PROPOSED RULEMAKING

COMPULSORY LICENSE FOR CABLE SYSTEMS

The following excerpt is taken from Volume 42, No. 231 of the Federal Register for Thursday, December 1, 1977 (pp. 61051-8).

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking is issued to inform the public that the Copyright Office of the Library of Congress is considering the adoption of new regulations to implement portions of section 111 of the Act for General Revision of the Copyright Law pertaining to the secondary transmission of copyrighted works by cable systems. Section 111 prescribes various conditions...
under which cable systems may obtain a compulsory license to retransmit copyrighted works, including the filing of certain notices and statements of account. The implementation of this regulation is to establish requirements governing the form, content and filing of such notices and statements.

DATES: Initial comments should be received on or before December 10, 1977; reply comments on or before December 22, 1977.

ADDRESSES: Interested persons should submit five copies of their written comments, if by mail to: Jon Baumgarten, General Counsel, Copyright Office, Library of Congress, Call No. 2899, Arlington, Va. 22202; or, if by hand to: Office of the General Counsel, Copyright Office, Library of Congress, Room 519, Crystal Mall Building No. 2, 2021 Jefferson Davis Highway, Arlington, Va.


SUPPLEMENTARY INFORMATION: Section 111(c) of the first section of Pub.L. 94-553 (90 Stat. 2541) establishes a compulsory licensing system under which the copyright owner may make secondary transmissions of copyrighted works. The compulsory license is subject to, among other conditions, requirements that the cable system comply with certain provisions regarding recordation of notices under section 111(d) (1) and disposition of statements of account under section 111(d) (2).

1. Section 111(d) (1) Notices

Section 111(d) (1) of the Act provides:

(d) Compulsory License For Secondary Transmissions By Cable Systems—

(1) For any secondary transmission to be subject to compulsory licensing under subsection (c), the cable system shall, at least once a year, make a record of the performance of operations of the cable system or within one hundred and eighty days after the last day of the Act, whichever is later, and thereafter within thirty days after each occasion on which the ownership or control of the cable system was changed, record in the Copyright Office a notice including a statement of the identity and address of the person who owns or operates the secondary transmission service or has power to exercise primary control over it, together with the name and location of the primary transmitter or primary transmitters whose signals are regularly carried by the cable system, and thereafter, from time to time, such further information as the Register of Copyrights, after consultation with the Copyright Royalty Tribunal and after notice to the public, shall prescribe by regulation to carry out the purpose of this clause.

On March 18, 1977 (42 FR 15055) we adopted an interim regulation § 201.11 to enable cable systems to comply with their immediate obligations under this section. At that time we referred to the need for further proceedings before issuing final regulations pertaining to section 111(d) (1) and other provisions of the Act regarding compulsory licensing, in light of the Notice of Proposed Rulemaking in this proceeding and docket (42 FR 15431; March 22, 1977), we held a public hearing on the issues involved in implementing section 111. At that time we heard testimony on, among other matters, the possible modification of interim regulation § 201.11. We now propose to amend § 201.11 in light of the comments received at the hearing. The proposed amendments are also heavily influenced by the Office's experience in enforcing section 111. We believe that the portion of section 111(d) (1) permitting the Register to require recordation of "further information" does authorize the Office to require that, at least after January 1, 1978, the parties shall record with the Copyright Office any other information which is not specified in the earlier clauses of the section. A contrary interpretation would impose an unnecessary burden of multiple filings on cable systems in order to obtain such information. Accordingly, the proposed amendments to § 201.11 do require notices to include information which was merely "suggested" in the interim regulation. However, with one exception related to the secondary transmission of "all-band" FM signals, cable systems which record or recorded notices before January 1, 1978 will not be required to make corrective or amendatory filings.

