

Announcement

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

FINAL REGULATIONS

PART 201--GENERAL PROVISIONS

COMPULSORY LICENSE FOR CABLE SYSTEMS

The following excerpt is taken from Volume 43, No. 3 of the Federal Register for Thursday, January 5, 1978 (pp. 958-964).

[1410-03]

Title 37—Patents, Trademarks, and Copyrights

CHAPTER II—COPYRIGHT OFFICE,
LIBRARY OF CONGRESS

[Docket RM 77-2]

PART 201—GENERAL PROVISIONS

Compulsory License for Cable Systems

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulations.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is adopting new regulations to implement portions of section 111 of the Act for General Revision of the Copyright Law. That section 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 new regulations establish requirements governing the form, content and filing of such notices and statements.

EFFECTIVE DATE: February 10, 1978.

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).

On December 1, 1977 the Copyright Office published in the FEDERAL REGISTER (42 FR 61051) a proposal to adopt new regulations §§ 201.11 and 201.17 establishing requirements governing the form, content and filing of such notices and statements.¹ Sixteen initial and reply comments were received in response to the Notice of Proposed Rulemaking. After careful consideration of all the comments, we have decided to make several changes in the proposed regulations. A discussion of the major substantive comments appears below. It should be noted at the outset, however, that we are dealing with an entirely new area of copyright law in which all parties concerned lack practical experience. Moreover, future actions by the Copyright Royalty Tribunal and Federal Communications Commission can be expected to affect the theory and application of our rules. Accordingly, these regulations must be considered somewhat experimental and subject to reconsideration as circumstances and experience develop.

1. DEFINITION OF "CABLE SYSTEM"

Several copyright owners objected to our proposal to define an "individual" cable system "as a distinct entity under the rules, regulations, and practices of the Federal Communications Commission in effect on the date of recordation or deposit", subject to certain qualifications (§§ 201.11(a)(3), 201.17(b)(2)). They asserted that this definition would cause confusion because a "cable system" for copyright purposes is not the same as a "cable system" for FCC purposes. Representatives of cable systems generally agreed with our proposal. We are not persuaded that our original purpose in adopting this definition, namely, "to minimize confusion and benefit all interested parties", will fail. Accordingly, we have adopted the definition as proposed. If the FCC changes its definition

of a cable system in the future, we can then consider whether the change is consistent with the provisions of the Copyright Act, and if it is not, make appropriate changes in our rules.

Proposed §§ 201.11(a)(3) and 201.17(b)(2) also interpreted the final sentence of the definition of "cable system" in section 111(f) of the Act to mean that "two or more cable facilities (A) in contiguous communities under common ownership or control or (B) operating from one headend shall be considered as one individual cable system". Although one comment suggested that the words "contiguous communities" were intended to modify both the "common ownership" and "one headend" clauses, we do not agree. As stated in our Notice of Proposed Rulemaking, "the legislative history of the Act indicates that the purpose of this sentence is to avoid the artificial fragmentation of cable systems", and we believe our interpretation is more consistent with this purpose.

One comment argued that this interpretation would lead to the artificial combination of two completely separate systems into a single system merely because, for economic reasons, they use a single headend. It was suggested that our regulation be modified so that "two or more cable facilities (A) in contiguous communities under common ownership or control or (B) operating from one headend and under common ownership or control shall be considered as one individual cable system." This modification, however, would be an inappropriate addition of language to the act.

2. ALL-BAND FM

Comments from cable operators criticized our proposed solution to the problem of identifying FM stations carried by a cable system as part of an all-band transmission. Our proposal required re-

¹ The Notice of Proposed Rulemaking was issued after full consideration of testimony received at a two-day hearing in April, 1977 under an Advance Notice of Proposed Rulemaking in this docket (42 FR 15431; March 22, 1977). Many of the issues raised in the comments to the proposed regulation were considered at the hearing and fully discussed in the preamble of the December 1st Notice.

peated reassessment of FM signal strengths. The thrust of these comments was that the proposed requirement would place considerable financial and administrative burdens on cable systems. After reconsideration, we agree with this objection. However, none of the various alternatives suggested by these comments was sufficient to meet, with any certainty, copyright owners' interests in identifying the carriage of their work by cable systems.

On the present record and in the absence of practical experience, the problem posed by all-band FM signal identification is a difficult one. We have decided to amend our proposal in an attempt to provide copyright owners and the Copyright Royalty Tribunal with a reasonably accurate list of individual FM stations generally receivable by "all-band" cable systems, without imposing a disproportionate burden on those systems.

