



# ANNOUNCEMENT

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

## ADVANCE NOTICE OF PROPOSED REGULATIONS

### GENERAL PROVISIONS; COMPULSORY LICENSE FOR CABLE SYSTEMS

The following excerpt is taken from Volume 44, Number 243 of the Federal Register for Monday, December 17, 1979 (pp. 73123-73127).

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#### LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket RM 79-4]

#### General Provisions; Compulsory License for Cable Systems

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

**ACTION:** Advance notice of proposed  
regulations.

**SUMMARY:** This notice is issued to advise the public that the Copyright Office of the Library of Congress proposes to adopt certain technical and clarifying amendments to its revised regulations implementing portions of section 111 of the Copyright Act of 1976, title 17 U.S.C. That section prescribes conditions under which cable systems may obtain a compulsory license to retransmit copyrighted works, including the filing of Statements of Account. The proposed amendments would revise certain regulatory requirements concerning the filing of Statements of Account.

**DATE:** Written comments should be received on or before January 21, 1980.

**ADDRESSES:** Ten copies of written comments should be addressed, if sent

by mail, to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Caller No. 2999, Arlington, Virginia 22202.

If delivered by hand, the copies should be brought to: Office of the General Counsel, Room 519, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (703) 557-8731.

**SUPPLEMENTARY INFORMATION:** Section 111(c) of the Copyright Act of 1976 (Act of October 19, 1976, 90 Stat. 2541) establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including requirements that the cable system comply with provisions regarding deposit of Statements of Account under section 111(d)(2).

On June 27, 1978, the Copyright Office published in the Federal Register (43 FR 27827) amendments to its regulations (37 CFR 201.17) governing the form, content, and filing of Statements of Account. Further experience with these regulations has led us to propose certain clarifying and technical amendments, as follows:

1. *Date or dates of receipt.* When Statements of Account, royalty fee payments, or other related documents or

payments are received in the Copyright Office, the Licensing Division of the Copyright Office checks whether they contain obvious errors or omissions. However, the Licensing Division does not examine the documents or payments for all possible errors or omissions. For example, on Forms CS/SA-2 and CS/SA-3, we will check to make sure that the same "gross receipts" figure is given in spaces K and L, and we will check the accuracy or the arithmetic laid out in space L. However, although there should be some rough correspondence between the amount of "gross receipts" given in space K and the result of multiplying the number of subscribers and the amounts of rates given in space E, it is not our practice to compute totals in space E and compare the result with space K. This is because the information in the two spaces reflect different time periods (space E calls for figures as of the last day of the accounting period and space K calls for gross receipts for the entire accounting period) and also because the figure in space K may vary depending on whether the cable system's accounting is done on an accrual or cash basis.\*

The present regulations concerning deposit of royalty fees and filing of Statements of Account (37 CFR 201.17(c)(2)) provide for a "date of acceptance by the Copyright Office" and authorize the Office to require correction of errors or omissions before the documents will be "accepted." The

text of the relevant paragraph reads as follows:

(2) The date of acceptance by the Copyright Office will be the date when both a proper Statement of Account and appropriate royalty fee are received in the Copyright Office. The Copyright Office will advise cable systems of errors or omissions appearing on the face of documents submitted to it, and will require that any such obvious errors or omissions be corrected before the documents will be accepted. However, acceptance and filing of any document by the Copyright Office shall establish only the fact and date thereof; such acceptance and filing shall in no case be considered a determination that the document was, in fact, properly prepared or that all of the requirements to qualify for a compulsory license have been satisfied.

Consistent with this provision, the boxes in the upper right hand corner of the three Statement of Account forms (CS/SA-1, 2, and 3) call for two dates to be added by the Copyright Office under the headings "Application Received" and "Accepted."

