

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, DC 20554

In the Matter of]
]
]
FILING OF CLAIMS TO]
CABLE ROYALTIES FEES]
]

REPLY COMMENTS OF
NATIONAL BASKETBALL ASSOCIATION

COMES NOW, the National Basketball Association (hereinafter sometimes "NBA" or "Basketball"), and files the instant Reply Comments in response to the Advance Notice of Proposed Rulemaking issued by the Copyright Royalty Tribunal. 1/

The instant Reply Comments are directed specifically to portions of the Comments of Motion Picture Association of America, Inc., ("MPAA") which take apparent exception to an Advisory Letter from the Tribunal, noted in the Advance Notice of Proposed Rulemaking. As the Tribunal said in its Advance Notice:

The CRT has received an inquiry concerning whether a copyright owner must satisfy the deposit requirements and secure registration of a copyright claim as a condition of participation in the royalty distribution. The CRT has also received an inquiry as to whether the CRT has required the preservation and submission of copies of simultaneous fixations of live transmissions as a requirement of participation

1/ 43 F.R. 6263 (Feb. 14, 1978).

in the royalty distribution. In an advisory letter of January [31], 1978, the CRT has stated that participation in the royalty distribution proceeding does not require satisfying the deposit requirements, securing registration, or preserving and submitting simultaneous fixations of live transmissions. 2/

The MPAA, in seeking what it calls "a more complete consideration of the issues underlying the request for an advisory letter" has thoroughly clouded what should have been a rather simple point. First of all, the MPAA states that the advisory letter "does not make clear" the need for fixation. However, no one has urged otherwise: not the parties in their letter to the Tribunal, not the Tribunal in its response, and not the Advance Notice. And these factors were well known to the MPAA before filing its Comments on the Advance Notice. Some attempt has been made to confuse the issue before the Tribunal, in an effort to create a controversy where in fact none exists.

The MPAA seems to be arguing on a matter of what proof of a simultaneous fixation will suffice. Indeed, the MPAA states:

Absent a registration certificate, or some other acceptable evidence, a copyright owner may run substantial risk... 3/

And

[P]articipation in royalty distribution would necessarily require competent evidence...4/

2/ Supra note 1.

3/ (Emphasis added.) MPAA Comments at 14.

4/ (Emphasis added). Id.

This, it must be recognized, will simply come down to a best-available-evidence-type of argument. It would indeed be virtually the same kind of argument which will have to be made concerning whether one particular feature film or another was run : there will have to be some attestation as to carriage and/or fixation.

Finally, the MPAA makes some vague illusions to copyright abandonment.

The revision of the copyright law -- as the Tribunal correctly stated and as the MPAA well knows -- does not require anything beyond a simultaneous fixation. MPAA's suggestions of further notices, inquiries, or comments on this particular issue are inappropriate; the matter has been correctly decided.

Respectfully submitted,

NATIONAL BASKETBALL ASSOCIATION


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