2. A Workable Recording System: Designating the "Owner" of the Cable System—

Section 111(d) (1) of the Act provides that the notices required by that section shall include "a statement of the identity and address of the persons who owns or operates the secondary transmission service or has power to exercise primary control over it." The meaning of these terms has caused confusion among cable systems. Moreover, the appearance in certain classes of subscribers, proposed amendments would require all cable systems which record Initial Notices of Identity or Notices of Change on or after January 1, 1978 to identify the owner of the cable system. The use of "ownership" as the key to the secondary transmission regulation is not consistent with the recordation requirements of other provisions regarding the filing of amendments and statements of account.

This decision to require identification of the owner of the cable system does not affect the circumstances under which a Notice of Change must be filed. Section 111(d) (1) of the Act provides that a Notice of Change shall be recorded by the person who exercises primary control over the system changes. The requirement that a Notice of Change be recorded upon a change in "control" was apparently intended to assure the possibility that an Initial Notice would give the name of the person or entity "exercising primary control" over the system. Since initial Notices were recorded on or after January 1, 1978 will be required to identify the "owner" of the system, paragraph (d) (2) of proposed § 201.11 would eliminate the necessity of recording a Notice of Change. We do not believe that the potential gap is of such significance as to warrant the imposition of an additional recording requirement. Proposed § 201.11 (d) (2) also makes clear that Notices of Change are not required when certain other information contained in the Initial Notice later changes. Although these other items of information are useful in establishing an initial record of the system's existence, and reliance can be placed upon them in the event that their importance is such as to justify the filing of additional recording requirements. Changes in these elements will be picked up in statements of account which can be tied to the section 111(d) (1) notices through ownership.

3. "Cable System." During the hearing in this proceeding the question of what constitutes a single or "individual" cable system was raised. After considering several alternatives, we have decided to propose that the rules and practices of the Federal Communications Commission be followed. This consistency with F.C.C. practice should reduce confusion and benefit all interested parties. However, because the F.C.C. has adopted certain exclusions from its definition of "cable system," the proposed rule implementing section 111(d) (1) would not apply to cable systems having less than a certain number of subscribers or which serve only certain classes of subscribers, proposed § 201.11 (a) (3) states that the rule does not apply to any rule, regulation or practice of the Federal Communications Commission which ex-
cludes facilities from consideration as a 'cable system' because of the number of secondary transmissions of PM signals made shall not be given effect for copyright purposes.

A particular aspect of this issue related to the proper reading of the final sentence of the definition of 'cable system' is section 111(f) of the Act. The legislative history of the Act indicates that the purpose of this sentence is to avoid artificial fragmentation of cable systems. § 201.11(3) proposes an interpretation of this sentence which is most consistent with that purpose.

4. "All-Band FM" Carriage. During the hearing in this proceeding considerable attention was focused on the issue of signal identification when FM radio signals are carried in secondary transmissions on an all-band basis. As in the interim proceeding, cable systems argued that where they carry the entire FM band, specific identification of individual FM signals is rendered virtually impossible, or at the least very burdensome, because of the presence of secondary transmissions of technological, climatic, atmospheric, or similar conditions. Representatives of copyright owners, however, pointed out that they required some means of identifying their works in secondary transmissions of FM signals for the purpose of calculating and claiming compensation. Both sides appeared to acknowledge the problems posed in this area, and to agree that FM signals which "dropped in" to a system's carriage infrequently need not be identified. There was also considerable support from both sides for a reasonable interpretative regulation in connection with all-band FM carriage. Proposed § 201.11(a)(4) and (e)(v) proposed to deal with this issue by providing an essentially objective standard of when an FM signal secondarily carried by an "all-band" system must be identified. Because, in many cases, the standard cannot be applied before a cable system must file an Initial Notice, proposed § 201.11(e)(iv)(B) and (e)(3) would require the filing of a later "Special Amendment" to the Notice in such cases. A "Special Amendment" would also be required of "all-band" cable systems which received Initial Notices before January 1, 1978 without identifying individual primary transmitters of PM signals. Also, proposed § 201.11(d)(3) would adjust the time for filing a Notice of Change in all-band FM signals to accommodate such amendments.

