



ANNOUNCEMENT

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

NOTICE OF PUBLIC HEARING

PART 201-COMPULSORY LICENSE FOR CABLE SYSTEMS

The following excerpt is taken from Volume 46, Number 111 of the Federal Register for Wednesday, June 10, 1981 (pp. 30649-30651).

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

Compulsory License for Cable Systems

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public hearing.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is reviewing its regulations which implement portions of section 111 of the Copyright Act of 1976, title 17 of the United States Code. That section prescribes conditions under which cable systems may obtain a compulsory license to retransmit copyrighted works, including the filing of Statements of Account. This notice announces and invites participation in a public hearing intended to elicit comments, views, and information which will assist the Copyright Office in considering alternatives, formulating tentative regulations to be later issued as proposed rules, and proposing revisions to the Statement of Account forms.

DATES: The hearing will be held on July 28, 1981 in Washington, D.C.

Anyone desiring to testify should submit a written request to present testimony by July 21, 1981, to the address set forth below. To assist the Copyright Office in scheduling witnesses we urge the public scrupulously to observe the date for

requesting time to testify, even if written statements are submitted later. Ten copies of written statements must be received by the Copyright Office by 4:00 p.m., July 24, 1981.

ADDRESSES: Hearing location: The hearing will be held on July 28, 1981, at the James Madison Building of the Library of Congress, First and Independence Avenue, S.E., Washington, D.C. in the Assembly Room on the sixth floor, beginning at 9:30 a.m.

Written requests to present testimony and ten copies of written statements or of supplementary statements should be submitted as follows:

If sent by mail: Library of Congress, Department D.S., Washington, D.C. 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Building, Room 407, First and Independence Avenue, S.E., Washington, D.C.

All requests to testify should clearly identify the individual or group desiring to testify and the amount of time desired. The Copyright Office will try to contact all witnesses to confirm the time of their appearances.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

SUPPLEMENTARY INFORMATION:

1. *Background.* Section 111(c) of the Copyright Act of 1976 (Act of October 19, 1976, 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 various conditions, including the requirements that the cable systems comply with provisions regarding recordation of Notices of Identity and Signal Carriage Complement and Notices of Change of Identity or Signal Carriage Complement under section 111(d)(1), and deposit of Statements of Account and statutory royalty fees under section 111(d)(2).

On January 5, 1978, the Copyright Office published in the Federal Register (43 FR 958) new §§ 201.11 and 201.17 of its regulations governing the form, content, and filing of the Notices, Statements of Account, and statutory royalty fees. The Copyright Office emphasized in the preamble to the regulations that [43 FR 958]:

... 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.

On July 27, 1978, the Copyright Office¹ announced in the Federal Register (43 FR 27827) the adoption of Statement of Account forms and published amendments to its regulations (37 CFR 201.17) to reflect changes necessitated by the new forms.

Further experience with these regulations led the Copyright Office to publish in the Federal Register on July 3, 1980 (45 FR 45270) certain clarifying and technical amendments to its regulations (37 CFR 201.17) governing the form,

¹Error; line should read: "On June 27, 1978, the Copyright Office"

content, and filing of Statements of Account.

During the July 3, 1980 rulemaking proceeding, the Copyright Office received several comments suggesting substantive revisions to the regulations and Statement of Account forms (45 FR 45273):

Based on their experience reviewing the Statements of Account submitted during the first three accounting periods, copyright owners noted in their comments particular areas where they feel further information and/or clarifications are needed. These areas principally concerns the designation of local and distant stations, classification of Canadian and Mexican stations, and problems resulting from the filings submitted on behalf of joint "individual" cable systems. In addition, some copyright owners proposed changes that they contend would streamline the royalty calculation steps required on forms CS/SA-2 and CS/SA-3.

Comments on behalf of cable operators, on the other hand, suggested that a good deal of the information required on the Statements of Account for the purpose of assisting copyright owners and the Copyright Royalty Tribunal in the distribution of cable royalties is, in fact, unnecessary. They also advocated a review of our definition of "gross receipts for the 'basic service of providing secondary transmissions of primary broadcast transmitters'" based on recent technological advances and new marketing strategies affecting the types of services now available for a single monthly fee.

Although these issues were outside the scope of that rulemaking, the Copyright Office stated that it believes "that some of these developments do warrant a review of our cable regulations and Statement of Account forms at an appropriate time." (45 FR 45273).

