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WRITER'S DIRECT DIAL NUMBER

HAND DELIVERED

August 12, 1980

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

Re: Cable Royalty Distribution Proceeding
Docket No. 79-1

Dear Chairman Burg:

Yesterday we learned fortuitously through Gloria Messenger of ASCAP that the music portion of Phase II of this case has been scheduled for August 21, 1980. This development takes BMI completely by surprise.

On August 5, 1980, BMI, after prior consultation with Gloria Messenger, raised with you the possibility of the designation of a specific date for presentation of the music cases in order to accommodate schedules of counsel and witnesses. You stated that you would not assign a specific date and that all parties must be prepared to go forward on August 18th. Our Partner, Charles T. Duncan, who has appeared before the Tribunal on behalf of BMI from the inception of these proceedings, made plans to interrupt his vacation and return to Washington for the scheduled August 18th hearing.

Apparently, ASCAP thereafter requested the August 21st date in order to accommodate its counsels' vacation plans. It did not consult with BMI prior to its request. The Tribunal, possibly under the misimpression that BMI had been informed of the request, did not consult with BMI prior to its ruling. Basic standards of procedural fairness have been ignored.

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In addition, we are very troubled by the fact that our request for a date certain, made after consultation, was denied; and a subsequent request by ASCAP was granted in an ex parte manner without consultation. The matter is reminiscent of the problem described in Mr. Duncan's letter to you of June 10, 1980, a copy of which is attached.

Edward Cramer, BMI's President and Chief Executive Officer, is scheduled to be BMI's principal witness in Phase II of this proceeding. Prior commitments, however, prevent his appearance on August 20th or 21st. Mr. Cramer is to appear as a principal Congressional witness on August 20th and is thereafter scheduled to travel to Idaho to address the National Federation of Music Clubs on August 22nd. His inability to appear on those dates is due to long standing business engagements--not vacation plans.

These matters were related yesterday to Commissioner Brennan who suggested that BMI may wish to present its case on August 18th while ASCAP would still present its case on August 21st. While BMI appreciates the Commissioner's efforts, it is apparent that separate scheduling of the presentations would permit ASCAP the unfair advantage of effectively turning its direct case into a rebuttal. In its Order of July 25, 1980 (45 F.R. 50621) the Tribunal specifically stated that no rebuttal would be permitted in Phase II of this proceeding. Even if the Tribunal were to permit BMI to present its own rebuttal, as we have stated, our witness is not available at the time designated.

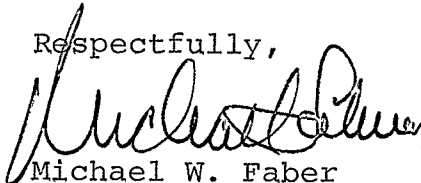
BMI submits that ASCAP should have consulted with it prior to its request. Moreover, the Tribunal should have placed BMI on notice that the request had been made. We respectfully request that the Tribunal reinstate August 18th as the date upon which all parties will be expected to be present and prepared to offer their Phase II evidence in accordance with your July 25th public announcement. In addition, we request that the Tribunal, in light of the scheduling problems described herein, permit the presentation of Phase II evidence by all music interests at the commencement of

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this phase of the proceeding. As it appears that the schedule was changed only yesterday, we do not believe that any party herein will be disadvantaged or prejudiced in any manner.

Respectfully,



Michael W. Faber



Joel S. Winnik

Counsel to
Broadcast Music Inc.

cc: Commissioner Thomas C. Brennan)
Commissioner Douglas E. Coulter)
Commissioner Frances Garcia) Hand-delivered
Commissioner Clarence L. James, Jr.)
Edward Cramer
Edward M. Chapin

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June 10, 1980

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

Dear Chairman Burg:

Thank you for your courtesy during our telephone conversation on June 9 concerning the Hearing which had been scheduled on that date (concerning AMOA surrebuttal testimony in CRT Docket No. 80-1) and its subsequent cancellation, of which Broadcast Music, Inc. was not notified, either through Mr. Chapin or me. I fully understand how this unfortunate incident occurred.

As local counsel for BMI, I am embarrassed by the fact that Mr. Chapin made a needless trip from New York City to Washington, D.C. on the morning of June 9th. I explained the circumstances to him and he graciously accepted the explanation.

I am compelled to state, from my standpoint as the responsible local attorney, that the interests of my client would be better served if I can be assured that the Tribunal's procedures, either formal or informal, will, to the extent possible, prevent the repetition of a similar occurrence in the future.

I again express my appreciation and thanks to you for your unfailing courtesy, not just yesterday, but throughout the several proceedings in which we have been mutually involved.

With personal good wishes,

Sincerely yours,

Charles T. Duncan
Charles T. Duncan

CTD:sld

cc: ✓ Edward W. Chapin, Esq.
Albert F. Ciancimino, Esq.
Bernard Korman, Esq.
Benjamin Zelenko, Esq.
Nicholas E. Allen, Esq.

CERTIFICATE OF SERVICE

I hereby certify that, on this 12th day of August, 1980, copies of the foregoing letter to Chairman Mary Lou Burg, dated August 12, 1980, Re: Cable Royalty Distribution Proceeding, Docket No. 79-1, were served upon the following parties to this proceeding by first class mail, postage prepaid:

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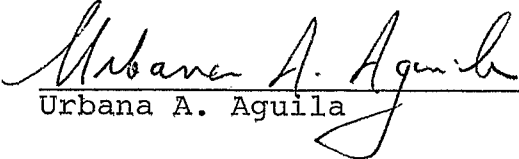
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