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United States Copyright Office Releases Section 302 Report

Study Recommends Phase-Out Options for the Cable and Satellite Statutory Licenses in the Copyright Act

The U.S. Copyright Office today issued its report on marketplace alternatives to the statutory licenses set forth in Sections 111, 119 and 122 of the Copyright Act as required by Section 302 of the Satellite Television Extension and Localism Act of 2010 (STELA). The report, prepared after a year of review, including a public hearing, provides recommendations for commencing a structured phase-out of the statutory provisions while taking into account the reasonable needs of those who would be affected.

“The Copyright Office welcomes this opportunity to help Congress navigate the complex statutory licensing landscape,” said Register of Copyrights Maria A. Pallante. “We look forward to working with Members of Congress and the copyright community as technology, business models and the broadcast programming market continue to evolve.”

The report makes seven key observations:

- Although statutory licensing has ensured the efficient and cost-effective delivery of television programming for as long as 35 years, it is an artifact of an earlier era. Copyright owners today should be permitted to develop marketplace-licensing options by working with market participants, taking into account consumer demands.
- Business models based on sublicensing, collective licensing and/or direct licensing are largely undeveloped in the broadcast retransmission context, but are feasible alternatives that could emerge in a variety of innovative ways.
- The concepts of sublicensing, direct licensing, and collective licensing do not represent the entire universe of possibilities, are not mutually exclusive, and will not remain static. Business models may emerge that incorporate these concepts in part or in combination, and technology will continuously inform the practices of both licensors and licensees.
- The Copyright Office recommends that Congress announce a date-specific trigger for the phase-out and eventual repeal of the distant-signal licenses, but should leave repeal of the local-signal licenses to a later time. This approach would provide stakeholders with an opportunity to test new business models with the least likely disruption to consumers, and give Congress the advantage of drawing on that experience when considering when and how to address the local-signal licenses.
- Before determining the date-specific trigger and transition period for the phase-out of the distant-signal licenses, Congress should evaluate the concerns of stakeholders who operate with limited resources in the broadcast programming distribution chain and evaluate to determine whether special consideration is advisable.

- In selecting the sunset date for the distant-signal licenses, Congress should build in a sufficient transition period, during which cable operators and satellite carriers should be instructed to negotiate with broadcast stations for carriage of the programming on the broadcast signal in cases where said broadcast stations have obtained the rights necessary to retransmit all of the content carried on its signal (provided, however, the broadcast station forgoes its mandatory carriage rights under the must-carry and carry-one carry-all provisions of the Communications Act).
- Although the statutory licenses at issue are codified in copyright law, they do not operate in a vacuum. Instead, they interact with equally complex provisions of communications law and related regulations. The Copyright Office recommends that Congress consider and, as appropriate, address these provisions in tandem with the recommendations described in this report.

First enacted in 1976, the Section 111 license permits cable operators to retransmit both local and distant television and radio signals to their subscribers; Section 119, enacted in 1988, permits a satellite carrier to retransmit distant non-network and network television station signals to its subscribers for private home viewing. Section 122, enacted in 1999, permits satellite carriers to retransmit local television station signals into the stations' local market. These statutory licenses are intertwined with the broadcast signal carriage rules administered by the Federal Communications Commission.

Section 302 of STELA extended certain of the statutory licenses, and directed the Register of Copyrights to submit to Congress a report proposing mechanisms, methods and recommendations (including legislative or administrative actions) to achieve the phase-out and eventual repeal of Sections 111, 119, and 122, including possible marketplace alternatives.

The United States Copyright Office promotes creativity by administering and sustaining an effective national copyright system. The office serves as the primary legal advisor to Congress on copyright issues and administers the national copyright registration system. The Copyright Office has been part of the Library of Congress since 1870.

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