5. Amendment to correct errors or omissions. Several cable systems which have been amendment to the Copyright Act regulations have asked whether they might record "amendments" to correct mistakes. Although the statute does not expressly provide for such amendments, we do not believe we should close our records to corrections. Proposed § 201.11(e)(1) does provide for the recording of "amendments to Initial Notices or Notices of Change submitted to correct an error or omission in the information given in the earlier document," and adds that an amendment under that paragraph "is not appropriate to reflect developments or changes in facts occurring after the date of signature of an Initial Notice of Change." Since the statute does not itself provide for amendment and does not include the compulsory license upon proper and timely recording, the proposed section also states that "the recordation of an amendment shall have only such effect as may be attributed to it by a court of competent jurisdiction." This will permit questions as to whether omissions or errors were willful or inadvertent, or isolated or repeated, and their effect on the compulsory license, to be resolved in the proper forum.

8. Fees. As the Act does not expressly impose a fee for the recordation of section 111(d)(1) notices, the only authority for a recording fee is section 708(a)(11). The latter section permits the Register to establish a fee "for any other special services requiring a substantial amount of time or expense." Fees under this section are, however, to be fixed "on the basis of the cost of providing the service." Since section 111(d) requires the Register to "deduct the real cost of the Services," Copyright Royalty Tribunal in administering the cable provisions from statutory royalties paid under the Act, we do not believe we can require a fee to be paid by cable systems for recording notices required by the statute or our regulations.

As noted earlier, however, the proposed regulation would permit cable systems to record amendments to correct errors or omissions in previously-recorded documents. This is proposed essentially as an accommodation to the cable systems themselves and may properly be considered a "special service" for their benefit. It would not be equitable or reasonable to require the costs of processing such amendments to be borne by right owners through deduction from the royalties available for distribution. Accordingly, we have proposed a fee of § 201.17 will require identification of all primary transmitters, subject to a limited exception for "all-band" FM carriage.

6. Repeated information in notices of change. Both section 111(d)(1) of the Act and the interim regulation left it unclear as to whether, in recording a Notice of Change, all of the information required to be given in an Initial Notice, whether changed or not, must be given. We do not require a cable system recording a Notice of Change affecting ownership to repeat its signal carriage complement, or to require a system recording a Notice reflecting changes which underlie the Notice, together with certain additional identifying information.

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Proposed § 201.17(b)(6) reflects our view that translator stations are to be considered "primary transmitters" for purposes of section 111 of the Act. Accordingly, where a cable system secondary transmitters are involved, and both translator and parent should be separately given and categorized.

Proposed § 201.17(b) also incorporates the definitions of "cable system" and "generally receivable FM signals" discussed in connection with the proposed amendments to § 201.11.

2. Accounting Periods. Section 111(d) (5) requires the deposit of statements of account on a "semianual basis". The legislative history of this section states that the "dates for filing such statements of account for the six months which they are to cover" are to be determined by Copyright Office regulations. H.R. Rep. 94-1476, 94th Cong., 2d Sess., Sept. 3, 1976 at 95. After considering a number of alternatives, we have proposed (§ 201.17(c)) that the statements cover the periods January 1 through June 30 and July 1 through December 31, and that they may be deposited in the Copyright Office within sixty days from the expiration of the accounting period. This proposal is based on the operational needs of the Copyright Office with respect to workflow and balancing of the operations of our new Licensing Division, and on our desire not to impose unusual reporting requirements on cable systems which must also prepare reports for other agencies and authorities.

This proposal does raise issues concerning claims to compulsory license fees which are to be filed with the Copyright Royalty Tribunal during the month of July in each year under section 111(d) (5) of the Act. We anticipate that the Tribunal will adopt such procedures as may be necessary to safeguard the interests of copyright owners in prompt and accurate reporting, assist cable operators in meeting their obligations under the Act and regulations, and aid copyright owners, the Copyright Office, and the Copyright Royalty Tribunal in reviewing and using the information provided at the hearings. This proceeding is to establish the contents of statements of account. We will continue exploring the adoption of a form for statements of account and will make our final decision on a form well before the expiration of the first accounting period in 1978.


