program Syndicators. Given the Section 809 mandate plus this showing, other parties must show why they are entitled to have stayed a greater percentage. The Tribunal can then make its own judgment as to what portion must be distributed. Mere unsupported and particularly erroneous assertions can provide no support for a claim that certain amounts are subject to an appeal.

The Tribunal should disregard Joint Sports Claimants' views in this matter, except to the extent necessary to note them on the record. No showing has yet been made as to why 50% of the fund should not be distributed immediately as requested by Program Syndicators.

Very truly yours,


Arthur Scheiner

Dennis Lane

/rrs