ARBITRATION PROCEEDING

In the Matter of the Arbitration

-between-

SCREEN ACTORS GUILD (SAG),

The Complainant,

-and-

COLUMBIA PICTURES INDUSTRIES, INC.; METRO-GOLDWYN-MAYER/UNITED ARTISTS ENTERTAINMENT CO.; ORION PICTURES CORP.: PARAMOUNT PICTURES CORP.; TWENTIETH CENTURY FOX FILM CORP.; UNIVERSAL CITY STUDIOS, INC.; and WARNER BROS., INC.,

The Respondents [Producers].

Re: Reuse of Film Clips in Movie Music Videos

OPINION AND AWARD OF ARBITRATOR

Joseph F. Gentile
Arbitrator

June 28, 1986

Los Angeles, California

[2064-2870-86]

STATEMENT OF THE MATTER

On November 2, 1984, the SCREEN ACTORS GUILD ("SAG") filed a "Statement of Claim and Request For Conciliation" ("Claim 11377") with METRO-GOLDWYN-MAYER/UNITED ARTISTS ENTERTAINMENT CO. ("MGM/UA"). The essence of Claim 11377 was SAG's contention that MGM/UA had violated Section 22(A) of the Codified Basic Agreement of 1977, as amended in 1980 and 1983 ("BA"), when it failed to "first separately bargain" with the actors who appeared in the theatrical motion picture WAR GAMES and from which film clips were reused in a music video. In the view of SAG, the use of the film clips in the music video without first meeting the Paragraph 22 obligation to bargain constituted a violation of the BA.

As part of Claim 11377, SAG also asked for the "three times" penalty found in Paragraph 22(B).

Following Claim 11377, SAG continued to file claims with various Producers covered by the BA who allowed film clips to be reused in music videos without first bargaining with the actors. The other Producers included the following: COLUMBIA PICTURES INDUSTRIES, INC.; ORION PICTURES CORP.; PARAMOUNT PICTURES CORP.; TWENTIETH CENTURY FOX FILM CORP.; UNIVERSAL CITY STUDIOS, INC.; and WARNER BROS., INC.

For the purposes of this decision and given the rather stringent time constraints to get this decision into the hands of the Parties during current negotiations, the Arbitrator will not enumerate the numerous other claims. [SAG Exhibit 1] The evidence record adequately reflects this information.

The various named Producers against whom the claims were filed took the position that the reuse of the film clips in the music videos fell within the exclusions (or exceptions) found in Section 22(A), Paragraph 3. In essence, the Producers argued that they had the right to exploit and advertise their motion pictures in any manner and in any media which they deemed effective, including the

reuse of film clips in music videos, without payment to the actors for any reuse of photography or soundtrack.

As already indicated, SAG took a different view and further argued, in addition to the Section 22(A) and (B) contentions, that the music video was a "promotional use" and therefore fell within the scope of Section 18(B) of the BA.

The impasse in positions continued and the number of claims regarding the use of film clips in music videos escalated; thus, the matter was moved to arbitration before the undersigned in late 1985.

The Arbitration was held pursuant to Section 9 of the BA with evidentiary hearings held on October 31, December 19, December 20, 1985, and January 2, January 9, January 24 and March 25, 1986.

During the course of the hearing all Parties were afforded a full and complete opportunity to be heard, cross-examine witnesses, develop arguments and present relevant evidence. An official transcript was made of thehearings by McKay Court Reporters. All witnesses appearing before the Arbitrator were duly sworn. Closing arguments were reserved to Post-Hearing Briefs and Reply Briefs. The matter stood fully submitted as of May 16, 1986.

APPEARANCES BY COUNSEL

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ISSUES AND PROCEDURAL CONSIDERATIONS

The Parties were not in agreement on the specific wording of the issue to be addressed and determined in this arbitration; thus, each side stated its view:

SAG's statement of the issue was as follows:

> "Whether the Producers violated Section 22 of the Producers-Union Agreement of 1977 as modified in 1980 and 1983?"

The Producers' view of the issue was to this effect:

> "1. Do the movie music videos in question fall within the Producers' right to advertise, exploit and make trailers for motion pictures?
>
> "2. If the answer to issue No. 1 is in the negative, what is the appropriate remedy?"

The Parties agreed that the various claims identified in this evidence record could be consolidated for the purposes of this hearing.

