

Announcement

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

PROPOSED RULEMAKING

COMPULSORY LICENSE FOR CABLE SYSTEMS

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[1410-03]

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 201]

[Docket RM 77-2]

COMPULSORY LICENSE FOR CABLE SYSTEMS

Proposed Rulemaking

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking is issued to inform the public that the Copyright Office of the Library of Congress is considering the adoption of new regulations to implement portions of section 111 of the Act for General Revision of the Copyright Law pertaining to the secondary transmission of copyrighted works by cable systems. Section 111 prescribes various conditions

under which cable systems may obtain a compulsory license to retransmit copyrighted works, including the filing of certain notices and statements of account. The effect of the proposed regulations is to establish requirements governing the form, content and filing of such notices and statements.

DATES: Initial comments should be received on or before December 15, 1977; reply comments on or before December 23, 1977.

ADDRESSES: Interested persons should submit five copies of their written comments, if by mail to: Jon Baumgarten, General Counsel, Copyright Office, Library of Congress, Caller No. 2999, Arlington, Va. 22202.

or, if by hand to: Office of the General Counsel, Copyright Office, Library of Congress, Room 519, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Section 111(c) of the first section of Pub. L. 94-553 (90 Stat. 2541) establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to, among other conditions, requirements that the cable system comply with certain provisions regarding recordation of notices under section 111(d) (1) and deposit of statements of account under section 111(d) (2).

I. SECTION 111(d) (1) NOTICES

Section 111(d) (1) of the Act provides:

(d) Compulsory License For Secondary Transmissions By Cable Systems.—

(1) For any secondary transmission to be subject to compulsory licensing under subsection (c), the cable system shall, at least one month before the date of the commencement of operations of the cable system or within one hundred and eighty days after the enactment of this Act, whichever is later, and thereafter within thirty days after each occasion on which the ownership or control or the signal carriage complement of the cable system changes, record in the Copyright Office a notice including a statement of the identity and address of the person who owns or operates the secondary transmission service or has power to exercise primary control over it, together with the name and location of the primary transmitter or primary transmitters whose signals are regularly carried by the cable system, and thereafter, from time to time, such further information as the Register of Copyrights, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), shall prescribe by regulation to carry out the purpose of this clause.

On March 18, 1977 (42 FR 15065) we adopted an interim regulation § 201.11 to enable cable systems to comply with their immediate obligations under this section. At that time we referred to the

need for further proceedings before issuing final regulations pertaining to section 111(d) (1) and other provisions of the Act regarding cable television. On April 12 and 13, 1977 pursuant to an Advance Notice of Proposed Rulemaking in this proceeding and docket (42 FR 15431; March 22, 1977), we held a public hearing on the various regulatory issues involved in implementing section 111. At that time we heard testimony on, among other matters, the possible modification of interim regulation § 201.11. We now propose to amend § 201.11 in light of the comments received at the hearing. The proposed amendments are also heavily influenced by the Office's experience in recording section 111(d) (1) notices over the past several months, and by inquiries and problems raised by cable systems which sought to comply with the interim provision.

1. *General approach Section 111(d) (1) "As a Whole"*. The proposed amendments reflect our view that section 111(d) (1) must be considered in its entirety in establishing workable recording requirements. Specifically, we believe that the portion of section 111(d) (1) permitting the Register to require recordation of "further information" does authorize the Office to require that, at least after January 1, 1978, Initial Notices of Identity and Notices of Change include information which is not specified in the earlier clauses of the section. A contrary view would require the Office to impose an unnecessary burden of multiple filings on cable systems in order to obtain such information. Accordingly, the proposed amendments to § 201.11 do require section 111(d) (1) notices to include information which was merely "suggested" in the interim regulation. However, with one exception related to the secondary transmission of "all-band" FM signals, cable systems which record or recorded notices before January 1, 1978 will not be required to make corrective or amendatory filings.

2. *A Workable Recording System: Designating the "Owner" of the Cable System*. Section 111(d) (1) of the Act provides that the notices required by that section shall include "a statement of the identity and address of the persons who owns or operates the secondary transmission service or has power to exercise primary control over it." The meaning of these terms has caused confusion among cable systems. Moreover, the appearance of three options ("owner" or "operator" or "person (having) the power to exercise primary control") will cause substantial problems to the Office, the Copyright Royalty Tribunal, copyright owners, and members of the public in creating and using a workable recording system which will permit the tracing, identification, and connection of the various documents to be recorded and deposited by cable systems under section 111. Accordingly, under authority of the "further information" clause of section 111(d) (1), the proposed amendments would require all cable systems which record Initial Notices of Identity or Notices of Change

on or after January 1, 1978 to identify the owner of the cable system. The use of "ownership" as the keystone of the filing system is repeated in other proposals regarding the filing of amendments and statements of account.

This decision to require identification of the owner of the cable system does affect the circumstances under which a Notice of Change must be filed. Section 111(d) (1) of the Act provides that a Notice of Change shall be recorded "within thirty days after the ownership or control * * * of the cable system changes * * *." The requirement that a Notice of Change be recorded upon a change in "control" was apparently intended to complement the possibility that an Initial Notice would give the name of the person or entity "exercising primary control" over the system. Since Initial Notices recorded on or after January 1, 1978 will be required to identify the "owner" of the system, paragraph (d) (2) of proposed § 201.11 would eliminate the necessity of recording a Notice of Change after a change in control which is not accompanied by a change in ownership.

