

---

# ANNOUNCEMENT

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

---

## STATEMENT OF VIEWS

### COMPULSORY LICENSE FOR CABLE SYSTEMS INQUIRY

The following excerpt is taken from Volume 48, Number 62 of the Federal Register for Wednesday, March 30, 1983 (pp. 13166-7)

---

#### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Part 201

[Docket No. RM 83-3]

#### Compulsory License for Cable Systems Inquiry

AGENCY: Copyright Office, Library of Congress.

ACTION: Statement of Views.

---

**SUMMARY:** By Notice of Inquiry published in the Federal Register of February 11, 1983 (48 FR 6372-6373), the Copyright Office invited public comment on four general questions: substitution for specialty stations, expanded geographic coverage, expanded temporal carriage and ungranted waiver requests. After analyzing the comments received, the Copyright Office reached certain tentative conclusions on specific issues and communicated its views to the interested parties in a letter of opinion dated March 11, 1983. The Office is publishing this Statement of Views to inform the public of the positions taken in its letter of opinion and to address one additional point.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, Telephone: (202) 287-8380.

**SUPPLEMENTARY INFORMATION:** At a public meeting on October 20, 1982, the Copyright Royalty Tribunal [Tribunal] adopted its final rule in Docket No. 81-2, Cable Television Royalty Fee

#### Adjustment Proceeding.

The Tribunal established a new schedule of royalty rates in light of the repeal by the Federal Communications Commission [FCC] of certain distant signal carriage and syndicated exclusivity restrictions. The text of the Tribunal's amendments to 37 CFR Part 308 were published in the Federal Register of Friday, November 19, 1982 (47 FR 52146-52159).

Following the publication of the Tribunal's final rule in the rate adjustment proceeding, the Copyright Office received letters from several cable system operators and their representatives requesting interpretative rulings in connection with the application of the new 3.75% rate in specific instances. To assist the Copyright Office in responding to the various letters of inquiry and requests for interpretative rulings, the Office published a Notice of Inquiry in the Federal Register of February 11, 1983 (48 FR 6372-6373) inviting comment on four general issues. Twenty-one comments were submitted on behalf of cable system operators, program suppliers, sports claimants, and broadcasters. The Office analyzed these comments, the Copyright Act and its legislative history, the CRT rate determination, and certain former FCC regulations to the extent possible, given the wish of cable systems for guidance before March 15, 1983, and reached the conclusion that only a limited response to the questions posed in the Notice of Inquiry was appropriate at this time.

In its letter of opinion dated March 11, 1983, the Copyright Office responded to certain urgent requests from cable

system operators for guidance regarding the 3.75% rate increase; however, the views expressed were tentative and did not represent any effort to decide any issues that may be considered by the U.S. Court of Appeals for the District of Columbia Circuit, to whom the Tribunal's rate adjustment decision has been appealed. The Office reiterated its hope that issues regarding interpretation of the Tribunal's new royalty rates would be brought to the attention of the Court, and that the Court would provide guidance.

As stated in its Notice of Inquiry, and recalled in its opinion letter, the Copyright Office does not intend to take any steps to implement the October 20, 1982 rate adjustment pending a final decision by the Court of Appeals; the Office will, however, accept royalty payments at the levels set by the October 20, 1982 rate determination, and will examine the Statements of Account at an appropriate time.

Although the Copyright Office observed in its letter that it understands the expressed wish of cable systems for some guidance regarding the 3.75% rate adjustment, to give the guidance requested at this juncture would require the Copyright Office to interpret the rules of another governmental body at a time when those rules are under appeal in the courts, and before the Office is called upon to take any steps to carry out its responsibilities in collecting royalties due under the CRT's October 20, 1982 rate adjustment. Its response was accordingly limited and is subject to reexamination after a final decision by the Court of Appeals. At that time, the Copyright Office will again consider

the comments submitted in response to the Notice of Inquiry, RM 83-3, and may invite additional comments.

As for the specific questions raised in its Notice of Inquiry, the Copyright Office did make the following observations:

1. *Specialty Stations.* Most of the comments concentrated upon the first issue raised in the Notice, suggesting that the substitutability of nonspecialty independent stations for specialty stations (whether carried or not) constitutes the most important of the four issues posed. It is the view of the Copyright Office that section 801(b)(2)(B) of the Copyright Act contemplates that cable royalty rates shall be adjusted by the Tribunal following any change after April 15, 1976 in the FCC distant signal rules to ensure that "rates for the *additional distant signal equivalents* resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations." (emphasis added).

The argument advanced in cable system comments that specialty stations never carried, even though "permitted", may now be replaced by nonspecialty independent stations and paid for at less than the 3.75% rate is inconsistent with the intent of the Congress that the "additional" DSE's mentioned in section 801(b)(2)(B) of the Act shall be governed by a new rate. No royalties were ever paid for nonexistent DSE's for specialty stations never carried; therefore, carriage now of an additional nonspecialty independent station, whose carriage was not permitted under

the FCC's former distant signal rules, presumably represents "additional distant signal equivalents" within the meaning of section 801(b)(2)(B), as to which Congress intended that the Tribunal should establish new reasonable rates. The Tribunal determined that the 3.75% would be reasonable for such additional distant signal equivalents.

A related issue that was not addressed by the Copyright Office in its letter of opinion concerns the carriage of "grandfathered" signals that cable systems were lawfully carrying on March 31, 1972 under former FCC rule § 76.65. The Office has been asked whether such signals should be considered carried pursuant to an individual waiver or "permitted" for purposes of § 308.2(c) of the Tribunal's final rule. In this respect, section 801(b)(2)(B) of the 1976 Act provides that "no adjustment in royalty rates shall be made . . . with respect to any distant signal equivalent or fraction thereof represented by . . . (ii) a television broadcast signal *first carried after April 15, 1976*, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976." (emphasis added). In light of the wording of this section of the Act, it would appear that the exception for individual waivers would not apply where the signals in question were first carried prior to April 15, 1976. Such signals may be covered by the proviso in section 801(b)(2)(B)(i) concerning substitution for "permitted" signals.

2. *Expanded geographic coverage.*

With respect to expanded geographic coverage, the Office makes the observation that any argument that the 3.75% rate does not apply must assume that the particular cable system prior to the FCC rule change has reported all gross receipts from all subscribers in that entire geographic area for the basic service of providing secondary transmissions of primary broadcast transmitters and paid royalties accordingly, even if some subscribers in that same area did not formerly receive the signal.

3. *Expanded temporal carriage.* The Copyright Office is not now prepared to express any views with respect to expanded temporal carriage.

4. *Ungranted waiver requests.* With respect to ungranted waiver requests, the Copyright Office believes that the new 3.75% rate must apply to additional distant signal equivalents resulting from carriage of distant signals not previously carried because of waiver of the FCC's rules had not been obtained for any reason.

List of Subjects in 37 CFR Part 201

Cable television copyright.

Dated: March 17, 1983.

David Ladd,  
*Register of Copyrights.*

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

[FR Doc. 83-6109 Filed 3-29-83; 8:45 am]

BILLING CODE 1410-03-M

---