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

Filing of Claims to  
Cable Royalty Fees            ] ] ] ]

COMMENTS OF NATIONAL BASKETBALL ASSOCIATION

COMES NOW, the National Basketball Association (hereinafter sometimes "NBA" or "Basketball") and files the instant comments pursuant to the Notice of Proposed Rulemaking, issued by the Copyright Royalty Tribunal.<sup>1/</sup>

BACKGROUND

In issuing its Notice, the Tribunal noted that its proposed regulations were designed to supplement the regulations issued on June 6, 1978,<sup>2/</sup> which dealt with claims pursuant to 17 U.S.C. 111(d)(5)(A) for the period January - June 1978, and to establish procedures for claims for the period July - December 1978.

The proposed regulations call for the Supplemental claims to establish a percentage or dollar figure claim to the compulsory license fees and a "justification" for the claim;<sup>3/</sup>

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<sup>1/</sup> 44 Fed.Reg. 20220 (April 4, 1979).  
<sup>2/</sup> 44 Fed.Reg. 24528 (June 6, 1978).  
<sup>3/</sup> Proposed Section 302.5.

for the new claims to contain the same information required in July 1978,<sup>4/</sup> in addition to that now proposed in the above-referenced Supplemental claim<sup>5/</sup> and for a deduction from the royalty fees of costs which would not have been incurred by the Tribunal but for the distribution proceeding.<sup>6/</sup>

SUBSTANTIVE COMMENTS

Claim Information

As contrasted with the information filed in July 1978 for the period January - June 1978, the Supplemental Filing pursuant to Proposed Section 302.5 and the regular Filing pursuant to Proposed Section 302.6 should contain considerably greater information. The July 1978 filing was required by statute and, as the Tribunal has recognized, was only a "minimal filing of a claim."<sup>7/</sup> It is not at all unlikely that negotiations among the interested Claimants will be on-going through much of 1979. Whereas the July 1978 filing was beneficial only in identifying those parties with a legitimate claim, the July 1979 filing can be of substantial aid to the parties in negotiating and to the Copyright Royalty Tribunal in its eventual distribution.

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4/ See Section 302.3.

5/ Proposed Section 302.6 includes the language of Proposed Section 302.5.

6/ Proposed Section 302.10.

7/ Supra note 2.

To that end, the National Basketball Association suggests that Proposed Sections 302.5 and 302.6 be expanded to include the following informational requirements:

- (a) For the claimant, which specific programs were sold to which specific television stations carried as distant signals?
- (b) How many hours of programming owned by the claimant were carried by the station whose distant signal was imported?
- (c) For syndicated programs and feature films, what "run" of the program was reflected in the programming carried?
- (d) Whether any programs were deleted by which cable systems pursuant to network, syndicated, or sports exclusivity provisions of the Rules of the Federal Communications Commission?

The information that would be provided pursuant to the above suggestions would formulate a sound starting point for negotiations by the parties or through the Tribunal, by providing the necessary information to determine the legitimate scope of a claim. For example, if the only basketball telecasts carried by WBZ-TV, Boston, were of Boston at Knickerbocker games and the only systems importing WBZ-TV were New York-area systems obliged to delete the telecast pursuant to Section 76.67 of the Rules of the Federal Communications Commission, then there would be no legitimate claim by the National Basketball Association for any revenues attributable to the carriage of WBZ-TV. Just as importantly, owners of programs deleted in any market pursuant to the syndicated exclusivity or network non-duplication provisions of

Commission have no claim for any money attributable to that station's importation.

It would appear that the providing of such information is at least as important -- if not more important -- as the dollar figures or percentages sought by the Tribunal in the event there is a controversy. If in fact, as the Tribunal states

The obligation on claimants to affix a price tag on their claims will enable the Tribunal to establish simply and expeditiously if there is controversy 8/

then the information will aid the Tribunal in reaching whatever second step is necessary in resolving any controversy. It will, quite simply, do away with any blanket, unsupported claim that might be made by a party seeking a windfall.

#### Joint Claim Filing

In its adoption of the interim provision of Section 302.2 of the Tribunal regulations, the Tribunal stated that:

For purposes of this clause, claimants may file claims jointly or as a single claimant. A joint claim shall include a concise statement of the authorization for the filing of the joint claim. 9/

For the very rationale stated when the Tribunal adopted Section 302.2, the above-cited requirement should be reimposed in Proposed

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8/           Supra note 1.

9/           (Emphasis added.) Section 302.2.

Section 302.6; in other words, any filings pursuant to Proposed Section 302.6 likewise must contain the concise authorization statement. As stated to the Tribunal a year ago, this will prevent any parties without an existing interest or existing authorization from filing on behalf of non-claiming parties.

Moreover, by including Proposed Section 302.5(b) a provision which appears to be duplicative of the existing claim-joining provision of Section 302.2, the Tribunal may be contemplating a further joining of claims. So, for instance, under Proposed Section 302.5(b) the National Basketball Association, the National Hockey League, Major League Baseball, and any other interested organization might file an entitlement claim under the generic heading of "Sports;" likewise, a different type of "entitlement claim" might be filed by syndicated programmers or local television stations. The National Basketball Association simply would urge that any supplemental filing pursuant to Proposed Section 302.5(b) merely reference any already-cited "concise statement of the authorization for the filing" or include a new concise statement of authorization.

CONCLUSION

For the reasons stated above, the National Basketball Association urges the adoption of the cited changes in the Proposed Rules.

Respectfully submitted,

NATIONAL BASKETBALL ASSOCIATION

  
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