This does leave open the possibility of a "gap" in our records in the case of a cable system which recorded an Initial Notice before January 1, 1978 giving the name of the controlling party, rather than the owner, and which changes control but not ownership after that date. However, this "gap" will generally be closed by the deposit of statements of account under the owner's name. In any event, we are not convinced that the potential gap is of such significance as to warrant the imposition of a special recording requirement. Proposed § 201.11 (d) (2) also makes clear that Notices of Change are not required when certain other information contained in the Initial Notice later changes. Although these other items of information are useful in establishing an initial record of the system's existence and reliance on section 111, we do not believe that their importance is such as to justify the burden of additional recording requirements. Changes in these elements will be picked up in statements of account which can be tied to the section 111(d) (1) notices through ownership.

3. *"Cable System"*. During the hearing in this proceeding the question of what constitutes a single or "individual" cable system was raised. After considering several alternatives, we have decided to propose that the rules and practices of the Federal Communications Commission be followed. This consistency with F.C.C. procedure should minimize confusion and benefit all interested parties. However, because the F.C.C. has adopted certain exclusions from its definition of "cable system" which are not relevant under the Copyright Act (namely, systems having less than a certain number of subscribers or which serve only certain classes of subscribers), proposed § 201.11(a) (3) states that "any rule, regulation or practice of the Federal Communications Commission which ex-

cludes facilities from consideration as a 'cable system' because of the number or nature of subscribers or nature of the boundary transmissions made" shall not be given effect for copyright purposes.

A particular aspect of this issue related to the proper reading of the final sentence of the definition of "cable system" in section 111(f) of the Act. Since the legislative history of the Act indicates that the purpose of this sentence is to avoid artificial fragmentation of cable systems, § 201.11(3) proposes an interpretation of this sentence which is most consistent with that purpose.

4. "All-Band FM" Carriage. During the hearing in this proceeding considerable attention was focused on the issue of signal identification when FM radio signals are carried in secondary transmissions on an all-band basis. As in the interim proceeding, cable systems argued that where they carry the entire FM band, specific identification of individual FM signals is rendered virtually impossible, or at the least very burdensome, because of the intervention of changing technological, climatic, atmospheric, or similar conditions. Representatives of copyright owners, however, pointed out that they required some means of identifying the carriage of their works in secondary transmissions of FM signals for the purpose of calculating and claiming compensation. Both sides appeared to acknowledge the problems posed in this area, and to agree that FM signals which "dropped in" to a system's carriage infrequently need not be identified. There was also considerable support from both sides for a reasonable interpretative regulation in connection with all-band FM carriage. Proposed § 201.11(a)(4) and (c)(iv)(B) attempt to deal with this issue by providing an essentially objective standard of when an FM signal secondarily carried by an "all-band" system must be identified. Because, in many cases, the standard cannot be applied before a cable system must file an Initial Notice, proposed § 201.11(c)(iv)(B) and (e)(3) would require the filing of a later "Special Amendment" to the Notice in such cases. A "Special Amendment" would also be required of "all-band" cable systems which recorded Initial Notices before January 1, 1978 without identifying individual primary transmitters of FM signals. Also, proposed § 201.11(d)(3) would adjust the time for filing a Notice of Change in all-band FM signals to accommodate such amendments.

5. "Regular Carriage". We have considered the comments made during the interim proceeding, and at the hearing in this proceeding, regarding the concept of "regular carriage" for the purposes of section 111(d)(1). There was general consensus that some certainty in this area was desirable, and proposed § 201.11(a)(5) adopts an objective definition of "regular carriage." It must be recognized that the definition is only relevant for the purposes of notices filed under section 111(d)(1). For the purpose of accounting for and calculating royalties,

proposed § 201.17 will require identification of all primary transmitters, subject to a limited exception for "all-band" FM carriage.

6. Repeated information in notices of change. Both section 111(d)(1) of the Act and the interim regulation left it unclear as to whether, in recording a Notice of Change, all of the information required to be given in an Initial Notice, whether changed or not, must be given. We do not believe it is necessary to require a cable system recording a Notice of Change affecting ownership to repeat its signal carriage complement, or to require a system recording a Notice reflecting a change in its signal carriage complement to identify that portion of its carriage which has not been changed. Accordingly, the proposed amendments to § 201.11 would only require information reflecting the changes which underlie the Notice, together with certain additional identifying information.

7. Amendment to correct errors or omissions. Several cable systems which recorded Notices under the interim regulation have asked whether they might record "amendments" to correct mistakes. Although the statute does not expressly provide for such amendments, we do not believe we should close our records to corrections. Proposed § 201.11(e)(1) does provide for the recordation of "amendments to Initial Notices or Notices of Change submitted to correct an error or omission in the information given in the earlier document", and adds that an amendment under that paragraph "is not appropriate to reflect developments or changes in facts occurring after the date of signature of an Initial Notice of Change." Since the statute does not itself provide for amendment and does condition the compulsory license upon proper and timely recording, the proposed section also states that "the recordation of an amendment shall have only such effect as may be attributed to it by a court of competent jurisdiction." This will permit questions as to whether omissions or errors were willful or inadvertent, or isolated or repeated, and their effect on the compulsory license, to be resolved in the proper forum.

