

ORIGINAL

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

In the Matter of)
) CRT 79-1
1978 Cable Royalty Fees)
Distribution)

NOTICE OF POSITION TAKEN BY
THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters (NAB), by its attorneys, hereby responds to the Tribunal's Notice of April 22, 1982, requesting claimants who intend to participate in the Tribunal's proceedings on the remand of this case from the United States Court of Appeals to notify the Tribunal of their intention to participate and of the position they will assert on the following question:

Does the record of the 1978 distribution proceeding support an award of 0.25% to National Public Radio, or shall no award be made to National Public Radio and the 0.25% be allocated as provided in the Tribunal's final order?

47 Fed. Reg. 18019-20 (April 27, 1982).

The only portion of the Tribunal's 1978 distribution decision which was remanded is its "decision retracting its initial award of 0.25% of NPR [National Public Radio] and allocating that amount to PBS [Public Broadcasting Service]." National Association of Broadcasters v. Copyright Royalty Tribunal, No. 80-2273, slip op. at 35 (April 9, 1982). If,

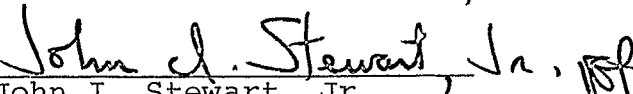
as it appears, the Tribunal intends to stay within the bounds of the remand and leave unchanged the allocations made to the other claimants in its final order, NAB will not participate. If, however, the Tribunal is considering altering the allocations to parties other than PBS in order to award royalties to NPR, NAB does intend to participate. NAB would assert that such an alteration of the 1978 allocation is beyond the scope of the Court's remand and is without record support.

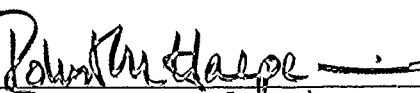
So that it may determine whether its participation is necessary, NAB respectfully requests the Tribunal to declare whether it will consider in the remanded portion of the 1978 proceeding altering the awards set forth in the 1978 final order to parties other than NPR and PBS.

Respectfully submitted,

THE NATIONAL ASSOCIATION OF
BROADCASTERS

By 
Victor E. Ferrall, Jr.

By 
John I. Stewart, Jr.

By 
Robert M. Halperin

Of Counsel:

Erwin G. Krasnow, Esq.
James J. Popham, Esq.
Michael D. Berg, Esq.

CROWELL & MORING
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

Its Attorneys

May 5, 1982

CERTIFICATE OF SERVICE

I, Clarice L. Shearer, certify that I have this 5th day of May, 1982 caused copies of the foregoing "Notice of Position Taken By The National Association of Broadcasters" to be served by mail, first class, postage prepaid on the following:

*The Honorable Frances Garcia
Chairperson
Copyright Royalty Tribunal
1111 20th Street, N.W.
Washington, D.C. 20036

Bernard Korman, Esquire
ASCAP - One Lincoln Plaza
New York, New York 10023

Charles T. Duncan, Esquire
Peabody, Lambert & Meyers
Suite 1200
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Peter E. Robinson, Esquire
P.O. Box 8478
Ottawa, Ontario
K1G 3J5

Grover C. Cooper, Esquire
Fisher, Wayland, Cooper & Leader
Suite 730
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

David H. Lloyd, Esquire
Arnold & Porter
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Philip R. Hochberg, Esquire
Baraff, Kaerner, Olander & Hochberg
Suite 203
2030 M Street, N.W.
Washington, D.C. 20036

* Hand Delivered

Ritchie T. Thomas, Esquire
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Robert W. Coll, Esquire
McKenna, Wilkinson & Kittner
1150 17th Street, N.W.
Washington, D.C. 20036

Arthur Scheiner, Esquire
Wilner & Scheiner
Suite 300
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

*Jamie S. Gorelick, Esquire
Miller, Cassidy, Larroca & Lewin
Suite 500
2555 M Street, N.W.
Washington, D.C. 20036

*Gene A. Bechtel, Esquire
Farmer, Wells, McGuinn, Flood,
Sibal & Bechtel
Suite 402
1000 Potomac Street, N.W.
Washington, D.C. 20007

Robert F. Corazzini, Esquire
Smith & Corazzini
Suite 700
1776 K Street, N.W.
Washington, D.C. 20006

Arthur J. Levine, Esquire
Spencer & Kaye
1111 19th Street, N.W.
Washington, D.C. 20036

