BEFORE THE COPYRIGHT ROYALTY TRIBUNAL

United States of America
Washington, D. C.

IN THE MATTER OF
Proceeding Concerning
Regulations to Provide
Access to Phonorecord
(Jukebox) Players.

May 22, 1981

REPLY COMMENTS OF AMOA (AMUSEMENT AND MUSIC OPERATORS ASSOCIATION) TO COMMENTS OF ASCAP (AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS) AND BMI (BROADCAST MUSIC, INC.)

1. By notice issued March 30, 1981 and published in the Federal Register April 6, 1981 (46 Fed.Reg. 20566) the Tribunal initiated this proceeding to delete from the jukebox access regulations (37 C.F.R. 303) the provisions which require jukebox operators to record with the Tribunal lists of their jukebox locations (37 C.F.R. 303.3). The Tribunal's notice required interested parties to submit comments on or before May 15, 1981 and reply comments by May 26, 1981.

2. Prior to the Tribunal's issuance of the notice of this proceeding AMOA had filed with the Tribunal a motion for reconsideration of the regulations and for deletion of the provisions of the regulations that require listing of locations. AMOA filed the motion on February 27, 1981 and on March 3, 1981 filed a supporting memorandum with annexed exhibits, furnishing

copies of the same to the other interested parties, ASCAP, BMI and SESAC. Thereafter ASCAP and BMI submitted opposing comments and AMOA replied to their comments.

3. On April 28, 1981 AMOA responded to the notice of this rule-making proceeding by letter to the Tribunal with copies to ASCAP, BMI and SESAC. AMOA has received and considered copies of comments from ASCAP and BMI but has received no comments from SESAC.

Pursuant to the Tribunal's notice AMOA now submits its reply to the comments of ASCAP and BMI.

4. AMOA replies, generally, to the comments of both ASCAP and BMI by pointing out that both of them acknowledge they have not called upon the Tribunal for information concerning location lists filed by jukebox operators for purposes for which such information was intended, that is, for use in preparing claims for jukebox royalties from the jukebox royalty pool under Section 116 of the Copyright Act. The Tribunal is correct, therefore, in stating this as the basic reason for the proposed rule to delete section 303.3 of the regulations which requires operators to record their location lists with the Tribunal.

5. BMI contends that <u>if</u> the Tribunal rescinds its policy of non-disclosure of the location lists that are recorded with it, BMI would them make use of the unrestricted location list information. In other words, BMI would use the present

proceeding for amendment of the regulations to accomplish a different purpose, namely, to withdraw the confidentiality the Tribunal has accorded to the operators' location lists. The Tribunal announced the non-disclosure policy at a public hearing on November 9, 1978 and published it in the Federal Register on November 17, 1978 (43 Fed. Reg. 53795). Jukebox operators have the right to rely upon the Tribunal's published assurances of confidentiality as a condition to their recording of the location lists. Rescission of the policy, therefore, as BMI proposes, would violate the operators' constitutional rights to due process of law.

6. ASCAP explains its non-use of the location list information on the dual grounds (1) that not as many location lists have been filed as ASCAP would like to have, and (2) that ASCAP thought it best to refrain from requesting use of a location list while AMOA's lawsuit challenging the regulations was pending. Those grounds, we submit, are insufficient to justify ASCAP's non-use. In the first place, the location list information, though not as complete as ASCAP would like, was there for its use and it was not used. In the second place the litigation in which AMOA challenged the regulations did not operate as a stay of the location listing requirements, and ASCAP's legal rights to enforce the regulations was unfettered by the litigation.

7. ASCAP and BMI contend that AMOA's motion for reconsideration of the regulations, and AMOA's support for the proposed amendment to do away with the location listing requirements, should be denied because of the fact that there has been minimal compliance with the location listing requirements to date. It is unfair to AMOA and to the jukebox operators who have complied with the regulations to lay the blame for non-compliance against AMOA, as the moving party in this proceeding. AMOA's motion is meritorious, it is consistent with the position AMOA maintained throughout the original proceeding which led to adoption of the access regulations, and it is consistent with the position AMOA maintained in its challenge against the regulations in the federal courts.

8. Accordingly, we submit that ASCAP and BMI have failed to show any just grounds for opposing rescission of section 303.3 of the regulations, and we therefore urge the Tribunal to adopt the amendment to rescind this section of the regulations as it has proposed.

Respectfully,

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