8. Fees. As the Act does not expressly impose a fee for the recordation of section 111(d)(1) notices, the only authority for a recording fee would be section 708(a)(11). The latter section permits the Register to establish a fee "for any other special services requiring a substantial amount of time or expense." Fees under this section are, however, to be fixed "on the basis of the cost of providing the service." Since section 111(d) requires the Register to "deduct the reasonable costs incurred by the Copyright Office" in administering the cable provisions from statutory royalties paid under the Act, we do not believe we can require a fee to be paid by cable systems for recording notices required by the statute or our regulations.

As noted earlier, however, the proposed regulation would permit cable systems to record amendments to correct errors or

omissions in previously-recorded documents. This is proposed essentially as an accommodation to the cable systems themselves and may properly be considered a "special service" for their benefit. It would not be equitable or reasonable to require the costs of processing such amendments to be borne by copyright owners through deduction from the royalties available for distribution. Accordingly, we have proposed a fee of \$10.00 for the filing of these permissive amendments.

II. SECTION 111(d)(2) STATEMENTS OF ACCOUNT

Section 111(d)(2)(A) of the Act provides:

(2) A cable system whose secondary transmissions have been subject to compulsory licensing under subsection (e) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), prescribe by regulation—

(A) a statement of account, covering the six months next preceding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers, the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), from time to time prescribe by regulation. Such statement shall also include a special statement of account covering any nonnetwork television programming that was carried by the cable system in whole or in part beyond the local service area of the primary transmitter, under rules, regulations, or authorizations of the Federal Communications Commission permitting the substitution or addition of signals under certain circumstances, together with logs showing the times, dates, stations, and programs involved in such substituted or added carriage;

Additionally, section 111(d)(2)(B), (C), and (D) require deposit of certain royalty fees for the period covered by the statement.

We propose to implement these sections by the addition of a new § 201.17 to the regulations of the Copyright Office. The proposed section would establish requirements governing the content of statements of account, the time periods covered by the statements, and the dates they are to be deposited in the Copyright Office. In developing this proposal we have fully considered the record of the April hearing. A discussion of the principal issues follows.

1. Definitions. For the purposes of clarity and uniformity of filings, proposed § 201.17(b)(1) provides a definition of "amounts attributable to the basic service of providing secondary transmissions of primary broadcast transmitters." We believe that this definition accurately reflects the intent of the Act. See House Rep. 94-1476, 94th Cong., 2d Sess., Sept. 3, 1976 at 96.

Proposed § 201.17(b) (6) reflects our view that translator stations are to be considered "primary transmitters" for purposes of section 111 of the Act. Accordingly, where a cable system secondarily transmits signals emanating from a translator station, the identity of the primary transmitter, and whether it is "distant", would be determined only by reference to that translator station. When a cable system makes separate secondary transmissions of the signals emanating from a translator station and its "parent" station, two primary transmitters are involved, and both translator and parent should be separately given and categorized.

Proposed § 201.17(b) also incorporates the definitions of "cable system" and "generally receivable FM signals" discussed in connection with the proposed amendments to § 201.11.

2. *Accounting Periods.* Section 111(d) (2) requires the deposit of statements of account on a "semiannual basis". The legislative history of this section states that the "dates for filing such statements of account and the six month period which they are to cover" are to be determined by Copyright Office regulations. H.R. Rep. 94-1476, 94th Cong., 2d Sess., Sept. 3, 1976 at 95. After considering a number of alternatives, we have proposed (§ 201.17(c)) that the statements cover the periods January 1 through June 30 and July 1 through December 31, and that they may be deposited in the Copyright Office within sixty days from the expiration of the accounting period. This proposal is based on the operational needs of the Copyright Office with respect to workflow and balancing of the operations of our new Licensing Division, and on our desire not to impose unusual reporting requirements on cable systems which must also prepare reports for other agencies and authorities.

This proposal does raise issues concerning claims to compulsory license fees which are to be filed with the Copyright Royalty Tribunal "during the month of July in each year" under section 111(d) (5) of the Act. We anticipate that the Tribunal will adopt such procedures as may be necessary to safeguard the interests of copyright owners in proper compensation for the secondary transmission of their works.

3. *Forms.* We agree with the views expressed at the hearing that the use of standard printed forms prescribed by the Copyright Office will promote uniform and accurate reporting, assist cable operators in meeting their obligations under the Act and regulations, and aid copyright owners, the Copyright Office, and the Copyright Royalty Tribunal in reviewing and using the information provided. The purpose of this proceeding is to establish the contents of statements of account. We will continue exploring the adoption of a form for statements of account and will make our final decision on a form well before the expiration of the first accounting period in 1978.

