Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

Statutory Cable, Satellite, and DART	**)**	
Compulsory Licensing Reporting Practices	**)**	**Docket No. 2005-6**

COMMENTS OF COPYRIGHT OWNERS

The undersigned representatives of copyright owners who receive the bulk of the statutory licensing royalties paid by cable operators under Section 111 of the Copyright Act ("Copyright Owners")[1] submit their comments in response to the Copyright Office's ("Office") "Notice of Proposed Rulemaking," *Statutory Cable, Satellite, and DART License Reporting Practices* ("Notice"), 82 FR 56926 (Dec. 1, 2017). The Notice "addresses issues raised in response to the NOI [Notice of Inquiry, 71 FR 45744 (Aug. 10, 2006)] that are still relevant, and notes where intervening statutory and/or regulatory changes may have mooted some issues [and]. . . proposes revisions to SOA forms and/or the Office's regulations." 82 FR at 56927/1-2.

Following publication of the NOI, Congress directed the Office to adopt regulations that permit interested parties, for the first time, to verify the information and royalty payments in SOAs. *See* Pub. L. No. 111-175, 124 Stat. 1218 (2010); 17 U.S.C. §§ 111(d)(6) & 119(b)(2). Pursuant to regulations adopted by the Office in 2014, Copyright Owners have audited several SOAs. Based upon these audits and ensuing discussions with various statutory licensees, Copyright Owners believe that there is a compelling need for the Office both to amend the SOA

[1] The representatives of Copyright Owners are the Motion Picture Association of America, Inc. ("MPAA"), on behalf of its member companies and other producers and/or distributors of movies, series and specials broadcast by television stations ("Program Suppliers"), Joint Sports Claimants (Major League Baseball, National Football League, National Basketball Association, Women's National Basketball Association, National Hockey League and National Collegiate Athletic Association), the National Association of Broadcasters ("NAB") on behalf of U.S. commercial television claimants ("CTV"), Public Broadcasting Service, Settling Devotional Claimants, and Canadian Claimants Group.

forms as well as to provide additional guidance concerning the proper calculation of Section 111 royalty payments.

<u>Rough Comparability: Space E and Space K</u>

As the Office is aware, cable operators' Section 111 royalty payments are directly related to the amount of their "gross receipts from subscribers to the cable service . . . for the basic service of providing secondary transmissions of primary broadcast transmitters." 17 U.S.C. § 111(d)(1)(B) ("Gross Receipts"). The reporting requirements for Space E of the Section 111 statement of account ("SOA") were designed to "'be useful for at least a rough comparison with the reported gross receipts'" in Space K of the SOA. *Id*. at 56927/3 (citation omitted). Because cable operators merely list a Gross Receipts figure in Space K without any support or detail, the Space E information offers the only window into how Space K gross receipts are comprised, absent an audit. While it might be unrealistic to expect that the Space E information will *exactly replicate* the Space K gross receipts number, it does seem realistic to expect the Space E information would produce a result that is roughly comparable to the Space K gross receipts. As Program Suppliers demonstrated during the initial round of comments, however, rough comparability between the two has been the exception, not the rule. *See* Program Suppliers Reply Comments, Exhibits A-C (Oct. 24, 2006); *see also* NAB Reply Comments at 4-6 (Oct. 24, 2006)(same). This pattern has not changed since that time. *See* 82 FR at 56928/1("a concern that the Office understands remains germane as the cable marketplace continues to evolve").

To be sure, the recently-adopted right to audit cable systems provides a mechanism for determining how the Space K gross receipts are calculated, but the audit right has its limitations. "These audits are not intended to substitute for accurate and complete information provided by cable operators on the SOAs; nor is there an expectation that every single SOA would be audited. Indeed, it is important for SOAs to provide meaningful information to facilitate copyright owners' determination of whether or not to initiate an audit." *Id*. at 56929/1.

Nor do the proffered explanations for the widespread disparity between Spaces E and K hold up to scrutiny. *See* 82 FR a 56928/3 ("as noted by NCTA, a comparison between Spaces E and K is difficult since the information in the two spaces reflect different time periods"). The underlying support for this claim posits that "both tier charges and subscribership fluctuate over six months" allegedly due to various factors, and that "the number of subscribers in Space E are reported as of the last day of the accounting period, whereas gross receipts are accumulated over the entire six-month period." *Id*. at 56928/2 (footnote omitted).

