

**Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, DC**

In the Matter of)
)
Authentication of Electronic Signatures) Docket No. 2013-5
On Electronically Filed Statements of Account)

**COMMENTS OF THE NATIONAL CABLE & TELECOMMUNICATIONS
ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) hereby submits its comments in response to the Copyright Office’s Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding.¹ For the reasons set forth below, NCTA urges the Office (i) to modify its rules to expressly permit the use of facsimile or “s-signatures” on paper statements of account (SOA) filed pursuant to Section 111 of the Copyright Act and (ii) to defer adopting rules governing electronic signatures on electronically-filed SOAs until various outstanding issues regarding the operation of the Office’s proposed electronic filing system (“eLi”) have been resolved.

DISCUSSION

I. THE COPYRIGHT OFFICE SHOULD MODIFY ITS RULES TO EXPRESSLY ALLOW FACSIMILE OR “S-SIGNATURES” ON PAPER STATEMENTS OF ACCOUNT.

Section 201.17(e)(14) of the Office’s rules expressly requires that each SOA filed by or on behalf of a cable system must include “the handwritten signature” of a person of authority (e.g., a corporate officer if the system is owned by a corporation) accompanying “a declaration of

¹ 78 Fed. Reg. 38240 (June 26, 2013).

the veracity of the statements of fact contained in the [SOA] and the good faith of the person signing in making such statement of fact.”²

As originally adopted, the Office’s rules governing the preparation and submission of SOAs did not expressly include a “handwritten” signature requirement.³ That requirement was added, without explanation, in a subsequent version of the rules.⁴ Over the years, the Office has taken the position that “printed, stamped, photocopied or other facsimile signatures” are not allowed under its rules.⁵ On the other hand, it also has suggested that it might be open to changing the handwritten signature rule⁶ and has expressed the view that it would be acceptable for a cable operator to submit a single “handwritten” signature to cover 31 separate statements of account.⁷

In the current rulemaking proceeding, the Office proposes to retain the handwritten signature requirement for SOAs that are filed on paper. NCTA submits that the Office should reconsider this approach and allow facsimile or “s-signatures”⁸ to be used on paper SOAs so long as the submission of those SOAs is accompanied by a cover letter that (a) contains a

² 37 CFR § 201.17(e)(14).

³ Compulsory License for Cable Systems, Final Regulations, Docket No. 77-2, 43 Fed. Reg. 958, 964 (Jan. 5, 1978).

⁴ Compulsory License for Cable Systems, Final Regulations, Docket No. 77-2, 43 Fed. Reg. 27827, 27835 (June 27, 1978).

⁵ Letter to Daniel Shields, Esq., United Cable Television Corp., from Richard E. Glasgow, Assistant General Counsel (June 26, 1985). Mr. Glasgow’s letter indicated that the issue of allowing facsimile signatures could be appropriately raised in a rulemaking proceeding in the future.

⁶ *Id.* (Stating that if in the future the Office conducted a “housekeeping” proceeding, the issue of allowing facsimile signatures could be raised at that time).

⁷ Memorandum to John Martin, Head, Examining and Processing Section, Licensing Division, from Richard E. Glasgow, Assistant General Counsel (July 7, 1984).

⁸ An “s-signature” typically is a signature, made by electronic or mechanical means, that is inserted between forward slash marks and is accompanied by the printed or typed name of the person signing. A facsimile signature typically is a stamped or electronic reproduction of a handwritten signature.

handwritten signature and (b) a declaration by the signatory that he or she has reviewed the SOAs and directed that his or her facsimile signature or “s-signature” be affixed to them.

Allowing cable operators to use facsimile signatures or “s-signatures” on SOAs offers clear benefits to cable operators with no risk to copyright owners. As the cable industry has grown and consolidated, the number of SOAs that some companies must file has increased with a concomitant increase in the burden imposed by the requirement that each SOA be separately signed by hand. Furthermore, in recent years, a number of operators have made use of Office-authorized software programs (such as Gralin or the Time Warner Cable excel template) to more efficiently prepare their SOAs. Allowing the use of facsimile signatures or “s-signatures” on such forms would give cable operators greater flexibility in readying them for submission to the Office.

