



# ANNOUNCEMENT

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

## PROPOSED RULES

### STATEMENTS OF ACCOUNT AND FILING REQUIREMENTS FOR SATELLITE CARRIER STATUTORY LICENSE

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#### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Part 201

[Docket No. RM 88-8]

#### Statements of Account and Filing Requirements for Satellite Carrier Statutory License

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

**ACTION:** Proposed rules.

**SUMMARY:** The recently enacted "Satellite Home Viewer Act of 1988," in a new section 119 of the Copyright Act, title 17 U.S. Code, creates a statutory license for certain secondary transmissions made by satellite carriers to satellite home dish owners for private viewing. The new satellite carrier compulsory license requires the filing of statements of account by those parties availing themselves of the license, as well as the payment of royalty fees. The Copyright Office is proposing filing requirements for the satellite carrier statutory license and invites interested parties to comment on the proposed regulations.

**DATE:** Comments should be submitted on or before March 30, 1989.

**ADDRESS:** Interested parties should submit ten copies of their written comments to: Office of the General Counsel, Copyright Office, Library of Congress, Department 17, Washington, DC 20540, or if by hand to: Office of the General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC 20540.

**FOR FURTHER INFORMATION CONTACT:**  
Dorothy Schrader, General Counsel,  
Copyright Office, Library of Congress,  
Washington, DC 20559. Telephone (202)  
707-8380.

**SUPPLEMENTARY INFORMATION:** The "Satellite Home Viewer Act of 1988," Pub. L. 100-667, amended the Copyright Act, title 17 of the United States Code by creating a new statutory license for certain secondary transmissions made by satellite carriers to satellite home dish owners. As of January 1, 1989, satellite carriers will be permitted, pursuant to the new 17 U.S.C. section 119 license, to make secondary transmissions of "superstation" and network station signals to satellite home dish owners for private home viewing upon payment of a statutory royalty fee and satisfaction of certain other conditions. The royalty fee provisions of section 119 will end in four years, and will be replaced by privately negotiated licenses or an arbitrated fee on or before December 31, 1992. The entire Satellite Home Viewer Act itself terminates on December 31, 1994.

The Office is proposing regulations which would describe the content and nature of the required satellite carrier filings. Those satellite carriers who, pursuant to the new Act, negotiate private copyright licenses and agreements for secondary transmissions of superstation and network station signals to satellite home dish owners will not be affected by the proposed regulations.

#### *1. Summary of the Satellite Carrier Statutory License*

Subject to particularized conditions and limitations provided for in new section 119 of the Copyright Act of 1976, the new satellite carrier statutory license permits, upon payment of a

royalty fee and compliance with the filing requirements, secondary transmission of "superstation" and network station signals to satellite home dish owners (or to a distributor that has contracted with the satellite carrier to provide the signals to satellite home dish owners) provided that such signals are for private home viewing. Secondary transmission of network signals is subject to specific limitations and filing procedures which do not apply to secondary transmission of "superstation" signals.

In general, secondary transmissions of network station signals to private home viewers under the statutory license may only be made to those viewers who reside in "unserved households." An unserved household is defined in section 119(d)(10) as being a household which cannot receive a particular primary network station signal of over-the-air grade B intensity (as defined by the Federal Communications Commission) or, within 90 days before the date on which the household subscribes to the satellite carrier service, has not received that network station signal through subscription to a cable system. If a satellite carrier provides an unserved household with a network station signal pursuant to the statutory license, it must submit to the network that owns or is affiliated with the network station transmitted a list of names and addresses of all subscribers which receive that signal. This list must be provided 90 days after January 1, 1989 or 90 days after commencing such secondary transmissions, whichever is later. The list must be updated by the satellite carrier on the 15th of each month by submitting a list to the network of names and addresses of any subscribers added or deleted.

The networks and their part, are required to submit to the Register of Copyrights, for placement in a public file, a name and address of the person to whom the satellite carrier lists should be provided. Failure by a satellite carrier to provide a list of subscribers and monthly updates to the proper network constitutes an infringement of copyright subject to the remedies of the Copyright Act.

As with the cable compulsory license, the satellite carrier license requires the payment of a royalty fee. Section 119 provides for a monthly statutory royalty fee of twelve cents per subscriber per superstation received from a satellite carrier, and three cents per subscriber for each network station signal received by the subscriber. Although private agreements as to the royalty fee may be negotiated at any time, the statutory royalty fee will end on December 31, 1992. On or before July 1, 1991, the Copyright Royalty Tribunal will publish notice in the *Federal Register* of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers. Voluntary agreements must be filed with the Register of Copyrights 30 days after execution. On or before December 31, 1991, the Copyright Royalty Tribunal will publish notice of the initiation of arbitration proceedings for those parties not already subject to a voluntary agreement. An Arbitration Panel will be chosen which shall, after appropriate proceedings, submit a report to the Tribunal recommending the proper royalty fee. Once accepted by the Tribunal, the fee becomes binding upon all parties not then subject to a voluntary agreement. This fee shall remain in effect until December 31, 1994 when all the provisions of section 119 expire.