Program Suppliers' extensive empirical review of actual SOA reporting did not, however, support either reason as justification for the disparity. In the vast majority of cases, individual cable systems report the same monthly subscriber charge for basic service in Space E over several accounting periods. In other words, the reported tier charge fluctuates only infrequently from one accounting period to the next, much less within the same accounting period. Likewise, the fluctuations in reported subscribers to basic service in Space E generally fall within a range of 1%-2% from one accounting period to the next. Such relative stability in reported "tier charges and subscribership" over time belies the notion that their continuous fluctuations within accounting periods can explain the much wider disparity between Space E and Space K, which over the 2001-04 period *averaged* almost 32% for the largest Form 3 systems. Program Suppliers Reply Comments, Exhibit C.

No significant change in this phenomenon has been observed in the years since the original NOI comments were filed. Moreover, subscribership has trended downward in recent years, which means the number of subscribers on the last day of an accounting period would likely be the lowest number of subscribers during that accounting period. It follows that calculated gross receipts using the Space E last-day-of-the-period subscriber count should produce a smaller number than the reported Space K gross receipts that is based on higher subscriber counts from the entire period, especially where the reported monthly rate for basic service remains the same from one accounting period to the next. Yet, the opposite remains true for a large number of cable systems.

Despite widespread acceptance that Space E and Space K generally have not (and still do not) yielded roughly comparable results, the cable industry's response, at least in its initial comments in this docket, was to treat the issue as inevitable and thus not worth the purportedly burdensome effort to remedy. *See* Comments of the National Cable & Telecommunications Association ("NCTA Comments")(Sept. 25, 2006) at 5 (even with the additional Space E detail proposed by MPAA, gross receipts cannot be replicated "since neither tier charges nor subscribership remains constant over 6 months"); American Cable Association Comments (Sept. 25, 2006) at 6 (the SOA does not need to be changed because in the event of a mismatch in the reported information, MPAA may simply ask the system for more information, although in the form of correspondence that "typically includes a threat of litigation").

The Office's proposal "to require a somewhat more granular breakdown of the number of subscribers and rates charged for the various pertinent categories of service," 82 FR at 56929/3, may not, by itself, provide greater transparency as to how cable systems derive their Space K Gross Receipts number. But revising the Space E reporting requirements in an appropriate way has the potential to reduce the number of cases requiring either a mutually costly audit or "a threat of litigation" to encourage responsiveness.

A wide disparity between Spaces E and K does not appear to be inevitable, nor is it likely to be resolved by a more expansive listing of tier offerings. Rather, based on limited audit experience, the disparities seem to rest largely, though not fully, on a disconnect between (1) the monthly rate that subscribers must *actually* pay to receive broadcast signals and (2) the monthly service fees that cable operators report in Space E.

Most cable operators appear to report in Space E (at least for "residential subscribers") the monthly rate card rate for basic service, *viz.*, the monthly rate listed on that cable operator's published rate card as the charge for taking only the lowest-priced video service tier, which typically contains all local and distant broadcast signals ("Basic Service"). But, according to the available information, only about 10% of cable subscribers take only video service; the remainder take video programming tiers with internet data and voice services. A small percentage of cable subscribers receive the Basic Service as their only video service (with or without internet and voice services). All video program packages include Basic Service. *See* 47 U.S.C. §§ 534(b)(7) & 535(h) (local signals shall be available to all subscribers of a cable system); 47 C.F.R. § 76.56(d) (same).

Virtually all Form 3 cable systems offer, and the vast majority of their subscribers take, video service bundled with internet data and voice services – at a price typically representing a discount from the total price that is charged if each such service were taken separately. Cable operators regularly offer, for example, promotional discounts to attract new subscribers or to retain subscribers that would otherwise "cut the cord." *See NCTA* Comments at 5 (tier pricing may vary due to "promotions and discounts that may come and go over the course of an accounting period"). In all these cases, cable operators have unilaterally developed their own methodologies for determining what portion of the subscriber fees they receive to include in

Gross Receipts. None of these methodologies must currently be reported or explained on the SOA; nor is the methodology used apparent from an examination of the SOAs alone.

