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

The following excerpt is taken from Volume 54, Number 38 of the Federal Register for Tuesday, February 28, 1989 (pp. 8350-8354)

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION: The "Satellite Home Viewer Act of 1988," Pub. L. 100-267, amended the Copyright Act, title 17 U.S. Code by creating, in section 119 of the Act, 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 section 119 license, to make secondary transmissions of "superstation" and network station signals to satellite home dish owners 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 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.

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.

The networks, on 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, 1982. 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 in the Federal Register 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 1994 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 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-4 456, 101 Independence Avenue, SE, Washington, DC 20557 for placement in the public file.

As explained in the legislative history, 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-456, 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 semi-annual 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.

* Error; line should read: "examining the need for a universal" 
ML-397

1 Error; line should read: "Division, Madison Building, Room LM-" 

2 Error; line should read: "Division, Madison Building, Room LM-"
Regulatory takes the position that this act do not apply to Copyright the Library of Parts 201--regulated by the legislative branch. Neither the Office is an "agency" within the impact on small businesses. Regulatory Stat. 201(b)(l) defined in the Copyright Office is an of the Federal small businesses regulated by 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 shall be added to 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. 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 (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 paid 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 document, and will require that any such obvious errors or omissions be corrected before final processing of the document 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 shall be added to 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. 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

PART 201—[AMENDED]
1. The authority citation for Part 201 would be revised to read as follows:
2. Section 201.11 would be added to read as follows:
§ 201.11 Satellite Carrier Statements of Account covering statutory licenses for secondary transmisslo~s 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.
(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.
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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.

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1. The authority citation for Part 201 would be revised to read as follows:
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.
(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 paid 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 document, and will require that any such obvious errors or omissions be corrected before final processing of the document 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 shall be added to 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. 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

3 Error: line should read:
by the Register of Copyrights under this title (17).

4 Error: line should read:
"additional fee is deposited or changes or"
the period covered by the Statement.

(9) The total number of subscribers to each superstation for the six-month period covered by the Statement multiplied by the statutory royalty rate of twelve (12) cents per subscriber (or in lieu thereof, the arbitrated rate, if applicable).

(7) The total number of subscribers to each network station for the six-month period covered by the Statement multiplied by the statutory royalty rate of three (3) cents per subscriber (or in lieu thereof, the arbitrated rate, if applicable).

(8) The name, address, business title, and telephone number of the individual or individuals to be contacted for information or questions concerning the content of the Statement of Account.

(9) The handwritten signature of:

(i) The owner of the satellite carrier or a duly authorized agent of the owner, if the owner is not a partnership or a corporation; or

(ii) A partner, if the owner is a partnership; or

(iii) An officer of the corporation, if the owner is a corporation. The signature shall be accompanied by:

(A) The printed or typewritten name of the person signing the Statement of Account;

(B) The date of signature;

(C) If the owner of the satellite carrier is a partnership or a corporation, by the title of an official position held in the partnership or corporation by the person signing the Statement of Account;

(D) A certification of the capacity of the person signing; and

(E) The following statement: I have examined this Statement of Account and hereby declare under penalty of law that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.


(f) Royalty fee payment. The royalty fee payable for the period covered by the Statement of Account shall accompany that Statement of Account and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier’s check, or money order, payable to: Register of Copyrights.

(g) Corrections, supplemental payments, and refunds. (1) Upon compliance with the procedures and within the time limits set forth in paragraph (g)(3) of this section, corrections to Statements of Account will be placed on record, supplemental royalty fee payments will be received for deposit, or refunds will be issued. In the following cases:

(i) Where, with respect to the accounting period covered by a Statement of Account, any of the information given in the Statement filed in the Copyright Office is incorrect or incomplete; or

(ii) Where calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low.

(c) Corrections to Statements of Account will not be placed on record, supplemental royalty fee payments will not be received for deposit, and refunds will not be issued, where the information in the Statements of Account, the royalty fee calculation, or the payments were correct as of the date on which the accounting period ended, but changes (for example, addition or deletion of a subscriber) took place later.

(3) Requests that corrections to a Statement of Account be placed on record, that fee payments be accepted, or requests for the issuance of refunds, shall be made only in the case mentioned in paragraph (g)(3) of this section. Such requests shall be addressed to the Licensing Division of the Copyright Office, and shall meet the following conditions:

(i) The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 30 days from the last day of the applicable Statement of Account filing period, as provided for in paragraph (c)(1) of this section. A request made by telephone or by telegraphic or similar unsigned communication, will be considered to meet this requirement if it clearly identifies the basis of the request, if it is received in the Copyright Office within the required 30-day period, and if a written request meeting all the conditions of this paragraph (g)(3) is also received in the Copyright Office within 14 days after the end of such 30-day period;

(ii) The Statement of Account to which the request pertains must be sufficiently identified in the request (by inclusion of the name of the owner of the satellite carrier and the accounting period in question) so that it can be readily located in the records of the Copyright Office;

(iii) The request must contain a clear statement of the facts on which it is based, in accordance with the following requirements:

(A) In the case of a request filed under paragraphs (g)(1)(i) of this section, where the information given in the Statement of Account is incorrect or incomplete, the request must clearly identify the erroneous or incomplete information and provide a correct or additional information:

(B) In the case of a request filed under paragraph (g)(1)(ii) of this section, where the royalty fee was miscalculated and the amount deposited in the Copyright Office was either too high or too low, the request must be accompanied with 5

Error; line should read:
"the request must be accompanied by"

an affidavit under the official seal of any officer authorized to administer oath within the United States, or a statement in accordance with section 1746 of Title 28 of the United States Code, made and signed in accordance with paragraph (e)(14) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculation.

(iv)(A) All requests filed under this paragraph (g) must be accompanied by a filing fee in the amount of $15 for each Statement of Account involved.

Payment of this fee may be in the form of a personal or company check, or of a certified check, cashier’s check or money order, payable to: Register of Copyrights. No request will be processed until the appropriate filing fees are received.

(B) All requests that a supplemental royalty fee payment be received for deposit under this paragraph (g), must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be in the form of a certified check, cashier’s check, or money order, payable to: Register of Copyrights. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

(v) All requests submitted under this paragraph (g) must be signed by the satellite carrier owner named in the Statement of Account, or the duly authorized agent of the owner, in accordance with paragraph (e)(10) of this section.

(vi) A request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the satellite carrier owner named in the Statement of Account without regard to the time limitations provided for in paragraph (g)(3)(i) of this section.

(4) Following final processing, all requests submitted under this paragraph (g) will be filed with the original Statement of Account in the records of the Copyright Office. Nothing contained in this paragraph shall be considered to relieve satellite carriers from their full obligations under Title 17 of the United States Code, and the filing of a correction or supplemental payment shall have only such effect as may be attributed to it by a court of competent jurisdiction.


Ralph Oman.
Register of Copyrights.

Approved by:
James H. Billington.
The Librarian of Congress.

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