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Before the
Copyright Royalty Tribunal
Washington, D. C.

11 pages

In the Matter of:

Cable Royalty)
Distribution Proceeding)

JOINT STATEMENT OF THE AMERICAN
SOCIETY OF COMPOSERS, AUTHORS
AND PUBLISHERS AND SESAC, INC.

The American Society of Composers, Authors and Publishers (ASCAP) and SESAC, Inc. (SESAC) submit this joint statement in accordance with the Copyright Royalty Tribunal's scheduling order announced at the pre-hearing conference of February 14, 1980.

The Tribunal has decided that the first stage in these proceedings will be the determination of the relative shares of cable compulsory license fees for the four major groups of claimants: 1) music; 2) motion pictures and syndicated television programs; 3) sports; and 4) broadcasters. This statement deals with music's share.

INTRODUCTION

It is axiomatic that, in our economic system, marketplace forces are the best determinants of the economic value of goods and services. Here, a compulsory license exists, and the Tribunal must determine economic value. The Tribunal's determination, we suggest, should be based on what happens in analogous existing markets.

We believe the Tribunal's determination must also account for the relative values of the copyrighted program elements carried by cable systems. The value of one of those elements -- broadcasters' locally produced television programming -- is, we suggest, de minimis.

Broadcasters' programs consist almost exclusively of local news and local public affairs shows. Distant cable audiences and cable systems are not interested in those programs. After all what interest is there to an El Paso viewer in a Los Angeles local newscast? Cable systems would pay nothing in the open market for these programs.

We submit that even though, as a technical matter, these programs are copyrighted, their value is nil for cable royalty distribution purposes. They are, therefore, excluded from our analysis.

Our analysis shows that music is entitled to 13.5% of 1978 cable compulsory license fees. We base our conclusion on: 1) television's payments for music and other copyrighted materials; 2) radio's payments for music and other copyrighted materials; 3) a reasonable allocation of cable compulsory license fees between radio and television retransmissions; and 4) other factors, including the failure of potential non-music claimants to file claims and the legislative history of the Copyright Law.

I. MUSIC'S SHARE FROM CABLE RETRANSMISSIONS OF TELEVISION BROADCASTS

Music's share of cable television compulsory license fees is best determined by examining the existing television market to find the relative amounts paid for copyrighted music and other copyrighted program materials by those television broadcasters whose signals are carried by cable systems.

The different amount television broadcasters pay for music and for other copyrighted materials is our first guide to the relative value of music. The relative value we derive is based on a market where the buyers perform the same music, in the same programs and for the same type of audience, the cable systems do.

In 1978, based on FCC data, independent stations paid 6.1% of their expenditures for copyrighted materials for performing rights in music; for network affiliates, the figure was 16.1%:

AMOUNTS PAID BY TELEVISION BROADCASTERS
FOR COPYRIGHTED MATERIALS IN 1978*

<u>Item</u>	<u>Independent Stations</u>		<u>Network Affiliates</u>	
	<u>\$ (Millions)</u>	<u>%</u>	<u>\$ (Millions)</u>	<u>%</u>
Music License Fees	8.9	6.1	46.9	16.1
Rental and amortization of film and tape	118.6	81.2	221.1	75.7
Other program and performing rights	18.6	12.7	24.1	8.2
TOTAL	146.1	100.0	292.1	100.0

We have no comparable FCC (or other) figures for public broadcasting.

Knowing the relative values of music and other copyrighted materials in the television market, our next step is to relate music's value in television to its value in cable. To do so, we analyzed a sample of cable television distant signal carriage.**

* Source: FCC Public Notice #19540 ("TV Broadcast Financial Data, 1978"), July 30, 1979. Percentages have been calculated by ASCAP.

Affiliated stations' payments for music license fees were reduced by an amount equal to the networks' payments for music license fees reported to the FCC for 1978. This adjustment is made because, under the networks' agreements with their affiliates, the affiliated stations are required to reimburse the networks for one half the networks' payments for music performing rights.

** The sample included cable systems accounting for 9% of all cable royalties paid for 1978.

Our sample disclosed that independent stations accounted for 85.1% of all distant signal equivalents (DSEs), network affiliates for 13.2%, and public broadcasting stations for 1.7%.

Relating the relative value of music as determined by the FCC figures for television's expenditures for copyrighted material to the weighted distant signal carriage of different types of stations by cable systems, we find music's share for television to be 7.4%:

Independent stations (85.1% x 6.1%)	= 5.2%
Network affiliates (13.2% x 16.1%)	= 2.1%
Public broadcasting stations (estimate)	= 0.1%
	<hr/>
	7.4%

To sum up the first step in our analysis, music is entitled to at least 7.4% of cable compulsory license fees attributable to retransmissions of television broadcasts.

II. MUSIC'S SHARE FROM CABLE RETRANSMISSIONS OF RADIO BROADCASTS

We apply the same market analogy to the radio component of cable -- the amounts paid by radio broadcasters for music compared to the amounts paid for other copyrighted materials. Our sample of

cable systems shows 98% of all radio signals carried are FM stations. We, therefore, suggest that only the amounts paid by FM broadcasters are relevant.

According to the FCC, in 1978, FM radio stations paid 76.7% of their expenditures for copyrighted materials for music:

AMOUNTS PAID BY FM RADIO BROADCASTERS
FOR COPYRIGHTED MATERIALS IN 1978*

<u>FCC Item</u>	<u>FM Stations Reporting Separately</u>	
	<u>\$ (Million)</u>	<u>%</u>
Music License Fees	13.794	76.7
Rental and amortization of film and tape	1.229	6.8
Other performance and program rights	2.965	16.5

Accordingly, as the next step in our analysis, music's share of the radio component of cable royalties is at least 76.7%.

