

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

In the Matter of Section 302 Report to Congress Regarding the Section 111, 119, and 122 Statutory Licenses))))))	Docket No. 2010-10
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**REPLY COMMENTS OF
COPYRIGHT OWNERS**

The Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, Public Television Claimants, Devotional Claimants, Canadian Claimants Group and Music Claimants (collectively “Copyright Owners”) submit these reply comments pursuant to the Copyright Office’s (“Office’s”) Notice of Inquiry (“NOI”) published at 72 Fed. Reg. 11816 (March 3, 2011).

Copyright Owners represent the “Phase I” claimant groups that historically have received virtually all of the royalties that cable systems pay for the compulsory license set forth in Section 111 of the Copyright Act. Several of the Copyright Owners are filing separate comments responsive to the NOI. The sole purpose of these reply comments is to respond to the claim of ivi, Inc. (“ivi”) that it “falls squarely within the Section 111(f) ‘cable system’ definition.” ivi, Inc. Comments on the Proposed Compulsory License Phase-Out at (unnumbered page) 3.

ivi is not a cable system within the meaning of Section 111(f) of the Copyright Act, and it is not entitled to the Section 111 cable compulsory license. That is precisely the conclusion the

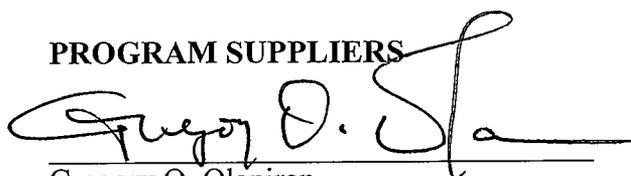
court recently reached in *WPIX, Inc. v. ivi, Inc.*, --- F.Supp.2d ----, 2011 WL 607111 (S.D.N.Y. Feb. 22, 2011), a copyright infringement case initiated by some of the parties that Copyright Owners represent. In reaching that conclusion, the Court relied on, among other things, the Office's consistent pronouncements about the scope of the Section 111 license. *See id.* at *7 (the Copyright Office statements "unambiguously reject the claim that a service such as ivi's could be a cable system, and essentially view the matter as settled law"); *id.* at *16 (basing its conclusion on the "lengthy and unequivocal administrative record, a reading of the statute consistent with Congress' purpose as well as the practical implications of this decision, and the fact that Congress has remained silent in the face of consistent and ardent Copyright Office declarations"). Copyright Owners believe the court in *WPIX* correctly enjoined ivi from streaming over the Internet, without authorization, the copyrighted programming and other works on broadcast television stations and that the court properly relied upon the clear pronouncements of the Office itself to support that result.

ivi's attempt to misuse the Copyright Office's Notice of Inquiry to revisit prior pronouncements of the Office on the substantive reach of Section 111 and to change the result in *WPIX* is improper. The Office initiated its inquiry for the limited purpose of seeking comment and information that it could use in fulfilling the mandate of Section 302 of the Satellite Television Extension and Localism Act of 2010, P.L. No. 111-175, 124 Stat. 1218 (2010) ("STELA"). Nothing in Section 302 raises any question concerning the scope of the compulsory licenses as currently written; nor does it direct the Office to review its prior pronouncements and rulings concerning eligibility for the existing compulsory licenses. The issues ivi attempts to inject into the Office's inquiry concerning the scope of the compulsory licenses as currently written are both irrelevant to and beyond the scope of this inquiry. If the Office believes it

would be appropriate to consider any eligibility issues with respect to the compulsory licenses in existence today (including those eligibility questions raised by ivi's comments), either in this inquiry or another proceeding, Copyright Owners respectfully submit that the Office should afford all interested parties adequate notice and an opportunity to present a full response on such issues.

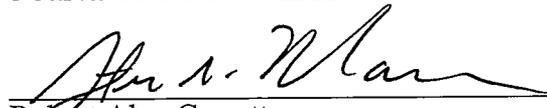
Respectfully submitted,

PROGRAM SUPPLIERS



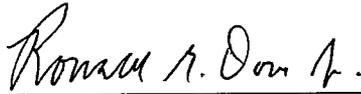
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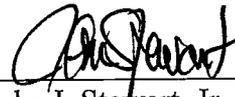
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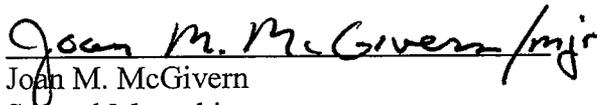
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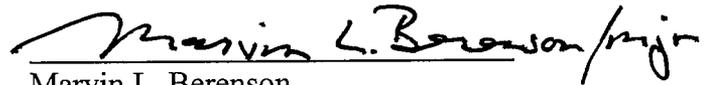
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