



ANNOUNCEMENT

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

NOTICE OF PUBLIC HEARING

COMPULSORY LICENSE FOR CABLE SYSTEMS: PUBLIC HEARING ON STATUS OF LOW POWER TELEVISION STATIONS

The following excerpt is taken from Volume 49, Number 194 of the Federal Register for Thursday, October 4, 1984 (pp. 39174-39175)

37 CFR Part 201

[Docket RM 84-4]

Compulsory License for Cable Systems; Public Hearing on Status of Low Power Television Stations

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public hearing.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is reviewing its interpretation of section 111 of the Copyright Act concerning whether the signals of low power television stations should be treated as "local" or "distant" signals for purposes of computing cable television copyright royalties in certain cases. This notice invites participation in a public hearing intended to elicit comments, views, and information which will assist the Office in this review of the status of low power television stations.

DATES: The hearing will be held on October 12, 1984 in Washington, D.C. Anyone desiring to testify should contact the Office of the General Counsel, Copyright Office at (202) 287-8380 by October 11, 1984. Ten copies of written statements should be submitted to the Copyright Office by 4:00 p.m. on October 11, 1984, if possible, and in any case no later than October 22, 1984. Comments are also invited from persons who do not wish to testify by October 22, 1984.

ADDRESSES: Hearing location: The hearing will be held on October 12, 1984 in Dining Room A, LM-620 (Yellow Quadrant) of the James Madison Memorial Building, Library of Congress, First and Independence Ave., SE., Washington, D.C., beginning at 10:00 a.m.

Ten copies of written statements, supplementary statements, or comments should be submitted as follows:

If sent by mail—Library of Congress, Department D.S., Washington, D.C. 20540.

If delivered by hand: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Ave., Washington, D.C.

All requests to testify should clearly identify the individual or group desiring to testify.

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

SUPPLEMENTARY INFORMATION: Section 111(c) of the Copyright Act of 1976, title 17 of the United States Code, established a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including the requirements that cable systems file Statements of Account semi-annually and pay statutory royalty fees in accordance with section 111(d)(2) and as adjusted by the Copyright Royalty Tribunal in accordance with section 801(b)(2).

A question has arisen regarding the status of low power television stations under the Copyright Act's definition of the "local service area of a primary transmitter." That definition establishes the demarcation between so-called "local" and "distant" signals under the cable compulsory license. The demarcation is critically important since large cable systems, whose semiannual gross receipts exceed \$214,000, compute their copyright royalties beyond the minimum fee¹ on the basis of distant signal carriage (the "distant signal equivalent" formula is applied).

The definition of local service area is found in section 111(f):

"The 'local service area of primary transmitter,' in the case of a television broadcast station, comprises the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976. . . ."

The FCC rules in effect on April 15, 1976, did not require low power television stations to be carried by cable systems. Under the law as written, the difference in local and distant signals is arguably frozen as of April 15, 1976. The Committee on the Judiciary explained that they used this date in the relevant section 111(f) definition since they believed "that any such change for copyright purposes, which would materially affect the royalty fee payments provided in the legislation, should only be made by an amendment to the statute." H.R. Rep. No. 1476, 94th Cong., 2d Sess. 99 (1976).

List of Subjects in 37 CFR Part 201

Cable television, Copyright.

Dated: October 1, 1984.

David Ladd,

Register of Copyrights.

Approved by:

Donald C. Curran,

Acting Librarian of Congress.

[FR Doc. 84-26404 Filed 10-3-84. 8:45 am]

BILLING CODE 1410-03-M

Within the past year, the Copyright Office, in correspondence with representatives of cable systems, has advised them that low power television stations, which on April 15, 1976 were not subject to the Federal Communications Commission's "must-carry" rules and are even now not subject to them, would presumably be classified as "distant" signals under the definition in 17 U.S.C. 111(f). Most recently, members of Congress and representatives of The American Low Power Television Association, Low Power Technology, Inc., Low Power Television, Inc., Community Broadcasters of America, Inc., The Radio and Television Commission of the Southern Baptist Convention, The American Christian Television System, Inc., ACTS Satellite Network, Inc., Kentucky New Era, Inc., Shoblom Broadcasting, Inc. and John Boler have asked the Copyright Office to reconsider on an urgent basis the status of low power television stations under the definition of "local service area of primary transmitter."

In response to these requests, the Copyright Office has decided to hold a public hearing on October 12, 1984 for the purpose of eliciting comment on the correct interpretation of the Copyright Act as it relates to the status of signals of low power television stations retransmitted by cable systems. Comment is specifically invited in two areas: (1) If a cable system retransmits a low power television signal, should the signal be characterized as "local" or "distant" for purposes of applying the distant signal equivalent value formula? If the response is that the signal should be considered "local," how are the limits of the station's "local service area" defined and by what authority? (2) If a cable system retransmits a low power television station on the basis of a voluntary license from the station and all owners of copyright in all copyrighted works transmitted by the low power television station have granted explicit voluntary licenses for the secondary transmission by cable, must the cable system nevertheless specify that carriage in its Statement of Account and pay copyright royalties under the compulsory license, (assuming the cable system retransmits at least one additional broadcast signal), or is the retransmission of such a low power television station outside the cable compulsory license since all copyright owners have consented voluntarily to the retransmission?

(17 U.S.C. 111: 702)

* All cable systems pay a minimum fee for the privilege of making secondary transmissions, irrespective of gross receipts or actual distant signal carriage. 17 U.S.C. 111(d) (B)(i), (C) and (f).