

EXECUTIVE SUMMARY

At the request of Senator Orrin Hatch, Chairman of the United States Senate Committee on the Judiciary, the Copyright Office conducted a review of the copyright licensing regimes governing the retransmission of over-the-air radio and television broadcast signals by cable systems, satellite carriers, and other multichannel video providers. The specific issues addressed in this review include whether the compulsory licenses should continue to exist, whether harmonization of the satellite and cable compulsory licenses is possible and desirable, whether the satellite compulsory license should be extended, whether to extend either of those licenses to new technologies such as open video systems and the Internet, whether the satellite carrier compulsory license should encompass the local retransmission of broadcast signals, how to solve the disputes surrounding the "unserved household" restriction for the retransmission of network television stations that is currently a part of the satellite compulsory license, and whether the satellite compulsory licensing regime should make a special provision for the retransmission of a national satellite feed of the Public Broadcasting Service with a separate royalty rate for such a signal.

I. THE CURRENT SYSTEM OF COPYRIGHT LICENSING FOR BROADCAST RETRANSMISSIONS

There are currently two compulsory licenses in the Copyright Act governing the retransmission of broadcast signals. A compulsory license is a statutory copyright licensing scheme whereby copyright owners are required to license their works to users at a government-fixed price and under government-set terms and conditions. The cable compulsory license allows a cable system to intercept over-the-air television and radio broadcast signals (comprised of copyrighted programming) and to retransmit the signals to its subscribers who pay a fee for such service. The satellite carrier compulsory license permits a satellite carrier to intercept television (but not radio) signals and retransmit the signals to satellite home dish owners for their private home viewing. The cable compulsory license does not have a sunset provision, but the satellite carrier compulsory license is scheduled to expire on December 31, 1999.

The cable compulsory license originated in the 1976 Copyright Revision Act and was premised on two significant Congressional considerations. The first consideration concerns the difference between cable retransmission of a broadcast signal to the local audience served simultaneously by the broadcaster and its retransmission to a distant audience that would not otherwise be able to receive the signal. In 1976, Congress determined that the carriage of local broadcast signals by a cable operator does not greatly harm the copyright owners of the programming on the signal retransmitted. Based on that consideration, the compulsory license essentially lets cable systems carry local signals for a *de minimis* fee.

To the contrary, Congress found a cable system's retransmission of broadcast signals to subscribers in distant markets does harm copyright owners. To compensate copyright owners for the retransmission of their programming to distant markets, Congress requires cable systems utilizing the cable compulsory license to pay royalties for each signal they carry to distant audiences.

The second consideration concerns a differentiation between large and small cable systems based upon the dollar amount of receipts a cable system receives from subscribers for the carriage of broadcast signals. In 1976, Congress determined that the retransmission of copyrighted works by smaller cable systems whose gross receipts from subscribers were below a certain dollar amount deserved special consideration because of their mostly rural location. Therefore, in effect, the cable compulsory license subsidizes smaller systems and allows them to follow a different, lower-cost royalty computation. Large systems, on the other hand, pay in accordance with a highly complicated and technical formula, principally dependent on how the Federal Communications Commission regulated the cable industry in 1976. The vast majority of royalties paid under the cable compulsory license comes from the large cable systems.

The royalty scheme for the large cable systems employs the statutory device known as the distant signal equivalent (DSE). Whether a signal is distant or local for a particular cable system for purposes of calculating the system's DSE total is determined in accordance with two sets of FCC regulations on cable systems: the "must-carry" rules for carriage of broadcast stations in effect on April 15, 1976, and each

station's television market as currently defined by the Commission. A cable system pays royalties based upon a sliding scale of percentages of its gross receipts depending upon the number of DSEs the station incurs. The greater the number of distant signals a system carries, the greater the percentage the system must apply against its gross receipts and the greater the royalty it will pay under the cable compulsory license.