4. *"Subscriber Information", "Gross Receipts", and "Total Actual Receipts".*

Section 111(d) (2) of the Act requires a statement of account to include "the total number of subscribers" to the system, the gross amounts paid to the system for basic secondary transmission services, and "such further information as the Register of Copyrights * * * shall prescribe by regulation" to carry out the purpose of this section.

The "number of subscribers" alone will serve no real purpose. We believe this item was intended to provide copyright owners with a basis for a comparison with the reported gross receipts. Accordingly, we have proposed (§ 201.17(e) (6)) that the number of subscribers be accompanied by certain related information concerning subscriber categories and charges in order reasonably to accomplish this purpose. We recognize that the specified information will not provide a definitive or detailed comparison with the reported gross receipts, but on the present record we are not persuaded that more information or detail should be required.

Although section 111(d) (2) does not expressly refer to the reporting of receipts from activities other than "the basic service of providing secondary transmissions of primary broadcast transmitters", copyright owners have urged that the statements include a detailed accounting of all of the cable system's receipts during the period covered by the statement. We believe that copyright owners and the Copyright Royalty Tribunal should have some basis for comparing the gross receipts upon which royalties are calculated with the cable system's total receipts; however, on this record and for present purposes, we are not convinced that a detailed accounting is necessary. Accordingly, proposed § 201.17(e) (8) requires that statements of account for the period July 1 through December 31 include "the total actual receipts paid to the cable system for all services performed or rendered to its subscribers during the full calendar year immediately preceding deposit of the statement." Although "total actual receipts" are to be given for the full calendar year, they are required to be reported under this proposal only in statements of account prepared for the last six months of that year. We believe that, in general, cable systems will have the necessary information available at the time the second-half statements are being prepared.

5. *Television Primary Transmitter and Carriage Information.* Proposed § 201.17 (e) requires cable systems to include in the statement of account information related to the identification of primary transmitters, and the nature and basis of carriage of their transmissions by the system. Although representatives of cable systems suggested that the carriage information (that is, whether the primary transmitter is "local" or "distant", and the legal basis of carriage in certain cases) should be obtained independently by copyright owners, we do not agree. Most cable systems are required to know, or will know, this information in the nor-

mal course of operating their business. In these circumstances there is no reason to impose the substantial burden of independent research on copyright owners or the Copyright Royalty Tribunal. As noted more fully below, certain small systems will be exempt from these requirements. On balance, we believe that the obligation of disclosure should rest with the cable television industry.

During the hearing in this proceeding, representatives of cable systems urged that information concerning carriage of television signals should not be required for systems whose gross receipts for the period are less than \$160,000. It was argued that, since these systems would not compute royalties on the basis of "distant signal equivalents", information related to the nature and basis of carriage was irrelevant. Copyright owners responded that such information might still be required for purposes of allocation and distribution of royalty fees. We have concluded that we cannot, in this proceeding, omit the collection of information which may well be of use to copyright owners and the Copyright Royalty Tribunal in allocating and distributing royalties.

Accordingly, we have not exempted all systems grossing less than \$160,000 from providing this information. However, proposed § 201.17(e) (9) (1) (G) does provide such an exemption for systems whose gross receipts for basic secondary transmission services during the accounting period total less than \$40,000. Such systems will pay a royalty fee of \$15. It may reasonably be anticipated that the proportion of the total royalty pool attributable to all such systems, and the impact on allocation and distribution of royalties will not be significant.

6. *Radio Primary Transmitter and Carriage Information.* Proposed § 201.17 (e) does not require the same information for secondary transmission of radio signals as is required for television signals. Information pertaining to whether a primary radio transmitter is distant or local, and the legal basis of carriage in certain cases, is not required for computation of royalties. The distant or local character of the primary transmitter is relevant to the allocation of royalties among copyright owners. However, we understand that the operators of cable systems generally do not know, and normally are not required to know, the "primary service area" of radio transmitters in the normal course of their business. This information is publicly available through the FCC and can be independently matched to the identity of particular cable systems to determine the local or distant character of the primary transmitter. In this situation, we believe that the obligation of obtaining the information may be more readily and appropriately borne by the interested copyright owners.

7. *Issues related to calculation of royalties.* As noted in item 3, above, we are continuing to explore the question of forms to be prescribed for statements of account. We anticipate that any such form will include more specific instru-

tions for the calculation of royalties than

(11) In this connection, we invite comment on the following interpretative issues:

(a) Section 111(d)(2)(B) of the Act states that in computing certain royalties, "in the case of any cable system located partly within and partly without the local service area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located without the local service area of such primary transmitter." What is the proper application of this proviso, particularly where a cable system carries the signals of more than one such "partially distant" station and different groups of subscribers are "distant" as to different stations?

(b) Under section 111(f) of the Act, where several programs are carried on the same day pursuant to the permissive substitution rules of the F.C.C., should the number of substitute programs be used in calculating the appropriate distant signal equivalent?

PROPOSED REGULATIONS

We propose to amend Part 201 of 37 CFR Chapter II by amending § 201.11 and adding a new § 201.17 to read as follows:

§ 201.11 Notices of identity and signal carriage complement of cable systems.

