

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

In the Matter of)
)
Supplemental Rule With)
Respect To Filing Of)
Claims To Cable Royalty)
Fees)

COMMENTS OF
THE COMMISSIONER OF BASEBALL

The Commissioner of Baseball, by his attorneys,
submits the following comments on the Copyright Royalty
Tribunal's proposed rules published at 44 Fed. Reg.
20220 (April 4, 1979):

NATURE OF PROPOSED RULES

The rules proposed by the Tribunal specify the
information which must be included in the July 1979
claims for cable royalty fees. With respect to the
supplemental claim for the period January 1 through June
30, 1978, proposed section 302.5(a) requires the claimants
to provide:

"[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."

Proposed section 302.5(b) makes it clear that, in accordance with Section 111(d)(5)(A) of the Copyright Revision Act, claimants may "lump their claims together and file them jointly through a designated common agent." Such joint filings need not, however, "contain a separate entitlement claim or justification for each individual claimant."^{*/}

With respect to the claim for the period July 1 through December 31, 1978, proposed section 302.6 sets forth the same requirements as does proposed section 302.5 -- as discussed above. In addition, proposed section 302.6 requires copyright owners to provide most of that general information which was included in their initial claim for cable royalties covering the first half of calendar year 1978. See 43 Fed. Reg. 24528 (June 6, 1978). This consists of:

^{*/} Major League Baseball has filed a joint claim on behalf of each of its twenty-six clubs. Baseball interprets proposed section 302.5(b) to mean that it is not required to identify a percentage or dollar figure for each club, or to justify each club's share individually. Rather, it may provide this information for all clubs collectively. Baseball strongly support this approach.

"[a] The full legal name of the person or entity claiming compulsory license fees.

[b] The full address, including a specific number and street name or rural route, of the place of business of the person or entity.

[c] A general statement of the nature of the copyrighted works, whose secondary transmissions provides the basis of the claim.

[d] Identification of at least one secondary transmission establishing a basis for the claim."

Proposed section 302.6 further provides that copyright owners are not entitled to cable royalty fees for the second half of 1978 unless they file a claim during the month of July 1979. See 37 C.F.R. § 202.2.

The Tribunal has also proposed section 302.10. This provision requires it to deduct from the royalty fees "all costs which would not have been incurred by the Tribunal but for the distribution proceeding."

RECOMMENDATIONS

Baseball supports adoption of the proposed rules with the following modifications:

First, in addition to the information specified in these rules, the Tribunal should require the claimants

to identify:

- 1) The names of the programs for which a claim is made;
- 2) The television station or stations which broadcast this programming; and
- 3) The number of times during the relevant period which each station broadcast or was licensed to broadcast this programming.

This information, which should be readily available from the claimants' own records, is essential.

Although not entirely clear, it appears that some parties may have asserted conflicting claims to ownership of some programming. Requiring the claimants to identify the specific programming for which a claim is being made will clarify these conflicts, and thereby allow the parties to attempt a resolution of the matter before lengthy Tribunal proceedings.

Furthermore, as the Tribunal knows, claimants may receive royalties only for those copyrighted programs which were in fact carried by CATV systems as non-network distant signal programming. No compensation is due for network programming, programs whose copyright may have lapsed, programs which were deleted by cable systems pursuant to, for example, syndicated programming exclusivity rules or programs which were not carried on distant signals. In addition, the share of the royalty

pool to which each claimant is entitled can only be determined by a comparison of his programming to all of that programming for which a claim has actually and properly been made -- and not to all potentially eligible programming. Requiring the information identified above will greatly assist each claimant in determining the relative value of his programming and for ensuring that the shares sought by others are not inflated. This, in turn, will provide a significant aid in any settlement negotiations or, if such negotiations are unproductive,^{*/} in preparing a justifiable case before the Tribunal.

It must, of course, be emphasized that the above information will certainly not be all that the Tribunal will need to make a proper distribution of the royalties. It is, however, the minimum for determining whether there is a real controversy and for allowing the parties to make a reasoned justification for the shares which they seek.

^{*/} Although settlement negotiations may be initiated before the July filings, they may not be concluded until after that time. Moreover, if parties know that they must submit the information in these filings, they will, in all likelihood, have the information available during any negotiations before the July filings.

Second, proposed section 302.6 should be amended to provide that: "A joint claim shall include a concise statement of the authorization for the filing of the joint claim." This provision was included in section 302.2 of the Tribunal's rules, which concerns the filing of initial claims for the first half of calendar year 1978, but appears to have been inadvertently omitted from proposed section 302.6. For the reasons which persuaded the Tribunal to include this requirement in Section 302.2, the same requirement should be placed in proposed section 302.6.

Third, section 807 of the Copyright Revision Act provides that: "Before any funds are distributed pursuant to a final decision in a proceeding involving distribution of royalty fees, the Tribunal shall assess the reasonable costs of such proceeding." The language in proposed section 302.10 differs from section 807 of the Act. The Tribunal should make it clear that, notwithstanding the different language, the standard is the same.

It is not entirely clear from the language or legislative history of the Copyright Act which costs can

actually be deducted. Nor is the precise nature of these costs clear from proposed section 302.10. These costs are, moreover, potentially most significant. The Tribunal should, therefore, at some point specify the costs to be deducted and seek comment from the claimants.

Respectfully submitted,


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