Besides providing the mechanism of the statutory license, the Satellite Home Viewer Act contains other significant features. New copyright remedies and penalties for individual as well as patterns of violations of the statutory license are established. Section 705 of the Communications Act of 1934 is amended to provide additional remedies and penalties for the piracy of satellite cable programming. Also made actionable are acts of unlawful discrimination by a satellite carrier against distributors of their signals to satellite home dish owners. The Federal Communications Commission will conduct an inquiry regarding the extent of discrimination against distributors by satellite carriers, as well as inquiries examining the need for a universal \* encryption standard that permits decryption of satellite cable programming, and the need for

\* Error; line should read:  
"examining the need for a universal "

syndicated exclusivity rules in the home satellite dish market. Finally, the Copyright Royalty Tribunal will distribute the royalties collected under the satellite carrier statutory license to the owners of the retransmitted programming.

## 2. Statutory License Filing Requirements

The Copyright Office notifies the public as to the following filing requirements for the satellite carrier statutory license:

(1) *Network Name and Address File.* Commencing January 1, 1989, a public file will be opened in the Licensing Division of the Copyright Office for the purpose of receiving network names and addresses as required by Section 119(a)(2)(C). The network notice should contain the name of the network, the contact person, a full mailing address and phone number. The notices should be sent to Walter Sampson, Chief of Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557 or, if hand delivered, Licensing Division, Madison Building, room LM- 2 458, 101 Independence Avenue, SE., Washington, DC 20557 for placement in the public file.

As explained in the legislative history,<sup>1</sup> the reference to "network stations" means exclusively those stations owned by or affiliated with the three major commercial networks (ABC, CBS, and NBC) and the stations associated with the Public Broadcasting Service. Any other broadcast station would be classified as a "superstation" if retransmitted by a satellite carrier for private home viewing.

(2) *Satellite Carrier Voluntary Agreement File.* Also commencing January 1, 1989, the Copyright Office will be open a public file for voluntary royalty fee agreements in accordance with section 119(c)(2)(C). The file will be located in the Licensing Division of the Copyright Office. One complete copy of an agreement, required to be submitted 30 days after execution, should be sent to: Walter Sampson, Chief of Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557 or, if hand delivered, Licensing Division, Madison Building, Room LM-458, 101 Independence Avenue, SE., Washington, DC 20557.

(3) *Satellite Carrier Statements of Account.* The Copyright Office proposes to implement the following statement of account procedures. Like the cable compulsory license, royalties will be collected on a semiannual basis with accounting periods running from January 1, to June 30, and July 1, to December 31 of each year. Unlike the cable compulsory license, royalties will be calculated for each six month period on a monthly basis, and must be submitted,

<sup>1</sup> 134 Cong. Rec. 10428, 100th Cong., 2d Sess. (October 19, 1988)

along with the statement of account forms, one month after the closing date of the accounting period. Thus, royalties and statements of account will be due on January 31, and July 31 of each year for the preceding six-month period. The first filing deadline for the satellite carrier license will be July 31, 1989.

Statement of account forms will be available to the public by May of 1989. They may be obtained by writing the Licensing Division of the Copyright Office, Library of Congress, Washington, D.C. 20557, Telephone No. (202) 707-8150.

Although the statement of account forms have not been prepared in final form, the Copyright Office in this notice proposes regulations establishing the types of information that, if the regulations are adopted, would be requested on the form.

The royalty fee will be calculated on a monthly basis. Thus, any subscribers receiving a television station signal for any period of each month must be included in the monthly calculation for that signal. For example, if a new subscriber begins receipt of a network signal on March 31, a royalty must be paid for that subscriber for the entire month of March. The statement of account form would contain spaces for the calculation of monthly subscriber totals for each of the six months of the accounting period, plus space for calculation of the total royalty fee.

Satellite carriers would be expected, aside from basic information regarding the identification and operation of the carrier, to provide the number of subscribers to a signal (either network or superstation) for each month, and the identity of the particular station provided. The Copyright Office will probably not require names or addresses of particular subscribers, as are required to be provided to networks in the case of carriage of network signals.