Finally, the proposal for allowing facsimile signatures or “s-signatures” where accompanied by a hand-signed cover letter is consistent with the Office’s 1984 internal memorandum indicating that a single handwritten signature could cover multiple SOAs. It also is consistent with the current practice of other agencies, such as the Federal Communications Commission (FCC), which “no longer believe[s] an original signature requirement is the only reliable means of guaranteeing” a document has been reviewed.⁹ The Patent and Trademark Office (PTO) also considers electronic or s-signatures as a valid original signature on virtually all documents, including paper documents.¹⁰

⁹ 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes, 64 Fed. Reg. 56974, 56976 (Oct. 22, 1999). The FCC accepts the filing of paper documents with facsimile or electronic reproductions of signatures so long as the filer maintains the original signed copy. NCTA’s proposal, which would allow s-signatures or facsimile signatures on paper SOAs so long as they are accompanied by a cover letter with a handwritten signature, actually requires more than is required by the FCC.

¹⁰ 37 C.F.R. 1.4(d), 2.193. The PTO enforces the authenticity of such signatures by requiring, in the event there is some doubt as to the veracity of a signature, that a party ratify a signature or submit a handwritten signature. 37 C.F.R. 1.4(h).

II. THE COPYRIGHT OFFICE SHOULD DEFER ADOPTION OF RULES GOVERNING THE AUTHENTICATION AND USE OF ELECTRONIC SIGNATURES IN ELECTRONICALLY-FILED STATEMENTS OF ACCOUNT PENDING RESOLUTION OF ISSUES REGARDING THE OPERATION OF THE ELECTRONIC FILING (“eLi”) SYSTEM.

The Office has set as a goal the development of “an efficient electronic system for filing, managing, and retrieving [SOAs], royalty payments, notices, amendments, and other documents related to the work of the Licensing Division.”¹¹ To this end, the Office has been developing, over the past six years, an electronic filing system for SOAs (known as “eLi”). The principal purpose of the instant proceeding is to update the Office’s rules to allow the use of electronic signatures on SOAs filed using eLi. In particular, the NPRM seeks to establish a “robust identity authentication system” for both the preparation and electronic filing of SOAs.¹²

The NPRM proposes rules that are detailed, complex and technical in nature. They also are based on certain assumptions regarding the final operational details of the eLi system. However, it is NCTA understands that eLi is still in the developmental stage and that most cable operators have had no exposure to the eLi software. Moreover, while the Office offered “hands-on” demonstrations of eLi to NCTA and certain individual cable operators and/or their representatives last fall, it is unclear what changes, if any, have been made to the system based on feedback received from the participants in those demonstrations.

The issues identified during the Office’s initial demonstrations of the eLi system included (i) whether multiple individuals, operating from multiple locations, would be able to simultaneously access the same SOA during the preparation process; (ii) whether a cable operator would be able to submit multiple SOAs on a “batch” basis rather than one-by-one; (iii) whether more than one individual could have signing authority and whether the person taking the

¹¹ NPRM, 78 Fed. Reg. at 38241.

¹² *Id.*

final step of actually causing the transmission of the filings could be a different person than the one electronically signing the form; and (iv) whether cable operators that previously used the Gralin software and/or Time Warner Cable excel template would be able to migrate data from previous forms into the eLi system, thereby avoiding the need to re-enter data into the new system (a process that would be time consuming and increase the risk of error).

The Office's proposed rules address some of these issues, leave others unresolved, and raise new questions. For example, with respect to the preparation and review of SOAs, the Office envisions a process in which multiple people could be authorized to prepare and/or review a SOA. However, it is unclear whether it will be possible for more than one preparer and/or reviewer to access a particular form simultaneously (a practice that can be essential to the cable operator's efficient resolution of questions about a form's contents).