APPLICABLE CONTRACTUAL PROVISIONS

Various provisions of the BA were referenced in this case. These provisions will be briefly noted and, where appropriate, quoted:

1) Section 9 of the BA details the arbitration processes. As already noted above, the instant matter was heard pursuant to Section 9.

2) Section 18 addresses "trailers and promotional films." Subsection A covers the subject of "trailers" and provides in part that . . .

"(1) Full day-player rates shall be paid to actors employed in each trailer, with right of Producer to use on television and in theatres. Producer shall have the right to make a 'teaser' trailer in addition to the full-length trailer for theatrical use only.

"(2) The foregoing shall not apply to a player who appears as a star or featured player in a theatrical motion picture, or to a term contract player who during his employment period performs in a trailer or trailers for such motion picture. The foregoing provisions as to term contract players shall not be used to wilfully subvert the provisions of this Section.

"(3) No additional compensation shall be payable for the use of any portion of a motion picture or for the use of scenes photographed simultaneously with a separate camera (behind the scenes shots), utilized as a trailer.

"(4) The above provisions refer to trailers to be used for theatrical exhibition, television exhibition or a combination of both."

Section 18(B) outlines the use of "promotional films for theatrical motion pictures." This provision calls for individual bargaining with actors receiving $25,000 or more for a motion picture regarding "promotional films, or to permit the use of any portion of the motion picture or of behind the scenes shots in such promotional films."

Section 18(B)(2) covers "term contract players acting in such promotional films during their employment under

contracts. . ." This includes the "use of film clips or behind the scenes shots" and calls for "individual bargaining" as to the use.

Section 22 details the "reuse of photography or sound tracks" and provides in Subsection A for the following:

"No part of the photography or sound track of an actor shall be used other than in the picture for which he was employed, without separately bargaining with the actor and reaching an agreement regarding such use. The foregoing requirement of separate bargaining hereafter applied to reuse of photography or sound track in other pictures, television, theatrical orother, or the use in any other field or medium. . . ."

[emphasis supplied]

Paragraph 3 of Section 22(A) calls for an exception or exclusion from the reuse prohibition just quoted:

"The provisions of this Subsection A shall not limit Producer's right to use photography or sound track in exploiting thepicture, or in trailers, promotional films twelve minutes (or less) in length for theatrical motion pictures, or in advertising, as provided in this Agreement."

[emphasis supplied]

Schedule B and Schedule C which cover "free-lance players" also have in Section 39 a provision which addresses "rights granted to producer." A similar provision is not found in Schedule A which covers "day players."

FACTUAL SUMMARY AND POSITIONS

This arbitration involved a number of separate music videos which reused film clips from various theatrical motion pictures as part of the music videos.

As used in this decision, a music video is defined as a video tape production which was created for the purpose of visually telling a story or depicting an atmosphere through song and dance using film clips, key art and the sound track from a theatrical motion picture. As to those music videos which formed the basis for the claims in this arbitration, the average running time was about 3+ minutes. The use of film clips and key art varied from little to extensive.

Because of the visual impact of music videos and their quicksilver rise as a persuasive communications vehicle, Producers determined to use them as part of their overall marketing program for theatrical motion pictures, indeed, "[r]ecent marketing surveys have shown that a significant portion of the moviegoing audience may be drawn to the theatres by music vid[eo]s." ["Soundtrack Albums: Looking Back and Looking Forward," Variety, October 29, 1985]

It is this use and the characterization of this use which forms the core of the instant dispute.

SAG contends that the Producers' use of film clips in music videos combines to create a totally separate entertainment product. As a totally separate entertainment product, these music videos are intended for a totally separate entertainment medium and thus fail to qualify for the exclusions found in Section 22(A), Paragraph 3 of the BA. In the view of SAG, these exclusions should be narrowly construed because of the way they have been defined in the past.

SAG further argued that should the Arbitrator find that the music videos are not a separate entertainment product, the music videos are nonetheless "promotional" products within the meaning of Section 18(B) of the BA.

In either situation, SAG argued, the Producers are answerable for damages if separate bargaining is not accomplished.

Parenthetically, under Section 22(B) the amount of the damages is three times the "original amount paid the actor for the number of days of work covered by the material used."

The Producers' responses to SAG's contentions were: (1) music videos are produced as but one element in the overall marketing strategy to exploit and advertise the theatrical motion picture identified with the music video and (2) as a marketing vehicle, it clearly falls within the Section 22(A), Paragraph 3 exceptions which allow for the advertising and exploitation of a theatrical motion picture by the Producers.