(a) *Definitions.* (1) An "Initial Notice of Identity and Signal Carriage Complement" or "Initial Notice" is a notice under section 111(d)(1) of title 17 of the United States Code as amended by Pub. L. 94-553 and required by that section to be recorded in the Copyright Office "at least one month before the date of commencement of operations of the cable system or within one hundred and eighty days after (October 19, 1976), whichever is later", for any secondary transmission by the cable system to be subject to compulsory licensing.

(2) A "Notice of Change of Identity or Signal Carriage Complement" or "Notice of Change" is a notice under section 111(d)(1) of title 17 of the United States Code as amended by Pub. L. 94-553 and required by that section to be recorded in the Copyright Office "within thirty days after each occasion on which the ownership or control or signal carriage complement of the cable system changes" for any secondary transmission by the cable system to be subject to compulsory licensing.

(3) A "cable system" is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, or other communications channels to subscribing members of the public who pay for such service. The No-

tices required to be recorded by this section, and the statements of account and royalty fees to be deposited under § 201.17 of these regulations, shall be recorded and deposited by each individual cable system desiring its secondary transmissions to be subject to compulsory licensing. For these purposes, and the purpose of § 201.17 of these regulations, an "individual" cable system means each cable system recognized as a distinct entity under the rules, regulations, and practices of the Federal Communications Commission in effect on the date of recording or deposit. *Provided*, That (i) any rule, regulation, or practice of the Federal Communications Commission which excludes facilities from consideration as a "cable system" because of the number or nature of subscribers or nature of the secondary transmissions made shall not be given effect for the purposes of this section or § 201.17 of these regulations; and (ii) two or more cable facilities (A) in contiguous communities under common ownership or control or (B) operating from one head-end shall be considered as one individual cable system.

(4) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, an FM radio signal is "generally receivable" if (i) it is usually carried by the system whenever it is received at the system's headend, and (ii) it can be received at the system's headend, with the system's FM antenna, at least three consecutive hours each day at the same time each day, five or more days a week, for four or more weeks during any calendar quarter, with a strength of not less than fifty microvolts per meter measured at the foot of the tower or pole to which the antenna is attached.

(5) The signals of a primary transmitter are "regularly carried" if they are carried by the cable system for at least one hour each week for thirteen or more consecutive weeks, or if, in the cases described in paragraph (a)(4) of this section, they comprise generally available FM radio signals.

(b) *Forms.* The Copyright Office does not provide printed forms for the use of persons recording Initial Notices or Notices of Change.

(c) *Initial Notices.* (1) An Initial Notice of Identity and Signal Carriage Complement shall be identified as such by prominent caption or heading, and shall include the following:

(i) The designation "Owner", followed by: (A) The full legal name of the person who, or entity which, owns the cable system; (B) any fictitious or assumed name used by that person or entity for the purpose of conducting the business of the cable system; and (C) the full mailing address of that person or entity.

(ii) The designation "System", followed by: (A) All corporate, trade, or business names or styles used to identify the business and operation of the cable

system; and (B) the full mailing address of the system. To the extent any portion of this information is identical to the information given in response to paragraph (c)(1)(i) of this section it need not be repeated. If all of the information called for by this paragraph is identical to the information given in response to paragraph (c)(1)(i) of this section, the designation "System" shall be followed by the statement "as given above", or like reference.

(iii) The designation "Area Served", followed by the name of the community or communities served by the system.

(iv) The designation "Signal Carriage Complement", followed by the name and location of the primary transmitter or primary transmitters whose signals are, or are expected to be, regularly carried by the cable system.

(A) The "name" of the primary transmitter(s) shall be given by station call sign; accompanied by a brief statement of the type of signal carried (for example, "TV", "FM", or "AM"). The "location" of the primary transmitter(s) shall be given as the name of the community to which the transmitter is licensed by the Federal Communications Commission (in the case of domestic signals) or with which the transmitter is identified (in the case of foreign signals).

(B) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, the Notice shall identify that portion of its signal carriage as "all-band FM" or the like, and shall separately identify the name and location of each primary transmitter of such signals whose signals are generally receivable by the system. In any case where such generally receivable FM signals cannot be accurately determined at the time of recording of the Initial Notice, they shall be subsequently identified in a Special Amendment recorded in compliance with paragraph (e)(3) of this section.

(v) The individual signature of the person identified as the person who owns the cable system, or of a duly authorized representative of that person; or, if an entity is identified as the owner, the signature of an officer if the entity is a corporation, or of a partner if the entity is a partnership. In any case, the date of signature shall also be given.

(2) The requirements of this paragraph (c)(1) of this section shall apply only to Initial Notices of Identity and Signal Carriage Complement recorded on or after January 1, 1978. Initial Notices recorded before January 1, 1978 shall be governed by the applicable Copyright Office regulations in effect on the date of recordation.