The amendment consists of two parts: (1) § 201.11(a)(4) and, by reference, § 201.17(b)(4), have been modified to identify a "generally receivable" FM signal as one that "as a result of monitoring at reasonable times and intervals . . . can be expected to be" received at the system's headend at a specified frequency and with a specified signal strength; and (ii) § 201.17(e)(9)(iii) requires statements of account filed by all-band systems to describe the monitoring employed to identify such signals. The intent of the first part is to permit cable systems to adopt monitoring systems, such as the periodic use of a good FM receiver during optimum weather conditions for the area, which can reasonably be expected to identify signals meeting the specified time and strength standards. Such monitoring systems will not require the expenditure of the time, and the investment in specialized equipment, needed to make the precise measurements required by our proposal. Since at present, without any practical experience to guide us, it is impossible for the regulations to offer any detailed definition of the monitoring systems required, the second part of our amendment is designed to provide a record for later consideration by copyright owners, the Copyright Royalty Tribunal, and the Copyright Office.

3. REGULARLY CARRIED

Section 111(d)(1) of the act requires that notices of identity include a list of all "primary transmitters whose signals are regularly carried by the cable system", and that a notice of change be filed whenever there is a change in these regularly carried signals. Our proposed § 201.11(a)(5) defined "regularly carried" as "one hour each week for 13 or more consecutive weeks." Representatives of some cable operators argued that one hour per week is too short a time. However, we believe that a station whose signal is retransmitted by a cable system for one or more hours per week for 13 consecutive weeks should be considered regularly carried under any reasonable

definition of the word "regular"; accordingly, § 201.11(a)(5) is adopted as proposed.

4. OWNERSHIP

In response to inquiry made in one comment, we confirm that the regulations do not require disclosure of parent corporations or stockholders. To avoid possible confusion on this point, references to designating "corporate" names used to identify the business of the cable system (except when giving the legal name of the owner) have been deleted.

5. FEES

Copyright owners argued that a filing fee should be required to accompany the deposit of statements of account. Cable systems asserted that a filing fee for permissive amendments under § 201.11(e)(1) should not be required. For the reasons stated in paragraph I 8. of the preamble to our Notice of Proposed Rulemaking, we believe that the Act prohibits our imposition of a filing fee for the deposit of statements of account,¹ but does permit a filing fee for permissive amendments.

6. DEFINITION OF RECEIPTS

Proposed § 201.17(b)(1) defined "amounts attributable to the basic service of providing secondary transmissions . . ." to include "additional set fees". Although representatives of cable operators objected, we have adopted the proposed definition without change.

A family with two television sets attached to a cable system pays for the availability, on both sets, of the entire basic cable-television service, so that two or more members of the family can, separately but at the same time, view different retransmitted programs. The additional set fee is, we believe, clearly a payment for basic secondary transmission service, and this conclusion is supported by FCC practice.

7. TRANSLATORS

Proposed § 201.17(b)(6) stated: "A translator station is, with respect to programs both originally transmitted and retransmitted by it, a primary transmitter for the purposes of this section and § 201.11 of these regulations." Although some cable operators urged us to modify this provision, we believe it necessarily follows from the definitions of "primary transmission" and "secondary transmission" in 17 U.S.C. 111(f).

8. ACCOUNTING PERIODS AND FILING DATES

Proposed § 201.17(c) required that statements of account cover the periods

¹The discussion of fees in the Notice of Proposed Rulemaking was specifically directed to the filing of Notices of Identity. However, the reasons given for not imposing a filing fee on those notices are equally applicable to the recording of statements of account. Copyright owners argued that our position was inconsistent with our charging a filing fee for the recordation of contracts by "off-shore" cable systems under 37 C.F.R. 201.12 and 17 U.S.C. 111(e)(2). We believe this point may be well taken, and we are willing to reconsider the provision requiring a fee to be charged under the latter section.

January 1 through June 30 and July 1 through December 31, and that they be deposited not later than sixty days from the expiration of the accounting period. Some cable operators urged us to base the accounting period on the system's fiscal year, and to establish a filing period of 90 calendar days or 105 calendar days after the expiration of each accounting period.

For the reasons set forth in paragraph II 2. of the preamble to our Notice of Proposed Rulemaking we are adopting the proposed section without change. Sixty days is ample time for the preparation of statements of account, and we find no justification for possible delay of the review of such statements or distribution of royalties. We note that the Copyright Royalty Tribunal has filed a comment in this proceeding, indicating that the proposed accounting periods will not interfere with its duties.

