

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

MCA INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -3323

Decision No. CU - 6002

Counsel for claimant:

Ernest B. Goodman, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$8,568.07, was presented by MCA TV, a division of MCA INC., based upon the loss of certain film product and loss of certain balances due under film exhibition agreements.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record establishes that MCA TV is a division of and wholly owned by MCA INC. and that MCA INC. was organized under the laws of the State of Delaware. A certificate of a corporate official of MCA INC. discloses that at all times pertinent to this claim substantially all of the outstanding capital stock of MCA INC. was owned by nationals of the United States. The record shows that .0452% of the outstanding common stock of MCA INC. and 1.305% of the outstanding preferred stock were held by non-residents, including United States nationals and non-nationals. The Commission finds that MCA TV as a division of MCA INC. has no legal entity of its own, that MCA INC. is a national of the United States within the meaning of Section 502(1)(B) of the Act, and is substituted as claimant herein.

MCA TV, a division of MCA INC., filed this claim in the amended amount of \$8,568.07, for loss of 24-16mm black and white prints which were to be exhibited in Cuba, pursuant to contracts with MCA TV which were executed by CMBF Cadena Nacional, S.A., hereinafter referred to as CMBF TV. Claim was also asserted for loss of certain balances due MCA TV under three film exhibition contracts with CMBF TV. In support, there have been submitted exhibition contracts between MCA TV and certain producers of the subject prints, doing business in the United States, exhibition contracts with the aforesaid Cuban exhibitor, lists of the 16mm prints involved in this claim, company records, affidavits, correspondence and other evidence, including data pertaining to the value of the prints at the time of loss.

The Commission finds that MCA TV's predecessor in interest, MCA TV, Ltd. (a California corporation), entered into the exhibition contracts in question and shipped the 24 prints to the Cuban exhibitor, CMBF TV, pursuant to the agreements. The Commission also finds that CMBF TV was intervened by the Government of Cuba under Resolution 899 which was published in the Official Gazette on November 23, 1960.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is the "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The evidence discloses that MCA TV, Ltd., a predecessor of MCA TV, a division of MCA INC., entered into three film exhibition contracts with CMBF TV in 1959 for exhibition of certain film on television facilities located in Havana, Cuba. The contracts provided for supply of certain prints in a continuing series for a total of 52 telecasts for each series, including "Dragnet", "Tales of Wells Fargo" and "Mike Hammer". The contracts, executed in August and October of 1959, were each to continue for one year, with exhibition starting dates in October and December 1959, ending in October and December 1960. The total consideration to be paid by CMBF TV to MCA TV for these three series was \$28,600.00.

The evidence indicates that MCA TV was obligated to pay certain percentages of the film rentals to the producers of the prints. The producers

of the film did not, however, have privity of contract with CMBF TV and are not claimants of record herein. For purposes of the instant claim the Commission finds that MCA TV was the owner of the prints and contract rights between the parties are subject to future adjustments between the claimant and the producers, commensurate with determinations made in this claim.

Data has been submitted to establish that MCA TV received from CMBF TV the sum of \$4,075.19 in film rentals for the period expiring February 1, 1960; and received from the Cuban exhibitor the sum of \$16,591.62 in payment for film rentals between February 1, 1960 and July 31, 1960, for a total payment under the contracts, of \$20,666.81, ending July 31, 1960. The sum of \$7,933.19 remained due and payable by the Cuban exhibitor. When the Government of Cuba seized the property of the Cuban exhibitor and the subject film product they also assumed the outstanding indebtedness due MCA TV by CMBF TV since the contracts between the parties were substantially performed at the time of intervention. The Commission finds that the Government of Cuba succeeded to such indebtedness for \$7,933.19 by seizing the Cuban firm. (See Claim of Pilgrim Plastics Corporation, Claim No. CU-1979, 1969 FCSC Ann. Rep. 61.)

Accordingly, the Commission finds that the balance of \$7,933.19 was due and payable to MCA TV and was an indebtedness of CMBF TV at the time of intervention on November 23, 1960. The Commission has consistently held that claims based upon debts of nationalized enterprises are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) Thus, the Commission finds that MCA TV suffered a loss in the amount of \$7,933.19, within the meaning of Title V of the Act, to which claimant has succeeded and such loss arose on November 23, 1960.

This leaves for determination the portion of the claim asserted for loss of 24-16mm "one-half hour, black and white film prints" which were the prints shown or to be shown by CMBF TV and who retained such prints on the date when this Cuban exhibitor was intervened. Evidence of record, including data submitted by the Movielab of California, indicates that the approximate cost of manufacturing such prints in 1960 was \$.0244 per foot. The 16mm prints had an average total length of 1,050 feet per print, and, at \$.0244 per foot, the replacement cost per average print would be \$25.62, or \$614.88 for 24 prints.

The Commission finds that such prints were newly prepared for the Cuban market pursuant to the contract terms between MCA TV and CMBF TV and were to be returned by the exhibitor immediately after exhibition in Cuba. Thus, the Commission finds that depreciation or remaining useful life of the prints is not a factor in determining value of the prints in the instant claim; and that replacement costs, as asserted by MCA TV, are the most appropriate criteria in determining the value of the subject prints at the time of loss. The Commission concludes that claimant succeeded to and suffered a loss within the meaning of Title V of the Act in the amount of \$614.88 for this portion of the claim.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that MCA INC. succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eight Thousand Five Hundred Forty-eight Dollars and Seven Cents (\$8,548.07) with interest thereon at 6% per annum from November 23, 1960 to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

JAN 6 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 31.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)