Since statutory deadlines are involved, and since there could be serious consequences for late filing, it is important that the form reflect the exact date when the royalty fee was deposited and the Statement of Account was received in the Copyright Office. There will necessarily be a time lag between receipt and examination—and, since the bulk of filings are made just before the deadline, it may be days or weeks before the Office determines whether errors or omissions exist that require correction or whether an additional royalty fee must be deposited. If, following letters, phone calls, or personal visits, changes are made in the information on the Statement or an additional fee is deposited, the date when the additional information or money was received should also be reflected on the form.

At the same time, having spaces for two dates on the form, the way the headings of those two spaces are worded, and the language in the regulations about "acceptance," have led to various misunderstandings. We believe that nothing on the form as finally placed on record should in any way suggest either that (1) the filing date, with its statutory consequences, has anything to do with the date the Copyright Office examines and finally processes the document; or (2) that the Office has sought to verify the information given and, by placing it on record, has given it some sort of official imprimatur or evidentiary weight. To remove any possible ambiguity on these points, we are proposing the following changes:

(1) The headings of the two boxes on the forms will be changed to read: "Deposit and Statement Received" and "Additional Deposit and/or Information Received." To avoid the expense of

reprinting the forms for this purpose, the present printed headings will be changed by hand at the time of examination.

(2) The date given in the box headed "Deposit and Statement Received" will be the date when the fee and form are physically received in the Copyright Office. If there are no errors or omissions requiring changes on the form or deposit of additional money, this is the only date that will appear in the boxes on the form.

(3) If an additional deposit is made or if there are changes in the information on the form as the result of communications between the Copyright Office and the cable system, the date that additional deposit or information was actually received in the Office will be added to the box headed "Additional Deposit and/or Information Received."

(4) The regulations will be amended to reflect this practice and to delete any reference to "acceptance."

Under the proposed amendment the Licensing Division will continue to examine the Statements of Account and royalty fee payments for errors and omissions, and will continue to require correction of obvious errors or omissions before placing the Statement in the completed record of Statements of Account. If additional fees or information are received, the Statement of Account will reflect both the original date of receipt and the later date of receipt of the additional material. However, the regulations will continue to make clear that placing the documents in the completed records of the Copyright Office does not imply any determination that the statutory requirements of section 111 have been met, and will add that the statement of a date or dates of receipt on the form reflect actual receipt in the Copyright Office, and are not intended to be taken as a legal determination by the Copyright Office that the statutory deadlines have or have not been met.

**2. Time limitations.** Under section 111(d) of the Act, the Copyright Office has issued regulations setting forth certain time limitations in connection with the filing by cable system owners of the Statements of Account and royalty fees, 37 CFR 201.17(c)(1). For the first semiannual accounting period in a particular year (January 1 through June 30), the Statement and fee should be deposited between July 1 and August 29 of that year; for the second semiannual accounting period in a particular year (July 1 through December 31), the Statement and fee should be deposited between January 1 and March 1 of the next succeeding year.

We are proposing to add a new subparagraph (3) to § 201.17(c) to clarify the relationship of these filing periods to

our handling of Statements and fees. The first part of the subparagraph states that Statements of Account and fees will not be accepted before the end of the accounting period they purport to cover; for example, a Statement covering the accounting period of January 1, 1980 through June 30, 1980, will not be accepted before July 1, 1980. The second part states the general rule that we will not inquire into the timeliness of Statements and fees filed after the end of the accounting period, and makes clear that we will not refuse to accept late filings. As indicated above, the form will give the actual date or dates of receipt, without characterizing that information in any other way. It must be emphasized, however, that our action in such cases cannot be interpreted as relieving the compulsory licensee of any statutory obligations or of the consequences of a late filing, and will only have whatever effect a court may determine.