(d) *Notices of change.* (1) A Notice of Change of Identity or Signal Carriage Complement shall be identified as such by prominent caption or heading, and shall include the following:

(i) In the case of a change of ownership: (A) The designation "Former Owner", followed by the full legal name

of the person who, or entity which, owned the cable system as given in the Initial Notice recorded by the cable system or, if an earlier Notice of Change affecting ownership has been recorded by the cable system, as given in the last such Notice;¹ (B) the designation "New Owner", followed by the full legal name of the person who, or entity which, now owns the cable system, together with any fictitious or assumed name used by that person or entity for the purpose of conducting the business of the cable system and the full mailing address of that person or entity; (C) the designation "System", followed by the information required by paragraph (c) (1) (ii) of this section; and (D) the effective date of the change of ownership.

(ii) In the case of a change of signal carriage complement: (A) The designation "Owner", followed by the information called for by paragraph (c) (1) (i) or (d) (1) (i) (B) of this section, as given in the Initial Notice recorded by the cable system or, if an earlier Notice of Change affecting ownership has been recorded by the cable system, as given in the last such Notice;² (B) the designation "System," followed by the information required by paragraph (c) (1) (ii) of this section; (C) the names and locations of the primary transmitter or primary transmitters whose signals have been added to or deleted (as shall be stated in the Notice) from the system's signal carriage complement, given as set forth in paragraphs (c) (1) (iv) (A) and (B) of this section; and (D) the approximate date of each such addition or deletion.

(iii) In the case of either a change in ownership or in signal carriage complement, the Notice of Change shall be signed and dated in accordance with paragraph (s) (1) (iv) of this section.

(2) Unless accompanying a change in ownership and required to be given by paragraph (d) (1) (i) of this section, a Notice of Change is not required to be

recorded to reflect changes occurring on or after January 1, 1978 in: (i) Fictitious or assumed names used by the owner of a cable system for the purpose of conducting the business of the cable system; (ii) corporate, trade or business names or styles used to identify the business and operation of the cable system; (iii) mailing addresses of the owner of the cable system or of the system; (iv) the name of the operator of the cable system; or (v) the name of the person or entity exercising primary control over the system. A Notice of Change is not required to be recorded to reflect changes in, or in the names of, the community or communities served by the cable system.

(3) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, and which have not recorded an Initial Notice identifying the primary transmitters of FM signals generally receivable by the system, a Notice of Change shall not be required to be recorded to reflect changes in the complement of such signals until the expiration of one hundred and twenty days from the date of recordation of a Special Amendment under paragraph (e) (2) or (e) (3) of this section.

(4) The provisions of paragraphs (d) (1) and (d) (2) of this section shall apply only to Notices of Change recorded on or after January 1, 1978. Notices of Change recorded before January 1, 1978 shall be governed by the applicable Copyright Office regulations in effect on the date of recordation.

(5) Notice of change in ownership and in signal carriage complement may be combined in one Notice of Change, if the information required under paragraph (d) (1) of this section is given for each change.

(e) *Amendment of Notices*—(1) *General (Permissive) Amendments to Correct Errors or Omissions.* The Copyright Office will record amendments to Initial Notices or Notices of Change submitted to correct an error or omission in the information given in the earlier document. An amendment is not appropriate to reflect developments or changes in facts occurring after the date of signature of an Initial Notice or Notice of Change. An amendment shall (i) be clearly and prominently identified as an "Amendment to Initial Notice of Identity and Signal Carriage Complement" or "Amendment to Notice of Change of Identity or Signal Carriage Complement"; (ii) identify the specific Notice intended to be amended so that it may be readily located in the records of the Copyright Office; (iii) clearly specify the nature of the amendment to be made; and (iv) be signed and dated in accordance with paragraph (c) (1) (v) of this section. The signature shall be accompanied by the printed or typewritten

name of the owner of the system as given in the Notice sought to be amended.³ The recordation of an amendment under this paragraph shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(2) *Special (Required) Amendments for Certain Systems which Recorded Initial Notices before January 1, 1978.* Any cable system which, before January 1, 1978, recorded an Initial Notice of Identity and Signal Carriage Complement which identified all or a portion of its signal carriage complement as "all-band FM", "broad-band FM" or the like, or which otherwise did not identify individual primary transmitters of FM signals generally receivable by the system, shall, no later than June 30, 1978, record an amendment to that Notice identifying the primary transmitter or primary transmitters of FM signals generally receivable by the system as of the date of the amendment in accordance with paragraphs (c) (1) (iv) (A) and (B) of this section. Such amendment shall: (i) Be clearly and prominently identified as an "Amendment to Initial Notice of Identity and Signal Carriage Complement"; (ii) specifically identify the Initial Notice intended to be amended so that it may be readily located in the records of the Copyright Office; and (iii) be signed and dated in accordance with paragraph (c) (1) (v) of this section. The signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended.⁴

(3) *Special (Required) Amendments for Certain Cable Systems which Recorded Initial Notices on or after January 1, 1978.* Any cable system which records an Initial Notice of Identity and Signal Carriage Complement on or after January 1, 1978 and is required by the last sentence of paragraph (c) (1) (iv) (B) of this section to record a special amendment shall, no later than one hundred and twenty days after recordation of the Initial Notice, record an amendment to that Notice identifying the primary transmitter or primary transmitters of FM signals generally receivable by the system as of the date of the amendment in accordance with paragraphs (c) (1) (iv) (A) and (B) of this section. Such amendment shall: (i) be clearly and prominently identified as an "Amendment to Initial Notice of Identity and Signal Carriage Complement"; (ii) specifically identify the Initial Notice intended to be amended so that it may be readily located in the records of the Copyright Office; and (iii) be signed and

¹ In the case of a change of ownership (i) which occurred or occurs on or after December 2, 1977 (ii) for which a Notice of Change was not recorded before January 1, 1978 and (iii) which involves a cable system that recorded an Initial Notice or Notice of Change before January 1, 1978 without identifying the owner of the system, the designation "Former Owner" shall be followed by the name of the person who, or entity which, was given as the operator or person or entity exercising primary control in the Initial Notice or last Notice of Change.