The Office also envisions a process whereby multiple SOAs could be signed and submitted on a batch basis by single authorized person who has completed a two-step authentication protocol. As an initial matter, the proposed authentication protocol is unnecessarily burdensome when compared to the electronic filing processes used by other agencies. For example, the Federal Communications Commission (FCC) accepts routine filings without any authentication or verification process. And where a filing with the FCC involves the payment of a fee (such as the required payment of annual regulatory fees), the payer simply must log in using a previously-established, company-wide "FCC Registration Number" (FRN) and password.¹³ Given that all cable operators are familiar with this system, it would make sense for the Office to adopt a similar approach with respect to the electronic filing of SOAs.

¹³ Applying for a FRN and creating a password is a simple process requiring a company to enter the following information on an online form: company name, tax ID number, contact information, a unique password, and a personal security question and response. Multiple users with access to the FRN and password can simultaneously access a regulatory fee filing form.

The process by which forms are reviewed, signed and submitted also needs to be flexible in other respects. In particular, it appears that the Office contemplates an approach whereby all of a cable operator's SOAs are reviewed and signed by the same person and the submission of the SOAs occurs at the same time that they are signed. But there are good reasons why a cable operator may want to divide responsibility for reviewing and signing its SOAs among multiple officials and may want someone other than the official reviewing and signing one or more SOAs to perform the final step of submitting those SOAs. For example, allowing more than one person to have signing authority is necessary in those instances where a multiple system operator assigns responsibility for reviewing and signing SOAs to officials on a regional basis. And where there are separately signed groups of forms, it will be easier for an operator to keep track of its filings, and to coordinate the submission of a single electronic funds transfer for all of the company's forms, if the operator can aggregate those separately signed forms for submission in a single batch.¹⁴

It also would allow operators that rely on the assistance of outside counsel or consultants in preparing their submissions to the Office (including, in particular, corrections, supplemental payments, and requests for refunds) to continue that practice.

Finally, the Office has yet to address the issue of whether and how cable operators will be able to transfer data from existing software-based formats to eLi. Although this issue does not directly relate to the establishment of rules governing the use of electronic signatures, it is nonetheless relevant since it will impact the process by which the initial set of forms using eLi are prepared and reviewed.

¹⁴ Another way to increase the flexibility of the proposed electronic filing system would be to give a signer, once logged in, an unlimited time to complete his or her review of the forms before affixing a signature (either individually or through a batch signature process).

In light of the foregoing, NCTA urges the Office to defer adopting final rules implementing the proposed electronic signature methodology for filings made with eLi. The Office has previously indicated that it intends to offer cable operators the opportunity to participate in a “pilot” version of eLi prior to launching it for general use. This pilot program would provide the Office and users an opportunity to test one or more approaches to the electronic signature issue before finalizing e-signature rules.¹⁵ In addition, NCTA recommends that the Office continue to take steps to raise awareness among cable operators of the eLi system.

CONCLUSION

For the reasons stated above, the Office should modify its rules to allow the use of facsimile signatures or “s-signatures” on paper filings where accompanied by a handwritten cover letter with an appropriate certification. The Office also should defer adoption of specific rules governing the use of electronic signatures on forms submitted through the eLi electronic filing system until such system has been finalized.

Respectfully submitted,

/s/ **Rick Chessen**

Of Counsel:
Seth A. Davidson
Edwards Wildman
1255 23rd Street N.W.
Eighth Floor
Washington, D.C. 20037

Rick Chessen
Diane B. Burstein
National Cable & Telecommunications
Association
25 Massachusetts Avenue, N.W. – Suite 100
Washington, D.C. 20001-1431
(202) 222-2445

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¹⁵ To the extent necessary, the Office could waive its handwritten signature rule so as to allow the use of a flexible password-protected protocol for affixing electronic signatures to an operator’s forms and for filing those forms.