



ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559

FINAL REGULATION; TECHNICAL AMENDMENT

CABLE COMPULSORY LICENSE; DEFINITION OF A CABLE SYSTEM

The following excerpt is taken from Volume 58, Number 165 of the Federal Register for Friday, August 27, 1993 (pp. 45263-45264)

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 86-7D]

Cable Compulsory License; Definition of a Cable System

AGENCY: Copyright Office; Library of Congress.

ACTION: Final Regulation; technical amendment.

SUMMARY: The Copyright Office is making a technical amendment to its rules in light of its recent decision to postpone the effective date of its regulation regarding the definition of a cable system under the cable compulsory license. Satellite carriers and MDS/MMDS operators, whose royalty payments under the cable license will no longer be accepted by the Copyright Office as of January 1, 1995, may file a written request no later than March 1, 1995 for a refund of past royalties submitted to the Office.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 707-8380.

SUPPLEMENTARY INFORMATION: On January 29, 1992, the Copyright Office issued a final regulation in its proceeding regarding the definition of a cable system under the cable compulsory license, 17 U.S.C. 111. 57 FR 3284 (1992). The Office concluded that satellite carriers and MDS/MMDS operators were not eligible for compulsory licensing under § 111, and amended its rules to reflect that conclusion

as well as permit satellite carriers and MDS/MMDS operators time in which to request a refund for royalties submitted under § 111 in previous accounting periods. 37 C.F.R. 201.17(k). The Office initially set an effective date of January 1, 1994 for the new regulation.

On July 28, 1993, the Copyright Office issued a policy decision extending the effective date of the § 201.17(k) cable regulation by one year to January 1, 1995. 58 FR 40363 (1993). The Office now makes a technical amendment to the regulation to extend the time period within which to request a refund from March 1, 1994 to March 1, 1995.

Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.¹

¹The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act of 1976 (i.e., "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits) (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small business.

List of Subjects in 37 CFR Part 201

Cable systems; cable compulsory license. **Final Regulation**

In consideration of the foregoing, part 201 of 37 CFR chapter II is amended in the manner set forth below.

PART 201--GENERAL PROVISIONS

1. The authority citation for Part 201 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; 201.7 is also issued under 17 U.S.C. 408, 409, and 410; 201.16 is also issued under 17 U.S.C. 116; 201.17 is also issued under 17 U.S.C. 111; 201.27 and 201.28 are also issued under Public Law 102-563, 106 Stat. 4237.

2. Section 201.17(k) is revised to read as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.
* * * * *

(k) **Satellite carriers and MMDS not eligible.** Satellite carriers, satellite resale carriers, multipoint distribution services, and multichannel multipoint distribution services are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111 of title 17 of the United States Code. At its election, any such entity who paid copyright royalties into the Copyright Office in an attempt to comply with 17 U.S.C. 111 may obtain a refund of the royalties paid