Section 111(d) (2) of the Act requires a statement of account to include "the total number of subscribers" to the system, the gross amounts paid to the system for basic and primary transmission services, and "such further information as the Register of Copyrights **** shall prescribe by regulation" to carry out the purpose of this section. The "number of subscribers" alone will serve no real purpose. We believe this item was intended to provide copyright owners with a basis for a comparison with the reported gross receipts. Accordingly, we have proposed (§ 201.17(e) (6)) that the number of subscribers be accompanied by certain related information concerning subscriber categories and charges in order reasonably to accomplish this purpose. We recognize that the specified information will not provide a definitive or detailed comparison with the reported gross receipts, but on the present record we are not persuaded that more information or detail should be required.

Although section 111(d) (2) does not expressly require the reporting of receipts from activities other than "the basic service of providing secondary transmission services of primary broadcast transmitters", copyright owners have urged that the statements include a detailed accounting of all of the cable system's receipts during the period covered by the statement. We believe that copyright owners and the Copyright Royalty Tribunal should have some basis for comparing the gross receipts upon which royalties are calculated with the cable system's total receipts; however, on this record and for present purposes, we are not convinced that a detailed accounting is necessary. Accordingly, proposed § 201.17(e) (6) requires that statements of account for the period July 1 through December 31 include "the total actual receipts paid to the cable system for all services performed or rendered to its subscribers during the full calendar year immediately preceding deposit of the statement." Although "total actual receipts" are to be given for the full calendar year, they are required to be reported on a "semianual" basis only in statements of account prepared for the last six months of that year. We believe that, in general, cable systems will have the necessary information available at the time the second-half statements are being prepared.

5. Television Primary Transmitter and Carriage Information. Proposed § 201.17 (e) of the Act requires cable systems to include in the statement of account information related to the identification of primary transmitters, and the nature and basis of carriage of their transmissions by the system. Although this information may be obtained from a cable system's records, we believe that the obligation of obtaining the information from a cable system and providing this information to copyright owners and the Copyright Royalty Tribunal is more appropriately borne by the cable system.

6. Radio Primary Transmitter and Carriage Information. Proposed § 201.17 (e) does not require the same information for secondary transmission of radio signals as is required for television signals. Information pertaining to whether a primary radio transmitter is distant or local, and the local or distant character of carriage in certain cases, is not significant in the computation of royalties. The distant or local character of the primary transmitter is relevant to the allocation of royalties among copyright owners. However, we understand that the operators of cable systems generally do not know, and normally are not required to know, the "primary service area" of radio transmitters in the normal course of their business. This information is publicly available through the FCC and can be independently matched to the identity of particular cable systems to determine the local or distant character of the primary transmitter. In this situation, we believe that the obligation of obtaining the information is best appropriately borne by the interested copyright owners.

7. Issues related to calculation of royalties. As noted in item 3, above, we are continuing to explore the question of forms to be prescribed for statements of account. We anticipate that any such form will include more specific instructions.
tions for the calculation of royalties than.

(a) Section 111(d) (2) (D) of the Act states that in setting certain royalties, "in the case of any cable system located partly within and partly without the local service area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located without the local service area of such primary transmitter." What is the proper application of this proviso, particularly where a cable system carries the signals of more than one such "partially distant" station and different groups of subscribers are "distant" as to different stations?

(b) Under section 111(f) of the Act, where several programs are carried on the same day pursuant to the permissive substitution rules of the FCC, should the number of substitute programs be used in calculating the appropriate distant signal equivalent?

PROPOSED REGULATIONS

We propose to amend Part 201 of 37 CFR Chapter II by amending §201.11 and adding a new §201.17 to read as follows:

§201.11 Notices of identity and signal carriage complement of cable system" (a) Definitions. (1) An "Initial Notice of Identity and Signal Carriage Complement" or "Initial Notice" is a notice under section 111(d) (1) of title 17 of the United States Code as amended by Pub. L. 94-553 and required by that section to be recorded in the Copyright Office "at least one month before the date of commencement of operations of the cable system or within one hundred and eighty days after (October 19, 1976), whichever is later", for any secondary transmission by the cable system to be subject to compulsory licensing.

