



PERFORMING RIGHTS ORGANIZATION OF CANADA LIMITED
SOCIÉTÉ DE DROITS D'EXÉCUTION DU CANADA LIMITÉE



HEAD OFFICE: 41 VALLEYBROOK DRIVE, DON MILLS, ONTARIO, M3B 2S6
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January 4, 1980

Honorable Douglas Coulter
Chairman
Copyright Royalty Tribunal
1111 20th St. N.W.
Washington, D.C. 20036
U.S.A.

Sir:

Re: Claim to Cable Royalty Fees

Performing Rights Organization of Canada Limited ("PRO") is one of two performing rights organizations in Canada, representing over 11,000 music writers and publishers. Operating similarly to its American counterparts, Broadcast Music, Inc. ("BMI") and the American Society of Composers, Authors and Publishers ("ASCAP"), we have had since 1976 a reciprocal licensing agreement with BMI whereby the works of all PRO affiliates are licensed by BMI in the United States and BMI affiliates' works are licensed by PRO in Canada.

The purpose of this letter is to request that the Tribunal waive its rules with respect to the filing deadlines (37 CFR, Chapter III, Part 302, ss. 302.2 and 302.6) and accept the attached claim for a portion of the available fees. In support of our request, we offer the following considerations.

Until most recently, PRO believed that its interests in this matter were protected through its reciprocal agreement with BMI, which had duly filed its claims with the Tribunal. As a foreign entity, PRO had little knowledge of or regular access to reports on proceedings and procedures of the Tribunal.

We have now reached the conclusion that our interests are not sheltered under the BMI claims. BMI has only claimed royalties for the music performed on U.S.-source stations carried by cable systems. While PRO's

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own affiliates benefit indirectly, through our reciprocal agreement with BMI, from the share of the cable revenues attributable to our affiliates' music on U.S.-source stations, PRO affiliates (as well as BMI affiliates through our reciprocal agreement), in the absence of the present claim, would not benefit from cable revenues attributable to our affiliates' music on Canadian-source stations.

PRO is familiar with the Tribunal's recent deliberation in connection with late-filed claims: (Final Rule, 37 CFR, Part 302, 44 Fed. Reg. 60726-27 - October 22, 1979). Our situation is a clear example of the difficulties the Tribunal envisioned which led it to conclude that leniency was warranted with regard to the filing of initial claims. While PRO recognizes that it has failed to make the required July 1979 filing, we submit that no prejudice will result to any party.

Of course, PRO waives any rights we may have in respect of the filing of legal briefs and memoranda due November 15 and 28, 1979.

In light of the foregoing, PRO pleads for acceptance of the attached late-filed 1978 claims and for its designation as a party herein. It is expressly understood that a grant of such relief will not constitute a precedent for the filing of claims in subsequent years.

PRO appreciates the Tribunal's consideration of this matter and looks forward to an opportunity to assist the Tribunal in forthcoming proceedings.

Yours very truly:



Craig Parks
Legal Advisor

CCP/bpt

Encl:

TO: Copyright Royalty Tribunal
1111 20th Street N.W.
Washington, D.C. 20036
U.S.A.

RE: Claim to Cable Royalty Fees for secondary transmission during
the period January 1, 1978 through June 30, 1978 (pursuant to
37 CFR Chapter III, s. 302.6)

(a) Claimant

Performing Rights Organization of Canada Limited/
Société de Droits d'Exécution du Canada Limitée - ("PRO")

(b) Address of Claimant

41 Valleybrook Drive
Don Mills
Ontario
M3B 2S6 - Canada Tel: (416) 445-8700

(c) Nature of copyrighted works providing basis of claim

Musical works, the public performing rights of which are licensed
to PRO by its affiliated publishers and writers or through
reciprocal agreements with other non-Canadian performing rights
organizations.

(d) One secondary transmission establishing basis for claim

Time/Date: January 20, 1978; 21:00-22:00 P.S.T.
Cable system: Far-West Communications Inc.
Service area: Oregon, Salem and Marion
Transm. Source: CBUT, Vancouver, B.C.
Program Title: Tommy Hunter Country
Title of Work: Comin' On Stronger
Writer: Stan Richombel (PRO)
Publisher: Mercey Brothers

(e) Percentage of fees claimed

At least 0.58%

(f) Justification for percentage of fees claimed

In its claim, BMI justified a 7½% share of the available royalties
on a basis with which we concur. The BMI and PRO repertoires are
almost identical as a result of the reciprocal agreement between

our organizations. There are approximately 500 U.S. cable systems out of 4,100 which are carrying Canadian-source stations, or 12.2% of U.S. cable systems. The carriage of a Canadian broadcast signal always has a DSE value of 1.0 per station, whereas many U.S. stations are valued at .25; thus, a greater than average proportion of revenues of those systems carrying Canadian stations will be attributable to those individual stations. The CBC's claim, for example, represents 36% of the available revenues of systems carrying any Canadian signal. While the other major Canadian network (CTV) has not to our knowledge filed a claim with the Tribunal, it is estimated that 75% of the systems carrying a CBC signal also carry a CTV signal; independent Canadian stations may also be distributed in certain areas. Canadian broadcasting therefore accounts for at least 63% ($36\% + .75(36\%)$) of total revenues available from systems carrying any Canadian signals.

Accordingly, $63\% \times 12.2\% = 7.7\%$ is the share of total available revenues that is attributable to all rights attaching to Canadian-source stations.

Adopting the BMI proposal that 15% of all revenues should be attributable to music performances and that 50% of that figure is attributable to the BMI-PRO repertoire (7.5%), then $7.5\% \times 7.7\% = 0.58\%$ is the share of total available revenues that is attributable to music performances over Canadian-source stations carried by U.S. cable systems.

PERFORMING RIGHTS ORGANIZATION
OF CANADA LIMITED

Dated: Toronto, Ontario
January 8, 1980

By: 
S. Campbell Ritchie
Managing Director

TO: Copyright Royalty Tribunal
1111 20th Street N.W.
Washington, D.C. 20036
U.S.A.

RE: Claim to Cable Royalty Fees for secondary transmission during
the period July 1, 1978 through December 31, 1978 (pursuant to
37 CFR Chapter III, s. 302.6)

(a) Claimant

Performing Rights Organization of Canada Limited/
Société de Droits d'Exécution du Canada Limitée - ("PRO")

(b) Address of Claimant

41 Valleybrook Drive
Don Mills
Ontario
M3B 2S6 - Canada Tel: (416) 445-8700

(c) Nature of copyrighted works providing basis of claim

Musical works, the public performing rights of which are licensed
to PRO by its affiliated publishers and writers or through
reciprocal agreements with other non-Canadian performing rights
organizations.

(d) One secondary transmission establishing basis for claim

Time/Date: 23:45 - 00:45, November 22, 1978
Cable system: Far-West Communications Inc.
Service Area: Oregon, Salem and Marion
Transmission source: CBUT, Vancouver, B.C.
Program title: Canada After Dark
Title of work: Chocolate Goodnight
Writer: Valdi
Publisher: Irving Music

(e) Percentage of fees claimed

At least 0.58%

(f) Justification for percentage of fees claimed

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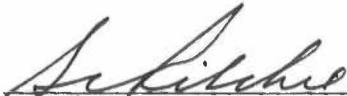
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