The Office proposes to change Space E in a way that "make[s] it easier for cable operators to more accurately report the number of subscribers for the various services they offer." 82 FR at 56929/3. The Office proposes to add space for cable operators to list "each relevant category of retransmission of television" and "to briefly describe these additional services to reflect the specific offering" along with the "number of subscribers and rate information." 82 FR at 56930/1. But it is questionable whether that additional information alone would move the Space E information any closer to rough comparability with Space K unless the rate information reflects what subscribers actually pay to receive broadcast signals. Rather than have operators list tiers and describe what type of programming the tiers offer, the better approach would be to require an accurate picture of both the number of subscribers to, and what they actually pay for, each service that includes retransmitted broadcast signals.

Because the number of subscribers and the actual rates they pay to receive broadcast signals are the main drivers of Gross Receipts calculations, providing an accurate picture of both in Space E would go a long way to making Space E data roughly comparable to Space K gross receipts. Moreover, monthly reporting (as is the case with satellite carriers) would help alleviate the problem the cable industry's comments have identified with the mismatch between the time periods reflected in Spaces E and K.

To that end, Space E should be modified to require cable operators to report, for each of the six months covered by the SOA, the following information for each category of service that included retransmitted broadcast signals: 1) the number of subscribers to each such category; 2) the published rate card monthly fee for each category, if any; and, 3) the average monthly fee actually paid by the subscribers[2] to each category. By having this information reported on the SOA, Copyright Owners could better determine whether cable operators are complying with the Section 111 and implementing regulations requirement that Gross Receipts include all fees paid by subscribers to the cable system to receive broadcast signals, and whether they should initiate audits.[3] *See* 82 FR at 56929/1 (noting need to "provide meaningful information to facilitate copyright owners' determination of whether or not to initiate an audit.").

On a related point, Copyright Owners agree with the Office's proposal to replace "the term 'converter' with 'equipment' on the SOA forms and in the regulations" as a way "to modernize the regulatory terminology." *Id.* at 56930/2. If anything, this change may not fully reflect how far modernization has progressed, as some cable operators have begun to offer "apps" that will perform the functions that are now done by converters/equipment. In whatever form, if the cable operator charges subscribers for its use, and subscribers use the converter/equipment/app/device to obtain the basic service of providing retransmitted broadcast signals, the subscriber revenues should be included in gross receipts.

<u>Reporting Bundled Services And Other Required Charges In Gross Receipts</u>

There is significant disagreement as to the types of revenues from subscriber payments that should be included in Gross Receipts. Disagreement exists not only between Copyright Owners, on the one hand, and cable operators, on the other hand, but also among cable operators themselves. Some cable operators include certain types of subscriber revenues within Gross Receipts while others exclude the very same type from Gross Receipts.

[2] This amount represents what cable operators required their subscribers to pay to receive broadcast signals.

[3] The same information should be reported for each of the categories identified by the Office in its Notice, *i.e.*, Single-unit residential, Multi-unit residential, Motel/Hotel, Other MDU, Commercial and Equipment. Copyright Owners recognize that published rate card fees may not exist for certain of these categories. In such cases, the cable operator should be required simply to state that such information is not available.

The Notice deals with only one of the issues involving the proper components of Gross Receipts. It states that the "Office is considering whether to amend its regulations to provide specific guidance on how remitters should report cable television services sold as a bundled service." 82 Fed. Reg. at 56,931. The Office proposes amending 37 C.F.R. § 201.17(b)(1) to provide that:

> [G]ross [R]eceipts shall not include any fees collected from subscribers for the sale of Internet services or telephony services when such services are bundled together with cable service; instead, when cable services are sold as part of a bundle of other services, gross receipts shall include fees in the amount that would have been collected if such subscribers received cable service as an unbundled stand-alone product.

82 Fed. Reg. at 56,937.

Copyright Owners agree that revenues from the sale of Internet and telephony services should not be included in Gross Receipts – just as Gross Receipts do not include "charges for pay cable or other program origination services." 37 C.F.R. § 201.17(b)(1). It appears the language that Gross Receipts "shall include fees in the amount that would have been collected if such subscribers received cable service as an unbundled stand-alone product" merely summarizes prior Office and judicial guidance concerning the meaning of the term Gross Receipts[4] -- although there is no mention, let alone discussion, in the Notice of that guidance or the other provisions in Section 201.17(b)(1) defining Gross Receipts in the context of a bundled service.