The statutory rates and percentages applied by cable systems have changed over the years pursuant to rate adjustment proceedings that were held by the now-defunct Copyright Royalty Tribunal and the Copyright Office by authority of the statute. The annual royalty funds collected by the Copyright Office have been distributed to copyright owners pursuant to settlement or distribution proceedings before the same bodies.

The satellite carrier compulsory license was created by the Satellite Home Viewer Act of 1988. The license was due to expire at the end of 1994 but was extended by Congress for an additional five years. The satellite license operates in many respects like the cable license, but with a far simpler royalty calculation method.

The satellite compulsory license allows satellite carriers to retransmit superstation signals to home dish owner subscribers located anywhere in the United States, and to retransmit network signals only to "unserved households." Unserved households are those that cannot receive an over-the-air signal of Grade B intensity of a network station using a conventional rooftop antenna, and that have not received the signal from a cable system within the previous 90 days. After the amendment of the satellite carrier compulsory license in 1994, Congress adopted a "fair market value" standard for adjusting the royalty rates of the satellite license.

II. SHOULD THE CABLE AND SATELLITE CARRIER COMPULSORY LICENSES CONTINUE TO EXIST?

Compulsory licenses are an exception to the copyright principle of exclusive ownership for authors of creative works, and, historically, the Copyright Office has only supported the creation of compulsory

licenses when warranted by special circumstances. With respect to the cable and satellite compulsory licenses, those special circumstances were initially seen as the difficulty and expense of clearing all rights on a broadcast signal. However, as early as 1981, the Copyright Office had recommended the elimination of the cable compulsory license and full copyright liability for cable systems' retransmission of distant signals, based on a finding that the cable industry had progressed from an infant industry to a vigorous, economically stable industry which no longer needed the protective support of the compulsory license.

Revisiting the issue, and factoring in the satellite compulsory license, the Copyright Office finds that for licensing the copyrighted works retransmitted by cable systems and satellite carriers, the better solution is through negotiation between collectives representing the owner and user industries, rather than by a government administered compulsory license. However, the comments demonstrate that the cable and satellite licenses have become an integral part of the way broadcast signals are brought to the public, that business arrangements and investments have been made in reliance upon the compulsory licenses, and that the parties advocating elimination of the licenses at this time have not presented a clear path for such elimination at this time. For these reasons, the Copyright Office does not advocate the elimination of the compulsory licenses at the present time. The Copyright Office also believes that the satellite carrier industry should have a compulsory license to retransmit broadcast signals as long as the cable industry has one. Consequently, the Copyright Office would support the removal of the sunset date for the section 119 satellite compulsory license.

However, the Office recommends major revisions for both the cable and satellite compulsory licenses that would make them as simple as possible to administer, would provide the copyright owners with full compensation for the use of their works, and that would treat every multichannel video delivery system the same, except to the extent that technological differences or differences in the regulatory burdens placed upon the delivery system justify different copyright treatment.

III. SHOULD THE CABLE AND SATELLITE CARRIER LICENSES

BE HARMONIZED?

The commenters were nearly unanimous that the cable and satellite carrier compulsory licenses should remain separate because the two signal delivery industries are different in nature and are subject to different communications regulation. For example, the cable technology is terrestrially based and delivers a mix of local and national programming in relatively local markets, while satellite systems deliver mostly national programming on a national basis from satellites whose footprints cover the entire continental United States.

The Copyright Office concludes that merging section 111 and 119 into a single section would not lead toward any practical benefit to the public administration of the licenses and, therefore, the Office agrees that the two sections should not be merged. However, the Office does agree with the rationale behind the idea of harmonization. That is, any existing differences between the copyright treatment of cable retransmissions and of satellite retransmissions should be removed where possible so that the compulsory licenses do not affect the competitive balance between the satellite carrier and cable industries.

