



ANNOUNCEMENT

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

FINAL REGULATION

ADJUSTMENT OF THE SYNDICATED EXCLUSIVITY SURCHARGE

The following excerpt is taken from Volume 55, Number 233 of the Federal Register for Tuesday, December 4, 1990 (p. 49999)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 90-4]

Adjustment of the Syndicated Exclusivity Surcharge

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

SUMMARY: In response to the regulations adopted by the Federal Communications Commission reinstating its former syndicated exclusivity blackout rules, the Copyright Royalty Tribunal recently amended its rules concerning the syndicated exclusivity surcharge which some cable systems have paid since 1983, under the cable compulsory license, 17 U.S.C. 111. The Tribunal eliminated the surcharge except in the case of a distant commercial VHF station that places its predicted Grade B contour in whole or in part over a cable system. The Copyright Office now amends its cable compulsory license filing procedure regulations to reflect this change.

EFFECTIVE DATE: December 4, 1990.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION: On August 16, 1990, the Copyright Royalty Tribunal issued final regulations eliminating the syndicated exclusivity surcharge in certain circumstances. See 55 FR 33604. The Tribunal retained the surcharge, however, for distant commercial VHF stations that place a Grade B contour over a cable system and are not "significantly viewed" or

otherwise exempt from the syndicated exclusivity rules in effect on June 24, 1981. The Tribunal reasoned that the surcharge should be retained in this instance to compensate copyright owners who, under the former syndicated exclusivity rules dropped in 1981, enjoyed greater blackout protection than under the current exclusivity rules.

In order to reflect the general elimination of the syndicated exclusivity surcharge and its current application, the Copyright Office amends its regulations governing completion of statement of account forms under the cable compulsory license. The definition of "surcharge," as it appears in § 201.17(h)(1)(ii), is amended to reflect that for accounting periods on or after January 1, 1990, the word refers to the recent Tribunal decision of August 16, 1990. Section 201.17(h)(2)(ii) is amended to reflect that for accounting periods on or after January 1, 1990, the surcharge applies only to those commercial VHF signals that place, in whole or in part, a Grade B contour over the cable system.

Other references to the surcharge in subsections (h)(3) and (h)(7) remain unchanged.

List of Subjects in 37 CFR Part 201

Cable television. Cable compulsory license. Copyright Office.

Final Regulations

In consideration of the foregoing, part 201 of 37 CFR, chapter II is amended in the manner set forth below.

PART 201—[AMENDED]

A. The authority citation for part 201 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702.

§ 201.17 [Amended]

B. Section 201.17 is amended as follows:

1. Paragraph (h)(1)(ii) is revised to read:

(h) . . .

(1) . . .

(ii) *Surcharge* means the applicable syndicated exclusivity surcharge established by 37 CFR 308.2(d), in effect on January 1, 1983. For accounting periods beginning on or after January 1, 1990, "surcharge" refers to the applicable syndicated exclusivity surcharge established by 37 CFR 308.2(d) in effect on January 1, 1990.

2. Paragraph (h)(2)(ii) is revised to read:

(h) . . .

(2) . . .

(ii) If the 3.75% rate does not apply to certain DSE's in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972. With respect to statements of account covering the filing period beginning January 1, 1990, and subsequent filing periods, the current base rate together with the surcharge shall apply only to those DSE's that represent commercial VHF signals which place a predicted Grade B contour, in whole or in part, over a cable system. The surcharge will not apply if the signal is exempt from the syndicated exclusivity rules in effect on June 24, 1981.

Dated: November 13, 1990.

Ralph Oman,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

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