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[4]*See, e.g., Cablevision Sys. Dev. Co. v. Motion Picture Ass'n of Am., Inc.,* 836 F.2d 599 (D.C. Cir. 1988) ("*Cablevision v. MPAA*") (affirming the Office's rule (37 C.F.R. § 201.17(b)(1)) that Gross Receipts include the "full monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals"); *Compulsory License for Cable Systems; Reporting of Gross Receipts*, 53 Fed. Reg. 2493 (Jan. 28, 1988) ("1988 Notice") (clarifying, in light of *MPAA v. Cablevision*, the Office's interpretation of Gross Receipts involving discounts and tie-ins).

In addition to this multi-product bundling issue, other issues involving the proper interpretation of the term "Gross Receipts" surfaced recently and the resolution of these issues also has a significant bearing on the amount of Section 111 royalties that cable operators pay and the information that should be included in the SOAs:

- Single-Unit Residential Subscribers. As noted above, cable operators typically include all broadcast signals (local and distant) in the entry-level Basic Service tier and only a small minority of single-unit residential subscribers take that tier alone. Another small portion of subscribers take video-only service that includes higher-priced tiers that offer both the Basic Service Tier broadcast channels as well as various non-broadcast and pay channels. In such cases, cable operators may allocate to Gross Receipts no less than the amount they charge subscribers to receive the Basic Service Tier alone, provided that "subscribers may actually elect to purchase . . . [the Basic Service Tier] separate from the tier or tiers in the package containing only nonbroadcast service . . . ." 53 Fed. Reg. at 2495.[5] The audits have shown that some cable operators routinely allocate to Gross Receipts an amount that is less (often considerably less) than that amount. The vast majority of subscribers today take, however, a bundled package comprised of video, internet data, and voice services.

- Bulk Subscribers. Cable operators generally do not have a rate card, but, rather, negotiate deals for "bulk" subscribers, such as entire apartment, condominium and co-op buildings, motels, hotels and other multiple-dwelling units ("MDU"). Individual MDU residents take whatever video services that are bundled together as part of the negotiated bulk package. In such cases, cable operators have developed their own methodologies for determining what percentage of revenues to allocate to Gross Receipts.

- Commercial Subscribers. The issues involving commercial subscribers are comparable to those related to MDU subscribers.

[5] In its 1988 Notice, the Office gave an example of cable system that offers "tier A, consisting of all broadcast signals, for $10, tier B, consisting of both broadcast and nonbroadcast signals, for $4, and tier C, consisting of all nonbroadcast signals for $9, and also offers a discount package of all three tiers for $22." 53 Fed. Reg. at 2495/1. Dicta in *MPAA v. Cablevision* suggested that "in these circumstances, the cable system should report $14 of the $22 received from a subscriber to the discounted package as gross receipts because 'it would be possible to buy all the broadcast signals, A and B, alone for $14.'" *Id.* The Office "agreed" but only "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 subscribers may actually elect to purchase those individual tiers separate from the tier or tiers in the package containing only nonbroadcast service, then 'gross receipts' from subscribers to 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"). *Id*.

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- Broadcast Surcharges. Cable systems increasingly have included a separate line item on monthly subscriber invoices identified as a "broadcast surcharge." This represents the amount that the cable system charges the subscriber for the retransmission consent fees that the system pays to carry broadcast television signals. Many cable operators have included the subscriber payments for these broadcast surcharges in Gross Receipts, but some have not. Because cable subscribers cannot receive broadcast signals without paying the broadcast surcharge (where imposed), these surcharges should be included in Gross Receipts.

- Franchise Fees. Cable systems also typically include a separate line item on monthly subscriber invoices for "franchise fees." *See* 47 U.S.C. § 542. Some cable operators do not include the subscriber revenues used to pay franchise fees in Gross Receipts. Because franchise fees are part of the total amount cable subscribers pay to receive broadcast signals, such fees should be included in Gross Receipts and separately identified in the SOAs. *See* 17 U.S.C. § 111(d)(1)(A)(operators must specify the "gross amounts paid to the cable system for the basic service"); *cf. City of Dallas v. FCC,* 118 F.3d 393, 398-399 (5th Cir. 1997) (franchise fees passed on to subscribers must be included in "gross revenues" for purpose of calculating franchise fee, reversing contrary FCC determination).