IV. SHOULD THE CABLE RATE STRUCTURE BE REFORMED?

The cable compulsory license rate mechanism that was established in 1976 was based upon a Federal Communications Commission (FCC) cable regulatory structure that has not been in existence for a number of years. In addition, the cable royalty system is a three-tiered system with progressively higher rates for larger systems. These factors have resulted in many anomalies in royalty obligations, and many difficulties in royalty calculation that affect copyright owners, cable system operators, and the Copyright Office. The Copyright Office thoroughly examined many ideas for the reform of the royalty rate mechanism, and concluded as follows.

First, the Copyright Office recommends that section 111 be amended to make cable rates as simple as possible and reflect fair market value. This would eliminate many of the administrative costs and uncertainties created by the present royalty mechanism, eliminate undercompensation to authors, and treat cable systems similarly to satellite carriers.

Second, the Office recommends that Congress reconsider the royalty rate subsidy for small cable systems. If Congress does not eliminate the subsidy, the Office would urge Congress to raise the minimal payment paid by small cable systems to an amount that can be considered fair; now the minimal payment does not even meet the amount it costs the Copyright Office to process the payment.

Third, the Copyright Office recommends that Congress amend section 111(f) to define when two cable systems under common ownership or control are, in fact, one system for purposes of section 111 in light of technological advances in headends and in anticipation of open video systems being eligible as cable systems. If a flat, per subscriber fee is not adopted, the same part of section 111(f) should also be amended to calculate cable rates only on those subscriber groups that actually receive a particular broadcast signal, thus addressing the "phantom" signal problem.

To accomplish these goals, the Copyright Office urges Congress to amend section 111(f) to read, "For purposes of determining the royalty fee under subsection (d)(1), two or more cable systems under

common ownership or control that are either (a) in contiguous communities, (b) operating from the same headend, or (c) using the same open video system platform, shall be considered as one system. Once two or more cable systems have been deemed a single larger cable system, the calculation of the rates shall be based on those subscriber groups who receive the secondary transmission as the Register of Copyrights shall by regulation provide."

Fourth, the Copyright Office believes that a rate based on fair market value would obviate the need for a step-up rate such as the 3.75% rate for the retransmission of distant signals that exceeds a certain quota. The Office believes that so long as the marginal costs of each additional signal does not go down, that provides sufficient disincentive for the cable system to import an excessive number of distant signals. Therefore, in keeping with the Office's proposal that differences between the compulsory licenses be eliminated where possible, the Office recommends that the cable distant signal rates should be set at fair market value, with no step-up rate for any class of distant signals, just as the current satellite carrier rates are set.

V. HOW SHOULD THE CABLE RATE STRUCTURE BE REFORMED?

As a preliminary matter to determining the best rate structure model, the Office addressed how to improve the method by which the current section 111 distinguishes which signals are local or distant for a particular cable system. This issue needs to be addressed under any of the three models considered and should be addressed even if the current rate structure is retained.

The Copyright Office strongly urges Congress to eliminate any reference in section 111 to the now-defunct 1976 must-carry rules. Instead, Congress should simply move to the new ADI system of determining a television station's local market. For noncommercial educational stations, which the ADI system does not address, the Office recommends defining the local market of a station as an area encompassing 50 miles from the community of license of the station, including any communities served in whole or in part by the 50 mile

radius. The Copyright Office recommends similar treatment for determining when satellite carriers are retransmitting local or distant signals, as described in Chapter IX.

Having dealt with the issue of when a signal retransmitted by a cable system should be considered a distant signal, the Copyright Office turns to the issue of how to determine the amount of royalties a cable system should pay for its carriage of distant signals. The Office considered three models for reforming the section 111 rate structure to promote simplicity in administration of the license. Each of the models could be adjusted to provide for a marketplace rate. The three models are: (1) a flat, per subscriber, per signal fee similar to that paid by the satellite carriers; (2) a reform of the current gross receipts structure; and (3) a tariffing model proposed by Major League Baseball.

The Copyright Office rejected the tariffing system proposed by Baseball because it would simply replace one complex system with another. The Office then determined that either a reformed gross receipts model or the flat, per subscriber, per signal model would work well to achieve simplicity, certainty, equity, and efficiency.