**3. Distant signal equivalent values.** Paragraph (f) of section 111 of the Copyright Act sets forth the definition of "distant signal equivalent," and this definition is incorporated by reference in the Copyright Office regulations. This definition provides that, in four specified exceptions, the ordinary distant signal equivalent value of a distant television station can be reduced in accordance with certain special formulas. Stated generally, these four exceptions cover certain cases of: (1) Part-time specialty programming; (2) late-night programming; (3) part-time carriage because of lack of activated channel capacity; and (4) live non-network programming substituted for programs deleted at the option of the cable system. Space G of Statement of Account Forms CS/SA-2 and CS/SA-3 requires identification of the basis on which cable systems carried distant stations during the accounting period, and Space I requires logging of substitute carriage. The DSE Schedule attached to Form CS/SA-3 is then used by those systems whose semiannual gross receipts for secondary transmissions total \$160,000 or more in calculating their total number of distant signal equivalents. This schedule carefully follows the formulas set out in the statute in allowing reduction of distant signal equivalents on the bases specified in paragraph (f) of section 111.

In the course of examining Statements of Account covering the first three accounting periods, we have come across several Statements where the effort had been made to reduce distant signal equivalents on some basis other than those specifically addressed in the DSE Schedule. We have also received inquiries as to whether apportionment, or pro-rata adjustment of DSE values

\*Error; line should read: "(2)The date of acceptance by the Copyright"

might be possible in cases other than those in the DSE Schedule. Situations raising these questions include the following:

- A distant signal is either added or deleted during an accounting period;
- The market position of a station changes during an accounting period, with the result that the station's signals become "may carry" rather than "must carry" (or vice versa);
- A signal is carried full-time for part of an accounting period, and on a part-time, late-night, specialty, or substituted basis during another part of the accounting period;
- During an accounting period, a signal changes its "type of station" status from a network station or a noncommercial educational station to an independent station (or vice versa); or
- For some reason, such as grandfathering, one part of a cable system receives more distant secondary transmissions than other parts of the same system.

None of the provisions of the Copyright Act allowing for the adjustment of the DSE of a station is broad enough to cover any of these situations, nor is there any indication in the Act or its legislative history that adjustments going beyond the language of section 111(f) were contemplated or might be permissible. Accordingly, we are proposing to add a new subparagraph (3) to § 201.17(f) of the regulations to eliminate any doubt concerning this matter. (The existing subparagraph (3) would be renumbered and amended, as discussed in the next section of this notice.)

**4. Computation of distant signal equivalents.** Subparagraph (3) of § 201.17(f) allows cable systems to "round off to the third decimal point" in computing DSE's. During our examining process, we have come across several Statements where, when rounding off a fourth decimal point of 5 (for example, .3575), the owner rounded off to the lower of the two possible third decimal points (for example, .357 rather than .358). Although our regulation does not expressly cover the point we believe that, if the cable system chooses to round off in this situation, it should use the higher of the two possible third decimal points. We therefore propose to amend § 201.17(f) to clarify this position.

**5. Corrections, supplemental payments, and refunds.** As already discussed earlier in this notice, where the Copyright Office notes an obvious mistake in a Statement of Account or fee, it will notify the cable system owner and seek to get the error corrected. There have also been cases where, after the normal examining process has been

completed, cable system owners themselves discovered their errors and requested corrections of Statements of Account, acceptance of supplemental royalty payments, or refunds of amounts paid. Although the Copyright Act does not expressly deal with these situations, we have concluded that it is within our authority and it would be reasonable, and beneficial to the accuracy of our records, to allow corrections, supplemental payments, and refunds to be made in limited cases and under certain conditions.

We are proposing to add a new paragraph (i) to § 201.17 of the regulations to deal with these cases. Paragraph (i)(1) specifies that corrections, supplemental payments, or refunds should be allowed in three situations: (1) Where incorrect or incomplete information was submitted; (2) where the royalty fee was miscalculated; or (3) where, in a special situation that existed only during the January 1-June 30, 1978 accounting period, the royalty fee was underpaid because the cable operator failed to compute royalties attributable to carriage of late-night, part-time, or specialty programming between January 1, 1978, and February 9, 1978. Confusion on the part of some cable system owners concerning the computation of the royalty fee in the latter case resulted from a provision in our regulations exempting cable systems from including in their Statements of Account the dates and hours of such carriage during that limited period. That exemption applied only to the requirements of paragraph (e)(9)(vi) of § 201.17 concerning the filing of information. The Copyright Office, of course, had no authority to relieve cable systems from their royalty obligations for such carriage, and had no intention of doing so.