(2) A "Notice of Change of Identity or Signal Carriage Complement" or "Notice of Change" is a notice under section 111(d) (1) of title 17 of the United States Code as amended by Pub. L. 94-553 and required by that section to be recorded in the Copyright Office "within thirty days after each occasion on which the ownership or control or signal carriage complement of the cable system changes" for any secondary transmission by the cable system to be subject to compulsory licensing.

(3) A "cable system" is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wire, cable, or other communications channels to subscribing members of the public who pay for such service. The Notice required to be recorded by this section, and the statements of account and royalty fees to be deposited under §201.17 of these regulations, shall be recorded and deposited by each individual cable system desiring to make secondary transmissions to be subject to compulsory licensing. For these purposes, and the purpose of §201.17 of these regulations, an "individual" cable system means each cable system recognized as a distinct entity under its regulations, and practices of the Federal Communications Commission in effect on the date of recordation or deposit. Provided. That (1) rules, regulations, or practices of the Federal Communications Commission which excludes facilities from consideration as a "cable system" because of the number or nature of subscribers or antenna microwave or parabolic transmission made shall be not given effect for the purposes of this section or §201.17 of these regulations; and (ii) two or more cable facilities (A) in contiguous communities, or (B) operating under the same control or (B) operating from one headend shall be considered as one individual cable system.

(4) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, an FM radio signal is generally receivable if (i) it is usually carried by the system whenever it is received at the system's headend, and (ii) it can be received at the system's headend, with the system's FM antenna, at least three consecutive hours each day at the time each day, five or more days a week, for four or more weeks during any calendar quarter, with a strength of not less than fifty microvolts per meter measured at the foot of the tower or pole to which the antenna is attached.

(5) The signals of a primary transmitter are "regularly carried" if they are carried by the cable system for at least one hour each week for thirteen or more consecutive weeks, or if, in the cases described in paragraph (a) (4) of this section, they comprise generally available FM radio signals.

(b) Forms. The Copyright Office does not provide printed forms for the use of persons recording Initial Notices or Notices of Change.

(c) Initial Notices. (1) An Initial Notice of Identity and Signal Carriage Complement shall be identified as such by prominent caption or heading, and shall include the following:

(i) The designation "Owner", followed by: (A) The full legal name of the person or entity which owns the cable system; (B) any fictitious or assumed name under which the person or entity for the purpose of conducting the business of the cable system; and (C) the full mailing address of that person or entity.

(2) The designation "System", followed by: (A) All corporate, trade, or business names or styles used to identify the business and operation of the cable system; and (B) the full mailing address of the system. To the extent any portion of this information is identical to the information given in response to paragraph (c) (7) (iv) of this section it need not be repeated. If all of the information called for by this paragraph is identical to the information given in response to paragraph (c) (3) of this section, the designation "Owner" shall be followed by the statement "as given above", or like reference.

(iii) The designation "Area Served", followed by the name and location of the primary transmitter or primary transmitters whose signals are, or are expected to be, regularly carried by the cable system.

(A) The "name" of the primary transmitter(s) shall be given by station call sign; accompanied by a brief statement of the type of signal carried (for example, "TV", "FM", or "AM"). The "location" of the primary transmitter(s) shall be given as the name of the community to which the transmitter is identified (in the case of foreign signals) or with which the transmitter is identified (in the case of foreign signals).

(B) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, the Notice shall identify that portion of its signal carriage as "all-band FM" or the like, and shall separately identify the name and location of each primary transmitter of such signals whose signals are generally receivable by the system. In any case where such generally receivable FM signals cannot be accurately determined at the time of recording of the Initial Notice, they shall be subsequently identified in a Special Amendment recorded in compliance with paragraph (e) (3) of this section.

(v) The individual signature of the person identified as the person who owns the cable system, or of a duly authorized representative of that person; or, if an entity is identified as the owner, the signature of an officer if the entity is a corporation, or of a partner if the entity is a partnership. In any case, the date of signature shall also be given.