- Equipment Fees. Section 201.17(b)(1) of the Office's rules currently states that Gross Receipts include "converter fees." However, some cable operators exclude subscriber revenues received for any converter fee, while other include only subscriber revenues related to the lowest-priced converters rather than the revenues from the actual converter fees paid by the subscriber. The Notice proposes to replace the term "converter" in the SOA with the term "equipment" "to modernize regulatory terminology." *See* 82 Fed. Reg. at 56930. It also proposes to amend Section 201.17(b)(1) to provide that Gross Receipts include "any other type of equipment or device necessary to receive broadcast signals that is supplied by the cable operator." *Id.* at 56,937. However, the Notice does not provide any guidance concerning the practice followed by some cable operators of allocating only a portion of equipment revenues to Gross Receipts. This issue has become increasingly more significant as the FCC has eliminated its prohibition on encrypting the basic service tier, thereby requiring equipment to receive digital broadcast signals.

In sum, Copyright Owners believe that the Office should address each of the issues identified above concerning the proper components of Gross Receipts, rather than limiting any amendment of the "Gross Receipts" regulation to deal only with bundled multi-product services, as proposed in the Notice. The Office should do so consistent with the statutory requirement that Gross Receipts include all amounts paid by subscribers to a cable system to receive broadcast signals.

Definition of Cable System

Although it was not an issue in the NOI, the Office "proposes to amend the regulatory definition of 'cable system' to reflect both the Copyright Office's longstanding position that such systems are limited to systems providing only localized retransmissions of limited availability, and the uniform case law holding that internet-based retransmission services are excluded from the section 111 compulsory license." 82 FR at 56931/1. While the proposed addition to the regulatory definition of cable system would be consistent with the Office's longstanding position and the uniform case law interpreting the statutory cable system definition, Copyright Owners do not believe that an amendment is needed to give full effect to that consistent interpretation.[6]

It is important to note that the relevant case law turns, as it must, on how the *statutory* definition of cable system is to be interpreted, and thus the Office's rulings have addressed how the statutory definition is to be interpreted. *See, e.g., Fox Television Stations, Inc. v. Aereokiller, LLC*, 851 F.3d 1002, 1012 (9th Cir. 2017)("Because the statute does not speak clearly to the precise question before us, we must decide how much weight to give the views of the Copyright Office. The Copyright Office has published its views on the meaning of §111 through a few different channels."). The Office's proposal to amend the *regulatory* definition of cable system, if adopted, would, of course, not change the statutory definition, which would remain the focal point for any judicial or Office interpretation of "cable system" for Section 111 purposes.

In the multiple and diverse contexts in which the Office has previously had occasion to interpret and apply the "cable system" definition, the Office has consistently considered "section

[6] The Office's position that internet-based retransmission services are excluded from the Section 111 license is now well established through several cases in which the Office's approach and interpretation have been consistently applied. *Fox Television Stations, Inc. v. Aereokiller*, 851 F.3d 1002 (9th Cir. 2017); *WPIX, Inc. v. ivi, Inc.*, 691 F.3d 275 (2d Cir. 2012); *WPIX, Inc. v. ivi, Inc.*, 765 F. Supp. 2d 594 (S.D.N.Y. 2011); *Fox Television Stations, Inc. v. FilmOn X LLC*, 150 F. Supp. 3d 1 (D.D.C. 2015); *FilmOn X, LLC v. Window to the World Commc'ns, Inc.*, No. 13 C 8451, 2016 U.S. Dist. LEXIS 37551, 2016 WL 1161276 (N.D. Ill. Mar. 23, 2016); *CBS Broad. Inc. v. FilmOn.com, Inc.*, No. 10 CIV. 7532 NRB, 2014 U.S. Dist. LEXIS 101894, 2014 WL 3702568 (S.D.N.Y. July 24, 2014); *ABC v. Aereo, Inc.*, No. 12-CV-1540, 2014 U.S. Dist. LEXIS 150555, 2014 WL 5393867 (S.D.N.Y. Oct. 23, 2014).

111 as a whole" and examined "the overall operation of section 111 [to] prove[] that the compulsory license applies only to localized retransmission services.'" *Cable Compulsory License; Definition of Cable System*, 57 FR 3284, 3292/1 (Jan. 29, 1992). This broad approach to analyzing the statute itself has been the constant in how the Office has interpreted what "cable system" means under Section 111. "The Office has maintained a consistent position on this issue since it first expressed its view in 1992. In articulating its position the agency has consistently referenced the statute's text, structure, and legislative history." *Aereokiller*, 581 F.3d at 1014 (citations omitted).