Clarice L. Shearer
Clarice L. Shearer

CROWELL & MORING
1100 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036

(202) 452-5800
CABLE: CROMOR
TELECOPIER: 202-452-5970
W. U. I. (INTERNATIONAL) 64344
W. U. (DOMESTIC) 89-2448

MAY 5 1982 11:00
ORIGINAL

May 5, 1982

The Honorable Frances Garcia
Chairperson
Copyright Royalty Tribunal
1111 20th Street, N.W.
Washington, D.C. 20036

Dear Chairperson Garcia:

Transmitted herewith for filing with the Tribunal,
on behalf of the National Association of Broadcasters (NAB),
are an original and ten copies of the "Notice of Position
Taken By The National Association of Broadcasters" in the
remanded portion of the 1978 cable royalty fees distribution
proceeding.

If there are any questions concerning this matter,
please communicate with this office.

Respectfully submitted,


Robert M. Halperin

Enclosure

CABLE CLAIMS HEARING DOCKET (Sept. 6 meeting) 1979

(Arguments on Controversy)

1. AVCO Embassy Corp., Los Angeles (Peter Bærstedt) dated 8/31
2. Midwest Radio/TV, Minneapolis (Peter Shuebruk, Fly, Shuebruk, Blume, Gaguine, Boros and Schulkind) 9/6
3. KCOP Television, Los Angeles (R. Clark Wadlow, Hogan & Hartson) 9/11
4. MTM Enterprises (Walter Schier, Hertzberg & Childs) 9/13
5. Westinghouse Co. (Ramsey Woodworth, Hedrick & Lane) 9/19
6. Lakeside Television Co., Dobbs Ferry, NY (Bernard Schulman) 9/20
7. KTSC/TV, Pueblo, Colorado (John C. Crabbe) 9/21
8. Hanna-Barbera Prod. (Wm Rogers, Youngman, Hungate & Leopold) 9/24
9. NAB (James Popham) requestg delay in submission 9/25
10. WDBJ, Roanoke, VA (Robt. Pugh, Sec/Treas) 9/26
11. QM Productions, Hollywood, CA 9/26
12. Philip Hochberg on behalf of ~~xxxxxxx~~ ASAP, MPAA, Joint Sports, etc. re requestg by NAB for delay 9/26
13. Peter Shuebruk, Herbert Schulkind and Gastfreund 9/27
14. WHYN-TV, Springfield, MA (Arnold Lutzker, Dow, Lohnes etc) 9/28
15. ASCAP & SESAC, New York (Bernard Korman) 10/1
16. Harden Broadcasting Co. (KNAC) (Harry P. Warner, L.A., CA) 10/1
17. KACE-FM, Inglewood, CA & APB Enterprises, Inc. (WLUM) Milwaukee, WI (Harry Warner, L.A., CA) 10/1
18. Buckley Communicatns, Inc. FM Stat KGIL, San Fernando, CA & Buckley Broadcastg Inc. KKHI-FM, S.F., CA (Harry Warner) "
19. Capital Cities Communications Inc., New York (Robt. Gelles) "
20. The Hearst Corp./King Features Syndicate Div., New York (Stanley Stempler) "
21. Ziff-Davis Broadcasting Co., New York (James C. McCreary) "
22. Canadian Broadcasting Corp., Ottawa (Peter Robinson) "

(Arguments on Controversy)

