

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-202970**DATE:** July 5, 1984**MATTER OF:**

Copyright Royalty Tribunal--

DIGEST: The Copyright Royalty Tribunal may return a certain sum of unobligated funds which it had transferred from copyright royalty fund accounts following their appropriation by Public Law 98-51. Under the Tribunal's appropriation legislation, the transferred funds were made available only "for the reasonable costs incurred in proceedings involving distribution of royalty fees as provided by 17 U.S.C. § 807." If the Tribunal did not make the return of funds it would result in their use for other purposes. Accordingly, the Tribunal should return to its royalty fund accounts the amount of the transferred funds which is not attributable to the expenses of royalty fee distribution proceedings, and should fund the rest of its activities from other appropriated funds.

This responds to a request by the Chairman of the Copyright Royalty Tribunal for our decision concerning the proper disposition of certain unobligated funds transferred from royalty fund accounts in fiscal year 1984. As explained below, the Tribunal should return to its royalty fee accounts the amount of the transferred funds which is not needed to pay the direct and indirect expenses of royalty fee distribution proceedings incurred during fiscal year 1984.

Background

The Copyright Royalty Tribunal is an independent agency within the legislative branch, established in 1976 by the enactment of title I of Public Law 94-553 (codified at 17 U.S.C. §§ 801-810). Among other statutorily assigned functions, the Tribunal makes determinations concerning copyright royalty rates for phonorecords, coin-operated phonorecord players, non-commercial broadcasting, and cable television. The Tribunal conducts rate adjustment proceedings in order to make its rate determinations.

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The Tribunal is also responsible for distributing cable television and jukebox royalties collected from operators of the above-named systems to the copyright owners. The royalties are deposited with the Register of Copyrights and kept in royalty fund accounts prior to their distribution by the Tribunal. The Tribunal makes these distributions after conducting distribution proceedings each year.

Section 807 of title 17 expressly provides that:

"Before any funds are distributed pursuant to a final decision in a proceeding involving distribution of royalty fees, the Tribunal shall assess reasonable costs of such proceeding."

For fiscal year 1984, the Tribunal's appropriation statute provided that a specified amount of its appropriation is to be derived from royalty fee collections. The Tribunal's fiscal year 1984 appropriation language reads as follows:

"For necessary expenses of the Copyright Royalty Tribunal, \$700,000, of which \$490,000 shall be derived by collections from the appropriation 'Payments to Copyright Owners' for the reasonable costs incurred in proceedings involving distribution of royalty fees as provided by 17 U.S.C. § 807." 97 Stat. 277.

After the passage of its 1984 appropriation, the Tribunal transferred \$490,000 from royalty fund accounts, to its operating appropriation account to cover its expenses. However, it now appears that its actual fiscal year 1984 expenditures will be substantially below its total appropriation. The Tribunal estimates that the amount transferred from the royalty funds accounts alone would cover almost 100 percent of its fiscal year 1984 expenses.

The Issue

The Tribunal proposes to return certain sums to the royalty fund accounts so that the actual funding of its expenses in fiscal year 1984 coincides with the 70-30 ratio of its appropriation. Its submission indicates that virtually its entire "direct" appropriation would be returned to the Treasury at the end of the fiscal year if it does not make the proposed return to the royalty fund accounts. The Tribunal asks whether it can make the contemplated return in light of the reference to 17 U.S.C. § 807, quoted above, in its 1984 appropriation act and in view of the appropriation's legislative history which indicates a desire to fund a larger share of the Tribunal's expenses from the royalty fund.

Discussion

We interpret the reference in the Tribunal's appropriation language to "reasonable costs" incurred in 17 U.S.C. § 807 proceedings as a limitation on the use of the part of the Tribunal's appropriation which is derived from the royalty fee accounts. It allows the portion of the appropriation derived from royalty collections to be used only for the payment of the Tribunal's "reasonable" expenses in conducting royalty distribution proceedings. Thus, it prohibits the use of these royalty funds for the Tribunal's other expenses. If the total sum transferred from the royalty fee account were to be used to pay the Tribunal's other expenses, it would violate the appropriation act restriction. Accordingly, the Tribunal should return to the royalty fund accounts that portion of the transferred royalty fees which is not needed to cover its distribution proceeding costs.

The submission suggests that the Tribunal is contemplating returning the transferred royalty funds in an amount which coincides with the 30-70 percent ratio of direct appropriations to royalty fee collections mentioned in its appropriation. However, the Tribunal should not make the return based on the ratio per se, regardless of how it actually expends its funds. Whether the amount returned should reflect the 70-30 ratio depends upon whether the Tribunal's distribution proceeding costs are in fact 70 percent of its total expenses. As the previous paragraph states, the Tribunal's appropriation requires that royalty fee collections fund its distribution proceeding expenses, and that the direct appropriation fund its other expenses. As discussed more fully below, the Tribunal and the Congress estimated that 70 percent of the Tribunal's expenses would be attributable to distribution proceedings in fiscal year 1984 when the Tribunal's appropriation was under consideration. If this is in fact what occurs (and there is reason to believe that the Tribunal's estimate was accurate), then a return based upon the 70-30 ratio is proper. Otherwise, the return should reflect the balance remaining after deducting the Tribunal's actual expenditures for royalty proceedings.

