



ANNOUNCEMENT

from the Copyright Office, Library of Congress,
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

NOTICE OF PROPOSED RULEMAKING

ADJUSTMENT OF CABLE STATUTORY LICENSE ROYALTY RATES

The following excerpt is taken from Volume 65, Number 177 of the
Federal Register of Tuesday, September 12, 2000 (pp. 54984-54985)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 256

[Docket No. 2000-4 CARP CRA]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Office, Library of
Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the
Library of Congress is submitting for public
comment a settlement proposal for the
adjustment of the royalty rates for the cable
statutory license.

DATES: Comments and Notices of Intent to
Participate are due by October 12, 2000.

ADDRESSES: If sent by mail, an original
and five copies of comments and Notices of
Intent to Participate should be addressed to:
Copyright Arbitration Royalty Panel
(CARP), P.O. Box 70977, Southwest Station,
Washington, DC 20024. If hand delivered,
copies should be brought to: Office of the
Copyright General Counsel, James Madison
Memorial Building, Room LM-403, First and
Independence Avenue, SE., Washington, DC
20540.

FOR FURTHER INFORMATION

CONTACT: David O. Carson, General
Counsel, or William J. Roberts, Jr., Senior
Attorney for Compulsory Licenses,
Copyright Arbitration Royalty Panel
(CARP), P.O. Box 70977, Southwest Station,
Washington, DC 20024. Telephone: (202)
707-8380. Telefax (202) 252-3423.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Copyright Act, 17
U.S.C., creates a statutory license for cable
systems that retransmit to their subscribers
over-the-air broadcast signals. Royalty fees

for this license are calculated as percentages
of a cable system's gross receipts received
from subscribers for receipt of broadcast
signals. A cable system's individual gross
receipts determine the applicable
percentages. These percentages, and the
gross receipts limitations, are published in 37
CFR part 256 and are subject to adjustment
at five-year intervals. 17 U.S.C. 801(b)(2)(A)
& (D). This is a window year for such an
adjustment.

A cable rate adjustment is initiated by the
filing of a petition from a party with a
significant interest in the rates. The Library
received two such petitions: One filed on
behalf of the National Basketball
Association, the National Hockey League,
Major League Baseball, and the National
Collegiate Athletic Association; the other
filed on behalf of syndicated television
programmers. The Library published a
Federal Register notice seeking comment on
these petitions and directed interested parties
to file a Notice of Intent to Participate in a
Copyright Arbitration Royalty Panel
("CARP") proceeding. 65 FR 10564
(February 28, 2000). The Library also
designated a 30-day period to negotiate a
settlement as to adjustment of the rates. 37
CFR 251.63(a). The Library extended the
negotiation period on two separate occasions
in Orders dated May 15, 2000, and June 5,
2000. The extensions proved to be
successful, as the Library has now received a
joint proposal to adjust the cable royalty fees
and the gross receipts limitations.

When a joint proposal is received in a rate
adjustment proceeding, the Librarian may,
upon the request of the parties, submit the
agreed upon rate to the public in a notice-
and-comment proceeding. The Librarian may
adopt the rate embodied in the proposed
settlement without convening an arbitration
panel, provided that no opposing comment is
received by the Librarian from a party with
an intent to participate in a CARP
proceeding. 37 CFR 251.63(b). This **Federal
Register** notice implements the requirements
of Sec. 251.63(b).

II. Proposed Rates and Gross Receipts Limitations

On June 30, 2000, the Library received a
joint proposal from the National Cable
Television Association; the Joint Sports
Claimants; the Program Suppliers; the
Canadian Claimants; the Public Television
Claimants; the National Association of
Broadcasters; Broadcast Music, Inc.; the
American Society of Composers, Authors
and Publishers; SESAC, Inc.; the Devotional
Claimants; and National Public Radio, which
represent all the parties that filed a Notice of
Intent to Participate in this proceeding. The
joint proposal puts forward adjustments to
the cable license royalty rates, pursuant to 17
U.S.C. 801(b)(2)(A), and the gross receipts
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limitations, pursuant to 17 U.S.C.
801(b)(2)(D). The details of the adjustments
are as follows.

