SATELLITE CARRIER COMPULSORY LICENSE; DEFINITION OF UNSERVED HOUSEHOLD

The following excerpt is taken from Volume 63, Number 16 of the Federal Register for Monday, January 26, 1998 (pp. 3685-3686).

OPENING OF THIS PROCEEDING

EchoStar's petition is not the first time that the Copyright Office has been called upon to decide whether it is permissible under section 119 for satellite carriers to retransmit network stations to subscribers who reside within the local markets of those stations. In the summer of 1996, the Office received a letter from American Sky Broadcasting ("ASKyB") requesting the Office issue a declaratory ruling that such local-into-local retransmissions were permissible under section 119. By letter dated August 15, 1996, the Office informed ASkyB that it would not issue a declaratory ruling or formally resolve the matter. The Office did state that if ASkyB filed a Statement of Account and royalty fee for local-into-local retransmissions of network signals, the Office would not question the sufficiency of the filing or return it. See Letter of the Acting General Counsel to William Reyner, August 15, 1996. ASkyB did not petition the Office for a rulemaking proceeding.

One year later, the issue of local-into-local retransmissions of network signals arose again in the context of the adjustment of the section 119 royalty rates. In Docket No. 96-3 CARP SRA, ASKyB argued to the Copyright Arbitration Royalty Panel (CARP) charged with the task of adjusting the section 119 rates that local-into-local retransmissions were permissible under the terms of the statute, and that the royalty rate for such retransmissions should be zero. The CARP declined to adopt ASkyB's zero royalty request because it determined that it lacked subject matter jurisdiction to do so. Report of the CARP at 48 (August 29, 1997). The CARP considered section 119(d)(10) definition of an "unserved household." The CARP concluded that:

[N]etwork signals generally may not be retransmitted to the local coverage area of local network signals. The separate rate request of ASkyB is explicitly intended to apply to retransmission of network signals to served households. Section 119 does not provide a compulsory license for those retransmissions. Hence, we lack subject matter jurisdiction to set a rate for such retransmissions of local network signals.

CARP Report at 48. The CARP did acknowledge, however, that there could be subscribers who resided within a network station's local market that fell within the CARP's interpretation of an "unserved household." but the CARP identified these as
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CARP decision, the Copyright Office

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whether certain retransmissions were subject

Antenna Television systems were eligible for

the section I

has determined in the past, in the context of

satellite carriers and Multichannel Multipoint

retransmissions of broadcast signals by

rulemaking proceeding to determine the

proceeding (January 29, 1992) (determining that

information and conduct a rulemaking to


Satellite Distribution Services were not eligible for

(cable compulsory license. See 57 FR 3284

(January 29, 1992) determining that

retransmissions of broadcast signals by

satellite carriers and Multichannel Multipoint

Distribution Services were not eligible for

the section I license): 62 FR 18705 (April

17, 1997) (determining that retransmissions

of broadcast signals by Satellite Master

Antenna Television systems were eligible for

section I license). The authority to issue

a determination in this proceeding is derived

from the Office's rulemaking authority under


The objections to EchoStar's petition filed by

ALTV, NASA and NAB all counsel

gainst the Copyright Office opening a

rulemaking proceeding at this time,

treating instead to resolve the matter

through legislation. There is no question that

legislative resolution of the issue of local-

into-local retransmissions of network stations

under section 119 is the best solution. The

Office has recommended to Congress that

section 119 be clarified to allow local-into-

local retransmission. Library of Congress,

U.S. Copyright Office, A Review of the

Copyright Licensing Regimes Covering

Retransmission of Broadcast Signals 119-120
(August 1, 1997). In the meantime, however,

the Office believes that it should exercise its
duties and responsibilities under section 702

of the Copyright Act and open this

rulemaking.

Issues for Public Comment

As presented by EchoStar's petition, the

question of whether local-into-local

retransmissions of network signals is

permissible turns on the interpretation to be

afforded the definition of an "unserved

household." Section 119(a)(2)(B) provides that

the satellite compulsory license for

retransmission of network signals is "limited to

secondary transmissions to persons who

reside in unserved households." Section

119(d)(10) defines an "unserved household" as:

a household that...

(A) cannot receive through the use of a

conventional outdoor rooftop receiving

antenna, an over-the-air signal of grade B

intensity (as defined by the Federal

Communications Commission) of a primary

network station affiliated with that network,

and

(B) has not, within 90 days before the date

on which that household subscribes, either

initially or on renewal, to receive secondary

transmissions by a satellite carrier of a network

station affiliated with that network, subscribed

to a cable system that provides the signal of a

primary network station affiliated with that

network.


In interpreting the "unserved household"

definition, the primary question is: Was it the

intention of Congress to prevent all satellite

retransmissions of a network station when a

subscriber can receive an off-the-air grade B

intensity signal of the local network station,
or was Congress attempting to exclude only

distant network stations of the same network

that might be imported by a satellite carrier

into the local affiliate's market? Is there

anything in the legislative history that offers

guidance on this question? If not, does

subsection (B)'s prevention of satellite

retransmission when a subscriber is receiving the

local network station via cable have any

bearing on this issue?

If local-into-local retransmissions of

network stations are permissible under

section 119, how should a network station's

local market be defined? Is the local market

definition in section 119(d)(11) appropriate,
or should some other measure be used?

In addition, the Copyright Office is

interested in receiving comment as to what

impact, if any, local-into-local

retransmissions of network stations by

satellite would have on retransmission

consent and other provisions and

requirements of the Communications Act. 47

U.S.C. ch. 5.

The Copyright Office welcomes and

encourages comments as to these questions,

and as well as any other matters that

commenting parties may deem relevant.


Marybeth Peters,

Register of Copyrights.

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BILLING CODE 1410-31-M

1 The Librarian did adopt a zero rate for retransmission

of network signals to unserved households located within

the local markets of network stations. Id.

*Error: Line should read:

"In addition, the Copyright Office is"

*Error: Line should read:

"as well as any other matters that"