² In the case of a change of signal carriage complement (i) which occurred or occurs on or after December 2, 1977 (ii) for which a Notice of Change was not recorded before January 1, 1978 and (iii) which involves a cable system that recorded an Initial Notice or Notice of Change before January 1, 1978 without identifying the owner of the system, the designation "Owner" shall be followed by the name of the person who, or entity which, was given as the operator or person or entity exercising primary control in the Initial Notice or last Notice of change.

³ In the case of an amendment to an Initial Notice or Notice of Change recorded before January 1, 1978 which did not identify the owner of the system, the signature shall be accompanied by the printed or typewritten name of the operator, or person or entity exercising primary control over the system, as given in the Notice sought to be amended.

dated in accordance with paragraph (c) (1)(v) of this section. The signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended.

(f) *Recordation.* (1) The Copyright Office will record the Notices and amendments described in this section by placing them in the appropriate public files of the Office.

(2) No fee shall be required for the recording of Initial Notices, Notices of Change, or the Special Amendments identified in paragraphs (e) (2) and (e) (3) of this section. A fee of \$10 shall accompany any General Amendment permitted by paragraph (e) (1) of this section.

(3) Upon request and payment of a fee of \$3, the Copyright Office will furnish a certified receipt for any Notice or amendment recorded under this section.

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

(a) *General.* This section prescribes rules pertaining to the deposit of statements of account and royalty fees in the Copyright Office as required by section 111(d) (2) of title 17 of the United States Code, as amended by Pub. L. 94-553, in order for secondary transmissions of cable systems to be subject to compulsory licensing.

(b) *Definitions.* (1) Amounts attributable to the "basic service of providing secondary transmissions of primary broadcast transmitters" include monthly (or other periodic) service fees for television and radio retransmission service and additional set fees. They do not include installation (including connection, relocation, disconnection, or reconnection) fees, charges for pay-cable, security, alarm or facsimile services, or charges for late payments.

(2) A "cable system" and "individual cable system" have the meanings set forth in § 201.11(a) (3) of these regulations.

(3) "F.C.C." means the Federal Communications Commission.

(4) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, an FM radio signal is "generally receivable" under the conditions set forth in § 201.11(a) (4) of these regulations.

(5) The terms "primary transmission," "secondary transmission," "local service area of a primary transmitter," "distant signal equivalent," "network station," "independent station," and "non-commercial educational station" have the meanings set forth in section 111(f) of title 17 of the United States Code, as amended by Pub. L. 94-553.

(6) A translator station is, with respect to programs both originally transmitted and re-transmitted by it, a primary transmitter for the purposes of this section and § 201.11 of these regulations.

(c) *Accounting Periods and Deposit.* (1) Statements of account shall cover semiannual accounting periods of (i) January 1 through June 30 and (ii) July 1 through December 31, and shall be deposited in the Copyright Office, together with the total royalty fee for such accounting periods as prescribed by section 111(d) (2) (B), (C), or (D) of title 17, within sixty calendar days from the expiration of each such accounting period.

(2) The date of deposit will be the date when both a proper statement of account and appropriate royalty fee are received in the Copyright Office.

(d) *Forms.* [Reserved]

(e) *Contents.* A Statement of Account shall be clearly and prominently identified as a "Statement of Account for Secondary Transmissions By Cable Systems," and shall include the following information:

(1) A clear designation of the accounting period covered by the statement.

(2) The designation "Owner," followed by: (A) The full legal name of the person who, or entity which, owns the cable system; (B) any fictitious or assumed name used by that person or entity for the purpose of conducting the business of the cable system; and (C) the full mailing address of that person or entity.⁴

(3) The designation "System," followed by: (A) All corporate, trade, or business names or styles used to identify the business and operation of the cable system; and (B) the full mailing address of the system. To the extent any portion of this information is identical to the information given in response to paragraph (e) (2) it need not be repeated. If all of the information called for by this paragraph is identical to the information given in response to paragraph (e) (2) of this section, the designation "System" shall be followed by the statement "as given above," or like reference.

(4) The designation "Area Served," followed by the name of the community or communities served by the system.

(5) The designation "Channels," followed by the number of channels on which the cable system made secondary transmissions to its subscribers during the period covered by the statement.

