

ORIGINAL

Before The
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C. 20036

In the Matter of)
) Docket No. CRT79-1
DISTRIBUTION OF CABLE)
ROYALTY FEES)

ANSWER OF PROGRAM SUPPLIERS IN OPPOSITION TO
STAY PENDING APPEAL OR, IN THE ALTERNATIVE, REQUESTING
CONDITIONS BE ATTACHED TO A STAY

The Motion Picture Association of America, Inc., its member companies, and other companies engaged in the production and/or distribution of programming exhibited by television broadcast stations 1/ (Program Suppliers) hereby file their answer to the application for stay filed by National Association of Broadcasters (NAB) opposing the grant of stay or, in the alternative, requesting that if the limited two week stay sought by NAB is granted, that required conditions be attached. In support of this pleading, Program Suppliers state:

NAB's application of April 13, 1981 must be considered to be an application for rehearing of the Tribunal's actions denying NAB's request for stay and granting partial distribution. NAB, in its original application for stay filed on October 22, 1980, requested the same relief as it is requesting here. In that pleading, NAB stated its request for relief as follows:

For all the foregoing reasons, the NAB respectfully requests that the Tribunal, on the law and in the exercise of its discretion, grant a stay of its September 23, 1980 final determination

1/ The member companies and other program producer/distributor companies are listed in Attachment A.

and postpone distribution of any and all 1978 cable royalties pending final resolution of the NAB appeal of that decision to the United States Court of Appeals for the District of Columbia Circuit and in any event, up to and including publication of the Tribunal's decision on this application and alternately, for a temporary stay pending a second application for this relief by NAB to the United States Court of Appeals for the District of Columbia Circuit in the event that such an application is necessary. (Emphasis added.)

This pleading has been before the Tribunal throughout its consideration of whether to grant a stay or not.

NAB is seeking the same relief in its April 13 pleading - a temporary stay pending application for stay to the Court of Appeals - that it sought earlier. The Tribunal's order granting partial distribution denied in part and granted in part NAB's motion by ordering a partial distribution, but at the same time postponing distribution until several days after its order was issued. In this context, NAB's instant request must be viewed as seeking reconsideration of the Tribunal's order. No new facts have been alleged by NAB in its rather short pleading that have not already been before the Tribunal; nor has the law or any other factor changed since the time the Tribunal issued its order. In such circumstances, reconsideration of the order does not properly lie. All arguments have already been considered by the Tribunal before issuing its order and nothing has changed to require reversal or modification.

In the alternative, Program Suppliers request that if the Tribunal decides to issue the two week stay requested here by NAB, it do so under the conditions set forth in

the attached proposed order which Program Suppliers request the Tribunal adopt. NAB has implied in its application that if the two week stay is granted, it will not seek a stay at the court on an emergency motion basis. The draft order makes that implied course of action a specific condition of the two week stay. In addition, the draft order conditions the two week stay further by requiring NAB to file its motion with the court by April 17, 1981. This condition would permit parties answering NAB motion (including NAB's response to these answers) to do so within the two week stay as well as permit the court time to consider the motion and to act upon it within the same period. This condition poses no undue hardship on NAB. First, it is given the relief it seeks. Next, NAB is given an additional day to file with the court.

Further, in its earlier application for stay to the Tribunal NAB has already developed the arguments it would be presenting to the court. NAB has been aware for several months of the possibility that the Tribunal would likely grant a partial distribution: indeed, NAB's comments included an alternative request for partial distribution to NAB and it should have been prepared for this possibility. Finally, NAB has been granted a stay far longer than necessary. The partial distribution has been delayed for several months and further delay is unwarranted. NAB's claimed irreparable injury should itself provide the necessary impetus for a quick filing without delaying the distribution even longer.


The order makes clear that should NAB fail to file on or before April 17, 1981, the stay will be lifted immediately and distribution will proceed. This condition is necessary to assure that NAB will take all action to assure that court review is completed within the two week period.

WHEREFORE, Program Suppliers request the Tribunal to rule that reconsideration should not be granted or, in the alternative, to issue the order attached hereto.

Respectfully submitted,

MOTION PICTURE ASSOCIATION OF
AMERICA, INC.
ITS MEMBER COMPANIES
OTHER PROGRAM PRODUCERS AND
DISTRIBUTORS

By 
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April 14, 1981

ATTACHMENT A

Member Companies of Motion Picture Association of America, Inc.

Avco Embassy Pictures Corp.
Columbia Pictures Industries, Inc.
Walt Disney Productions
Filmways Pictures, Inc.
Metro-Goldwyn-Mayer Inc.
Paramount Pictures Corporation
Twentieth Century-Fox Film Corporation
United Artists Corporation
Universal Pictures, a Division of Universal City Studios, Inc.
Warner Bros. Inc.