Ancillary to the above fundamental arguments, the Producers further contended that the music videos did not fall within the definition of a "promotional film" as used and defined in Section 18(B).

The respective arguments of SAG and the Producers, as just noted, are intended only to capture the essence of the positions taken and place in sharper focus the direction from which each side was coming.

Pivotal to the resolution of the issues in this case is the meaning of the language found in Sections 18 and 22 of the BA. The Arbitrator did not find this language clear and precise as to its placement of music videos in the contractual scheme. In fact, both sides acknowledged that the subject of music videos was not discussed at prior bargaining tables, including the most recent one in 1983. The contractual identification and characterization of music videos is one of first impression in this arbitration; thus, reference to extrinsic evidence was called for.

A considerable portion of the evidence record was devoted to two areas of inquiry: (1) the Producers' involvement in the development and use of music videos and (2) bargaining history as to the derivation, meaning and

definition of the terms and phrases now relied on by both sides to support their respective positions. A brief summary of these two areas of inquiry will be made.

The music videos under discussion had their genesis in the marketing departments of the Producers. The financing for the music videos in most instances came from the marketing department of the involved Producer. The actual production sequence for a music video [in the context of this arbitration] generally followed this pattern [1]:

1) The initial decision to have a music video as part of the overall marketing package for a forthcoming theatrical motion picture was made in the Producer's publicity/marketing department;

2) At the request of the Producer, either the Producer or the record company would contact a music video production company and enter into a contract to have a music video made which incorporated film clips and key art from the motion picture as supplied by the Producer;

3) The music video production company would employ the necessary artists to produce the requested product;

4) During this same time frame, the record company and the Producer would cooperate toward the production and release of a particular "single" or the motion picture's sound track;

5) The music video would be produced by the music video production company and returned to the Producer;

6) The Producer would then distribute the finished music video to the various video outlets, such as MTV, free of charge. This release would be timed, in most instances, during the "window period" of four to six weeks

prior to the motion picture's release to the public [2];

7) The music video may also be released subsequent to the public release of the motion picture if and when the Producer determines that the motion picture needs an additional promotional shove;

8) The video outlets would place the music video in its "rotation" schedule with other similar videos and its usual non-movie music videos; and

9) The Producers would have no control over the ultimate "rotation" chosen by the video outlets and receive neither a license fee nor royalty from the video outlets for the use of the movie music video.

Parenthetically, one of the reasons why the movie music video must be creatively developed is because the video outlets will either not select it for use or, if selected, will not place it in an advantageous position in the "rotation." Either of these possibilities would destroy or diminish the promotional value of the movie music video and adversely affect box office revenue.

Turning to the evidence record regarding bargaining history, the first observation is that this history must be divided into two areas: (1) history relating to Section 18 and (2) history relating to Section 22. At times in this evidence record, it appeared that recollections as to the respective developments between these two provisions blended; however, the Arbitrator attempted to place the respective histories in context.

Section 18(A) addresses the subject of "trailers." Prior to 1956 there was no specific "trailer" provision in the contract; however, in the 1956 Supplement to the Codified Basic Agreement of 1952, Section 10 was added and it memoralized the subject of "trailers."

With reference to the instant case, SAG argued that music videos were not "trailers" and the Producers' contended, by analogy, that a music video had certain of the indicia of a "trailer" and thus could be reasonably considered a "trailer" within the meaning of Section 18(A).

The details of the debate over music videos as "trailers" will not be amplified; however, the conclusion drawn from the evidence record on this subject will be found in the "Discussion" portion of this decision.

Section 18(B) was added in 1971. Section 18(B) discusses the compensation to actors for appearing in "promotional films" for theatrical motion pictures. SAG argued that the current movie videos were significantly similar to "promotional films" to bring them within the ambit of Section 18(B).

The Producers' response to SAG's contention was that the intent behind Section 18(B), and as expressed during the 1971 negotiations, was that it be narrowly construed. In the Producers' view, "promotional films" were films that used behind the scenes shots and other material to show and/or illustrate "the making of" the motion picture. As such, it did promote the film, but not in the manner which would reasonably parallel the movie music video.

SAG took the position that Section 18(B) should be more broadly interpreted and applied to movie music videos. As SAG stated, "if the shoe fits. . ." [p. 5 of SAG's Brief]

Section 18(B) was again addressed and amended during negotiations in 1983. The amendment was threefold: (1) it extended the time for promotional films from 12 to 30 minutes; (2) it removed individual bargaining requirements for day players and required the payment of minimum scale and (3) it separated the reuse payments for film clips from new production and behind the scene shots.

