

Before the
COPYRIGHT ROYALTY TRIBUNAL
1111 20th Street, N.W.
Washington, D.C. 20036

In the Matter of)
Supplemental Rule with Respect)
to Filing of Claims to Cable)
Royalty fees.)

COMMENTS OF CBS INC.

On April 4, 1979 in its proposed rulemaking with respect to the captioned matter, the Copyright Royalty Tribunal requested interested parties to submit comments not later than April 25, 1979 concerning its proposal to amend sections 302.5 and 302.6 of, and to add section 302.10 to, 37 CFR Chapter III.

In response to that request, CBS Inc. submits its comments.

The Copyright Royalty Tribunal proposes to amend sections 302.5 and 302.6 to read, in relevant part, as follows:

§302.5 Supplemental filing.

(a) During the month of July 1979, those persons who filed claims pursuant to §302.2 for secondary transmissions during the period January 1 through June 30, 1978, shall make a supplemental filing, which shall include:

(1) A percentage or dollar figure of the compulsory copyright license fees the claimant feels entitled to.

(2) A justification for such percentage or dollar figure.

"§302.6 Filing of claims to cable royalty fees for secondary transmissions during the period July 1 through December 31, 1978.

During the month of July 1979, any person claiming to be entitled to compulsory license fees for secondary transmissions during the period July 1 through December 31, 1978, shall file in the offices of the Copyright Royalty Tribunal a claim to such fees.... Such filing shall include:

(e) A percentage or dollar figure of the compulsory license fees the claimant feels entitled to.

(f) A justification of such percentage or dollar figure of the compulsory license fees."

This procedure, if followed, would be putting the cart before the horse; the Tribunal would be asking for a percentage or dollar figure in circumstances in which the claimant is completely ignorant about the distribution rules of the game. Until the distribution rules are adopted, it will not be possible for a claimant to indicate a percentage or dollar figure of the compulsory license fees he feels entitled to except on an ipse dixit basis.

Even if agreements were made by some of the claimants as to the proportionate division of their compulsory license fees among them (17 U.S.C.A. 111(d)(5)(a)), it would not be possible

for them to indicate with any rational justification a percentage or dollar figure of the compulsory license fees they feel entitled to except for a percentage or dollar figure of their particular slice of the compulsory license fees pie - and their particular slice could not be determined.

The justifications furnished by the claimants would undoubtedly rest on almost as many theories as there are justifications. Many would bear no relationship to others, some only a little.

It would not be possible for any rational distribution to be made on the basis of what the proposed rules would produce.

It, therefore, seems to CBS that each claimant should not be asked by the proposed rules to supply the percentage or dollar figure each claimant feels entitled to, and a justification. Rather, claimants should be asked to suggest distribution formulas for adoption by the Tribunal, and then to supply the information necessary to work the formulas.

Since the law requires that claims be filed in July 1979, it would appear prudent for the Tribunal to adopt distribution formulas before then, so that its regulations can require the claimants individually, or as groups pursuant to their agreements, to supply in July the information necessary to work the formulas.

CBS stands ready to submit distribution formulas which it believes to be equitable and which would distribute all of the compulsory license fees in the fund, and suggests that the Tribunal take the necessary steps to invite their submission.

If the Tribunal wishes at this time to adopt rules governing the submission of information in July, then its proposed rules should provide that the information to be filed should be the information about each claimant's claim, or each group's claim pursuant to the agreement of its members, necessary to work distribution formulas to be adopted by the Tribunal. It is not sufficient to ask for "a percentage or dollar figure of the compulsory license fees the claimant feels entitled to" because that information could not be used to work any rational distribution formulas.

Respectfully submitted,

CBS Inc.

By


HARRY R. OLSSON, JR.

Its Attorney

51 West 52nd Street
New York, New York 10019

April 25, 1979