Before the
COPYRIGHT OFFICE
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Washington, D.C.

In the Matter of	)	
Section 302 Report to Congress	)	**Docket No. RM 2010-10**

TESTIMONY OF FRITZ E. ATTAWAY
EXECUTIVE VICE PRESIDENT AND SPECIAL POLICY ADVISOR
MOTION PICTURE ASSOCIATION OF AMERICA, INC.

My name is Fritz Attaway and I am appearing on behalf of the Motion Picture Association, Inc., its member companies, and other producers and distributors of movies, series, and specials broadcast by television stations, also known as Program Suppliers.

Our constituents thank the Copyright Office for holding this public hearing to consider marketplace alternatives to the cable and satellite compulsory licenses and appropriate mechanisms for phasing out the licenses. Program Suppliers support replacing the compulsory licenses with an inclusive approach to private licensing, and welcome the opportunity to share their views on this issue with the Office.

Program Suppliers urge the Office to recommend that the compulsory licenses be replaced. Further, we ask that the Office adopt our view of private licensing, which we believe should have a broad scope, encompassing direct licensing, collective licensing, sublicensing, and other forms of licensing that a free market could sustain. In a well-functioning, unregulated market, all forms of private licensing, including these three, should be available for copyright owners to use, at their discretion.

Copyright owners are not all the same—they vary in size, content ownership, business models, and in long and short-term business strategies. Therefore, a one-size-fits-all approach to licensing retransmitted broadcast programming as a replacement for the compulsory licenses would be ineffectual. Moreover, it is not the role of government to dictate how retransmission rights should be transferred. Each copyright owner should be free to adopt the licensing approach (or combination of approaches) that best suits its business interests. Ultimately, the free market dynamic between sellers and buyers of content will, and should, dictate the appropriate transactional framework for copyright owners and content distributors to pursue.

It is fundamental that private licensing can, and does, work effectively in the existing television program marketplace. Not only have certain cable operators and satellite carriers chosen to enter into private licensing arrangements rather than taking advantage of the compulsory licenses, it is axiomatic that private licensing is working effectively for scores of new distribution technologies, including services such as iTunes, Netflix, Hulu, and the TV Everywhere initiative. Program Suppliers are confident that these services represent only a hint of the robust market for content distribution that could evolve for retransmission of television programming in the absence of compulsory licensing. In order to develop creative licensing solutions, copyright owners require both the flexibility and the incentive to develop and tailor private license agreements to satisfy the needs of their customers and meet other business interests. This is why our broad view of private licensing, free of government intrusion, is not only appropriate, but necessary as a successor to the statutory licenses.

Finally, I note that virtually *all* of the parties representing retransmitters of copyright content have, in their comments, tried to refocus this proceeding on why the compulsory licenses should be retained. Setting aside the fact that the purpose of this proceeding is to examine *how*

to effectively phase out the compulsory licenses, not *whether* they should be phased out, those comments fail to address the most significant reason why the compulsory licenses are not an adequate solution to licensing distant signal retransmissions—the fact that they force copyright owners to license their content at below market, government-mandated rates. As the Office has long recognized, the existing compulsory licenses do not afford copyright owners market value compensation for their content. Yet those parties who argue for retention of the licenses have offered no suggestions for allowing copyright owners to obtain market rates for their content.

Further, even accepting as true NCTA's comment that copyright owners have received about $4 billion dollars in cable royalties since the enactment of the licenses, that $4 billion dollar amount represents only a fraction (less than 1%) of the basic service revenues earned by cable systems over the thirty years that the cable compulsory license has been in effect.[1] Further, NCTA's suggestion that the total royalties collected for Section 111 have increased disproportionately to basic cable subscribership is misleading. For example, the U.S. Census Bureau reported that in 2009 alone, basic service revenue for cable systems amounted to $34.804 billion. *See id.* Cable operators are well established and are not new market entrants that require the benefit of subsidized compulsory license rates. Given the current state of the content distribution market, there is no credible reason for continuing these subsidies to the cable and satellite industries.

[1] According to the U.S. Census Bureau, the total basic cable revenue for the years 1980, 1985, 1990, and 1995-2009 was $418.3 billion. *See* Table 1141, Cable and Premium TV – Summary: 1980 to 2009, available at http://www.census.gov/prod/2011pubs/11statab/infocomm.pdf (last visited June 8, 2011). The $4 billion figure reported by NCTA is less than 1% of this total. Moreover, because the U.S. Census Bureau information cited above includes basic cable revenue data for only eighteen of the more than thirty years that Section 111 has been in existence, the 1% figure overstates, rather than understates, the percentage.

To reiterate, Program Suppliers support replacing the compulsory licenses with an inclusive approach to private licensing. Thank you again for giving me an opportunity to present the views of Program Suppliers in this proceeding.