The second area of historical inquiry is Section 22. As is apparent from the above, Section 22 of the BA is a pivotal provision in this arbitration hearing. According to a Stipulation [Tr. 6], the essential elements of Section 22 came into the BA in 1960. Section 22 codified certain practices and placed certain restrictions on the re-use of film clips in other media.

The 1960 language of the BA was found in Section 10. The last sentence of Section 10(a) contained three of the basic exceptions from the reuse bargaining requirement with the actor as currently found in the BA. This last sentence of Section 10(a) provided:

> "This provision shall not limit Producer's right to use photography or sound track in exploiting the picture, or in trailers or in advertising, as provided in the Basic Agreement."

Testimony from SAG witnesses indicated that the reuse language of Section 22 was placed in the BA in order to eliminate possible abuse and to provide higher compensation to actors when film clips were reused in another entertainment product.

With the inclusion of the reuse negotiations language came the exclusions at the request of the Producers. This language apparently came from Section 21 of the standard contracts promulgated by the Academy of Motion Picture Arts & Sciences in 1935, a contract which did not involve any union. Section 21 of that contract was entitled "Rights Granted Producer." In the 1960 negotiations the Producers apparently wanted the three exclusions as a form of balance to the reuse negotiations language.

In the 1965 BA the format of Section 10(a) of the 1960 BA was changed and renumbered as Section 11. It

was in these negotiations that the three exclusions became Paragraph 3 of Section 11(a). The only change in Paragraph 3 was the elimination of "[t]his provision" and the inclusion of "[t]he provisions of this subsection (a)."

Another aspect modified in the 1965 negotiations was the clarification of the reuse provision as it applied to a crossover from a motion picture to another medium.

The 1967 BA changed the numbering system and placed the "reuse of photography or sound track" clause into the BA as Section 22. There was no apparent substantive change in Paragraph 3 of the newly designated Section 22(A).

A substantive change came into the 1971 BA in Paragraph 3, Section 22(A). This change added the fourth exclusion from the reuse negotiations requirement. The new exception was as follows:

> ". . . promotional films twelve minutes (or less) in length for theatrical motion pictures."

The evidence record was not crystal clear as to the mutual rationale for this addition; however, it has already been noted that Section 18(B) was also added during the 1971 negotiations and this addition addressed the subject of "promotional films." As already pointed out, the Parties did not share the same understanding as to the definitional "intent" of "promotional films" as negotiated in 1971.

In any event, the Producers argued for a broad interpretation of "trailers," "exploitation," and "advertising" and SAG contended for a broad interpretation of "promotional films." The reverse of these positions was also maintained by the Parties.

The 1977 negotiations for the BA did not change the language of Section 22(A); however, the 1983 negotiations added to Section 22 of the BA and Section 36 of the Television Agreement the following:

> "The provisions of this Section shall not limit the Producer's right to use or authorize the use of clips from theatrical [television] pictures, without bargaining or making additional payment: (1) within regularly-scheduled news programs; and in connection with other news and review purposes under the same circumstances as in the past; and (2) in Oscar [Emmy] Award programs.
>
> "With respect to uses which would otherwise require payment pursuant to Section 22 [Section 36], a star performer may at the time of use wiave payment for the use of theatrical [television] film clips containing such performer's voice or likeness, it being understood that such waiver shall not affect other performers entitled to payment hereunder."

DISCUSSION

Before addressing the issues raised in this arbitration proceeding, the Arbitrator must acknowledge the arbitral limitations found in Section 9 of the BA and the mandated requirements of Section 41(A): "[t]he language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning, and not strictly for or against the Guild or the several Producers. Unless otherwise specifically defined herein, the terms used shall be given their common meaning in the motion picture Industry."

The first matter to resolve is the statement of the issue. As already noted, the Parties were not in agreement, yet they were not far apart. After fully considering this evidence record as a whole, the Arbitrator determined that the issue should be stated in this manner:

1) Are the movie music videos made a part of this evidence record within the exceptions of Section 22(A), Paragraph 3 of the BA as amended?

2) If the answer is "no," what is the proper remedy?

Section 22(A), Paragraph 3 is the critical provision. It provides . . .

"The provisions of this subsection A shall not limit Producer's right to use photography or sound track

in exploiting the picture, or

in trailers,

promotional films twelve minutes (or less) in length for theatrical motion pictures, or

in advertising,

as provided in this Agreement."

