

**Before the  
U.S. COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, DC**

In the Matter of	)	
	)	
Section 302 Report	)	Docket No. RM 2010-10
	)	
Notice of Inquiry		

**COMMENTS OF NATIONAL PUBLIC RADIO, INC.**

National Public Radio, Inc. (“NPR”) hereby submits its comments in response to the above-captioned inquiry into alternative market-based licensing mechanisms that might replace certain existing statutory licenses. *Section 302 Report, Notice of Inquiry*, Docket No. RM 2010-10, 76 Fed. Reg. 11,816 (Mar. 3, 2011) (“*NOI*”).

NPR is a non-profit membership organization dedicated to the development of a diverse noncommercial educational radio programming service. Best known for producing such noncommercial news and information programs as *All Things Considered*<sup>®</sup>, *Morning Edition*<sup>®</sup>, and *Talk of the Nation*<sup>®</sup>, NPR also represents more than 900 full-service public radio stations, which are themselves significant producers of local, regional, and national news, information, and cultural programming. In addition, NPR manages the Public Radio Satellite System (“PRSS”) -- a nationwide satellite-based program distribution network used by independent public radio producers, distributors, and stations to distribute programming for broadcast by local public radio stations -- and provides representation and other services to its Members.

The Section 111 statutory license enables the retransmission of NPR Member station signals by local cable television systems to many listeners who otherwise would not receive them because of distance, terrain, or other broadcast signal coverage issues. *See* 17 U.S.C. § 111. The relatively modest royalty payments NPR and the participating stations receive also support the noncommercial educational purpose and activities of these public institutions. Before recommending the elimination of the Section 111 license, therefore, the Copyright Office should carefully consider the potential loss of service that we fear would result.

Section 111 of the Copyright Act permits a cable operator to retransmit a primary broadcast transmission embodying a performance or display of a work, provided that the cable operator deposits the appropriate statement of account and royalty payments with the Register of Copyrights on a semi-annual basis. Although much of the *NOI* focuses on the retransmission of television station transmission, the Section 111 license applies to primary broadcast transmissions by both television and radio stations. 17 U.S.C. § 111(a), (d). Congress imposed this system after recognizing “that it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system.” H.R. Rep. No. 1476, 94th Cong., 2d Sess. 89 (1976).

In considering whether to phase out the Section 111 license, the *NOI* inquires whether marketplace mechanisms could suffice “to clear the public performance rights for the content transmitted by broadcast stations” without disruption. *NOI*, 76 Fed. Reg. at 11,817. The *NOI* considers, in particular, whether the Section 111 license could be replaced by a voluntary system of sublicensing, private licensing, or collective licensing. *NOI*, 76 Fed. Reg. 11,817-20. While such marketplace mechanisms are currently employed in a variety of licensing contexts, we do not believe they can replace the Section 111 license as the means for clearing public radio

broadcast programming for cable retransmission.

The public radio system is unique among electronic media in at least two important respects. First, it is quintessentially local and decentralized, featuring local station ownership, management, program selection, and service. Second, in determining how best to serve the needs of their local communities of service, stations have a tremendous variety of third party program options to choose from, in addition to the programs they produce themselves. Hundreds of program producers and distributors make use of the PRSS (<http://www.prss.org/about.html>), the online Public Radio Exchange (<http://www.prx.org/>), and other means of distributing public radio programming.

The process of securing sufficient rights to license the cable retransmission of public radio programming would require negotiating appropriate licenses with each separate holder of a copyright in a work carried by the broadcaster, which may include stations, statewide, regional, and national networks, syndicators, independent producers and distributors, and individual rights holders. In the case of programming stations produce, they would have to license the cable retransmission rights from the various rights holders with whom they deal. In such circumstances, we believe that sublicensing or private licensing is practically unfeasible as a means of clearing public radio programming for cable retransmission.

While the Corporation for Public Broadcasting licenses music rights through the relevant performing rights groups on behalf of public radio stations, producers, and distributors, collective licensing of other program elements does not exist, and when and how additional collective licensing might develop is uncertain. The PRSS and other mechanisms for distributing programming do not address the copyright interests involved in the programming. That is a matter for the program producer.

In sum, if Congress were to eliminate the Section 111 license, the administrative and financial burdens of individual licensing would likely disrupt the cable retransmission of public radio stations altogether. Accordingly, NPR urges the Copyright Office to recommend the retention of the Section 111 license.

Respectfully submitted,

NATIONAL PUBLIC RADIO, INC.

A handwritten signature in black ink, appearing to read "Terri Minatra".

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