NOTICE OF POLICY DECISION

COMPULSORY LICENSE FOR CABLE SYSTEMS;

POLICY DECISION ANNOUNCING TEMPORARY WAIVER OF TIME LIMIT FOR REFUNDS WHERE CABLE OPERATORS PAID BOTH THE MINIMUM FEE AND 3.75% FEE

The following excerpt is taken from Volume 51, Number 4 of the Federal Register for Tuesday, January 7, 1986 (pp.599-600)
implementation of the CRT's 1982 rate adjustment. (49 FR 26722). In the most recent amendment of the forms, the Office redesignated the amended Form CS/SA-3 as SA3 (Long Form).4

Each of the above-described Statement of Account forms includes a space designated as Space L and entitled "Copyright Royalty Fee." In this space the cable operator calculates the "minimum fee" which cable systems filing a Form CS/SA-3 or SA3 must pay pursuant to section 111(d)(2)(B)(i) of the Copyright Act regardless of whether they carried any distant stations. The operator also calculates in this space the payable pursuant to section 111(d)(2)(B)(ii)(iv) for carriage of distant signals. In the earliest versions of Form CS/SA-3 this fee was referred to as the "DSE fee." However, in the 1984-1 version of Form CS/SA-3, which was issued in response to the CRT's 1982 rate adjustment, this fee was redesignated as the "base rate fee." This version of Form CS/SA-3 also included in Space L lines to reflect the calculation of the "3.75% fee" and the "syndicated exclusivity surcharge" payable pursuant to the 1982 rate adjustment.

In the earliest versions of Form CS/SA-3, the cable operator was instructed to enter as the total royalty fee payable for the accounting period either the minimum fee or the DSE fee, whichever is larger. This is in accordance with section 111(d)(2)(B)(ii)(v) of the Copyright Act, which allows the minimum fee to be "applied against" or offset by any DSE fee owed by a cable system. In the 1984-1 version of Form CS/SA-3, the cable operator was instructed to calculate the total royalty fee by adding the syndicated exclusivity surcharge, the 3.75% fee and the larger of the base rate or the minimum fee.

Subsequent to the issuance of the 1984-1 version of Form CS/SA-3, the Copyright Office considered the issue of whether, in the unusual case where a cable system incurs no base rate fee but does incur a 3.75% fee, the minimum fee should be applied against the 3.75% fee in such a case. The Office finds that the legislative history behind the minimum fee makes clear that Congress had intended that the minimum fee be applied against a fee payable for any distant signal equivalent. Accordingly, when Form CS/SA-3 was amended in the second half of 1984, the Office specified in Block 7 that if a cable operator listed the minimum fee as being larger than the base rate fee, the minimum fee should not be added to the total royalty fee if the 3.75% fee exceeds the minimum fee.

2. Policy Decision To Waive Temporarily the Refund Time Limit

The Copyright Office received a request for a refund of royalty fees paid by a cable system for accounting periods 1983-1, 1983-2 and 1984-1. The cable system's representative noted that the system overpaid royalties in those accounting periods because it exactly followed the instructions on Form CS/SA-3 and paid both the minimum fee and the 3.75% fee. He argued that although the 60-day refund period provided for in 37 CFR 201.17(i)(3) of the Copyright Office regulations had expired, the Office should issue refunds where operators paid both the minimum and the 3.75% fee for the 1983 and 1984 accounting periods because the Copyright Office forms for those periods were not misleading.

The Copyright Office has now determined that in view of the fact that Space L of the 1984-1 version of Form CS/SA-3 misinstructed cable operators to add both the minimum fee and the 3.75% fee in determining the total royalty fee, the Office in this special case will temporarily waive its 60-day refund limitation. The Office will consider claims for refunds of royalties overpaid for accounting periods 1983-1, 1983-2 and 1984-1 where the minimum fee was not applied against the 3.75% fee in Space L of Form CS/SA-3, if the request for refund is made by March 3, 1986.

Furthermore, the Office acknowledges that cable operators routinely filing Statement of Account forms in accounting periods subsequent to the 1984-1 period might have failed to note the correction in Space L and might have continued to miscalculate the royalty fee. Accordingly, the Office will waive its refund period limitation in this case also and consider claims for refunds where system operators overpaid royalties by failing to apply the minimum fee against the 3.75% fee for accounting periods 1984-2 and 1985-1, even though the Office's forms for those periods were not misleading.

Any cable system that is entitled to a refund based upon the foregoing decision should file its request for refund with the Copyright Office no later than March 3, 1986. A deadline for refund requests is appropriate for reasons of administrative efficiency and because the Copyright Royalty Tribunal has begun a proceeding to distribute the 1983 cable royalty pool.

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

List of Subjects in 37 CFR Part 201

Cable television, Copyright, Copyright Office.


Ralph Oman,
Register of Copyrights.

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The Librarian of Congress.

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4 The House report accompanying the Copyright Act of 1976 expresses Congress' intent in creating the minimum fee: "Every cable system pays 0.75% of its gross receipts for the privilege of retransmitting distant non-network programming, such amount to be applied against the fee, if any, payable under the copyright for 'distant signal equivalents.' . . . The purpose of this initial rate, applicable to all cable systems in this class, is to establish a basic payment, whether or not a particular cable system elects to transmit distant non-network programming. It is not a payment for the retransmission of purely 'local' signals as is evident from the provision that if it applies to and is deductible from the fee payable for any distant signal equivalents." (Emphasis added) H.R. Rep. 94-1476, 94th Cong., 2d Sess. 96.

5 The cable system's representative argues that 2 there should be a refund of fees overpaid in accounting period 1984-2, even though the Form CS/SA-3 for that accounting period was completed, because there was no independent notification of the form change, and some operators who had routinely computed Form CS/SA-3 failed to notice the printed exception notice on the form. The overpaid royalties for the 1984-2 period as well.