New paragraph (i)(2) makes clear that corrections and supplemental payments will be accepted, and refunds will be issued, only on the basis of changes that took place during the accounting period in question. Changes occurring after the last day of that period would be relevant only to the next accounting period. Of course, this provision is not intended to relieve cable system owners from filing a "Notice of Change of Identity or Signal Carriage Complement" under § 201.11 of our regulations when such a Notice is required.

New paragraph (i)(3) of § 201.17 establishes the conditions under which corrections, supplemental payments, and refunds will be made in those cases where they are appropriate. These conditions are designed to give cable systems owners enough time to discover and advise the Copyright Office of errors, while also safeguarding the

interests of copyright owners in obtaining accurate information and the full compensation due them for the use of their works by compulsory licensees. Paragraph (i)(3)(i)(B) requires that a request for a refund be made "before the expiration of 60 days from the end of the Statement of Account filing period provided for in paragraph (c)(1) of this section or by April 15, 1980, whichever is later." There are several good reasons for placing a rather short and strict time limit on requests for refunds: to enable the Copyright Office to fulfill its statutory obligation promptly to transfer royalty payments to the Treasury for investment in interest-bearing securities; to provide detailed accounting to the Copyright Royalty Tribunal; to assure that copyright owners will derive the intended benefits of prompt transfers and investment; and to prevent the Copyright Royalty Tribunal from being hampered in distributing the accumulated fees and interest to copyright owners.

New paragraph (i)(3)(iv)(A) requires the cable system to submit a check or money order payable to the Register of Copyrights in the amount of \$15 where a correction is submitted, a supplemental royalty fee is deposited, or a refund is sought under paragraphs (i)(1)(i) and (ii) of § 201.17. This filing fee is to cover our administrative expenses and is authorized under section 708(a)(11) of the Copyright Act; since the error was the fault of the cable owner, we do not feel that the processing costs involved in correcting our records and accounts should be deducted either from the royalties owing to copyright owners or from the general operating funds of the Office. (A special exception is made in paragraph (i)(3)(iv)(A); no filing fee is required where a supplemental payment is made under paragraph (i)(1)(iii), covering the period January 1, 1978-February 9, 1978.)

With respect to the form of the payment of royalty fees, paragraph 10 of the supplementary information accompanying our final regulations as issued on June 27, 1978 (43 FR 27829) stated:

Copyright royalty fees are due on the dates specified in the regulations, and, after deducting administrative costs of the Copyright Office, are to be invested by the Department of the Treasury in "interest-bearing United States securities for later distribution with interest" to copyright owners. Copyright owners are thus entitled to interest earned on royalty fees from the earliest date on which purchase of the securities can be accomplished. In order to assure that none of this interest is lost to copyright owners because of payment by a check drawn on an account with insufficient funds, and also to assure that no administrative costs are incurred in handling bad checks, we are requiring in § 201.17(h)

that all copyright royalty fee payments be made by certified check, cashier's check, or money order.

Despite some continuing complaints about this requirement, we believe that, as an accounting matter, we are obliged to obtain royalty fees in a form immediately payable upon receipt—that is, certified check, cashier's check, or money order. Under new paragraph (i)(3)(iv)(B), this requirement will also apply to supplemental payments made under the new procedure to correct an underpayment. However, since the same accounting considerations do not apply to the \$15 filing fee, we would accept personal or company checks payable to the Register of Copyrights for payment of this fee, and this is made clear in paragraph (i)(3)(iv)(A).