With respect to rates, the joint proposal
raises the basic (or minimum) fee for
providing broadcast stations from .893 of 1
per centum to .956 of 1 per centum of gross
receipts for the privilege of further
transmitting any non-network programming
of a primary transmitter in whole or in part
beyond the local service area of such primary
transmitter; the fee for the first distant signal
equivalent from .893 of 1 per centum to .956
of 1 per centum of gross receipts; the fee for
the second, third, and fourth distant signal
equivalent from .563 of 1 per centum to .630
of 1 per centum of gross receipts; and the fee
for the fifth distant signal equivalent and
each distant signal equivalent thereafter, from
.265 of 1 per centum to .296 of 1 per centum
of gross receipts.

With respect to the gross receipts
limitations which determine the size of a
cable system (small, medium or large) and
the royalty fee percentages that apply to
those characterizations, the joint proposal
puts forward increases as well. The gross
receipts threshold for determining when a
cable system is a small system would be
raised from \$75,800 to \$98,600. Medium-

sized cable systems have two methods of calculating their royalties, depending upon which side of the limitation threshold their gross receipts result. That threshold would be raised from \$146,000 to \$189,800, with the minimum reportable gross receipts over \$189,800 being raised from \$5,600 to \$7,400. Finally, the gross receipts limitation for determining a large cable system would be raised from \$292,000 to \$379,600.

The joint proposal establishes July 1, 2000, as the effective date of these rates, meaning that they would apply to royalty calculations and payments made by cable systems beginning with the second accounting period of 2000.

III. Proposed Rulemaking

As noted above, the Library is publishing the terms of the joint proposal as proposed amendments to parts 201 and 256 of its rules. Any party who wishes to challenge these proposed rules must submit its written comments to the Librarian of Congress no later than close of business on October 12, 2000. The content of the written challenge should describe the party's interest in this proceeding, the proposed rule or rules that the party finds objectionable, and the reasons for the challenge.

In addition, any party submitting written challenges must also submit an accompanying Notice of Intent to Participate in a CARP proceeding to adjust the cable rates and gross receipts limitations. It should be understood that anyone who challenges the proposed rules must be willing to fully participate in a CARP proceeding and have a significant interest in the adjustment of the rates. Failure to submit a Notice of Intent to Participate will preclude an interested party from participating in this proceeding and will preclude consideration of his or her written challenge. Any interested party that does file a Notice of Intent to Participate will be notified as to when the CARP proceeding will commence and when written direct cases will be due.

List of Subjects

37 CFR Part 201

Copyright, Procedures.

37 CFR Part 256

Cable television, Royalties.

For the reasons set forth in the preamble, the Library proposes to amend 37 CFR parts 201 and 256 as follows:

PART 201—GENERAL PROVISIONS

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

Authority: 17 U.S.C. 702.

Sec. 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

2. In Sec. 201.17(d)(2), remove

“\$292,000” each place it appears and add “\$379,600” in its place.

3. In Sec. 201.17(e)(12), remove “\$75,800” and add “\$98,600” in its place.

4. In Sec. 201.17(g)(2)(ii), remove “.893” and add “.956” in its place.

PART 256—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

5. The authority citation for part 256 continues to read:

Authority: 17 U.S.C. 702, 802.

Sec. 256.2 Royalty fee for compulsory license for secondary transmission by cable systems.

6. In Sec. 256.2(a), introductory text, remove the phrase “the first semiannual accounting period of 1985” and add the phrase “the second semiannual accounting period of 2000” in its place.

7. In Sec. 256.2(a)(1), remove “.893” and add “.956” in its place.

8. In Sec. 256.2(a)(2), remove “.893” and add “.956” in its place.

9. In Sec. 256.2(a)(3), remove “.563” and add “.630” in its place.

10. In Sec. 256.2(a)(4), remove “.265” and add “.296” in its place.

11. In Sec. 256.2(b), introductory text, remove the phrase “the first semiannual accounting period of 1985” and add the phrase “the second semiannual accounting period of 2000” in its place.

12. In Sec. 256.2(b)(1), remove “\$146,000” and add “\$189,800” in its place, and remove “\$5,600” and add “\$7,400” in its place.

13. In Sec. 256.2(b)(2), remove “\$146,000” each place it appears, and add “\$189,800” in its place, and remove “\$292,000” each place it appears and add “\$379,600” in its place.

Dated: September 7, 2000.

David O. Carson,
General Counsel.

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