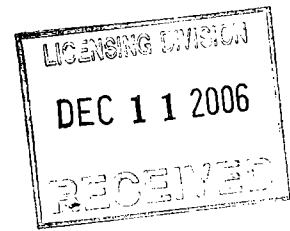
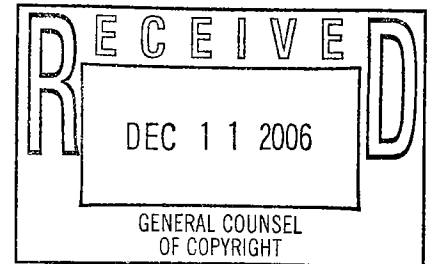


Before the
Library of Congress
Copyright Office
Washington, D.C.



Retransmission of Digital Broadcast Signals)
Pursuant to the Cable Statutory License)

Docket No. RM-2005-5



REPLY COMMENTS

I. Introduction and Summary

ACA submits these reply comments in support of the following point made in NCTA's Comments:¹ The Copyright Office should reject the Copyright Owner's claim that gross revenues on Statements of Account ("SOA") should include digital converter revenue. This claim lacks support in law or fact. Digital converters are not necessary for the receipt of digital broadcast signals. Consequently, under Section 111, Copyright Office regulations and interpretations, revenue from digital converters and CableCards are properly excluded from "Gross Revenues" for copyright purposes. As requested by NCTA, the Copyright Office should reject the Copyright Owners claims to the contrary.

Moreover, the Copyright Owners² fail to provide any support for their proposed rule. They conveniently ignore the ubiquitous retail availability of cable ready digital

¹ *Comments of the National Cable & Telecommunications Association*, Docket No. RM-2005-5 (filed November 6, 2006) ("*NCTA Comments*").

² *Comments of the Copyright Owners*, Docket No. RM-2005-5 (filed November 6, 2006).

television sets that do not require a set-top device to process digital broadcast signals. The Copyright Owners' position should be dismissed as yet another attempt to inflate compulsory license royalties beyond what the law requires.

American Cable Association. ACA represents nearly 1,100 small and medium-sized cable companies that serve about 8 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states, and in practically every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators with small systems in small markets. All ACA members retransmit broadcast signals under the cable compulsory license and file SOAs. A growing number are retransmitting digital broadcast signals as well.

II. ACA concurs with NCTA: Digital converter revenue should not be included with SOA gross revenues because digital converters are not necessary for the receipt of digital broadcast signals.

The Copyright Office should reject the Copyright Owners claims that revenue from digital converters and CableCards should be included in "Gross Revenues" for copyright purposes because: (i) digital converters are not necessary for receipt of digital broadcast signals; and (ii) Copyright Owners claims to the contrary are not supported by fact.

A. Digital converters are not necessary for receipt of digital broadcast signals.

The NOI questions whether cable operators should include digital converter fees from their gross receipts calculations.³ The short answer is: No. Copyright Office

³ *Retransmission of Digital Broadcast Signals Pursuant to the Cable Statutory License, Notice of Inquiry*, 71 Fed. Reg 54948, 53952 (Sept. 20, 2006).

regulations state, “any fees charged for converters necessary to receive broadcast signals must be included in the cable system’s gross receipts used to calculate its Section 111 royalty payment (emphasis added).”⁴ As correctly stated by NCTA, only fees from converters that are necessary for the receipt of digital broadcast signals are subject to royalties.⁵ Conversely, revenues from converters that are not necessary to receive digital broadcast signal are not subject to royalties.

As explained by NCTA, and as corroborated here, digital converters are not necessary for the receipt of digital broadcast signals on cable systems.⁶ The Cable Act and FCC regulations obligate cable operators to offer broadcast signals on the basic tier and prohibit cable operators from scrambling that tier.⁷ Put another way, the basic tier and broadcast signals in that basic tier are available to any customer with a cable subscription. Digital broadcast signals are no different.

To receive digital broadcast signals on cable, a customer need only purchase a digital “Plug-and-Play” television.⁸ The cable attaches directly to the television, and the television processes digital broadcast signals transmitted by the cable system.⁹ A

⁴ 37 CFR § 201.17(b)(1).

⁵ *NCTA Comments* at 9.

⁶ *NCTA Comments* at 10.

⁷ 47 USC § 543(b)(7)(A); 47 CFR § 76.630.

⁸ *Compatibility of Cable TV & Digital TV Receivers – Plug and Play*, available at <http://www.fcc.gov/cgb/consumerfacts/plugandplaytv.pdf>.

⁹ See NCTA Q & A on Cable Ready Equipment, <http://www.ncta.com/IssueBrief.aspx?contentId=2711&view=3> (“Digital Cable Ready devices (TVs and other equipment) allow consumers to enjoy digital cable services without the need for a set-top box”).

separate set-top box is not necessary.¹⁰ Consequently, no basis exists to include digital converter revenue with gross revenues for cable copyright purposes.

This conclusion finds further support in longstanding Copyright Office policy.

When addressing this issue, the Copyright Office stated:

In the usual case, however, converters are offered to subscribers when the tuners on the subscribers' television sets are not capable of tuning to all of the television stations offered by the cable system. In either case, the subscriber must have a converter to receive, in usable form, the signals of all of the television stations that constitute the cable system's basic service of providing secondary transmissions of primary broadcast transmitters. Fees paid to cable systems for converters, therefore, are clearly amounts paid for the system's secondary transmission service and are includible in that system's 'gross receipts.'¹¹

In short, a cable operator should pay copyright royalties on converter revenue only when a subscriber needs a converter to receive the broadcast signals. Consistent with this policy, cable operators properly exclude digital converter revenue because today, subscribers do not need digital converters to receive digital broadcast signals.

B. The Copyright Owners' claims regarding digital converters and digital broadcast signals are not supported by fact.

The Copyright owners maintain that "[c]urrently, cable subscribers are unable to receive digital (including HDTV) signals offered by their cable provider unless they obtain a special converter – regardless of whether those signals are available as part of the lowest-priced basic service."¹² This claim lacks any basis of fact.

As shown here and by NCTA,¹³ equipment to receive digital broadcast signals is

¹⁰ NCTA Comments at 11.

¹¹ *Compulsory License for Cable Systems*, 43 FR 27827–27828 (June 27, 1978) (emphasis added).

¹² *Copyright Owners' Petition for Rulemaking*, Docket No. RM-2005-5 at 4 (filed May 23, 2005).

¹³ NCTA Comments at 11-12.


widely available at retail. Every consumer in every town with a Wal-Mart or other electronics retailer has access to a plug and play digital television set that can display digital broadcast signals without a converter. The Copyright Owners' claims regarding the need for digital converters does not square with reality.

III. Conclusion

For the reasons stated above, digital converters are not necessary for the reception of digital broadcast signals. The Copyright Owners' claims regarding the necessity of digital converters to receive digital broadcast signals are not supported by fact. The Copyright Office should reject the proposed inclusion of digital converter revenues in the calculations of cable copyright royalties.

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December 6, 2006

CERTIFICATE OF SERVICE

The undersigned, a paralegal at the firm of Cinnamon Mueller, certifies that she caused a copy of the **American Cable Association's Reply Comments regarding Retransmission of Digital Broadcast Signals, Docket No. RM-2005-5** to be placed in the U.S.P.S. mail by 5:00 p.m. on December 6, 2006 and sent to:

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