The statute does not itself provide specifically for amendments or supplemental payments, and it does make proper and timely filing a condition of the compulsory license. For this reason, new paragraph (i)(4) also states that "the filing of a correction or supplemental payment shall have only such effect as may be attributed to it by a court of competent jurisdiction."

In consideration of the foregoing, it is proposed to amend Part 201 of 37 CFR Chapter II, in the manner set forth below.

**§ 201.17 Statements of account covering compulsory licenses for secondary transmissions by cable systems. [Amended]**

1. By revising § 201.17(c)(2) (as adopted on June 27, 1978) to read as follows:

- (c) \*\*\*
- (1) \*\*\*

(2) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such Statement and fee were physically received in the Copyright Office. Thereafter, the Office will examine the Statement and fee for obvious errors or omissions appearing on the face of the documents, and will require that any such obvious errors or omissions be corrected before final processing of the documents is completed. If, as the result of communications between the Copyright Office and the cable system, an additional fee is deposited or changes or additions are made in the Statement of Account, the date that additional deposit or information was actually received in the Office will be added to the official record of the case. However, completion by the Copyright Office of the final processing of a Statement of Account and royalty fee deposit shall establish only the fact of such completion and the date or dates of

receipt shown in the official record. It shall in no case be considered a determination that the Statement of Account was, in fact, properly prepared and accurate, that the correct amount of the royalty fee had been deposited, that the statutory time limits for filing had been met, or that any other requirements to qualify for a compulsory license have been satisfied.

2. By adding a new subparagraph (3) to § 201.17(c) to read as follows:

(3) Statements of Account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Copyright Office. Statements of Account and royalty fees received after the filing deadlines of August 29 or March 1, respectively, will be accepted for whatever legal effect they may have, if any.

3. By adopting, after subparagraph (2) of § 201.17(f) (as adopted on June 27, 1978), a new subparagraph (3) to read as follows:

- (f) \*\*\*
- (1) \*\*\*
- (2) \*\*\*

(3) In computing the DSE of a primary transmitter in a particular case, the cable system may make no prorated adjustments other than those specified as permissible "exceptions and limitations" in the definition of "distant signal equivalent" in the fifth paragraph of section 111(f) of title 17 of the United States Code, as amended by Pub. L. 94-553. The four prorated adjustments, as prescribed in the fourth and fifth sentences of said definition, are permitted under certain conditions where:

- (i) A station is carried pursuant to the late-night programming rules of the Federal Communications Commission;
- (ii) A station is carried pursuant to the specialty programming rules of the Federal Communications Commission;
- (iii) A station is 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; and
- (iv) A station is carried on a "substitute" basis under rules, regulations, or authorizations of the Federal Communications Commission in effect on October 19, 1976.

4. By deleting subparagraph (3) of § 201.17(f) (as adopted on June 27, 1978), and by adding a new subparagraph (4), to read as follows:

(4) In computing a DSE, a cable system may round off to the third decimal point. If a DSE is rounded off in any case in a Statement of Account, it must be rounded off throughout the Statement. Where a cable system has chosen to round off, and the fourth decimal point for a particular DSE value would, without rounding off, have been 1, 2, 3, or 4, the third decimal point remains unchanged; if, in such a case, the fourth decimal point would, without rounding off, be 5, 6, 7, 8, or 9, the third decimal point must be rounded off to the next higher number.

5. By adding a new paragraph (i) to § 201.17 to read as follows:

(i) *Corrections, supplemental payments, and refunds.* (1) Upon compliance with the procedures and within the time limits set forth in paragraph (i)(3) of this section, corrections to Statements of Account will be placed on record, supplemental royalty fee payments will be received for deposit, or refunds will be issued, in the following cases:

- (i) Where, with respect to the accounting period covered by a Statement of Account, any of the information given in the Statement filed in the Copyright Office is incorrect or incomplete;
- (ii) Where for any reason except that mentioned in paragraph (i)(1)(iii) of this section, calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low; or
- (iii) Where, for the semiannual accounting period of January 1, 1978, through June 30, 1978, the total royalty fee deposited was incorrect because the cable operator failed to compute royalties attributable to carriage of latenight, specialty, or part-time programming between January 1, 1978, and February 9, 1978.