III. ALLOCATION OF CABLE ROYALTIES
BETWEEN TELEVISION AND RADIO

We have seen that music's shares of cable television and radio carriage are different. This necessitates a division

* FCC Public Notice #23885 ("AM and FM Broadcast Financial Data, 1978"), December 10, 1979. Percentages have been calculated by ASCAP.

of cable royalties between the television and radio parts. Under the statute, the compulsory license fees are payable based on subscriber revenues for the smaller systems and based on television DSEs for the larger systems. There is no separate payment required for radio retransmissions.

The fee, on either basis, is paid for the right to retransmit both local and distant television and radio signals. Without the compulsory license, all cable retransmissions -- whether television or radio, local or distant -- would require licenses.*

It is important to recall that cable systems must pay compulsory license fees even if no distant television or radio signals are imported. The minimum fee paid is "for the privilege of further transmitting [nonnetwork distant signals]," even if that privilege is not exercised. 17 U.S.C. §111(d)(2)(B)(i) (emphasis added).

The law thus grants cable systems a right of access to all copyrighted material very similar to the right of access to music repertories our licenses grant to broadcasters. That right of access to local and distant radio signals is valuable.

*17 U.S.C. §106(4); S.Rep.No. 94-473, 94th Cong., 1st Sess., 59-61 (1975); H.Rep.No. 94-1476, 94th Cong., 2d Sess., 63-65 (1976).

We have been unable to quantify the value of this radio retransmission right on the basis of any formula. We suggest 5% is a reasonable approximation.*

When we apply music's shares to this division between radio and television, we find music entitled to at least 10.8% of cable compulsory license fees:

7.4% of television's 95% of total cable royalties	= 7.0%
76.7% of radio's 5% of total cable royalties	<u>= 3.8%</u>
TOTAL	10.8%

We turn now to the factor which raises the 10.8% to 13.5%.

IV. MUSIC'S SHARE SHOULD BE INCREASED
BECAUSE POTENTIAL CLAIMANTS FAILED
TO FILE CLAIMS

Our computation of music's 10.8% share is based on the assumption that all potential claimants filed. However, many did not. We believe a conservative estimate of unclaimed cable royalties would be one-fifth of the total.**

*Other claimants place a higher value on radio's portion of cable royalties. For example, the NAB suggests radio is entitled to 8.33% (NAB Suggested Broadcasters' Justification, July 31, 1979, p. 36). Should the Tribunal value radio higher than 5%, music should receive the same relative share of the higher amount, 76.7% of radio's total.

**For example, the sports interests tell us that only 50 of 500 eligible motion picture producers and syndicators filed claims for the last half of 1978. They also say only 40% of the eligible television broadcasters filed claims for that period. Mem. of Joint Sports Claimants, October 2, 1979, pp. 3,8.

The difference should be distributed to those claimants who did file. Since music is completely represented in these proceedings, music's share should be increased by 25%, to 13.5% of the total.

V. THE LEGISLATIVE HISTORY SUPPORTS
OUR CLAIMS FOR MUSIC

When the notion of a cable compulsory license was first introduced in the copyright revision bill, the draftsmen inserted a specific share for music -- 15%.* That figure was kept in the various copyright revision bills until 1974.**

We believe this history indicates a Congressional determination that 15%, if not the exact amount music should receive, is at least a reasonable "ballpark" figure. We do not at all suggest that the Tribunal should not have the right to make a different assessment, or that the law should have frozen music's share. Rather, we suggest the legislative history provides a valuable guideline for the Tribunal's determination, and supports our claim for 13.5%.

*S.543 (Committee Print) 91st Cong., 1st Sess., (1969), §111(d)(3)(c).

**S.644, 92nd Cong., 1st Sess. (1971); S.1361, 93rd Cong., 1st Sess.(1973). It was deleted at the request of Jack Valenti of the Motion Picture Association of America, who argued that the Tribunal, not Congress, should determine the value of various claims. See, Hearings on S.1361 Before the Subcommittee on Patents, Trademarks and Copyrights of the Sen. Jud. Comm., 93rd Cong., 1st Sess. (1973), at 303; S.1361 (Committee Print), 93rd Cong., 1st Sess. (1974).

CONCLUSION

Music should receive 13.5% of all cable compulsory license fees.

Respectfully submitted,

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By Bernard Korman
Bernard Korman
General Counsel

Of counsel:

I. Fred Koenigsberg
Benjamin L. Zelenko

SESAC, INC.

By Albert F. Ciancimino/fh
Albert F. Ciancimino
Vice President and Counsel

Dated: March 24, 1980

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American Society of Composers, Authors and Publishers
ASCAP Building—One Lincoln Plaza, New York, N.Y. 10023 Area Code (212) 595-3050

Bernard Korman
General Counsel

March 24, 1980

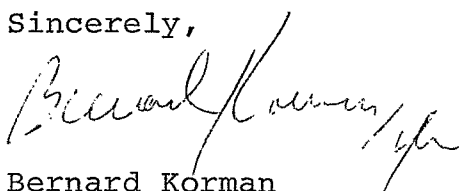
Chairman Mary Lou Burg
Copyright Royalty Tribunal
1111 20th Street, N.W.
Washington, D.C. 20036

RE: Cable Royalty
Distribution
Proceedings

Dear Chairman Burg:

Enclosed are an original and 15 copies of
the Joint Statement of ASCAP and SESAC in the above
matter.

Sincerely,


Bernard Korman

BK:ir
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cc: Parties

BY MESSENGER