

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C. 20036

In the Matter of)
)
Filing of Claims to)
Cable Royalty Fees)

COMMENTS OF THE MOTION PICTURE ASSOCIATION
OF AMERICA, INC.

The Motion Picture Association of America, Inc. (MPAA) submits these comments in response to the "Proposed Rulemaking with Respect to Filing of Claims to Cable Royalty Fees" issued by the Copyright Royalty Tribunal (CRT) and printed in the Federal Register on May 5, 1978 (43 Fed. Reg. 19423).

This proceeding concerns the filing of claims to royalty fees for secondary transmissions by cable systems under 17 U.S.C. §111(d)(5). In particular, the CRT has invited comments regarding "what proof of fixation other than the actual video tape or film, should be required in a royalty distribution proceeding."

The basis for the CRT's request for comments stems from an advisory letter of January 31, 1978, in which the CRT indicated "that participation in the royalty distribution proceedings does not require satisfying the deposit requirements, registration requirements, or preserving and submitting simultaneous fixation of live transmissions." (43 Fed. Reg.

at 6263). MPAA expressed concern, however, that the CRT advisory letter could be mistakenly relied upon to support a claim that fixation of a live television broadcast is not necessary as a condition for filing a royalty claim.

In its Notice of Proposed Rulemaking the CRT has made clear that the new Copyright Act requires that a work must be fixed in a tangible medium of expression as a condition of copyright protection, 17 U.S.C. §102. Further, it has stated that "[t]his requirement is statutory in nature and precludes the Copyright Royalty Tribunal from adopting any regulations waiving the requirement of fixation." 43 Fed. Reg. at 19424. Accordingly, the CRT has invited parties to comment regarding the proof that may be required to establish that fixation of a particular program has occurred. Specifically, parties are requested to consider such forms of proof as affidavits from authorized personnel and the technical feasibility of preserving an identifiable frame or frames from each program. 43 Fed. Reg. at 19424.

MPAA submits that there are a variety of ways in which a copyright owner can prove that a particular television program has been fixed in a tangible form. Perhaps the most common method used by copyright owners of motion picture and television films is the filing of a registration application with the Copyright Office accompanied by the deposit of a copy of the work, 17 U.S.C. §§407, 408. Under Section 410(c) of the Copyright Act, 17 U.S.C. §410(c), a registration certificate,

if obtained within five years of first publication of the work, constitutes "prima facie evidence of the validity of the copyright and of the facts stated in the certificate."

In general it is necessary to deposit two copies of the best edition of a published work to obtain a registration certificate, 17 U.S.C. §408(b)(2). However, the Register of Copyrights in regulations adopted on January 4, 1978, reduced the requirement from two copies to one copy for published motion pictures. Registration of Claims to Copyright, Deposit Requirements, 43 Fed. Reg. 763, §§202.19(d)(2)(ii) and 202.20(c)(2)(ii).

Further, in consideration of the burden and expense that would be placed on owners of copyrights of unpublished motion pictures -- including owners of copyrights in programs fixed simultaneously with their first transmission -- the Register adopted regulations providing for the deposit of identifying material only. Ibid, §202.21(g). This regulation provides:

"(g) In the case of unpublished motion pictures (including transmission programs that have been fixed and transmitted to the public, but have not been published), identifying material deposited in lieu of an actual copy shall consist of either: (1) an audio cassette or other phonorecord reproducing the entire soundtrack or other sound portion of the motion picture, and a description of the motion picture; or (2) a set consisting of one frame enlargement or similar visual reproduction from each ten minute segment of the motion picture, and a description of the motion picture. In either case the 'description' may be a continuity, a pressbook, or a synopsis, but in all cases it must include: (i) the

title or continuing title of the work, and the episode title, if any; (ii) the nature and general content of the program; (iii) the date when the work was first fixed and whether or not fixation was simultaneous with first transmission; (iv) the date of first transmission, if any; (v) the running time; and (vi) the credits appearing on the work, if any. The provisions of paragraphs (b), (c), (d), and (e) of this §202.21 do not apply to identifying material submitted under this paragraph (g)."

Thus, owners of copyrights in television programs fixed simultaneously with their first transmission, (e.g., local news, sports events) may obtain registration certificates without depositing complete copies of their works and have a ready and available means for proving that their works were "fixed" in a "tangible medium of expression."

Some copyright owners may argue, however, that even the relaxed deposit requirements adopted by the Copyright Office are too burdensome and that registration with the Copyright Office should not be a condition for filing claims to cable royalty fees. In this event, the CRT may wish to formulate its own regulations which will provide guidelines for specifying alternative methods of proving fixation, absent a registration certificate. In MPAA's view such rules should require:

(1) an affidavit from the copyright owner that the work for which a claim is submitted was in fact fixed in its entirety and a description of the copyrighted television program, including the title of the program, the nature

and contents of the program, the running time, and the date of fixation (if the copyright owner is a corporation, the affidavit should be given by a responsible corporate officer); and

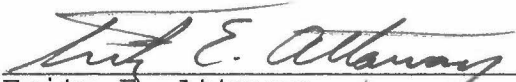
(2) some material evidence of fixation, including one or more frames from the program.

MPAA believes that the foregoing requirements represent the minimum proof that a copyright claimant may be expected to provide in any proceeding where a claim for royalty fees is presented. Clearly, an affidavit by the copyright owner that fixation took place is a reasonable requirement, and a description of the copyrighted television program would appear necessary to insure that specific information and a reliable record of each program is available. Finally, some material evidence should be required as independent affirmative proof of fixation. MPAA believes that preserving one or more frames from each program is technically feasible and is not an onerous burden. Otherwise, the reliability of affidavits could be questioned when the film or tape on which the program is fixed is subsequently destroyed.

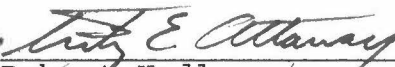
MPAA urges the CRT to adopt reasonable requirements in this area.

Respectfully submitted,

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