The 1983 negotiations added two additional exclusions which can be briefly identified as (1) news programs and (2) award programs.

The producers are contractually excused from the reuse negotiation requirements of Section 22 if the Producer used the photography or sound track for four precise reasons [six including the 1983 amendments]. These reasons are precise; but the definitional framework of the four placed at issue in this arbitration is a much different matter.

At the core of the numerous claims filed by SAG with the named Producers is the question of whether the music videos as found in this evidence record fall within one or more of the four exclusions listed in Section 22(A), Paragraph 3.

Two of the four exclusions are also covered in Section 18(A) ["trailers"] and 18(B) ["promotional films"]; thus, these exclusions will be considered first. Paragraph 3 also directs that the Arbitrator must consider these exclusions "as provided in this Agreement."

"As provided in this Agreement," "trailers" are found in Section 18(A). Music videos as used in connection with the release of a theatrical motion picture are a form of "teaser," as that term is used in Section 18(A) with reference to "trailers"; thus, music videos and "trailers" have this common meeting ground. However, the Industry's definition of "trailer as reflected in this evidence record places the thrust, use and placement of "trailers" in a context significantly different from music videos. Thus, "trailers" as used in the Industry fail to reasonably include music videos, the Producers' arguments to the contrary notwithstanding. Attempts to bend and twist music videos into the generally understood meaning of the word "trailers" is misplaced. Neither Section 18(A) nor Section 22(A), Paragraph 3, is sufficiently elastic to accomplish this stretching task.

Therefore, music videos as found in this evidence record can not be reasonably construed as part of the "in trailers" exclusion of Section 22(A), Paragraph 3.

The second exclusion to be considered is the "promotional films twelve minutes (or less) in length for theatrical motion pictures." Music videos are clearly promotional and part of a marketing/promotional scheme designed by the Producer to creat an interest in viewing the theatrical motion picture. On this point, there is a strong similarity between the "promotional film" and a music video.

Where the music video parts company with the "promotional film" is in the Industry's definition of a "promotional film." As indicated by the language of Section 18(B) and as augmented by credited testimony, a "promotional film," SAG's arguments to the contrary notwithstanding, relates to "the making of the film" and makes the viewing audience feel that "they were part of the making of the film." Another apt description is an inside look at the film and how it evolved.

The evidence record fails to support the broad definition argued for by SAG.

The music videos in question fail to meet this definition, though the ultimate goal of both the "promotional film" and the movie music video are strikingly parallel, namely, creating public interest in a particular motion picture. However, the means leading to this same goal are significantly different and this difference distinguishes music videos from "promotional films."

Therefore, music videos as found in this evidence record can not be reasonably construed as part of the "promotional films twelve minutes (or less) in length for theatrical motion pictures" exclusion found in Section 22(A), Paragraph 3.

"In exploiting the picture" is a more difficult exclusion to define. The word "exploiting" makes a definition with precision a challenge. In this regard, the Producers argued for a broad definition; as would be expected, SAG argued for a narrow definition.

The word "exploiting," by its very nature, is broad. In the context of Section 22(A), Paragraph 3, and as expanded upon in this evidence record, it reasonably appears that "exploiting" means the following:

> "taking advantage of a situation in order to promote and publicize a theatrical motion picture to enhance the profits to be gained from its release."

A movie music video certainly meets this test. How? In this manner as gleaned from this evidence record:

> The Producer takes advantage of a popular and separate entertainment product, the music video, in order to promote and publicize a theatrical motion picture in a separate medium, such as MTV, in order to reach a particular audience which the market experts say can be reached in this medium and thus enhances the profits to be gained from the motion picture by stimulating an interest in this targeted audience to see the theatrical motion picture.

SAG argued that a music video as a separate entertainment product for a separate entertainment medium should set it apart from the exclusions. On the contrary, these very attributes, as just illustrated, materially contribute to the movie music videos' placement within the definitional structure of "in exploiting the picture" as found in Section 22(A), Paragraph 3.

SAG argued that broad definitions should not be employed with respect to the "exploitation" exclusion and the "advertising" and "trailer" exclusions. As already stated, the Arbitrator agreed with SAG that a broad definition to the "trailer" exclusion should not be given.