As between the two models, the Office strongly recommends the flat, per subscriber, per signal fee because: it would eliminate the arbitrary royalty calculations that result when cable systems market channels on different tiers to manipulate their total gross receipts calculations; it would eliminate the time-consuming and complex calculations necessary for reporting subscriber groupings as discussed in Chapter IV; it would provide an easy comparison of the rates paid by cable systems and the rates paid by satellite carriers to facilitate the goal of achieving comparable rates between the two retransmission industries; and it would offer cable systems the flexibility to change their signal lineups monthly without incurring unintended additional royalty fees.

The Copyright Office also recommends that the statute be amended to cause a CARP to be convened to take evidence on what the flat, per subscriber, per signal rates (or the reformed gross receipts model rates) should be, based on the fair market value of the rates, the rates paid by satellite carriers keeping in mind the

regulatory and technological differences between the two industries, and the economic impact of the new rate structure on small cable systems. After the CARP has made its initial determination of cable rates, the Office recommends that all future rate adjustment proceedings be combined into a single cable-satellite rate adjustment proceeding to be conducted every five years so that the cable and satellite carrier industries can be compared by the same CARP panel at the same time.

VI. SHOULD THE CABLE COMPULSORY LICENSE APPLY TO OPEN VIDEO SYSTEM OPERATIONS?

The Telecommunications Act of 1996 creates the open video system as an entirely new framework for entering the video marketplace. In creating this new framework, which allows telephone companies and others to retransmit broadcast signals, Congress and the FCC strove to promote competition, to encourage investment in new technologies, and to maximize the consumers' choice of services. The Telecommunications Act treats open video systems similarly to cable systems by imposing must-carry and other carriage requirements. However, unlike a cable system operator, an open video system operator may act as a programmer itself on no more than one-third of its activated channel capacity, and it must carry programming for other video programmers on a non-discriminatory basis. The structure and appearance of open video systems remain largely unresolved at this time.

Without deciding whether open video systems might qualify as a section 111 cable system under the current statute, the Copyright Office believes that open video systems should be eligible for a cable compulsory license, and that the statute should be amended to facilitate open video systems' inclusion in section 111. The Copyright Office is swayed by the strong resemblance between open video systems and traditional cable systems in both technological and regulatory aspects. The Office agrees with the commenters who argue that it would be patently unfair, and that it would thwart Congress's intent in creating the open video system model, to deny the benefits of compulsory licensing to open video systems when similar benefits are enjoyed by traditional cable systems, satellite carriers, SMATV systems, and MDS and

MMDS operations.

The Copyright Office believes that section 111 should be amended in several ways to facilitate the eligibility of open video systems for the cable compulsory license. First, the definition of a cable system in section 111(f) should be amended to specifically include open video systems as cable systems, and to clarify that each programmer on the open video system is responsible for filing and paying royalties as a cable system. Furthermore, for purposes of identifying which open video system programmers must file together as one system to avoid artificial fragmentation of one larger system into smaller systems, it will be essential for Congress to amend the "contiguous communities" section of the definition of cable system.

Finally, both the complex rate structure in section 111 and the statute's reliance on the former FCC rules for determining local and distant signals should be amended, as discussed in Chapter V, to ensure the smooth administration of the compulsory license with open video systems as cable systems.

VII. THE PASSIVE CARRIER EXEMPTION.

The passive carrier exemption in section 111(a)(3) of the Copyright Act provides an exemption from copyright liability to any carrier who retransmits one or more broadcast signals so long as that carrier has "no direct or indirect control over the content or selection" of the broadcast signal being retransmitted or the recipients of the signal, and so long as its only involvement in the retransmission is to provide the "wires, cables, or other communications channels for the use of others." This provision was intended initially to ensure that telephone companies, whose wires and hardware were used as a conduit for the retransmissions made by cable systems, would not somehow be deemed to be infringers under the new Copyright Act of 1976.