(2) The requirements of this paragraph (c) (1) of this section shall apply only to Initial Notices of Identity and Signal Carriage Complement recorded on or after January 1, 1978. Initial Notices recorded before January 1, 1978 shall be governed by the applicable Copyright Office regulations in effect on the date of recordation.

(d) Notices of change. (1) A Notice of Change of Identity or Signal Carriage Complement shall be identified as such by prominent caption or heading, and shall include the following:

(i) In the case of a change of ownership: (A) The designation "Owner", followed by the full legal name
of the person who, or entity which, owned the cable system as given in the Initial Notice recorded by the cable system or, if an earlier Notice of Change affecting ownership has been recorded by the cable system, as given in the last such Notice; (B) the designation "New Owner", followed by the full legal name of the person who, or entity which, now owns the cable system; (2) unless accompanying a change in ownership or in signal carriage complement, the names and locations of the primary transmitter or primary transmitters whose signals have been added to or deleted (as shall be stated in the Notice) from the system's signal carriage complement, given as set forth in paragraphs (c) (1) (iv) (A) and (2) of this section; and (D) the approximate date of each such addition or deletion.

(b) In the case of a change of ownership or in signal carriage complement, a Notice of Change shall be signed and dated in accordance with paragraph (a) (1) (iv) of this section.

(2) Unless accompanying a change in ownership or required to be given as set forth in paragraphs (d) (1) (i) of this section, a Notice of Change is not required to be recorded to reflect changes occurring on or after January 1, 1978 in: (i) fictitious or assumed names used by the owner of a cable system for the purpose of conducting the business of the cable system; (ii) corporate names or business names or styles used to identify the business and operation of the cable system; (iii) mailing addresses of the owner of the cable system or of the system; (iv) the name of the operator of the cable system; or (v) the name of the person or entity exercising primary control over the system. A Notice of Change is not required to be recorded to reflect changes in, or in the names of, the community or communities served by the cable system.

(b) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, and which have not recorded an Initial Notice identifying the primary transmitters of FM signals generally receivable by the system, a Notice of Change shall not be required to be recorded to reflect changes affecting ownership of such signals until the expiration of one hundred and twenty days from the date of recordation of a Special Amendment under paragraph (e) (2) or (e) (3) of this section.

(4) The provisions of paragraphs (d) (1) and (d) (2) of this section shall apply only to Notices of Change recorded on or after January 1, 1978. Notices of Change recorded before January 1, 1978 shall be governed by the applicable Copyright Office regulations in effect on the date of recordation.

(5) Notice of change in ownership and in signal carriage complement may be combined in one Notice of Change, if the information required under paragraph (d) (1) of this section is given for each change.

(e) Amendment of Notices—(1) General (Permissive) Amendments to Correct Errors or Omissions. The Copyright Office will record amendments to Initial Notices or Notices of Change submitted to the Copyright Office to correct an error or omission in the information given in the earlier document. An amendment is not appropriate to correct developments or changes in facts occurring after the date of signature of an Initial Notice or Notice of Change. An amendment shall (i) be clearly and prominently identified as an "Amendment to Initial Notice of Identity and Signal Carriage Complement" or "Amendment to Notice of Change of Identity or Signal Carriage Complement"; (ii) identify the specific Notice sought to be amended.

1 In the case of a change of ownership (1) which occurred on or after December 2, 1977 (ii) for which a Notice of Change was recorded on or after January 1, 1978 but before January 1, 1979 (iii) which involves a cable system that recorded an Initial Notice of Ownership before January 1, 1979 without identifying the owner of the system, the designation "Former Owner" shall be followed by the name of the person who, or entity which, was given as the operator or person or entity exercising primary control in the Initial Notice or last Notice of Change.

1 In the case of an amendment to an Initial Notice or Notice of Change recorded before January 1, 1978 which did not identify the owner of the system, the signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended.

