

Before the
Library of Congress
Copyright Office
Washington, D.C.

DOCKET NO.
RM 2007 1
COMMENT NO. 3

In the matter of:

Section 109 Report to Congress

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Docket No. RM-2007-1

EXECUTIVE SUMMARY



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June 29, 2007

EXECUTIVE SUMMARY

Ten years ago, the Copyright Office reported to Congress that aspects of the cable compulsory license were "**burdensome**," "**unfair**," and resulted in "an **irrational and unjustified** disparity in payments." The Copyright Office recommended reforms to address these problems. In the intervening 10 years, Congress has failed to act on these recommendations. The Section 109 Report provides the Copyright Office with a singular opportunity to send a message loud and clear to Congress – Fix the problems with Section 111. A regulatory regime that is unnecessarily burdensome, unfair, and irrational, offends fundamental values and polices underlying our rule of law. Neither the Copyright Office nor Congress should tolerate this.

The Section 109 Report should recommend specific reforms to Section 111. Four changes would go far in rectifying the problems:

1. Congress should eliminate the use of the outdated FCC "market quota" rules for carriage of networks and independent stations.

Almost three decades ago, the FCC rescinded its market quota rules. Yet the Copyright Office still bases royalty calculations on these rules. Example 1 on pages 7 – 9 shows how the old market quota rules result in one of two identical cable systems paying **285%** more in copyright royalties solely because it is located 30 miles away from the other system. No rational basis exists for the disparity in payments.

2. Congress should eliminate the "phantom signal" problem so that a cable operator is not obligated to pay royalties on a distant signal where that distant signal is not carried.

The Copyright Office bases royalty calculations on the following interpretation of Section 111: If a cable operator carries a distant signal on a cable system, it must pay royalties for all subscribers where that signal would be distant, even where the signal is not retransmitted. Example 2 on pages 10 – 12 shows how

58% of a cable system's royalties results from the *non*-use of just one distant signal. No theory of intellectual property rights supports the payment of license fees for the *non*-use of a copyrighted work.

3. Congress should align the cable compulsory license with the DBS compulsory license by eliminating royalties for retransmission of local signals.

Currently, when a cable operator delivers a package of local signals to one household, and a DBS provider delivers the identical package of local signals to the house next door, the cable operator must pay copyright royalties, while the DBS provider does not. No rational basis remains for this disparity in royalties for local signals.

4. Congress should align the Section 111 definition of "network station" with the section 119 definition of "network station".

The Copyright Office continues to express doubts over whether it can classify Fox stations as "network" stations under the cable compulsory license, while it is clear the Fox stations are "network stations" under the DBS license.

Harmonizing the definitions will remove this doubt.

These changes would eliminate many of the administrative burdens and much of the unfairness and irrationality of the current cable compulsory license.

In addition, the Copyright Office should recommend retaining the short-form, flat fee regime for smaller cable systems. For a very small and shrinking segment of the industry, this approach continues to serve to reduce administrative burdens and help small rural systems provide broadcast signals to consumers.

By making these recommendations to Congress, the Copyright Office can advocate for long overdue reform and help advance the core policies underlying the cable compulsory license.

American Cable Association. ACA represents nearly 1,100 small and medium-sized cable companies that serve about 8 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states, and in virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators with small systems in small markets. All ACA members retransmit broadcasts signals under the cable compulsory license and have a keen interest in the reform of Section 111.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

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