The exemption came into wider use with the rise of superstations in the late-1970's. At that time satellite carriers became involved in the transmission of over-the-air signals to cable systems, and they, too, invoked the passive carrier exemption. Three mid-1980's appellate court decisions defined the scope of the exemption in the satellite carrier context. When the development of home earth station (satellite dish)

technology provided a new market for the retransmission of superstations (i.e., to home dish owners as well as to cable systems), the limits of the passive carrier exemption were explored. In 1986, Register of Copyrights Ralph Oman issued the Copyright Office view that the sale and licensing of descrambling devices to home dish owners by satellite carriers cannot be deemed passive activities within the purview of section 111(a)(3), particularly where the carrier itself encrypts the signal. Thus, for the delivery of superstations to home dish owners, Congress afforded satellite carriers a separate compulsory license, because they did not qualify for the passive carrier exemption in that context.

In this study, the Copyright Office reexamined the passive carrier exemption as it might apply to open video system operators who retransmit broadcast signals for independent programmers. At the same time, the Office considered the views of commenters regarding the entire scope of the exemption.

The Copyright Office concludes that if Congress amends the Copyright Act to clarify that open video systems are eligible for the cable compulsory license, then the passive carrier exemption should be amended to indicate that open video systems qualify for the section 111(a)(3) exemption only in very limited circumstances: when the open video system operator retransmits broadcast signals for an unaffiliated programmer and no stations invoke their must-carry privilege. In such limited circumstances, the open video system would be a truly passive carrier. The Copyright Office believes that providing ancillary services such as marketing, billing and collecting would not be activities that would disqualify an operator from claiming the exemption. However, the Office takes the position that is consistent with its position regarding satellite carriers, that if an open video system operator for some reason had the need to scramble or otherwise encode its signals and provide decoders to subscribers, it would not qualify for the passive carrier exemption. However, Congress might consider creating a different exemption for open video systems that only retransmit must-carry signals.

The Copyright Office believes it is probable in most, if not all instances, that when open video system operators provide retransmission services for independent programmers, local broadcasters will

invoke their must-carry rights against the operators. Then the operators will be required to retransmit the must-carry signals to the subscribers of the independent programmers. It is the Copyright Office's view that in making such carriage of local signals, the open video system operator would be publicly performing the copyrighted works embodied on the signal and must secure a compulsory license to avoid copyright liability. It would not be eligible for the passive carrier exemption. However, Congress might consider creating a different exemption for open video systems that only retransmit must-carry signals.

The Copyright Office also recommends that Congress may wish to reconsider the holding of the United States Court of Appeals for the Eighth Circuit in Hubbard Broadcasting, Inc. v. Southern Satellite Systems, 777 F.2d 393 (8th Cir. 1985), which permits a satellite carrier to invoke the passive carrier exemption even though it carries a signal on which national advertising has been substituted by the broadcaster for the local advertising on the over-the-air signal. The spirit of the law is that the signals should be retransmitted "as is." However, since it is the broadcaster who is making the alterations, not the satellite carrier, the question of who benefits, who's harmed, and whether this is a situation that needs to be remedied is not as clear as if the satellite carrier made the alterations. These issues were not fully briefed before the Office during the comment period, and therefore no conclusion was reached by the Office except that the issue deserves further study.

VIII. SHOULD THE CABLE COMPULSORY LICENSE BE EXTENDED TO THE INTERNET?

The next new multichannel program providers to claim eligibility for compulsory licensing are the Internet broadcasters of audio and some video events. One of these, AudioNet, Inc., described to the Copyright Office the "streaming" technology that, within two or three years, should make it possible for AudioNet to retransmit television broadcast signals to anyone anywhere in the world who has a computer with audio capability and access to the World Wide Web. The quality of the audiovisual display for such retransmissions should be close to advanced digital television standards. AudioNet argues that Internet

retransmitters should be eligible either for a section 111 cable compulsory license or a compulsory license of their own.