9. SUBSCRIBER INFORMATION

Comments from several cable operators questioned our proposed requirement (§ 201.17(e)(6)) that statements of account include information as to the number of subscribers in each category for which a charge is made for the basic service of providing secondary transmissions, and the applicable charge. As stated in paragraph II 4. of the preamble to our Notice of Proposed Rulemaking, although this information "will not provide a definitive or detailed comparison with the reported gross receipts", it will be useful for at least a rough comparison with the reported gross receipts, and gives meaning to the statutory requirement that the "number of subscribers" be given. Proposed § 201.17(e)(6) is therefore adopted without change.

10. TOTAL ACTUAL RECEIPTS

In their initial comments, several copyright owners approved the proposed requirement (§ 201.17(e)(8)) that cable systems be required to furnish, on an annual basis, information as to "total actual receipts" from subscribers for all services provided by the cable system. These comments pointed to section 801(b)(2)(A)(ii) of the Act, which authorizes the Copyright Royalty Tribunal to adjust the section 111 royalty rates "to reflect . . . changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions . . .". Copyright owners in their initial comments also urged that we require cable systems to furnish information as to the number of subscribers in each category of service and the "monthly or other periodic charge for each service provided." In reply comments, however, some of these copyright owners indicated they would accept deletion of the requirement that total actual receipts be provided if the information about subscribers and rates is required.

Cable interests strongly opposed the requirement for total actual receipts. They contended that this information is confidential, that it could be used by copyright owners in bargaining for the

right to exhibit copyrighted works on pay-cable, that the collection and public disclosure of this information by the Copyright Office might be inconsistent with other statutes, and that total actual receipts would be an inaccurate and irrelevant basis for determining whether there had been a change in average rates charged cable users under 17 U.S.C. 801(b)(2)(A)(II).

After considering the various positions taken by the parties in their initial and reply comments, we have decided to amend the proposed regulation to delete the requirement for reporting of total actual receipts. This category of revenue is a meaningful measure of changes in rates charged subscribers for various services, but only if other factors remain constant over several accounting periods. These other factors are: The number of subscribers, and the number of services offered. Any substantial changes in either of these two categories would make "total actual receipts" relatively meaningless.

We have accepted the copyright owners' suggestion that each statement of account include a complete listing of the rates charged to subscribers for all services furnished or offered by the cable system. However, we do not believe that additional information concerning the number of subscribers to such services is necessary to enable the Copyright Royalty Tribunal to review changes in "rates" under section 801(b)(2)(A)(II) of the Act.

II. DESIGNATION OF DISTANT STATIONS AND OF THE BASIS AND TIME OF CARRIAGE OF PART-TIME STATIONS

Some cable operators urged us to delete the requirements of proposed § 201.17(e)(9)(I)(E) and (F) that cable systems indicate whether a primary transmitter is distant and the basis of carriage of certain part-time stations. They argued that these requirements would unduly burden small systems, that many cable operators do not have this information, and that the information should not be required until it has become apparent that it is necessary for royalty distribution proceedings. However, for the reasons given in paragraph II 5. of the preamble to our Notice of Proposed Rulemaking, we have not accepted this suggestion.

Copyright owners urged us to expand § 201.17(e)(9)(I)(F) to require identification of all distant signals carried on a part-time basis (rather than those carried only pursuant to certain FCC rules) and specification of the times of such part-time carriage. These comments argued that such information would be necessary to identify particular copyright owners, or classes of owners, entitled to certain allocations or distributions of royalties.² Cable operators argued that such an expansion of our pro-

² In cases where a cable system's gross receipts exceed certain levels, and part-time carriage is made under certain FCC rules, time of carriage information is also relevant to the calculation of statutory royalties.

posal would impose an unfair burden of reporting, if not recording, the information.

As in other aspects of these regulations, we do not believe we can refrain, at this time and particularly before determinations are made by the Copyright Royalty Tribunal, from requiring information that may reasonably be anticipated to be relevant to the question of royalty distribution.⁴ Also, since part-time carriage requires that certain actions be taken by a cable operator at particular times (even if these actions are automated), we are not persuaded that the making and reporting of such actions would impose an undue burden. Accordingly we have amended paragraph (F) to require time of carriage information in cases of part-time carriage of distant stations. However, since it has not been shown on this record that part-time carriage, other than that under the FCC rules referred to in 17 U.S.C. 111(f) occurs with any significant frequency, the suggestion that this information be required for all part-time cases has not been accepted.

