



# ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559-6000

## AMENDMENT OF CABLE LICENSE REGULATION

### CABLE COMPULSORY LICENSE; DEFINITION OF CABLE SYSTEM

The following excerpt is taken from Volume 59, Number 250 of the Federal Register for Friday, December 30, 1994 (pp. 67635-67636)

#### LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 86-7B]

#### Cable Compulsory License; Definition of Cable System

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Amendment of cable license regulation.

**SUMMARY:** The Copyright Office is repealing the provision of its regulations regarding the eligibility of multipoint distribution service and multichannel multipoint distribution service operators for compulsory licensing under section 111 of the Copyright Act, and is amending other regulatory provisions necessitated by the Satellite Home Viewer Act of 1994.

**EFFECTIVE DATE:** January 1, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** On October 18, 1994, the President signed into law the Satellite Home Viewer Act of 1994 (1994 Home Viewer Act). Pub.L. 103-369, 108 Stat. 3477 (1994). The 1994 Home Viewer Act extends the Copyright Act's section 119 compulsory license for satellite carriers another five years, until December 31, 1999, and amends the section 111 cable compulsory license

definitions of a "cable system" and the "local service area of a primary transmitter." These legislative amendments to the Copyright Act require certain changes in Subchapter A, Part 201 of the Copyright Office's regulations, 37 C.F.R.

#### Definition of a Cable System -- Wireless Cable Systems

The 1994 Home Viewer Act amends the definition of a "cable system" in the section 111 cable compulsory license to include what are known as "wireless" cable systems. "Wireless" cable operators, which provide video retransmission in the Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS), are eligible for section 111 compulsory licensing for the broadcast signals that they retransmit to their subscribers.

By clarifying the section 111(f) definition of a "cable system" to include "wireless" cable operators, the 1994 Home Viewer Act expressly overruled a prior decision of the Copyright Office that "wireless" cable operators did not come within the § 111(f) definition. On January 29, 1992, the Office concluded its inquiry into the definition of a "cable system" in Docket No. 86-7B and issued a regulation denying both "wireless" cable operators and satellite carriers eligibility for the cable compulsory license. 57 FR 3284 (1992). This regulation added a new subsection (k) to section 201.17 of the Office's rules, the pertinent part of which provided:

#### Satellite Carriers and MMDS Not Eligible

Satellite carriers, satellite resale carriers, multipoint distribution services, and multichannel multipoint distribution

services are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111 of title 17 of the United States Code.

Subsequent to the issuance of this regulation, the Copyright Office delayed its effective date until January 1, 1995. 58 FR 40363 (July 28, 1993).

In light of the 1994 Home Viewer Act change to the "cable system" definition, the Office is amending §201.17(k) to conform to the law and will treat "wireless" cable operators as being eligible for the cable compulsory license since January 1, 1978, the effective date of the Copyright Act and section 111. Satellite carriers, however, continue to remain ineligible for the section 111 license and the regulation is revised to notify satellite carriers when they may request a refund of royalties submitted to the Copyright Office under section 111.

#### Local Service Area of a Primary Transmitter

The other change to the cable compulsory license made by the 1994 Home Viewer Act is the broadening of the section 111(f) definition of the "local service area of a primary transmitter." The definition is used to determine when a broadcast station is local or distant to a cable operator, which in turn determines whether the operator must pay a royalty fee for that station. Effective July 1, 1994, the local service area of a broadcast station for copyright purposes also includes the area in which the station is entitled to insist upon carriage of its signal by a cable system (i.e. its must-carry zone), in accordance with the rules of the Federal Communications Commission in effect on September 18, 1993, and any subsequent modification of those rules.

## Satellite Carriers

Section 201.11(a) and (b) are amended to reflect passage of the 1994 Home Viewer Act, including the royalty rate and the definitional changes to section 119 of the Copyright Act.

### List of Subjects in 37 CFR Part 201

Cable systems; satellite carriers; compulsory license.

### Proposed Regulation

In consideration of the foregoing, part 201 of title 37, Code of Federal Regulations, is amended as follows:

#### PART 201—[AMENDED]

1. The authority citation for part 201 is revised to read as follows:

Authority: Section 702, 90 Stat. 2541; 17 U.S.C. 702; §201.11 is also issued under Public Law 103-369, 108 Stat. 3477.

#### §201.11—[Amended]

2. Section 201.11 is amended by removing "100-667" every place it appears and adding "103-369".

3. Section 201.11(e)(6) is amended by removing "twelve (12) cents" and adding "17.5 cents per subscriber, or in the case of syndex-proof superstations as defined in 37 C.F.R. §258.2, 14 cents".

4. Section 201.11(e)(7) is amended by removing "three (3)" and adding "six (6)".

#### §201.17—[Amended]

5. Section 201.17(a) is amended by removing ", as amended by Pub. L. 94-553,".

6. Section 201.17(b)(2) is amended in the first sentence by adding "microwave," after "cables,,"; by removing "Notices required to be recorded by this section, and the"; and by removing ": (i) On the date of recordation with the Copyright Office, in the case of the preparation and filing of an Initial Notice of Identity and Signal Carriage Complement or notice of Change

of Identity or Signal Carriage Complement; or (ii)".

6a. Section 201.17(b)(5) is amended by adding "and Pub. L. 103-369." at the end of the sentence.

7. Section 201.17(h)(1)(i) is amended by removing "308.2(a)" and adding "256.2(a)".

7a. Section 201.17 in paragraphs (k)(1)(iii), (h)(2)(i), and (h)(3)(iii)(A) is amended by removing "308.2(c)" and adding "256.2(c)".

7b. Section 201.17(h)(9) is amended by removing "308(c)(2)" and adding "308.2(c)".

8. Section 201.17(k) is revised to read as follows:

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

\* \* \* \* \*

(k) Satellite carriers not eligible. Satellite carriers and satellite resale carriers are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111 of title 17 of the United States Code. Any such entity who paid copyright royalties into the Copyright Office in an attempt to comply with 17 U.S.C. 111 may obtain a refund of such royalties by submitting a written request to the Chief, Licensing Division, Copyright Office, Library of Congress, Washington D.C. 20557 no later than March 1, 1995.

Dated: December 22, 1994

Marybeth Peters  
Register of Copyrights

Approved:

James H. Billington  
The Librarian of Congress

[FR Doc. 94-32045 Filed 12-29-94; 8:45 am]

Billing Code: 1410-30-P