The Copyright Office concludes that it would be inappropriate for Congress to grant Internet retransmitters the benefits of compulsory licensing. The primary argument against an Internet compulsory license is the vast technological and regulatory differences between Internet retransmitters and the cable systems and satellite carriers that now enjoy compulsory licensing. The instantaneous worldwide dissemination of broadcast signals via the Internet poses major issues regarding the national and international licensing of the signals that have not been fully addressed by federal and international policymakers, and it would be premature for Congress to legislate a copyright compulsory license to benefit Internet retransmitters.

IX. THE UNSERVED HOUSEHOLD RESTRICTION IN THE SATELLITE CARRIER COMPULSORY LICENSE

Section 119(a)(2)(B) of the Copyright Act provides that the compulsory license granted under section 119 for the retransmission of television network signals is limited to "persons who reside in unserved households." This provision of section 119 denies the satellite compulsory license to a satellite carrier that retransmits a network signal to a subscriber who already receives the signal of the network's local affiliate from another source. As such, it is a communications provision, modeled after the FCC's network nonduplication rules that apply to cable systems, which has been incorporated in the Copyright Act.

An unserved household, ineligible for receipt of a network signal from a satellite carrier, is defined in section 119(d)(10) as a household that cannot receive an over-the-air signal of Grade B intensity of an affiliate of a particular network, using a conventional rooftop antenna, and that has not subscribed to a cable system that delivers the signal of an affiliate of that network within the last 90 days. The enforcement mechanism of the unserved household provision has proved problematic. Congress amended section 119 in 1994 to provide a transitional enforcement regime which allowed network affiliates to issue written

challenges against subscribers receiving network service which it believed did not reside in unserved households. While the term of that transitional regime has expired, it was highly contentious while it lasted. Now broadcasters who believe they are aggrieved of violations of the unserved household restriction must once again resort to the traditional enforcement action of the Copyright Act, the infringement suit. Several such suits have been brought in the last year.

Another controversial issue that surrounds the unserved household issue is the question whether satellite carriers that retransmit the local network affiliates to subscribers who reside in the affiliates' local markets qualify for the section 119 license. The retransmission of local signals by satellite carriers was never before addressed in section 119 because the technology did not exist to make such local retransmission possible. However, it would appear that such technology is actively being developed and, if satellite carriers could retransmit the signals of local network stations to subscribers, the concern that led to the unserved household provision would theoretically become resolved.

Finally, PBS proposes the creation of a direct feed to satellite carriers of PBS programming (i.e., a national PBS satellite service) that would be exempt from the unserved household restriction.

The Copyright Office suggests that the concept of network program exclusivity protection is not appropriately located in the copyright law. If the section 119 license is extended, the Copyright Office recommends that Congress amend the Communications Act of 1934 to provide, or direct the FCC to adopt, network exclusivity (and, for that matter, syndicated exclusivity) protection for satellite retransmissions of broadcast signals. Should Congress decline to do so, the Copyright Office admits that satellite subscriber eligibility for network signals is a problematic issue with few immediate solutions. In an attempt to improve the current unserved household provisions, the Copyright Office makes some further suggestions.

First, the Office notes that a technological solution would be the best solution in the unserved households debate. The problem can be eliminated entirely if technology and business practices advance to enable satellite carriers to retransmit local network affiliates to their subscribers. If the subscribers can

purchase the signals of their local network affiliates, they have no need to import distant network signals, and there will be no "unserved households." To clarify the law with respect to such local retransmissions, the Copyright Office recommends that section 119 be amended to allow retransmission of all television broadcast stations, commercial as well as noncommercial educational, within each station's local market. The Office proposes that the local market for commercial stations be the same as defined by the FCC (i.e. ADI, and any modifications thereof), and for noncommercial educational stations all communities in whole or in part within 50 miles of each station's community of license. This definition parallels the definitions suggested by the Copyright Office in Chapter V of this study for local signals in the context of the cable compulsory license. The Office does not at this time take a position as to what royalty rate, if any, should apply to local retransmissions.

