ORIGINAL

Before The
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C.

In the Matter of 1983 Cable Royalty Distribution Proceeding	Docket No. CRT 84-1-83CD

COMMENTS OF CANADIAN CLAIMANTS
ON NAB MOTION FOR DECLARATORY RULING

The Canadian Claimants hereby respectfully submit their comments on the Motion of the National Association of Broadcasters for a Declaratory Ruling.

Consideration of NAB's motion is premature at this time. The questions whether there should be a separate "syndex" pool at all, and, if so, how such a pool should be distributed among claimants is a mixed question of fact and law. In this connection, we note that NAB's argument for a separate syndex pool is essentially that the pay-out to copyright owners should be a mirror reflection of the pay-in by cable systems. This is a type of fee-generation approach that has been rejected in prior Tribunal decisions. The Canadian Claimants have consistently argued that their share of the royalty fund should approximate the fees paid by cable systems for the carriage of Canadian distant signals. The Tribunal has in the past rejected this argument and awarded the Canadian Claimants far less than that

amount. NAB now makes a similar argument with respect to its claimed entitlement to the bulk of the syndex pool. However, creation of a separate pool, and award of the bulk of it to NAB, would simply further dilute the share of the Canadian Claimants and others and would do so in a manner wholly inconsistent with prior Tribunal distribution criteria.

Such a drastic departure from the rationale and consistency of prior decisions as is now suggested by NAB should not be undertaken on pure legal arguments absent a full factual development. The NAB's legal argument itself -- based on "rights" acquired by broadcast stations pursuant to exclusive exhibition contracts for syndicated programs -- has also been rejected in prior years by the Tribunal. Thus, even the NAB's so-called pure legal argument is not clearcut. Obviously, the better procedure would be to defer any ruling on the issue of a syndex pool until the evidentiary record is closed and the issue can be fully briefed and decided on a complete legal and factual record <u>and</u> in a manner that will be consistent with the Tribunal's ultimate rationale and criteria for distribution of the entire 1983 fund. At the appropriate time, the Canadian Claimants intend to advance the proposition that application of the basic distribution criteria to the entire 1983 fund will result in the fairest and most equitable division of the fund and will adequately compensate the various competing copyright owners, without the necessity for creating separate pools.

In the event, however, that the Tribunal is disposed to consider NAB's Motion as a preliminary matter to the 1983 evidentiary hearing, the Canadian Claimants respectfully request that the Tribunal establish a procedural schedule for the taking of evidence on the point and for full briefing of the issue prior to commencement of the hearing on the overall 1983 fund.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sharon Powers Sivertsen, hereby certify that copies of the foregoing "Canadian Claimants' Objections to the Direct Cases of the Claimants Before the Copyright Royalty Tribunal" and "Comments of Canadian Claimants on NAB Motion for Declaratory Ruling" were mailed this 29th day of May, 1985, by first class mail, postage prepaid, to each of the following persons:

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May 29, 1985

Edward W. Ray
Acting Chairman
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Room 450
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Dear Chairman Ray:

Please find enclosed one original and six copies of the Canadian Claimants Objections to the Direct Cases of the Claimants and Comments of Canadian Claimants on NAB Motion for Declaratory Ruling Before the Copyright Royalty Tribunal.

Sincerely,

Douglas G. Thompson, Jr.

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cc. Robert Cassler, Esq.
All parties