



ANNOUNCEMENT

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

Congress Enacts New Satellite Carrier Statutory License

The "Satellite Home Viewer Act of 1988", Pub L. 100-667, went into effect January 1, 1989 for a six-year period. The Act, which adds a new section 119 to the Copyright Act of 1976, establishes a statutory license for certain secondary transmissions made by satellite carriers to satellite "dish" owners for private home viewing. Satellite carriers will be permitted to make secondary transmissions of "superstation" and network signals to satellite "dish" owners for private home viewing upon payment of a statutory royalty fee and satisfaction of certain other conditions. The statutory royalty fee will sunset in four years, and will be replaced by privately negotiated licenses or an arbitrated fee established on or before December 31, 1992. The entire Act itself terminates on December 31, 1994.

The Copyright Office is issuing this notice to inform the public how it intends to administer the new satellite carrier license. Of particular importance to satellite carriers are the filing dates and requirements for statements of account, the types of information that will be required to appear on the statement of account forms, the calculation of the statutory royalty fee, and other requirements necessary to be in compliance with the Act.

1. Summary of the Satellite Carrier Statutory License.

Subject to particularized conditions and limitations provided for in new section 119 of the Copyright Act of 1976, the new satellite carrier statutory license permits, upon payment of a royalty fee, secondary transmission of "superstation" and network signals to satellite home dish owners (or to a distributor that has contracted with the satellite carrier to provide the signals to satellite home dish owners) provided that such signals are for private home viewing.

The secondary transmission of network signals is subject to specific limitations and filing procedures which do not apply to secondary transmission of "superstation" signals.

In general, secondary transmissions of network signals to private home viewers under the statutory license may only be made to those viewers who reside in "unserved households". Section 119(d)(10) defines an unserved household by reference to each network. A household is unserved by a particular network if (a) it cannot receive the signal of a primary network station of that network over-the-air (a signal of grade B intensity, as defined by the Federal Communications Commission) or, (b) within 90 days before the date on which the household subscribes to the satellite carrier service, the household has not received a signal of a station affiliated with that network through subscription to a cable system. A satellite carrier that makes secondary transmissions of a network signal pursuant to the statutory license must submit, to the network that owns or is affiliated with the network station transmitted, a list of names and addresses of all subscribers which receive that signal. This list must be provided 90 days after January 1, 1989 or 90 days after commencing such secondary transmissions, whichever is later. The list must be updated by the satellite carrier on the 15th of each month by submitting to the network a list of names and addresses of any subscribers added or deleted. The networks, on their part, are required to submit to the Register of Copyrights, for placement in a public file, the name and address of the person to whom the satellite carrier lists should be provided. Failure by a satellite carrier to provide a list of subscribers and monthly updates to the proper network constitutes an infringement of copyright subject to the remedies of the Copyright Act.

Section 119 provides for a monthly statutory royalty fee of twelve cents per subscriber per superstation received from a satellite carrier, and three cents per subscriber for each network signal received by the subscriber. Although private agreements as to the royalty fee may be negotiated at any time, the statutory royalty fee will end on December 31, 1992.

On or before July 1, 1991, the Copyright Royalty Tribunal will publish notice in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers. Voluntary agreements must be filed with the Register of Copyrights within 30 days after execution.

On or before December 31, 1991, the Copyright Royalty Tribunal will publish notice of the initiation of arbitration proceedings for those parties not already subject to a voluntary agreement. An Arbitration Panel will be chosen which shall, after appropriate proceedings, submit a report to the Tribunal recommending the proper royalty fee. Once accepted by the Tribunal, the fee becomes binding upon all parties not then subject to a voluntary agreement. This fee shall remain in effect until December 31, 1994 when all the provisions of section 119 expire.

The Act directs the Copyright Royalty Tribunal to distribute the royalties collected under the satellite carrier statutory license to the owners of the retransmitted programming.

2. Statutory License Filing Requirements

The Copyright Office notifies the public as to the following filing requirements for the satellite carrier statutory license:

1) Network Name and Address File.

Commencing January 1, 1989, a public file will be opened in the Licensing Division of the Copyright Office for the purpose of recording network names and addresses as required by section 119(a)(2)(C). The network notice should contain the name of the network, the contact person, a full mailing address and phone number. The notices should be sent to Walter Sampson, Chief of Licensing Division, Copyright Office, Library of Congress, Washington, D.C. 20557 or, if hand delivered, Licensing Division, Madison Building, Room LM-458, 101 Independence Avenue S.E., Washington, D.C. 20557 for placement in the public file.

2) Satellite Carrier Voluntary

Agreements File. Also commencing January 1, 1989, the Copyright Office will open a public file for voluntary royalty fee agreements in accordance with Section 119(c)(2)(C). The file will be located in the Licensing Division of the Copyright Office. One complete copy of an agreement, required to be submitted within 30 days after execution, should be sent to: Walter Sampson, Chief of Licensing Division, Copyright Office, Library of Congress, Washington, D.C. 20557 or, if hand delivered, Licensing Division, Madison Building, Room LM-458, 101 Independence Avenue S.E., Washington, D.C. 20557.

3) Satellite Carrier Statements of Account. The Copyright Office intends to implement the following statement of account procedures.

Like the cable compulsory license, royalties will be collected on a semiannual basis with accounting periods running from January 1, to June 30, and July 1, to December 31 of each year. Unlike the cable compulsory license, royalties will be calculated for each six month period on a monthly basis, and must be submitted, along with the statement of account forms, one month after the closing date of the accounting period. Thus, royalties and statements of account will be due on January 31, and July 31 of each year for the preceding six-month period. The first filing deadline for the satellite carrier license will be July 31, 1989.

Statement of account forms will be available to the public by May of 1989. They may be obtained by writing the Licensing Division of the Copyright Office, Library of Congress, Washington, D.C. 20557, Telephone no. (202)707-8150.

Although the statement of account forms have not been prepared in final form, the Copyright Office serves notice to satellite carriers of the types of information that will likely be requested on the form. The royalty fee is based on the number of subscribers receiving a signal for any period of each month. For example, if a new subscriber begins receipt of a network signal on March 31, a royalty must be paid for that subscriber for the entire month of March.

Satellite carriers will be expected, in addition to the basic information regarding the identification and operation of the carrier, to provide the number of subscribers to each signal retransmitted (either network or superstation) each month, and the identity and location of the stations of the particular signals provided. The Copyright Office will probably not require names or addresses of particular subscribers, as are required to be provided to networks in the case of carriage of network signals.

The above mentioned requirements will be embodied in formal regulations to be issued by the Copyright Office in 1989.

As provided in the Satellite Home Viewer Act [amendment of Section 111(d)(1)(A)], any amounts collected by a cable system/distributor from subscribers for secondary transmissions for private home viewing pursuant to section 119 should be excluded from the cable system's determination of gross receipts received for the basic service of providing secondary transmissions of primary broadcast transmitters pursuant to the cable compulsory license, section 111(c) to (f). This provision contemplates the situation where the same entity may be offering both satellite and cable distribution of secondary transmissions of primary broadcast transmitters. Such a system should maintain separate records of the subscriber fees received for the satellite carrier retransmissions.

FOR FURTHER INFORMATION CONTACT:

Licensing Division
(202) 707-8150 or
Copyright General Counsel
(202) 707-8380