12. SPECIAL STATEMENT AND PROGRAM

Cable operators argued that they should not be required by proposed § 201.17(e)(10)(II)(F) to indicate the reason for deletion of substituted programs. However, as this requirement affects the calculation of royalties under the Act, and as the reasons for substitution are known to the cable operator, we have not accepted this argument.

13. RADIO STATION INFORMATION

One comment argued that cable systems should be required to state whether radio stations covered by the system are "distant". For the reasons stated in paragraph II 6. of the preamble to our Notice of Proposed Rulemaking, we do not agree.

14. FORMS

As stated in our Notice of Proposed Rulemaking, the purpose of this proceeding was to establish the substantive nature of the information to be filed by cable systems. We are continuing to explore the possibility of providing standard forms for the filing of information. In that connection, we are reviewing the responses to the questions of interpretation raised in paragraph II 7. of the preamble to our Notice of Proposed Rulemaking, as well as questions raised by one comment concerning the reporting of receipts on a cash or accrual basis.

15. EFFECTIVE DATE

The effective date of the regulations is February 10, 1978. (Before that date,

⁴ The Copyright Royalty Tribunal has advised us, in a comment filed in this proceeding, that: "The principal concern of the CRT is that the regulations and forms of the Copyright Office provide all the information that may be reasonably required by this agency to perform its statutory functions with regard to both the determination of royalty fees and the distribution of royalty fees."

the filing of Notices of Identity and Notices of Change is governed by interim § 201.11 as adopted on March 18, 1977 (42 FR 15065).) However, with one exception noted in the regulations (§ 201.17(e)(9)(I)(F)), the information to be included in the first 1978 statement of account under the regulations, and under the Act, should cover the entire January 1 through June 30 accounting period.

The proposed regulations are adopted, with changes, and are set forth below.

Dated: December 30, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTEIN,
Librarian of Congress.

Part 201 of 37 CFR Chapter II is amended by § 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 Notices 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

*Error; line should read: "amended by revising §201.11 and adding a new"

entity under the rules, regulations, and practices of the Federal Communications Commission in effect on the date of recordation or deposit. *Provided*, That (1) 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 headend 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) as a result of monitoring at reasonable times and intervals, it can be expected to 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 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 re-

sponse 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 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 paragraph (c)(1) of this section shall apply only to Initial Notices of Identity and Signal Carriage Complement recorded on or after February 10, 1978. Initial Notices recorded before February 10, 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; (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)(i) 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; (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 February 10, 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) 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 sys-

*In the case of a change of ownership (i) for which a Notice of Change was not recorded before February 10, 1978 and (ii) which involves a cable system that recorded an Initial Notice or Notice of Change before February 10, 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.

*In the case of a change of signal carriage complement (i) for which a Notice of Change was not recorded before February 10, 1978 and (ii) which involves a cable system that recorded an Initial Notice or Notice of Change before February 10, 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.

*Error; line should read: "tion, they comprise generally receivable"

**Error; line should read: "paragraph (c) (1) (v) of this section"

***Error; line should read: "or after February 10 1978 in: (i) Ficti-"

tem; 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 February 10, 1978. Notices of Change recorded before February 10, 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.* 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 February 10, 1978.* Any cable system which before February 10, 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.*

(3) *Special (Required) Amendments for Certain Cable Systems which Record Initial Notices on or after February 10, 1978.* Any cable system which records an Initial Notice of Identity and Signal Carriage Complement on or after February 10, 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 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 ac-

* In the case of an amendment to an Initial Notice or Notice of Change recorded before February 10, 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.

company 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.

*Error; line should read: "in the Notice sought to be amended". The"

(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.*

(3) The designation "System," followed by: (A) All 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 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.

* 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.

(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) The designation "Rates," followed by a description of each service furnished or made available to the cable system's subscribers for which a separate charge was made or established during the period covered by the statement, together with the amount of such charge.

(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 (1) 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. If the signals of that primary transmitter are carried on such part-time or late-night basis, the statement shall also include the dates on which such carriage occurred, and the hours during which such carriage occurred on those dates. In any case where such part-time or late-night carriage extends to the end of the broadcast day of the primary transmitter, an

approximate ending hour may be given if it is indicated as an estimate.*

(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: (A) identify that portion of its signal carriage as "all-band FM" or the like; (B) 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; and (C) include a clear description of the nature and frequency of the monitoring activities and equipment used during the period to determine the identity of such signals.

(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.

* The requirement of this § 201.17(e) (9) (i) (F) that the statement include the dates and hours of carriage applies only to carriage on and after February 10, 1978.

(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").

(G) 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.

(H) *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.

[FR Doc. 78-168 Filed 1-3-78; 8:45 am]