(2) Corrections to Statements of Account will not be placed on record, supplemental royalty fee payments will not be received for deposit, and refunds will not be issued, where the information in the Statements of Account, the royalty fee calculations, or the payments were correct as of the date on which the accounting period ended, but changes (for example, addition or deletion of a distant signal) took place later.

(3) Requests that corrections to a Statement of Account be placed on record, that fee payments be accepted, or requests for the issuance of refunds, shall be made only in the cases mentioned in paragraph (i)(1) of this section. Such requests shall be addressed to the Licensing Division of

\*Error; line should read: "completion by the Copyright Office of" \*\*Error; line should read: "late-night, specialty, or part-time"

the Copyright Office, and shall meet the following conditions:

(i) The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 60 days from the last day of the applicable Statement of Account filing period, as provided for in paragraph (c)(1) of this section, or before April 15, 1980, whichever is later. A request made by telephone or by telegraphic or similar unsigned communication, will be considered to meet this requirement if it clearly identifies the basis of the request, if it is received in the Copyright Office within the required 60-day period, and if a written request meeting all the conditions of this paragraph (i)(3) is also received in the Copyright Office within 14 days after the end of such 60-day period.

(ii) The Statement of Account to which the request pertains must be sufficiently identified in the request (by inclusion of the name of the owner of the cable system, the community or communities served, and the accounting period in question) so that it can be readily located in the records of the Copyright Office;

(iii) The request must contain a clear statement of the facts on which it is based, in accordance with the following requirements:

(A) In the case of a request filed under paragraph (i)(1)(i) of this section, where the information given in the Statement of Account is incorrect or incomplete, the request must clearly identify the

erroneous or incomplete information and provide the correct or additional information;

(B) In the case of a request filed under paragraph (i)(1)(ii) of this section, where the royalty fee was miscalculated and the amount deposited in the Copyright Office was either too high or too low, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with section 1746 of title 18 of the United States Code, made and signed in accordance with paragraph (e)(14) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculations;

(C) In the case of a request filed under paragraph (i)(1)(iii) of this section, the request shall be identified as "Transitional and Supplemental Royalty Fee Payment" and include a detailed analysis of the proper royalty calculations;

(iv)(A) All requests filed under this paragraph (i) (except those filed under paragraph (1)(iii) of this paragraph) must be accompanied by a filing fee in the amount of \$15 for each Statement of Account involved. Payment of this fee may be in the form of a personal or company check, or of a certified check, cashier's check or money order, payable to: Register of Copyrights. No request will be processed until the appropriate filing fees are received.

(B) All requests that supplement royalty fee payment be received for

deposit under this paragraph (i), must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be in the form of a certified check, cashier's check or money order, payable to: Register of Copyrights. No such request will be processed until acceptable remittance in the full amount of the supplemental royalty fee has been received.

(v) All requests submitted under this paragraph (i) must be signed by the cable system owner named in the Statement of Account, or the duly authorized agent of the owner, in accordance with paragraph (e)(14) of this section.

(4) Following final processing, all requests submitted under this paragraph (i) will be filed with the original Statement of Account in the records of the Copyright Office. Nothing contained in this paragraph shall be considered to relieve cable systems from their full obligations under title 17 of the United States Code, and the filing of a correction or supplemental payment shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(17 U.S.C. 111, 702, 706)

Dated: December 10, 1979.

**Barbara Ringer,**  
*Register of Copyrights.*

Approved:  
**Daniel J. Boorstin,**  
*The Librarian of Congress.*

[FR Doc. 79-38539 Filed 12-14-79; 8:45 am]

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