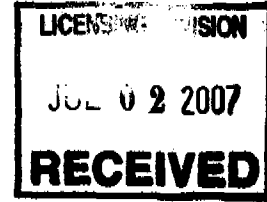


Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.



_____)
In the Matter of)
Section 109 Report to Congress)
Regarding Cable and Satellite)
Statutory Licenses)
_____)

Docket No. 2007-1

JOINT COMMENTS OF COPYRIGHT OWNERS

The undersigned Phase I claimant groups that participate in Section 111 and 119 proceedings, including the Joint Sports Claimants, the Program Suppliers, the National Association of Broadcasters, the Public Television Claimants, the Music Claimants, the Canadian Claimants Group, National Public Radio and the Devotional Claimants¹ (collectively "Copyright Owners") hereby submit these Joint Comments in response to the Copyright Office's Notice of Inquiry for the Section 109 Report to Congress, 72 Fed. Reg. 19039 (April 16, 2007) ("NOI").² The NOI identifies multiple proceedings related to Section 111 that are pending before the Copyright Office ("Office") and that have already been the subject of extensive comments. The Copyright Owners urge the Office to resolve these proceedings expeditiously, and not to delay resolution of these important questions while waiting to submit the Section 109

¹ The Devotional Claimants who are signatories to these Joint Comments represent the following entities: Amazing Facts, Inc., American Religious Town Hall Meeting, Inc., Billy Graham Evangelistic Association, Catholic Communications Corp., Christian Broadcasting Network, Coral Ridge Ministries Media, Inc., Cottonwood Christian Center, Crenshaw Christian Center, Crystal Cathedral Ministries, Evangelical Lutheran Church in America, Faith for Today, Family Worship Center Church, In Touch Ministries, It Is Written, Joyce Meyer Ministries, Liberty Broadcasting Network, Oral Roberts Evangelical Association, RBC Ministries, Reginald B. Cherry Ministries, Rhema Bible Church, Ron Phillips Ministries, Speak the Word Church International, The Potter's House of Dallas, Inc., Zola Levitt Ministries, Inc.

² Some Phase I claimant groups intend also to submit individual comments on other issues identified in the NOI.

Report to Congress in June 2008, or waiting for Congress to act after it receives the Report. Failure to act on these issues will compound the ongoing prejudice to Copyright Owners as certain cable operators appear to rely on perceived regulatory uncertainty to avoid compliance with their full obligations under the compulsory license system.

The Office identifies four topics in its notice that are the subject of pending rulemaking proceedings or petitions, all of which have been subject to public comment, some of them on multiple occasions. Those topics are: (1) the treatment of digital broadcast signals under the Section 111 compulsory license, (2) the need for changes to and additional information on the Section 111 statement of account (“SOA”) forms, (3) the Section 111 definition of “network station” and the treatment of Fox under that definition, and (4) the Section 111 definition of “cable system” and the related “phantom signal” issue. Cable operators encounter and address these issues in different ways on their SOAs, and Copyright Owners believe some have taken advantage of the seeming lack of clarity on these issues as a basis for reducing their royalty payments in a manner that is inconsistent with statutory and regulatory authority and longstanding Office precedent. Continued inaction and failure to resolve these proceedings will likely lead those cable operators to continue to avoid meeting their full royalty payment obligations.

It is possible that Congress will never act on the issues that are identified in the Section 109 Report, just as Congress never acted on the Office’s recommendations on many issues raised in the NOI that were also addressed in a 1997 review of the Section 111 and 119 compulsory licenses that was requested by Congress. *See A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals*, U.S. Copyright Office, August 1, 1997 (“1997 Report”). Even if Congress eventually chooses to address some of the numerous questions

identified in the NOI through legislation, the earliest action is likely to be taken is after the Section 109 Report is submitted to Congress in June 2008.³ And if Congress decides to act, it will benefit from clear statements from the Office interpreting the existing provisions of Section 111.

In order to provide immediate guidance to the parties on the proper application of the existing Section 111 compulsory license regime, the following proceedings -- involving issues which in all cases have been pending for over a year, and in some cases for many years -- should be addressed without waiting for the completion of the Section 109 Report:

- 1. Digital Signals Proceeding** -- In response to a Petition for Rulemaking submitted by the Program Suppliers and Joint Sports Claimants in 2005 requesting clarification on the application of the Section 111 compulsory license to digital broadcast signals, the Office recognized that issues regarding the retransmission of distant digital signals by cable operators are within its rulemaking authority. NOI at 19051. As noted in the NOI, *id.*, in 2006 the Office issued a Digital Signals NOI (71 Fed. Reg. 54948 (Sept. 20, 2006)) and obtained comments from interested parties. In their comments, copyright owners provided multiple examples of information related to the retransmission of digital broadcast signals that was absent or incorrect on cable operator SOAs. The respective commenters hereby incorporate by reference their pleadings and accompanying exhibits in that proceeding, as follows: Petition for Rulemaking *In re Retransmissions of Digital Broadcast Signals Pursuant to the Cable Compulsory License* (May 23, 2005); Comments of the Copyright Owners in Docket No. RM 2005-5 (Nov. 6, 2006); Comments of National Public Radio in Docket No. RM 2005-5 (Nov. 6, 2006); Reply

³ Copyright Owners also note that June 2008 falls in the second session of the 109th Congress during a presidential election year, so it is unlikely that Congress will consider Section 109 Report issues before at least early 2009.

Comments of the Copyright Owners in Docket No. RM 2005-5 (Dec. 18, 2006); and Reply Comments of National Public Radio in Docket No. RM 2005-5 (Dec. 18, 2006).