- | | |
|---|---------|
| 23. American Family Corp., Combined Comm. Corp, Gaylor Broadcastg. Co., etc. (R Jerald N. Fritz, Pierson, Ball & Dowd, Wash., D.C.) | 10/1/79 |
| 24. Jack Barry Productions & Barry & Enright Prod. (Howard Liberman, Cohn and Marks, Wash., DC) | " |
| 25. Ontario Educat'l Comm. Author endorsing position taken by Canadian Broadcasting Corp. (John Pelletier) | " |
| 26. BMI STATEMENTS on Statutory Deadline; 26A Structure and Procedures of Proceedings | " |
| 27. Bluegrass Media, Inc., WBKO, Bowling Green, KY (Victor Ferrall and Linda K. Smith, Crowell & Moring, DC) | " |
| 28. Buffalo Broadcastg Co., Inc. WIVB-TV, Buffalo, NY (Alfred C. Cordon, Cordon & Jacob, DC) | " |
| 29. MPAA (Fritz Attaway, DC) | " |
| 30. Worldvision Enterprises, Inc. (E. Wm. Henry, Ginsburg, Feldman etc, DC) (Supplemental brief rec'd 10/5) | " |
| 31. TCI Programs, Inc. (James A. Koerner, Baraff, Koerner & Olender) | " |
| 32. Nat'l Broadcasting Co. (Eleanor O'Hara, Asst. Gen'l Attorney) | " |
| 33. Arnold & Porter (Baseball joined by Basketball, Nat'l Hockey and Soccer Leagues) (James Fitzpatrick) | " |
| 34. Public Broadcasting Service (Shriver, Smith, Weiss) | " |
| 35. Nat'l Public Radio (Ernest Sanchez and Carol Moody) | " |
| 36. Joint Sports Claimants (Fitzpatrick, Garrett-Baseball-Hochberg-Basketball, Hockey, Soccer) | 10/2/79 |
| 37. MTM Enterprises, Inc. (Ken Phillips, Hertzberg & Childs) | " |
| 38. Children's TV Workshop (Art Levine) | " |
| 39. CBS--Structure and Procedures of the Distribution (Harry Olsson) & Distribution (Harry Olsson) | 10/3/79 |
| 40. Tandem Productions, Inc., L.A., CA (Robert Cahill) | 10/5/79 |
| 41. Nat'l Assn. of Broadcasters (NAB) (Coudert Bro., NY) | 10/9/79 |

Cable Royalty Distribution Proceeding - Phase II - Witnesses

1. ASCAP	Dr. Paul Fagan Mr. Bernard Korman	Mr. Paul Marks Mr. Robt. Nathan
2. BMI	Mr. Edward Cramer Mr. Allan Smith Mr. Paul Rosenthal	Mr. Ed Chapin Dr. Richard Link Mr. Al Feilich
3. CBC	Mr. Ronald Devion Mr. Michael Ginies Mr. Roger Wagner	Mr. Michael Morgan Mr. Mervyn Stone
4. CBN <i>A - LTR Re Settlement</i>	Pat Robertson Mr. Eldon Wyant Mr. Michael Little Mr. Everett Kochheiser	Mr. Stanley Ditchfield Mr. Horace P. Gross Mr. James Reed
5. JSC	Dr. LeMieux	
6. MPAA <i>A - Tax issue settlement</i>	Mr. Allen Cooper	
7. NAB	Mr. James J. Popham	
8. NCAA	Mr. Robt. James Mr. David Seifert	Mr. Wm. Rasmussen
9. SESAC	Mr. Al Ciancimino	
10. Time Life Films	Mr. Wynn Nathan	Mr. Roger Wagner
11. Turner Broadcasting System	Mr. Don Anderson	
12. Grinnell Communications	Mr. Roger Wagner	

Pleadings

Received

1. All Pro Broadcasting, Inc. 11/14/79
2. Golden West Broadcasters 11/14/79
3. Canadian Broadcasting Corp. 11/15/79
4. Radio Station WGNA 11/15/79
5. Motion Picture Association of America, Inc. 11/15/79
6. Cartoon Characters 11/15/79
7. American Society of Composers, Authors and Publishers 11/15/79
8. Broadcast Music, Inc. 11/15/79
9. Superstation, Inc. 11/15/79
10. The National Collegiate Athletic Association 11/15/79
11. National Public Radio 11/15/79
12. National Association of Broadcasters 11/15/79
13. Joint Sports Claimants 11/15/79
14. WYZZ Radio (certified mail post marked 11/14/79) 11/20/79

Reply Comments

Received

1. Public Broadcasting Service 11/28/79
2. Broadcast Music, Inc. 11/28/79
3. American Society of Composers, Authors and Publishers 11/28/79
4. National Association of Broadcasters 11/28/79
5. Superstation, Inc. 11/28/79
6. The National Collegiate Athletic Association 11/28/79
7. Joint Sports Claimants 11/28/79
8. Motion Picture Association of America, Inc. 11/28/79

RULEMAKING: FIXATION OF LIVE PROGRAMS (CABLE)

DOCKET OF COMMENTS RECEIVED

1978

6/14/78 CBS, Inc. - Harry R. Olsson, Jr.

