

Announcement

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

PROPOSED RULEMAKING

FILING OF COPIES OF CERTAIN CONTRACTS BY CABLE SYSTEMS

The following excerpt is taken from Volume 42, No. 159 of the Federal Register for Wednesday, August 17, 1977 (pp. 41438-39).

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 201]

[Docket RM 77-8]

FILING OF COPIES OF CERTAIN CONTRACTS BY CABLE SYSTEMS

Proposed Rulemaking

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking is issued to advise the public that the Copyright Office of the Library of Congress is considering the adoption of a new regulation designed to implement a section of the Act for General Revision of the Copyright Law, pertaining to the filing of copies of certain contracts entered into by cable television systems located outside of the forty-eight contiguous States. The new regulation would establish the formal requirements governing the nature of the document to be filed for recordation. We invite interested persons to participate in the making of the new regulation by submitting relevant written views, arguments or other comments.

DATES: Initial comments should be received on or before September 2, 1977. Reply comments on or before September 16, 1977.

ADDRESS: Five copies of all written comments should be submitted, if by mail, to: Office of the General Counsel, Copyright Office, Library of Congress, Caller Number 2999, Arlington, Virginia 22202, or, if by hand, to: Office of the General Counsel, Copyright Office, Rm. 519, Crystal Mall, Bldg. No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

Jon Baumgarten, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559. (703-557-8731.

SUPPLEMENTARY INFORMATION: Section 111 of the first section of Pub. L. 94-553 (90 Stat. 2941) establishes a compulsory licensing system under which cable system may make secondary transmissions of copyrighted works. As a general rule, secondary transmissions must occur simultaneously with the primary transmission in order to be eligible for the compulsory license. In most cases the videotaping or other off-air recording of a broadcast program and later transmission from the recording is not permitted under the compulsory license.

However, section 111 provides for an exception to this general requirement for simultaneous retransmission. Because of the limited availability of over-the-air signals in certain areas outside of the forty-eight contiguous States, cable systems located in these areas are still eligible for the compulsory license even if their secondary transmissions are "non-simultaneous"—that is, even if they use videotapes or similar forms of recordings to retransmit programming. The statute identifies the areas where these "non-simultaneous secondary transmissions" are permitted under the compulsory license: those areas located in whole or in part outside the boundary of the forty-eight contiguous States, but not including Puerto Rico and, with certain exceptions, Hawaii. To simplify discussion, we shall refer in this notice to a cable system located in such an area as a "special" cable system.

Section 111(e) of the Act specifies various conditions under which non-simultaneous secondary transmissions by special cable systems are permitted. Paragraph (2) of section 111(e) deals with exchanges of videotapes of programs between special cable systems. It provides that a videotape¹ embodying a

¹For this purpose the statute defines a "videotape" to include any material object embodying the reproduction of a television program broadcast by a station licensed by the F.C.C.

program nonsimultaneously transmitted by a special system may, under certain circumstances,² be transferred to another special system, but only "pursuant to a written nonprofit contract providing for the equitable sharing of the costs of such videotape and its transfer." Among other conditions it also requires that "a copy of such contract [be] filed, within thirty days after such contract is entered into, with the Copyright Office (which Office shall make such contract available for public inspection) * * *."

We propose that the filing and recordation of these documents be covered by the addition of a new § 201.12 to the regulations of the Copyright Office, to become effective on January 1, 1978. Proposed § 201.12 would establish the formal requirements governing the nature of the document to be filed for recordation. Since all documents recorded in the Copyright Office will be open to public inspection there is no need to specify their availability in the proposed regulation. The recording fee specified in the proposed regulation is authorized by § 708(a) (11) of the new Act and is consistent with that provided by § 708(a) (4).

Copies of all comments will be available for inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, in the Public Information Office of the Copyright Office, Room No. 101, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

Proposed Regulation. We propose to amend Part 201 of 37 CFR Chapter II by adding a new § 201.12 to read as follows:

§ 201.12 Recordation of certain contracts by cable systems located outside of the forty-eight contiguous states.

(a) Written, nonprofit contracts providing for the equitable sharing of costs of videotapes and their transfer, as identified in section 111(e) (2) of Title 17 of the United States Code as amended by Pub. L. 94-553, will be filed in the Copyright Office of recordation upon payment of the fee prescribed by this section. The document submitted for recordation shall meet the following requirements:

(1) It shall be an original instrument of contract; or it shall be a legible photocopy or other full-size facsimile reproduction of an original, accompanied by a certification signed by at least one of the parties to the contract, or an authorized representative of that party, that the reproduction is a true copy;

² If a special cable system has used a videotape for a nonsimultaneous retransmission in compliance with section 111, including section 111(e), the videotape may be transferred to certain other special cable systems; under certain conditions the tape "may be transferred by one cable system in Alaska to another system in Alaska, by one cable system in Hawaii permitted to make such nonsimultaneous transmissions to another such cable system in Hawaii, or by one cable system in Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands, to another cable system in any of those three territories * * *."

(2) It shall bear the signatures of all persons identified as parties to the contract, or of their authorized agents or representatives;

(3) It shall be complete on its face, and shall include any schedules, appendixes, or other attachments referred to in the instrument as being part of it; and

(4) It shall be clearly identified, in its body or a covering transmittal letter, as being submitted for recordation under 17 U.S.C. 111(e).

(b) For a document consisting of six pages or less the recordation fee is \$10; an additional charge of 50 cents is made for each page over six. If titles of works are specified in the contract, an additional charge of 50 cents is made for each title over one.

(c) The date of recordation is the date when all of the elements required for recordation, including the prescribed fee, have been received in the Copyright Office. A document is filed in the Copyright Office and a filing in the Copyright Office takes place on the date of recordation. After recordation the document is returned to the sender with a certificate of record.

(17 U.S.C. 207, and under the following sections of Title 17 of the U.S.C. as amended by Pub. L. 94-553: §§ 111; 702; 708(11).)

Dated: August 9, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

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