Given that local retransmission has yet to be accomplished commercially in the satellite industry, the Office recommends that any extension of the section 119 license must include revision of the unserved household restriction. The Office rejects the substitution of a picture quality standard for the Grade B standard as too subjective, legally insufficient, and administratively unworkable. Likewise, the Office finds the Grade B standard less than precise and cost inefficient when applied to individual household determinations.

If Congress declines to take network program exclusivity protection out of the copyright law and put it into the communications law, the Copyright Office proposes a "red zone/green zone" approach to the problem. The Office recommends that satellite carriers be permitted to retransmit a network signal to all subscribers located outside the local market of an affiliate station of that network (the "green zone"). The satellite carriers would be prohibited from retransmitting the network signal to subscribers located within the local market area of an affiliate station of that network (the "red zone"). The Office recommends that satellite carriers, and their distributors, be required to disclose to any potential subscribers whether that subscriber resides in a "red zone" or "green zone" with respect to each network signal offered by the satellite

carrier.

The Office is highly skeptical that a system can be devised that would accurately and fairly permit the retransmission of network signals to certain "unserved" subscribers within the "red zone" without authorizing some decision-making body to make individual determinations of eligibility. In lieu of creating such a bureaucracy, the Office suggests that Congress consider a transitional solution to the problem until either: (1) satellite carriers implement local retransmission of network signals, or (2) over-the-air digital television becomes a widespread medium and offers a clear standard for determining when a subscriber receives over the air a network signal with good picture quality. For this transitional solution, the Copyright Office would support allowing a satellite carrier to retransmit a network signal to subscribers located in a "red zone" if such subscribers pay a surcharge to the Copyright Office for distribution to the affiliates via the royalty distribution procedures of chapter 8 of the Copyright Act. The rate for such a surcharge would be established by a CARP.

PBS national satellite service would be exempted from the "red zone" provision. In addition, the Copyright Office recommends that Congress eliminate the 90-day waiting period for subscribing to network signals.

X. ADDITIONAL ISSUES

A. TREATMENT OF NETWORK SIGNALS

Under the cable compulsory license, distant network signals count as only one-quarter of a distant signal equivalent (DSE), as opposed to the full DSE accorded a distant independent station. Thus, large cable systems pay four times as much to retransmit an independent station as they pay to retransmit a network station. This ratio was carried over in the satellite carrier compulsory license, where satellite carriers pay 12 cents per subscriber to retransmit a superstation and 3 cents per subscriber to retransmit a network signal. One commenter argues that the rates for network and independent stations should be equalized because subscribers receive valuable programming on network signals, and copyright owners in that programming should be compensated. The Copyright Office agrees that in both the cable and satellite compulsory licenses, the rates paid by the licensees for the retransmission of network signals should be equalized with the rates paid for the retransmission of independent signals (or superstations). The Office, therefore, supports raising the value of network signals to one full DSE for cable systems under the present royalty regime. Furthermore, the Copyright Office recommends that Congress amend section 111(d)(3) to allow owners of network programming to qualify for a distribution of cable royalties, as they qualify for distribution of royalties under the satellite license.

B. PAYMENT FOR LOCAL SIGNALS

Although the Copyright Office has declined to comment as to the royalty compensation due for local retransmission of signals by satellite carriers, the Office does make the following observations about payment for the retransmission of local signals under section 111. Under the current law, every cable system pays a minimum copyright royalty fee, whether or not it carries any distant signals. The Copyright Office believes that the minimum fee is an important aspect of the cable compulsory license and should be retained. The Copyright Office reiterates that retransmissions of broadcast signals, either local or distant, are public

performances within the meaning of the Copyright Act and, therefore, fall within the exclusive rights granted by copyright protection.

XI. RECOMMENDATIONS

In Chapter XI, the Copyright Office summarizes and reiterates the recommendations from Chapters I through X that the Office is sending to Congress.