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March 18, 1980

The Honourable Mary Lou Burg
Chairman
Copyright Royalty Tribunal
1111 20th Street NW
Washington, D.C. 20036

Dear Miss Burg:

The Ontario Education Communications Authority (OECA) (TV Ontario) wishes to submit the following statement of its case under 17 USC 111 as required pursuant to the order made by the Tribunal on February 14, 1980.

The U.S. Copyright Act, Section 111 sets out certain conditions which must be met by copyright claimants in order for them to be entitled to the royalty fees as provided in ss. 111 (d) (3), (4) and (5).

These are:

1. Copyright Ownership
 2. Primary Transmission
 3. Secondary Transmission
 4. Non Network Status
 5. Distant Signal Status
1. Copyright Ownership
 - A) Television programming produced by TV Ontario (OECA):

The Ontario Educational Communications Authority was established by provincial statute in order to provide educational broadcasting and communications in the Province of Ontario. TV Ontario, a division of the OECA, owns and operates an educational television network in the Province of Ontario.

During 1978 TV Ontario broadcasts for its Ontario television network amounted to approximately one hundred and twenty (120) hours per week or three thousand one hundred and twenty (3120) hours per the 1978 calendar year. During the 1978 calendar year TV Ontario produced and is the copyright owner of approximately 1,845 units of programming representing approximately 615 hours of broadcast television.

- B) TV Ontario utilized acquired television programs for the balance of its 1978 calendar year TV broadcast schedule. These programs were obtained by TV Ontario through exclusive licences. TV Ontario relies upon the arguments put forth by the Canadian Broadcasting Corporation which support an exclusive licensee being the copyright owner of licensed programs.
- C) TV Ontario's television programs produced by it are fixed in such a manner as to meet the criteria established by the definition of "fixed" in 17 USC 101.

2. Primary Transmission

TV Ontario is licenced by the Canadian Radio Television and Telecommunications Commission (CRTC) to broadcast over a number of OECA owned television stations throughout the Province of Ontario.

3. Secondary transmissions of TV Ontario owned television programs made by United States cable systems.

Secondary, simultaneous transmissions were made of the primary transmission of TV Ontario television programs during calendar year 1978 in the United States. Such simultaneous transmissions were and are permitted under the authority granted to United States cable systems in USC 111(c)(4). The statements of account filed semi annually with the Register of Copyrights pursuant to the requirements in 17 USC 111 (d) (2) (A) set out those Canadian and Province of Ontario stations whose primary transmission signals are secondarily transmitted by United States cable systems.

BI Associates have accurately recorded all data from the aforementioned statements of account and this data

has been transposed into a computer data base.

TV Ontario has already submitted a statement setting out the number and location of secondary transmissions of its television programs in the United States during the calendar year 1978, and TV Ontario wishes to reserve the right to submit additional evidence and statements in respect of the same year, for TV Ontario produced and copyrighted television programs which were licensed to United States television broadcasters for purposes of primary television broadcasts. Depending on the Tribunal's final determination of the issue of "exclusive licensees" constituting copyright ownership, TV Ontario will determine which U.S. origin primary transmissions, incorporating copyrighted TV Ontario produced television programs, were the subject of secondary transmissions by U.S. cable systems. TV Ontario's claim in such a case would be in the same category as the case put forward by the motion picture producers.

4. Non Network Status

TV Ontario's television programs are non network programming. TV Ontario is not owned or operated by or affiliated with one or more of the television networks in the United States providing nation wide transmissions.

5. Distant Signal Status

Compensation from the cable royalty fund requires that a copyright owner's work must have been included in a signal which was the subject of distant secondary transmission outside the "local service area of a primary transmitter".

TV Ontario's claim relies on the statements made by the cable system owners as to its television signal being a distant signal. TV Ontario is prepared to file geographic or other evidence in the event of any uncertainty or dispute.

TV Ontario's entitlement to a share of the cable royalty fees for distant secondary transmissions of TV Ontario owned programs.

TV Ontario's claim is based upon fulfillment of the statutory requirements set out in 17 USC 111 (d) (4) which provides that distribution of the royalty fees deposited with the Register of Copyrights be made to qualified copyright owners whose works were the subject of secondary transmissions by cable systems as follows:

- A. The work was included in a secondary transmission made by a cable system of a non network television program in whole or in part beyond the local service area of the primary transmitter.
- B. The work was included in a secondary transmission identified in a special statement of account deposited under Clause 2 (a) of 111 (d).
- C. The work was included in non network programming consisting exclusively of aural signals carried by a cable system in the whole or in part beyond the local service area of the primary transmitter of the programming.

TV Ontario supports the argument presented by the Canadian Broadcasting Corporation with respect to the formula for distributing the royalty fees. More specifically such formula provides that the royalty fees should be based on a straight aggregation of a secondarily transmitted, distant, non network signals. In TV Ontario's case the formula would be applied as follows:

- A. Total number of hours of all TV Ontario owned programs broadcast in the accounting period, multiplied by the number of cable systems which secondarily distribute the said broadcast distant signals.
- B. Total number of hours of all programs broadcast during the accounting period on all stations and included in distant, non network signals which

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were given secondary transmission multiplied
by the number of cable systems which secondarily
distributed the said distant, non network signals.

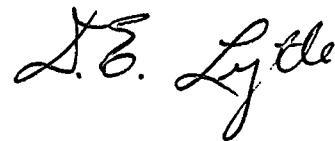
A divided by B multiplied by
the total copyright royalty
fund equals TV Ontario's share
of copyright royalty fund.

All of which is respectfully submitted for your consideration.

Yours truly,

John P. Pelletier
The Ontario Education Communications
Authority

This is a true copy of a telex sent by John P. Pelletier
of TV Ontario with the request that it be filed on his
behalf through the offices of CBC. This is a retyped copy
of the telex with transmission errors removed.



Director
Corporate Program Services
Canadian Broadcasting
Corporation