Perhaps due to the Office's consistent and persistent focus on the pertinent aspects of the statutory definition, Congress has not seen the need to amend the *statutory* cable system definition in the manner that the Office proposes here to change the *regulatory* definition. This is so despite Congress having made numerous changes to Section 111 in general, having amended the cable system definition in other respects, and having enacted the Sections 119 and 122 compulsory licensing schemes for satellite carriers. All this indicates, as the Ninth Circuit ruled in *Aereokiller*, that "Congress has effectively acquiesced" to the Office's interpretation of the statutory definition. *Id.* at 1015.

This history makes clear that an amendment to the *regulatory* definition would not amount to a substantive change to the *statutory* definition and is presently unnecessary to ensure that the *statutory* definition continues to be interpreted as the Office has interpreted in the past. The relevant case law uniformly adopts that interpretation and that approach, and those precedents in various circuit and district courts remain good law. That said, Copyright Owners agree that the Office should take this opportunity to reaffirm its commitment to addressing statutory interpretation questions by examining how Section 111, its legislative history, and the regulatory environment in which the cable compulsory licensing plan was developed apply to particular circumstances. This multi-layered analysis should retain the flexibility the Office has repeatedly shown in determining how best to achieve the basic objective of the statutory plan in differing contexts. *See Aereokiller*, 581 F.3d at 1014 (noting the Office's "position in not rigidly originalist," but accommodating of nuances). For example, the Office's interpretation of the Section 111 "cable system" definition to exclude internet retransmission of broadcast programming has been upheld repeatedly by the courts on the strength of its analysis and reasoning. *See, e.g., id*. at 1015 (upholding Office's interpretation under the *Skidmore* test because it is "longstanding, consistently held, and was arrived at after careful consideration"); *see also* n. 6, *supra* (listing cases) .

In sum, the Office's long-standing interpretation of "cable system" for Section 111 purposes, and the consistent case law holding that internet-based retransmission services are not entitled to the Section 111 compulsory license both rest on a well-reasoned application of the statutory text. Amending the *regulatory* definition would not change the validity of the Office's approach to these questions or the settled judicial interpretation of the *statutory* language. For these reasons, while the proposed amendment appears to be an accurate representation of the Office's longstanding position, its inclusion seems to be unnecessary at this time.

Cable Headend and County Information

Copyright Owners agree with the Office's assessment that "artificial fragmentation by cable systems seeking to avoid paying a higher royalty rate . . . is [not] currently a pressing concern or that requiring the reporting of headend information would significantly help lessen this issue." 82 FR at 56932/3.

On the other hand, it does remain desirable to require inclusion of county data on Space D of the SOA form. *Id*. at 56933/1. Many Long Form SOA filers report dozens and dozens (or more) of communities in Space D. Listing the county for each community would be beneficial for sorting out where in a state and in which television market the community is located. All parties agreed to its inclusion during the initial round of comments, and that providing this information imposes only minimal additional burdens on filers.

Definition of Community

Because fragmentation is today "of less interest to stakeholders," Copyright Owners do not object to the Office's tentative conclusion not to replace "the community unit definition with a franchise area definition." *Id.* at 56933/3.

Grade B Contour

It appears that the Grade B contour has for all practical purposes outlived its usefulness for cable royalty reporting purposes. *See generally* 82 FR at 56934. Accordingly, Copyright Owners do not oppose amendment of the SOA and the related regulations to remove references to a Grade B contour.

Closing Out Statements of Account

Among the many problems with cable operators' failure to respond to Licensing Division inquiries about SOA information is the delayed availability of the entire SOA for public inspection. 82 FR at 56935/3. Copyright Owners support the proposal "to close out SOA examination if a filer fails to reply to an Office correspondence request after 90 days from the date of the last correspondence from the Office." *Id*. This can hardly be called burdensome as the inquiries involve "whether the SOAs contain 'obvious errors or omissions,'" 82 FR at 56928/3, that can be reviewed and resolved quickly. At the conclusion of the 90 day period, the entire

SOA should be made available to the public, and copyright owners can review the file to determine whether additional action is appropriate.[7]

Respectfully submitted,

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[7] Copyright Owners also note that this common practice of not responding to Office inquiries belies the notion that copyright owners need only ask cable operators for more information about their SOA filings, rather than seeking to have operators routinely report that information through requirements on the SOA forms and in the regulations. As cable operators routinely fail to respond to Licensing Division inquiries, it can be reasonably inferred (as well as supported by past experience) that operators will also routinely fail to respond to inquiries from owners absent the threat of infringement litigation.

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