6/15/78 MOTION PICTURE ASS'N. OF AMERICA
Fritz E. Attaway

6/15/78 TURNER COMMUNICATIONS CORP.
Peter H. Feinberg

6/15/78 NATIONAL ASS'N. OF BROADCASTERS
Erwin G. Krasnow & James J. Popham

6/15/78 COMMISSIONER - Robert Alan Garrett
OF BASEBALL

6/19/78 NATIONAL HOCKEY LEAGUE
Philip R. Hochberg

6/19/78 NATIONAL BASKETBALL ASSOCIATION
Philip R. Hochberg

PROPOSED RULE:

8/21/78 NATIONAL HOCKEY LEAGUE - Philip R. Hochberg

8/21/78 NATIONAL BASKETBALL ASS'N- Philip R. Hochberg

8/21/78 NATIONAL ASS'N OF BROADCASTERS
Erwin G. Krasnow-James J. Popham

8/21/78 COMMISSIONER OF BASEBALL
James J. Fitzpatrick-Robert Alan Garrett

COMMENTS ON CABLE RULE AMENDMENT

(FR 20220-21 - 4/4/79)

<u>NO.</u>	<u>Date Rec'd</u>	<u>Rec'd From</u>
1	4/20/79	Douglas Wood (Hall, Dickler, Lawler etc
2	4/24	BMI
3	4/25	ASCAP
4	4/25	CBS Inc.
5	4/25	Commr. of Baseball
6	4/2 7	BI Associates, Inc.
7	4/26	Nat'l Assn. of Broadcasters
8	4/26	Nat'l Basketball Assn.
9	4/26	Nat'l Hockey League

REPLY COMMENTS

1	5/9	BMI
2	5/9	Nat'l Assn. of Broadcasters
3	"	PBS
4	"	MPA

Due Date

<u>03/15/78</u>	<u>Initial comments re content of proposed regulations for filing of claims (43 FR 6263)</u>
<u>04/03/78</u>	<u>Reply comments (43 FR 6263)</u>
<u>05/22/78</u>	<u>Comments concerning content and filing time for claims (43 FR 19423-4)</u>
✓ <u>06/15/78</u>	<u>Comments concerning nature of proof of fixation (43 FR 19423-4)</u>
✓ <u>08/21/78</u>	<u>Comments concerning proposed rule with respect to proof of fixation of copyrighted works (43 FR 7/28/78)</u>
✓ <u>04/25/79</u>	<u>Initial comments re content of proposed regulation on filing of claims (44 FR 20220-1)</u>
✓ <u>05/09/79</u>	<u>Reply comments (44 FR 20220-1)</u>
<u>10/01/79</u>	<u>Proposals on structure and procedures of the distribution proceedings (44 FR 9/12/79)</u>
✓ 11/15/79	Legal briefs re compilation, exclusive licensee, sports claimants, and any other question which may affect a claim (44 FR 59930)
✓ 11/28/79	Reply comments (44 FR 59930)
12/05/79	Oral arguments will commence (44 FR 59930)
01/31/80	Pre-hearing memo on form and timing of submissions, amount of time, number of witness and identification of studies or exhibits, etc. (44 FR 75201)
02/14/80	Conference of claimants (44 FR 75201)
✓ 03/24/80	Submission of direct statements (conference of claimants)
03/31/80	Phase I of evidentiary hearing commences
05/06/80	Phase I hearing concludes
05/07/80	Tribunal issues order governing scheduling for further proceedings; written direct cases due on May 19, 1980
05/22/80	Hearing commences
✓ 05/23/80	Hearing concludes; written briefs on legal issues re unclaimed funds; rebuttal testimony and witness lists due
05/27/80	Rebuttal hearings commence
05/29/80	Rebuttal hearings conclude
06/06/80	Joint claimants filed information re allocation of total shares
✓ 07/07/80	Findings of fact and conclusions of law due
07/30/80	Tribunal publishes (45 FR 50621) summary statement of Phase I
08/15/80	Entitlement justification due of claimants not associated with a joint claim
08/19/80	Phase II hearing commences
08/21/80	Phase II hearing concludes
09/23/80	Tribunal publishes (45 FR 63026) its final determination



Due Date

03/15/78 Initial comments re content of proposed regulations for filing of claims (43 FR 6263)

04/03/78 Reply comments (43 FR 6263)

05/22/78 Comments concerning content and filing time for claims (43 FR 19423-4)

06/15/78 Comments concerning nature of proof of fixation (43 FR 19423-4)