The appropriation act's legislative history further supports our conclusion that the Tribunal should allocate its expenses between its direct appropriation and royalty fee collections, based upon actual distribution proceedings

expenses incurred, in relation to its expenses for its other activities. Until fiscal year 1983, under the authority of 17 U.S.C. § 807, the Tribunal recovered only the direct administrative costs of conducting its distribution proceedings (i.e. printing and stenographic services) from the royalty fee accounts. A direct appropriation funded the balance of the Tribunal's expenses. Through fiscal year 1982, the Tribunal's appropriation legislation simply provided a single amount "for necessary expenses of the Copyright Tribunal" and made no mention of any of the appropriated funds being derived from royalty fees. E.g., Pub. L. No. 95-391, 92 Stat. 763, 786 (1978).

In fiscal year 1983, the Congress specified for the first time in the Tribunal's appropriation legislation that part of the Tribunal's total appropriation was to be derived from royalty fee collections. The language of that appropriation is like the language of the Tribunal's fiscal year 1984 legislation except for the amount appropriated and the two specified figures. At the time it was considering the Tribunal's 1983 appropriation, the Congress decided that it wanted the Tribunal, under the authority of 17 U.S.C. § 807, to begin charging the distribution proceedings' indirect costs against the royalty fee collection accounts, in addition to the previously charged direct costs. H.R. Rep. No. 801, 97th Cong., 2d Sess. 32 (1982). We think that the Congress changed the Tribunal's appropriation language in FY 83 to identify the portion to be derived from royalty collections in part because charging indirect costs was a departure from the Tribunal's past practice under 17 U.S.C. § 807, which resulted in much higher costs being assessed in distribution proceedings.

The Congress arrived at the appropriation's two separate figures by taking the total amount necessary for the Tribunal's fiscal year 1983 salaries and expenses and then dividing that amount according to its estimates of the distribution proceedings' costs, both direct and indirect, and of its expenses for its other activities. In this regard, the House Committee on Appropriations in its report on the bill which in substance was later enacted as the Tribunal's appropriation, stated:

"Over the past several years, the Tribunal has, using the authority granted in the copyright act (17 U.S.C. 807), charged the royalty fee fund only for the direct costs of conducting distribution proceedings. However, the Commissioners of the Tribunal estimate that, over and above the \$50,000 which they estimate in direct

costs for fiscal year 1983 for printing, stenographic services, etc., about 20 percent of their time will be spent in the hearings and in matters directly related to the conduct of these proceedings. The Committee, therefore, is inserting language which will limit the spending authority available for the entire fiscal year 1983 (\$606,000) and provides authority for the reimbursement from the royalty fee fund of \$157,000 within the total available. This results in a net appropriation of \$449,000, a reduction of \$107,000 under the amount requested." Id.

Congress applied the same reasoning when it made the Tribunal's fiscal year 1984 appropriation. The 1984 appropriation contains a different ratio between its directly appropriated portion and its "derived" portion because the Tribunal, with Congressional concurrence, estimated different amounts of time which the Tribunal would devote to distribution proceedings in relation to the time devoted to its other activities for fiscal year 1984, than it did for fiscal year 1983. In fiscal year 1983, it was estimated that 20 percent of the Tribunal's time and resources would be needed to conduct distribution proceedings; in fiscal year 1984, the estimate was 70 percent.

On this point, the Senate Appropriations Committee in its report on the bill later enacted as the fiscal year 1984 legislative branch appropriation act stated:

"The Committee recommends that \$700,000 be made available to the Copyright Royalty Tribunal (CRT) for its fiscal year 1984 activities. Of this total, 70 percent or \$490,000 is to be drawn from the Commission's existing authority to spend its receipts, and the remaining \$210,000 is a direct appropriation from the Treasury. Members of the Commission recommend that 'the allocation percentage from the royalty fee funds reflect the ratio between the number of rate adjustment proceedings and distribution proceedings for a given year,' which in 1984 is 70 percent. The Committee has adopted this recommendation for fiscal year 1984."

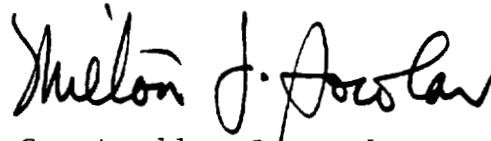
S. Rept. No. 161, 98th Cong., 1st Sess. 37 (1983).

For additional pertinent legislative history see Legislative Branch Appropriations Fiscal Year 1984: Hearings on H.R. 3135

Before the Committee on Appropriations, 98th Cong., 1st Sess.
261 (1983) at 267; H.R. Rept. No. 227, 98th Cong., 1st Sess.
27 (1983).

Conclusion

In the light of the language of the Tribunal's fiscal year 1984 appropriation provision and its legislative history, we conclude that the Tribunal should return the balance of the transferred royalty fees not needed to cover its direct and indirect distribution proceeding costs to their original accounts. It should fund any remaining fiscal year 1984 expenses which are related to its other activities, from the Tribunal's direct appropriation.



Acting Comptroller General
of the United States