To support its argument, SAG noted that during the 1983 negotiations two additional exclusions or exceptions were added, namely, television news broadcasting and award programs. If the Section 22(A), Paragraph 3, exclusions were to be construed broadly, then, SAG asks, why the necessity to negotiate these additions in 1983. This is a forceful contention; however, the contexts of a film clip's reuse in a news broadcast and in an award program are distinguishable from the other exclusions. Reasonable persons may disagree on this conclusion; however, this Arbitrator can easily envision problems in attempting to make the four exclusions elastic enough to reasonably accommodate to the film clips reuse in the environs now covered by these 1983 exclusions.

Therefore, music videos as found in this evidence record are within the exclusion of "in exploiting the picture" as found in Section 22(A), Paragraph 3.

Having concluded that music videos fall within one of the exclusions found in Section 22(A), Paragraph 3, and given the construction of Paragraph 3, namely, the four exclusions are joined by the disjunctive "or," this last finding is dispositive of the issue as framed. Therefore, the Arbitrator, as tempting as it is, need not address whether the music videos as found in this evidence record also fall within the "in advertising" exclusion of Paragraph 3.

Also finding music videos within the "in exploiting the picture" exclusion, the Arbitrator need not address the question regarding the application of Section 39 of Schedule B and C of the BA to Schedule A. Though the Arbitrator concluded that this evidence record answers this inquiry, no statement should be made on the basis of ratio decidenti.

Throughout this decision, the Arbitrator has been careful to use the phrase, "as found in this evidence record" as a qualification to the findings and conclusions expressed. This statement was used with the purpose of making clear that those movie music videos found to be with-

in the exclusion of Section 22(A), Paragraph 3, just noted were those which the Arbitrator considered in reaching the ultimate decision indicated.

Those movie music videos which form the substantive foundation for this hearing all reasonably appeared to meet the criteria the Arbitrator used to conclude that they were within the ambit of the "in exploiting the picture" exclusion of Paragraph 3.

In order to avoid any doubt as to the criteria used by the Arbitrator, the following "checklist" is submitted:

1) the theatrical motion picture must be planned for current release or in current release;

2) there must be a reasonable nexus between the music video and the theatrical motion picture by way of key art, sound track and the reuse of the film clips;

3) the music video must be financed and be made a part of the Producer's marketing/promotional scheme;

-and-

4) the Producer must retain the license to the film clips used in the music video [3].

Having applied the above to the claims in this evidence record, the Arbitrator will deny the claims. However, since there were so many claims in this evidence record, the Arbitrator will retain jurisdiction should a problem develop as to a specific claim.

Ancillary to the above application of the "in exploiting the picture" exclusion of Paragraph 3, the Parties raised the issue of the movie music videos moving

into the "secondary market." This aspect of the case raises a difficult and complex problem. A movie music video may leave the primary orbit of "exploitation" of a theatrical motion picture and gain an overriding independence as it moves into the "secondary market."

This "secondary market" element is best handled at the bargaining table; thus, no specific findings and conclusions will be expressed by the Arbitrator for the negotiating forum should handle it and not the Arbitrator by "arbitral fiat"; thus, this aspect is remanded to the Parties.

AWARD

Based on this evidence record, it is the AWARD of this Arbitrator that . . . .

The movie music videos made a part of this evidence record are within the "in exploiting the picture" exception of Section 22(A), Paragraph 3 of the BA, as amended.

The Claims are DENIED.

The matter of the "secondary market" ramifications of the above decision are remanded to the Parties.

Jurisdiction is retained should problems develop with respect to specific claims.

Respectfully submitted,

Joseph F. Gentile
Arbitrator

JFG:kk

June 28, 1986

Los Angeles, California

FOOTNOTES

[1] It must be kept in perspective that the following pattern is a combination of the testimony from the representatives of various Producers. There were minor variances between each Producer; however, the listing attempts to capture the essence of all the methods used.

[2] In this context, it should be noted that the record companies may be involved. As testified to by Cirina Hampton, Director of West Coast publicity at MGM/UA:

"Q. Who makes the arrangements with MTV for the music video production to be shown on MTV?

A. It's normally shipped out of our department.

Q. Is the record company involved in that?

A. Oftentimes, yes. They have a good relationship with MTV, and we certainly would like to capitalize on that. If it gets the video aired more, it's good for us."

[Tr. 311:1-10]

[3] The evidence record indicated that the final disposition of a movie music video becomes a type of "tug-of-war" between the record company, which desires to use the music video as long as the video outlet wants it, and the Producer who still maintains control over the film clip licenses.