

REPORTING OF GROSS RECEIPTS ACCOUNTING PERIOD 1987-2 AND EARLIER

COPYRIGHT OFFICE GROSS RECEIPTS REGULATION HELD VALID AS REASONABLE INTERPRETATION OF THE COPYRIGHT ACT

On January 5, 1988, the United States Court of Appeals for the District of Columbia Circuit held valid Copyright Office regulation 37 C.F.R. §201.17(b)(1), that defines the statutory term "gross receipts for the 'basic service of providing secondary transmissions of primary broadcast transmitters.'" *Cablevision Systems Development Company v. Motion Picture Association of America, Inc.*, No. 85-5552 (D.C. Cir. Jan. 5, 1988). The definition of that term is relevant to cable systems' calculation of cable compulsory license royalty fees pursuant to 17 U.S.C. §111(d).

The Copyright Office has made the following determinations pursuant to the appellate court's decision:

Statements of Account due February 29, 1988.

The Copyright Office definition of "gross receipts" at 37 C.F.R. §201.17(b)(1) is effective for cable systems calculating their gross receipts for accounting period 1987-2 (regarding secondary transmissions made during the period from July 1, 1987, through December 31, 1987).

Cable systems filing statements of account and depositing royalty payments by the February 29, 1988 filing deadline for that accounting period should calculate gross receipts pursuant to the Copyright Office Regulation. Cable systems should disregard Space P (Declaration of Gross Receipts) on Statement of Account Forms SA1-2 and SA 3.

Adjustments for Accounting periods before 87-2.

The Copyright Office will contact cable systems that indicated on a declaration of gross receipts statement for accounting periods 1986-1, 1986-2, or 1987-1, filed pursuant to 37 C.F.R. §201.17(k), that they did not calculate gross receipts in accordance with the Copyright Office regulation on gross receipts. The Office will request that those cable systems submit adjusted statements of account (on a special form the Office will mail out later) and remit any amounts representing underpaid royalties caused by the systems' calculation of gross receipts by an unapproved method.

If a cable system underpaid royalties for an accounting period prior to the 1986-1 period, the system should follow ordinary procedures governing the filing of amended statements of account. **Any cable system that underpaid cable compulsory license royalties due to its application of an interpretation of gross receipts that differs from the Copyright Office should now file an amended statement of account for every relevant accounting period and remit the amount of royalties underpaid to the Copyright Office in accordance with the forms and/or procedures established by the Office.**

NOTE regarding "discounts" and "tie-in" arrangements:

Hypotheticals regarding discounts and tie-in arrangements for marketing cable services were posed to the Copyright Office as part of the *Cablevision* litigation. Except for discounts associated with premium pay cable services where offered in combination with non-premium tiers or service packages, the Copyright Office believes the hypotheticals posed are abstract in nature and do not reflect existing business practices. The Office offers the following guidance, however, about the correct interpretation of the gross receipts regulation, in case any cable system uses "discounts" or "tie-in's" to market their services.

The "discount" issue arises in instances where a cable system sells a package of tiers of cable service for a lesser amount than the sum of the prices of each individual tier, but not all the individual tiers comprising the package contain broadcast signals. The Office has determined that in these circumstances, so long as all of the broadcast signals offered in a discounted package of tiers of cable service are included on one or more of the individual tiers of service comprising the discounted package, and those individual tiers may be purchased separately from the tier or tiers in the package containing all nonbroadcast service, the gross receipts for the discounted package shall be the lesser amount of 1) the sum of the amounts individually charged for every tier in the package that contains one or more broadcast signals, or 2) the price of the discounted package.

The "tie-in" arrangement issue arises in instances where a cable system might require a subscriber to purchase a tier of nonbroadcast service in order to purchase a particular tier containing broadcast signals. In this kind of "tie-in" arrangement, the Copyright Office believes that the tier with broadcast signals is not separately priced in the marketplace because consumers do not have a choice of buying the tier individually for a separate fee. Accordingly, the Office has determined that where subscriber receipt of a tier of cable service including broadcast signals is contingent upon purchase of a tier of nonbroadcast signals, subscriber revenues from both tiers of service should be included in the cable system's gross receipts. In the reverse situation, where a subscriber must purchase a tier containing broadcast signals in order to purchase a tier of all nonbroadcast service, the separate charge for the nonbroadcast service may be excluded from gross receipts.

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