2. **Cable SOA Proceeding** -- In response to a Petition for Rulemaking submitted by Program Suppliers in 2005 regarding the need for changes and additional information on cable operator SOAs, the Office issued an NOI (71 Fed. Reg. 45749 (Aug. 8, 2006)) and obtained extensive comments from interested parties. The copyright owner comments provided numerous illustrations of clarifications and additional information that are required in order to guide cable operators in preparing their SOAs in compliance with Office requirements, as well as to provide the Office and copyright owners with adequate information to confirm that the royalty payments are calculated correctly. The respective commenters hereby incorporate by reference their pleadings and accompanying exhibits in that proceeding, as follows: Petition for Rulemaking *In re Cable Compulsory License Reporting Practices* (June 7, 2005); Comments of Joint Sports Claimants in Docket No. RM 2005-6 (September 25, 2006); Reply Comments of Joint Sports Claimants in Docket No. RM 2005-6 (October 24, 2006); Comments of the National Association of Broadcasters in Docket No. RM 2005-6 (September 25, 2006); Reply Comments of the National Association of Broadcasters in Docket No. RM 2005-6 (October 24, 2006); Comments of Program Suppliers in Docket No. RM 2005-6 (September 25, 2006); Reply Comments of Program Suppliers in Docket No. RM 2005-6 (October 24, 2006); and Reply Comments of the Public Broadcasting Service in Docket No. RM 2005-6 (October 24, 2006).

3. Definition of Network Station -- In a 2005 Petition for Rulemaking from the National Cable & Telecommunications Association ("NCTA"), the Office was asked once again to revisit the longstanding decision that for purposes of calculating Section 111 royalties, Fox is treated as an independent station. See NOI at 19049 n. 10 (referring to NCTA rulemaking petition).⁴ Paxson Communications had previously sought clarification on this same issue and a rulemaking proceeding was initiated by the Office in 2000 and is still open. See *id.* (rulemaking NOI was published at 65 Fed. Reg. 6946 (Feb. 11, 2000)). Thus, interested parties have already had the opportunity to file a complete set of comments on this issue and there is no need for the Office to delay issuance of a ruling in the ongoing proceeding based on the existing version of Section 111. The Office should expeditiously conclude the open rulemaking proceeding and issue a ruling reiterating its prior decisions so that there is no ongoing uncertainty on this point -- under the existing version of Section 111 only ABC, NBC and CBS stations qualify as network stations for purposes of computing Section 111 royalties. The respective commenters hereby incorporate by reference their comments in that proceeding, as follows: Comments of the Joint Sports Claimants in Docket No. RM 2000-2 (April 11, 2000); Comments of Program Suppliers in Docket No. RM 2000-2 (April 11, 2000); Reply Comments of Program Suppliers in Docket No. RM 2000-2 (May 11, 2000); and Comments of the Music Claimants, RM 2000-2 (April 11, 2000).

⁴ The NOI inexplicably states that "it is unclear whether [Fox] can be considered a network station for Section 111 purposes." NOI at 19049. In fact there is clear precedent, including the Librarian's decision affirming the CARP ruling in the 1990-92 cable distribution proceeding, that for purposes of Section 111 Fox programming is compensable "nonnetwork programming." See *Distribution of 1990, 1991 and 1992 Cable Royalties*, 61 Fed. Reg. 55653, 55660 (1996).

4. Definition of Cable System -- In 2005, the NCTA submitted another petition for rulemaking to the Office, questioning once again the Office's interpretation of the definition of a cable system under Section 111(f) and raising the so-called "phantom signal" issue. See NOI at 19053 (referring to NCTA petition). The Office should act expeditiously to issue a ruling denying the petition and describing once again the obligations of cable operators under the existing statute and regulations, which as a matter of long-standing precedent do not permit the computation of royalties to be paid by a single cable system on a community-by-community basis. See *Notice of Final Regulations*, Docket No. RM 77-2, 43 Fed. Reg. 958 (1978). As described in the NOI, in its 1997 Report the Office made recommendations to Congress regarding the amendment of the definition of Section 111(f). See NOI at 19053. Congress has taken no action on these recommendations. The Office terminated a 1989 rulemaking proceeding on this issue at the time that it prepared the 1997 Report. See *Final Rule and Termination of Proceeding*, Docket Nos. RM 89-2 and RM 89-2A, 62 Fed. Reg. 23360 (April 30, 1997). There is no need to reopen a rulemaking proceeding on this issue, which has already been presented to Congress, and continued failure to deny the petition will only permit cable operators to exploit perceived uncertainty on treatment of cable systems for royalty calculation purposes. The respective commenters hereby incorporate by reference their comments in the 1989 rulemaking proceeding, as follows: Comments of the Joint Sports Claimants in Docket No. RM 89-2A (Feb. 23, 1995); and Comments of Program Suppliers in Docket No. RM 89-2A (Feb. 23, 1995).

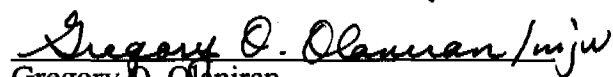
The Copyright Owners note that extensive briefing has already been conducted on all four of these issues. They urge the Office to address the pending rulemaking proceedings and

petitions as soon as possible, and not to delay action pending final preparation of the Section 109 Study Report and possible congressional action based on the contents of that Report. These pending rulemaking proceedings have languished far too long without resolution, and the Section 109 Study proceedings should not be permitted to delay further Copyright Office action on these issues.

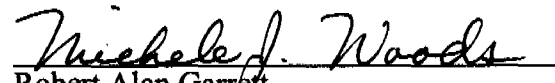
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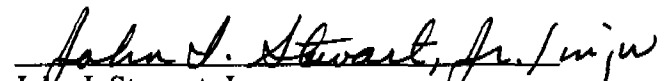
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