1 Year 1977 corrected to 1978.

2 Paragraphs (c) (1) (v) of this section. The Copyright Office will record amendments to Initial Notices or Notices of Change submitted to the Copyright Office to correct an error or omission in the information given in the earlier document. An amendment is not appropriate to correct developments or changes in facts occurring after the date of signature of an Initial Notice or Notice of Change. An amendment shall (i) be clearly and prominently identified as an "Amendment to Initial Notice of Identity and Signal Carriage Complement"; (ii) specify the nature of the amendment to be made; and (iii) be signed and dated in accordance with paragraph (c) (1) (v) of this section. The signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended.

The recordation of an amendment under this paragraph shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(2) Special (Required) Amendments for Certain Systems which Recorded Initial Notices before January 1, 1978. Any cable system which, before January 1, 1978, recorded an Initial Notice of Identity and Signal Carriage Complement which identified all or a portion of its signal carriage complement as "all-band FM", "broad-band FM" or the like, or which otherwise did not identify individual primary transmitters of FM signals generally receivable by the system, shall, no later than June 30, 1978, record a Special Amendment under paragraph (e) (3) of this section identifying the transmitters whose signals have been added to or deleted from the system's signal carriage complement, given as set forth in paragraphs (c) (1) (iv) (A) and (2) of this section; and (D) be signed and dated in accordance with paragraph (c) (1) (iv) of this section. The signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended.

(3) Special (Required) Amendments for Certain Cable Systems which Record Initial Notices on or after January 1, 1978. Any cable system which records an amendment to an Initial Notice or Notice of Change, whose signals have been added to or deleted from the system's signal carriage complement, shall, no later than one hundred and twenty days after recordation of the Initial Notice, record an amendment to identify the primary transmitter or primary transmitters of FM signals generally receivable by the system as of the date of the amendment in accordance with paragraphs (c) (1) (iv) (A) and (B) of this section to record a special amendment. Such amendment shall: (i) be clearly and prominently identified as an "Amendment to Initial Notice of Identity and Signal Carriage Complement"; (ii) specifically identify the Initial Notice intended to be amended so that it may be readily located in the records of the Copyright Office; and (iii) be signed and
dated in accordance with paragraph (c) (1) (v) of this section. The signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended.

(1) Recordation. (1) The Copyright Office will record the Notices and amendments described in this section by placing them in the appropriate public files of the Office.

(2) No fee shall be required for the recording of Initial Notices, Notices of Change, or the Special Amendments identified in paragraphs (e) (2) and (e) (3) of this section. A fee of $10 shall accompany any General Amendment permitted by paragraph (e) (1) of this section.

(2) Upon request and payment of a fee of $3, the Copyright Office will furnish a certified receipt for any Notice or amendment recorded under this section.

§ 201.11 Statements of account covering the period July 1 through December 31, and shall be deposited in the Copyright Office, together with the total royalty fee for such accounting periods as prescribed by section 111 (d) (2), (B), (C), or (D) of title 17, within thirty calendar days from the expiration of each such accounting period.

(2) The date of deposit will be the date when both a proper statement of account and appropriate royalty fee are received in the Copyright Office.

(d) Forms. (Reserved)

(e) Contents. A Statement of Account shall be clearly and permanently identified as a "Statement of Account for Secondary Transmissions By Cable Systems," and shall include the following information:

(1) A clear designation of the accounting period covered by the statement.

(2) The designation "Owner," followed by: (A) The full legal name of the person or entity owning the cable system; (B) any fictitious or assumed name used by that person or entity for the purpose of conducting the business of the cable system; and (C) the full mailing address of that person or entity.

(3) The designation "System," followed by: (A) All corporate, trade, or business names or styles used to identify the location or operation of the cable system; and (B) the full mailing address of the system. To the extent any portion of this information is identical to the information given in response to paragraph (2) of this section, the designation shall be repeated by the statement "as given above," or like reference.

(4) The designation "Area Served," followed by the name of the community or community area served by the system.

(5) The designation "Channels," followed by the number of channels on which the cable system made secondary transmissions to its subscribers during the period covered by the statement.