Other Program Producer/Distributor Companies

Celebrity Productions, Inc.
Filmways Enterprises Inc.
Filmways Feature Productions, Inc.
Filmways International, Ltd.
Filmways Motion Pictures, Inc.
Filmways TV Productions, Inc.
Goodson-Todman Enterprises, Ltd.
G-T Programs, Inc.
Hanna-Barbera Productions
Heatter-Quigley Distribution Corp.
Heatter-Quigley, Inc.
ITC Entertainment, Inc.
Lakeside Television Company
Marvel Comics Group, a Division of Cadence Industries Corporation
MTM Enterprises, Inc.
Panel Productions, Inc.
Price Productions, Inc.
Q-M Productions
Rhodes Productions Company
Ruby-Spears Productions, Inc.
T.A.T. Communications Company
Tandem Productions, Inc.
Viacom International
Lassie Television, Inc.
Lone Ranger Television, Inc.

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ROYALTY FEES)

ORDER GRANTING LIMITED STAY
WITH CONDITIONS

By order issued April 13, 1981 (46 Fed. Reg. 21637), the Copyright Royalty Tribunal (Tribunal) ruled that 50% of the 1978 cable royalty fund should be distributed to the claimant categories in the same proportionate shares as the categories were allocated in the Final Notice (45 Fed. Reg. 63026). This action was done pursuant to Section 809 of the Act which permits distribution of the fund to the extent it is not subject to an appeal. NAB filed an application on April 13, 1981 in which it requested that the Tribunal "postpone the effective date of [the partial distribution] from April 16, 1981 until and including April 30, 1981." Subject to the conditions stated, the Tribunal will grant NAB's request.

NAB has indicated that it will seek a judicial stay of the partial distribution. NAB implies that if the two week stay is granted it will file the motion under Rule 6(a) of the Rules of the District of Columbia Circuit and Rule 27(a) of the Federal Rules of Appellate Procedure; in the event a stay is not granted, NAB indicates it will file an emergency motion under Rule 6(j). The advantage of the Rule 6(a) motion is that it permits other parties opposing the motion

seven days to file their response in opposition, Rule 6(b), and allows the movant three days to reply, Rule 6(c). No time periods for responses and replies are provided under Rule 6(j) because an "emergency" requires that responses be filed as quickly as possible and that the Court rule as quickly as possible.

The Tribunal has determined that a two week stay should be issued upon the condition that NAB file its stay request with the court under Rule 6(a) of the Court's Rules. The partial distribution is the first interpretation of Section 809 in the context of an appeal from a royalty distribution proceeding. The issues presented have caused a split of opinion among the members of the Tribunal. In these circumstances, the benefit of allowing all affected parties to present their arguments to the Court outweighs the detriment of withholding the partial distribution for an additional two weeks. Furthermore, the action of extending the stay for two weeks means that an "emergency" will not exist until the date on which the stay is lifted. If NAB does not file a motion under Rule 6(a), the stay shall be lifted immediately because this will negate the countervailing balance - full development of argument by affected parties - that justifies extension of the stay.

The other condition which the Tribunal will impose for issuance of a stay is that NAB file its motion by April 17, 1981. This condition is attached in order to assure that the parties' will have completed their pleadings before the court

prior to the end of the stay extension. Court action can then be completed by April 30, 1981. The total time allowed for responses and reply is ten days; by starting the time running on April 17, 1981, it will be completed by April 27, 1981. This will provide an orderly means of resolving this question within the shortest possible time. Should NAB fail to file on or before April 17, 1981, the stay will be immediately lifted because the reason warranting an extension - orderly resolution as quickly as possible - will no longer be feasible.

For the reasons stated, the Tribunal orders that partial distribution be stayed through April 30, 1981, subject to the following conditions being met by NAB:

- (a) NAB file its motion for stay with the Court under Rule 6(a) of the Local Rules of the District of Columbia Circuit and Rule 27(a) of the Federal Rules of Appellate Procedure so as to permit the filing of responses in opposition three days after the responses are filed;
- (b) NAB file its motion on or before April 17, 1981.

Should either condition not be met, partial distribution in accordance with the Tribunal's order of April 13, 1981 will proceed immediately.

Clarence L. James, Jr.
Chairman

CERTIFICATE OF SERVICE

I, Arthur Scheiner, hereby certify that copies of the foregoing "Answer Of Program Suppliers In Opposition To Stay Pending Appeal Or, In The Alternative, Requesting Conditions Be Attached To A Stay" have been served, by first-class mail, postage prepaid, upon the parties appearing on the attached service list.


Arthur Scheiner

Dated at Washington, D. C. this 14th day of April, 1981

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