Since that time, several administrative actions have been taken affecting the cable television compulsory license mechanism. First, on September 11, 1980, the Federal Communications Commission (FCC) published in the Federal Register (45 FR 60186) the decision to remove the cable television distant signal limitations and syndicated program exclusivity rules from the FCC regulations. Second, on September 23, 1980, the Copyright Royalty Tribunal published in the Federal Register (45 FR 63026) its determination of the 1978 cable royalty distribution. Finally, on January 5, 1981, the Copyright Royalty Tribunal published in the Federal Register (46 FR 892) its adjustment of the compulsory license royalty rates. Although all three of these actions presently are on appeal in the courts, the Copyright Office has decided that the initial administrative determinations warrant attention and may now provide an adequate basis for a review of the

cable television regulations and Statement of Account forms.

Over the last few months, the issue of whether or not the cable television compulsory license should be retained, modified, or eliminated, has been addressed during hearings in both the Senate and the House of Representatives. On April 21, 1981, the Copyright Office advised Senator Strom Thurmond and Representative Robert W. Kastenmeier that the Office has concluded that the "cable compulsory license of section 111 should be eliminated, or at least, significantly modified." This conclusion was reiterated in greater detail during hearings held on April 29, 1981, before the Senate Committee on the Judiciary. Notwithstanding this position taken in the context of possible legislative change, the July 28, 1981 public hearing is believed necessary to consider improvements in the administration of the existing cable compulsory license and is not intended as an alternative forum for consideration of legislative issues presently before the Congress.

2. *Specific Questions.* The Copyright Office is interested in receiving comments and testimony relevant to the following questions:

A. *Distant Signal Equivalent [DSE] Value.*

(1) Should a cable system be permitted to make a prorated adjustment to the full DSE value of a distant television station added, deleted or carried on a part-time basis during an accounting period if that station is also carried full-time during any portion of that accounting period?

(2) Where two or more distant television stations are carried part-time on any one cable channel during an accounting period, should a cable system be required to set the total DSE values for those stations at not less than the full value of the signal carried most frequently during the accounting period?

(3) Should a cable system be required to classify its carriage of distant Canadian or Mexican television stations as "independent stations" and correspondingly assign to such stations a DSE value of one?

(4) Where a cable system carries a distant television station on a tiered basis so that only a portion of its subscribers are able to receive it, should the system be permitted to prorate the DSE value of the station on the basis of the receivable subscriber audience?

B. *Part-Time Carriage.*

(1) Should the Part-Time Carriage Log in Space J on Statement of Account form CS/SA-2 be discontinued? If not, what purposes does its retention serve?

(2) Should a cable system be permitted to prorate the DSE value of a

distant television station on the basis of part-time carriage because of lack of activated channel capacity where the cable system uses one or more of its activated channels for services other than secondary transmissions (e.g., local origination, subscription services, etc.)?

(3) What changes, if any, should be made to the Statement of Account forms and regulations with respect to part-time and substitute carriage as a result of the FCC elimination of its distant signal limitations and syndicated program exclusivity rules?

C. *Gross Receipts for the "Basic Service of Providing Secondary Transmissions of Primary Broadcast Transmitters."*

(1) Should a cable system be permitted to prorate its "basic service" gross receipts where it provides services other than secondary transmissions as part of its basic service?

(2) Where a cable system carries a distant television station on a tiered basis so that only a portion of its subscribers receive it, should the system be required to include any, all, or part of the tiered service gross receipts as part of its "basic service" gross receipts?

D. *Other Issues.*

(1) In the case of "all-band" carriage of FM radio stations, should the regulatory requirement for cable system monitoring activities (reported in Block 3 of Space H of the Statement of Account forms) be discontinued? If not, what purposes does its retention serve?

(2) In the case of carriage of local television stations, should cable systems be required to specify in Space G of the Statement of Account forms the basis for classifying the station as "local" (i.e., within Grade B contour, significantly viewed, etc.)?

(3) Should the royalty computation formula in Space L of Statement of Account form CS/SA-2 be rewritten to read as follows: ¹

1. Subtract \$41,500 [\$55,500] from amount of "gross receipts" from Space K	_____
2. Multiply the amount in Line 1 by .01	_____
3. Add \$15.00 [\$20.00] to the amount in Line 2.	_____
4. Total Royalty Fee Payable for Accounting Period	_____ \$

(17 U.S.C. 111, 702)

Dated: May 28, 1981.

David Ladd,
Register of Copyrights.

Daniel J. Boorstin,
The Librarian of Congress.

[FR Doc. 81-17238 Filed 6-9-81; 8:45 am]

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¹ Amounts in brackets represent adjustments to the "small system" gross receipts limitations adopted by the Copyright Royalty Tribunal on December 17, 1980 (46 FR 897) and presently on appeal in the courts.