(6) The designation "Subscriber Information," followed by: (A) A brief description of each subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters; (B) the number of subscribers to the cable system in each such subscriber category; and (iii) the charge or charges made per subscriber to each such subscriber category for the basic service of providing such secondary transmissions.

For these purposes (A) the description, the number of subscribers, and the charge or charges made shall reflect the facts existing on the day of the expiration of the accounting period covered by the statement; and (B) each entity (for example, the owner of a private home, the resident of an apartment, the owner of a motel, or the owner of an apartment house) which is charged by the cable system for the basic service of providing secondary transmissions shall be considered one subscriber.

(7) The designation "Gross Receipts," followed by the gross amount paid to the cable system by subscribers, during the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters.

(8) In the case of semiannual statements of account covering the period July 1 through December 31, the statement of account shall also include the designation "Total Actual Receipts," followed by the total actual receipts paid to the cable system for all services performed or rendered to its subscribers during the full calendar year immediately preceding deposit of the statement.

(9) The designation "Primary Transmitter," followed by an identification of all primary transmitters whose signals were carried by the cable system, other than the primary transmitters of programs required to be specially identified in paragraph (e) (10) of this section, in form and together with the information listed below:

(1) For each primary transmitter which is a television station:

(A) The station call sign of the primary transmitter.

(B) The name of the community to which that primary transmitter is licensed by the F.C.C. (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(C) The number of the channel upon which that primary transmitter broadcasts in the community to which that primary transmitter is licensed by the F.C.C. (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(D) A designation as to whether that primary transmitter is a "network station", an "independent station", or a "noncommercial educational station".

(E) A designation as to whether that primary transmitter is a distant station. For this purpose, a primary transmitter is a "distant station" if the programming of such transmitter is carried by the cable system in whole or in part beyond the local service area of such primary "independent station".

(F) If that primary transmitter is a "distant station" a specification of whether the signals of that primary transmitter are (1) carried pursuant to
the part-time specialty programming rules of the F.C.C.; or (2) carried pursuant to the late-night programming rules of the F.C.C.; or (3) carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry.

(G) The information indicated by paragraphs (e), (f), (l), (E), and (F) of this section is not required to be given by any cable system whose gross receipts from subscribers for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, exceed total less than $40,000.

(ii) For each primary transmitter which is an AM radio station, or an FM radio station the signals of which were electronically processed by the system as separate and discrete signals:

(A) The station call sign of the primary transmitter, and whether it is AM or FM.

(B) The name of the community to which the primary transmitter is licensed by the F.C.C. (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(C) The station call sign of the primary transmitter of the substitute program.

(D) The name of the community to which the primary transmitter of the substitute program is licensed by the F.C.C. (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(E) The full date when the secondary transmission of the substitute program occurred, and the hours during which such secondary transmission occurred on that date.

(F) A designation as to (1) whether deletion of the omitted program was required by the rules or regulations of the F.C.C., or was permitted by the rules, regulations, or authorizations of the F.C.C. in effect October 19, 1978, and (2) a brief statement clearly describing the legal basis for such deletion (for example: "Syndicated program exclusivity", or "program primarily of local interest to distant community").

(II) A statement of the total royalty fee payable for the period covered by the statement of account, together with a royalty fee analysis which gives a clear, complete and detailed presentation of the determination of such fee. This analysis shall present in appropriate sequence all facts, figures and mathematical processes used in determining such fee, and shall do so in such manner as will permit the Copyright Office to readily verify, from the face of the statement of account, the accuracy of such determination and fee.

(f) Certification and Signature. The statement of account shall be signed on its last page by the individual person identified as the person who owns the cable system, or by a duly authorized representative of such person; or, if an entity is identified as the owner, by an officer if the entity is a corporation, or by a partner if the entity is a partnership. The signature shall be accompanied by the printed or typewritten name of the person signing the notice, and by the date of signature; and (2) shall be immediately preceded by the following printed or typewritten statement:

I certify that I have examined this statement of account and that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(17 U.S.C. 207, and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-558; secs. 111; 708; 708(11).)


BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

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