As provided in the Satellite Home Viewer Act (amendment of section 111(d)(1)(A)), any amounts collected from subscribers for secondary transmissions for private home viewing pursuant to section 119 may be excluded from the determination of gross receipts received by a cable system for the basic service of providing secondary transmissions of primary broadcast transmitters. This provision contemplates the situation wherein the same entity may be offering both satellite and cable reception of secondary transmissions of primary broadcast transmitters. Separate records should be maintained of the subscriber fees received for the satellite carrier retransmissions.

<sup>2</sup> Error; line should read:  
"Division, Madison Building, Room LM-"

## Regulatory Flexibility Act Statement

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5 Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.<sup>o</sup>

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

### List of Subjects in 37 CFR Part 201

Satellite Carrier License.

### Proposed Regulations

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

### PART 201—[AMENDED]

1. The authority citation for Part 201 would be revised to read as follows:

Authority: Copyright Act, Pub. L. 94-553, 90 Stat. 2541 (17 U.S.C. 702), as amended by Pub. L. 100-667.

2. Section 201.11 would be added to read as follows:

§ 201.11 *Satellite Carrier Statements of Account covering statutory licenses for secondary transmissions for private home viewing.*

(a) *General.* This section prescribes rules pertaining to the deposit of Statements of Account and royalty fees in the Copyright Office as required by the satellite carrier license of section 119(b)(1) of Title 17 of the United States Code, as amended by Pub. L. 100-667, in order that certain secondary transmissions by satellite carriers for private home viewing be subject to statutory licensing.

(b) *Definitions.* (1) The terms "distributor," "network station," "private home viewing," "satellite carrier," "subscriber," "superstation," and "unserved household" have the meanings set forth in section 119(d) of title 17 of the United States Code, as amended by Pub. L. 100-667.

(2) The terms "primary transmission" and "secondary transmission" have the meanings set forth in section 111(f) of title 17 of the United States Code.

(c) *Accounting periods and deposit.*

(1) Statements of Account shall cover semiannual accounting periods of (i) January 1 through June 30, and (ii) July 1 through December 31, and shall be deposited in the Copyright Office, together with the total statutory royalty fee or the confirmed arbitration royalty fee for such accounting periods as prescribed by section 119(b)(1)(B) and (c)(3) of title 17, by not later than July 31, if the Statement of Account covers the January 1 through June 30 accounting period, and by not later than the immediately following January 31, if the Statement of Account covers the July 1 through December 31 accounting period.

(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 Licensing Division of the Copyright 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 satellite carrier, an additional fee is deposited or charges 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 statutory license have been satisfied.

(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

701(d) of the Copyright Act (i.e., "all actions taken by the register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits"). (17 U.S.C. 708(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOLA requirements.

<sup>3</sup>Error; line should read: "by the Register of Copyrights under this title (17),

Account and royalty fees received after the filing deadlines of July 31 or January 31, respectively, will be accepted for whatever legal effect they may have, if any.

(d) *Forms.* (1) Each Statement of Account shall be furnished on an appropriate form prescribed by the Copyright Office, and shall contain the information required by that form and its accompanying instructions. Computation of the copyright royalty fee shall be in accordance with the procedures set forth in the forms. Copies of Statement of Account forms are available free upon request to the Licensing Division, United States Copyright Office, Library of Congress, Washington, DC 20557.

(2) The form prescribed by the Copyright Office is designated "Statement of Account for Secondary Transmissions by Satellite Carriers to Home Viewers."

(e) *Contents.* Each Statement of Account shall contain the following information:

(1) A clear designation of the accounting period covered by the Statement.

(2) The designation "Owner," followed by: (i) The full legal name of the satellite carrier. If the owner is a partnership, the name of the partnership is to be followed by the name of at least one individual partner; (ii) Any other name or names under which the owner conducts the business of the satellite carrier; and (iii) The full mailing address of the owner. Ownership, other names under which the owner conducts the business of the satellite carrier, and the owner's mailing address shall reflect facts existing on the last day of the accounting period covered by the Statement of Account.

(3) The designation "Primary Transmitters," followed by the call signs, broadcast channel numbers, station locations (city and state of license), and a notation whether that primary transmitter is a "superstation" or "network station" transmitted to any or all of the subscribers of the satellite carrier during any portion of the period covered by the Statement of Account.

(4) The designation "Superstations," followed by:

(i) The call sign of each superstation signal carried for each month of the period covered by the Statement, and

(ii) The total number of subscribers to each superstation for each month of the period covered by the Statement.

(5) The designation "Network Stations," followed by:

(i) The call sign of each network station carried for each month of the period covered by the Statement, and

(ii) The total number of subscribers to each network station for each month of

<sup>4</sup>Error; line should read:

"additional fee is deposited or changes or"

<sup>o</sup> The Copyright Office was not subject to the Administrative Procedure Act before 1978, and is now subject to it only in areas specified by section