08/21/78 Comments concerning proposed rule with respect to proof of fixation of copyrighted works (43 FR 7/28/78)

04/25/79 Initial comments re content of proposed regulation on filing of claims (44 FR 20220-1)

05/09/79 Reply comments (44 FR 20220-1)

10/01/79 Proposals on structure and procedures of the distribution proceedings (44 FR 9/12/79)

11/15/79 Legal briefs re compilation, exclusive licensee, sports claimants, and any other question which may affect a claim (44 FR 59930)

11/28/79 Reply comments (44 FR 59930)

12/05/79 Oral arguments will commence (44 FR 59930)

01/31/80 Pre-hearing memo on form and timing of submissions, amount of time, number of witness and identification of studies or exhibits, etc. (44 FR 75201)

02/14/80 Conference of claimants (44 FR 75201)

03/24/80 Submission of direct statements (conference of claimants)

03/31/80 Phase I of evidentiary hearing commences

05/06/80 Phase I hearing concludes

05/07/80 Tribunal issues order governing scheduling for further proceedings; written direct cases due on May 19, 1980

05/22/80 Hearing commences

05/23/80 Hearing concludes; written briefs on legal issues re unclaimed funds; rebuttal testimony and witness lists due

05/27/80 Rebuttal hearings commence

05/29/80 Rebuttal hearings conclude

06/06/80 Joint claimants filed information re allocation of total shares

07/07/80 Findings of fact and conclusions of law due

07/30/80 Tribunal publishes (45 FR 50621) summary statement of Phase I

08/15/80 Entitlement justification due of claimants not associated with a joint claim

08/19/80 Phase II hearing commences

08/21/80 Phase II hearing concludes

09/23/80 Tribunal publishes (45 FR 63026) its final determination



CRT 79-1 - Chronology of Events

<u>Due Date</u>	
03/15/78	Initial comments re content of proposed regulations for filing of claims (43 FR 6263)
04/03/78	Reply comments (43 FR 6263)
05/22/78	Comments concerning content and filing time for claims (43 FR 19423-4)
06/15/78	Comments concerning nature of proof of fixation (43 FR 19423-4)
08/21/78	Comments concerning proposed rule with respect to proof of fixation of copyrighted works (43 FR 7/28/78)
04/25/79	Initial comments re content of proposed regulation on filing of claims (44 FR 20220-1)
05/09/79	Reply comments (44 FR 20220-1)
10/01/79	Proposals on structure and procedures of the distribution proceedings (44 FR 9/12/79)
11/15/79	Legal briefs re compilation, exclusive licensee, sports claimants, and any other question which may affect a claim (44 FR 59930)
11/28/79	Reply comments (44 FR 59930)
12/05/79	Oral arguments will commence (44 FR 59930)
01/31/80	Pre-hearing memo on form and timing of submissions, amount of time, number of witness and identification of studies or exhibits, etc. (44 FR 75201)
02/14/80	Conference of claimants (44 FR 75201)
03/24/80	Submission of direct statements (conference of claimants)
03/31/80	Phase I of evidentiary hearing commences
05/06/80	Phase I hearing concludes
05/07/80	Tribunal issues order governing scheduling for further proceedings; written direct cases due on May 19, 1980
05/22/80	Hearing commences
05/23/80	Hearing concludes; written briefs on legal issues re unclaimed funds; rebuttal testimony and witness lists due
05/27/80	Rebuttal hearings commence
05/29/80	Rebuttal hearings conclude
06/06/80	Joint claimants filed information re allocation of total shares
07/07/80	Findings of fact and conclusions of law due
07/30/80	Tribunal publishes (45 FR 50621) summary statement of Phase I
08/15/80	Entitlement justification due of claimants not associated with a joint claim
08/19/80	Phase II hearing commences
08/21/80	Phase II hearing concludes
09/23/80	Tribunal publishes (45 FR 63026) its final determination



ORIGINAL

CRT 79-1 - Comments re Partial Distribution

- | | |
|--------------------------------|------------|
| 1. Canadian Broadcasting Corp. | 2 March 81 |
| 2. ASCAP | 5 March 81 |
| 3. BMI | 6 March 81 |
| 4. Joint Sports and NCAA | 6 March 81 |
| 5. MPAA | 6 March 81 |
| 6. NAB | 6 March 81 |
| 7. NPR | 6 March 81 |
| 8. PBS | 6 March 81 |