(6) The designation "Subscriber Information", followed by: (i) A brief description of each subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters; (ii) the number of subscribers to the cable system in

⁴ In the case of the first statement of account deposited by a cable system which has not earlier filed an Initial Notice or Notice of Change under § 201.11 of these regulations identifying the owner of the system, that statement of account shall also give the name of the person who, or entity which, was given as the operator or person or entity exercising primary control in the Initial Notice or last Notice of Change.

each such subscriber category; and (iii) the charge or charges made per subscriber to each such subscriber category for the basic service of providing such secondary transmissions. For these purposes (A) the description, the number of subscribers, and the charge or charges made shall reflect the facts existing on the last day of the period covered by the statement; and (B) each entity (for example, the owner of a private home, the resident of an apartment, the owner of a motel, or the owner of an apartment house) which is charged by the cable system for the basic service of providing secondary transmissions shall be considered one subscriber.

(7) The designation "Gross Receipts", followed by the gross amount paid to the cable system by subscribers, during the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters.

(8) In the case of semiannual statements of account covering the period July 1 through December 31, the statement of account shall also include the designation "Total Actual Receipts", followed by the total actual receipts paid to the cable system for all services performed or rendered to its subscribers during the full calendar year immediately preceding deposit of the statement.

(9) The designation "Primary Transmitters", followed by an identification of all primary transmitters whose signals were carried by the cable system, other than the primary transmitters of programs required to be specially identified in paragraph (e) (10) of this section, in form and together with the information listed below:

(i) For each primary transmitter which is a television station:

(A) The station call sign of the primary transmitter.

(B) The name of the community to which that primary transmitter is licensed by the F.C.C. (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(C) The number of the channel upon which that primary transmitter broadcasts in the community to which that primary transmitter is licensed by the F.C.C. (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(D) A designation as to whether that primary transmitter is a "network station", an "independent station", or a "noncommercial educational station".

(E) A designation as to whether that primary transmitter is a distant station. For this purpose, a primary transmitter is a "distant" station if the programming of such transmitter is carried by the cable system in whole or in part beyond the local service area of such primary transmitter.

(F) If that primary transmitter is a "distant" station a specification of whether the signals of that primary transmitter are (i) carried pursuant to

the part-time specialty programming rules of the F.C.C.; or (2) carried pursuant to the late-night programming rules of the F.C.C.; or (3) carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry.

(G) The information indicated by paragraphs (e) (9) (i) (E) and (F) of this section is not required to be given by any cable system whose gross receipts from subscribers for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, total less than \$40,000.

(ii) For each primary transmitter which is an AM radio station, or an FM radio station the signals of which were electronically processed by the system as separate and discrete signals:

(A) The station call sign of the primary transmitter, and whether it is AM or FM.

(B) The name of the community to which that primary transmitter is licensed by the F.C.C. (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(iii) In the case of cable systems which made secondary transmissions of all available FM radio signals, which signals were not electronically processed by the system as separate and discrete signals, the statement shall identify that portion of its signal carriage as "all-band FM" or the like, and shall separately identify the station call sign and community of license (or, in the case of foreign signals, of identification) of each primary transmitter of such signals whose signals were generally receivable by the system during the period covered by the statement.

(10) A special statement and program log, which shall consist of the information indicated below for all nonnetwork television programming that, during the period covered by the statement, was carried in whole or in part beyond the local service area of the primary transmitter of such programming under (i) rules or regulations of the F.C.C. requiring a cable system to omit the further transmission of a particular program

and permitting the substitution of another program in place of the omitted transmission; or (ii) rules, regulations or authorizations of the F.C.C. in effect on October 19, 1976 permitting a cable system, at its election, to omit the further transmission of a particular program and permitting the substitution of another program in place of the omitted transmission:

(A) The name or title of the substitute program.

(B) Whether the substitute program was transmitted live by its primary transmitter.

(C) The station call sign of the primary transmitter of the substitute program.

(D) The name of the community to which the primary transmitter of the substitute program is licensed by the F.C.C. (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(E) The full date when the secondary transmission of the substitute program occurred, and the hours during which such secondary transmission occurred on that date.

(F) A designation as to (1) whether deletion of the omitted program was required by the rules or regulations of the F.C.C., or was permitted by the rules, regulations, or authorizations of the F.C.C. in effect on October 19, 1976; and (2) a brief statement clearly describing the legal basis for such deletion (for example: "Syndicated program exclusivity", or "program primarily of local interest to distant community").

(11) A statement of the total royalty fee payable for the period covered by the statement of account, together with a royalty fee analysis which gives a clear, complete and detailed presentation of the determination of such fee. This analysis shall present in appropriate sequence all facts, figures and mathematical processes used in determining such fee, and shall do so in such manner as will permit the Copyright Office to readily verify, from the face of the statement of account, the accuracy of such determination and fee.

(f) *Certification and Signature.* The statement of account shall be signed on its last page by the individual person identified as the person who owns the cable system, or by a duly authorized

representative of such person; or, if an entity is identified as the owner, by an officer if the entity is a corporation, or by a partner if the entity is a partnership. The signature shall (1) be accompanied by the printed or typewritten name of the person signing the notice, and by the date of signature; and (2) shall be immediately preceded by the following printed or typewritten statement:

I certify that I have examined this statement of account and that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

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

Dated: November 25, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

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