

**David J. Ervin**  
Partner  
DErvin@crowell.com  
(202) 624-2622 direct

Crowell & Moring LLP  
1001 Pennsylvania Avenue NW  
Washington, DC 20004  
+1.202.624.2500 main  
+1.202.628.5116 fax

November 11, 2022

**Via E-mail**

Suzanne Wilson  
General Counsel and Associate Register of Copyrights  
U.S. Copyright Office  
Library of Congress  
101 Independence Avenue, SE  
Washington, DC 20559-6003

Re: Copyright Owners' Notice of *Ex Parte* in Docket No. 2005-6

Dear Ms. Wilson:

On November 9, 2022, the undersigned, along with the copyright owner representatives listed in Exhibit A ("Copyright Owners"), met by Zoom with David Welkowitz and Jordana Rubel to discuss the above-referenced rulemaking proceeding.

During the meeting, the Copyright Owners provided a brief summary of their position on issues relating to proposed changes to the Statement of Account ("SOA") form and responses to specific questions posed by the Copyright Office:

**SOA Space E Reporting.** The Copyright Owners reiterated their position that more specific information than what is currently provided in Space E is critical to determine whether cable operators are complying with their royalty fee obligations. During the meeting, we discussed the benefits to both the Copyright Owners and the Copyright Office in requiring cable operators to report in Space E more than only the average monthly number of subscribers during the 6-month accounting period and the average monthly revenues for basic service collected per subscriber per accounting period as proposed by NCTA and MPA. Such accounting period average subscriber and revenue information will not show any fluctuations that may occur during the 6-month accounting period. This makes it more difficult to determine what portion of the lump sum gross receipts amount reported in Space K is attributable to subscriber fees vs other applicable fees including broadcast surcharges, franchise fees and equipment charges. Without the more detailed monthly subscriber and revenue amounts and category of service amounts included in Space E, the Copyright Owners will be unable to reasonably assess whether the gross receipts amount reported in Space K includes all amounts paid to the cable system by subscribers for the system's secondary transmission of broadcast stations during the accounting period.

During the meeting, the Copyright Owners reiterated their position that requiring cable operators to provide average monthly subscribers by category type and average monthly revenues per subscriber would not be unduly burdensome as cable operators likely have access to these monthly amounts. In response to the cable operators' stated concerns that reporting average monthly subscribers and revenues per subscriber would involve the public disclosure of cable system-level proprietary

information, the Copyright Office asked whether the Copyright Owners would consider a compromise on the requested reporting time period to something less than monthly. Without taking a position on whether the reporting of such monthly subscriber and revenue amounts would involve the disclosure of highly sensitive competitive information, the Copyright Owners stated that they are amenable to requiring the reporting of average monthly subscribers and revenues per subscriber every two months during the reporting period provided the average monthly subscribers and revenues per subscriber during the entire accounting period are also included in Space E.

As discussed during the meeting, requiring a greater level of detail regarding the average number of subscribers and revenue per subscriber to be reported in Space E will allow the Copyright Owners to more effectively assess the need for requesting a formal review with cable operators and conducting audits of specific SOAs which would benefit both the Copyright Owners and the cable operators by potentially reducing costs and time associated with such reviews and audits. The Copyright Owners also noted that the SOAs are critical documents for cable distribution proceedings, including the current 2014-17 cable proceeding, and including more relevant detailed information regarding the gross amounts paid to cable systems for the secondary transmission of broadcast stations will be beneficial in these distribution proceedings.

During the meeting, the Copyright Office discussed the potential for further revising Space E to include the separate reporting by cable operators of broadcast surcharges, franchise fees and equipment charges. The Copyright Owners would be receptive to such a further revision to the SOA form as disclosure of amounts in addition to subscriber fees paid by subscribers to cable systems for the service of providing secondary transmission of broadcast stations would better enable the Copyright Owners to identify gross receipts compliance issues and determine whether to initiate audits without being unduly burdensome for cable operators.

We appreciate your time and consideration.

Best regards,

*/s/ David J. Ervin*

David J. Ervin

#### Attachments

cc: David Welkowitz  
Jordana Rubel  
Seth Davidson  
Dennis Lane  
Jane Saunders  
Daniel Cantor  
Copyright Owners

### **Exhibit A - Alphabetical List of Meeting Participants**

1. Dustin Cho, Covington & Burling LLP (on behalf of the Public Broadcasting Service)
2. Ronald Dove, Covington & Burling LLP (on behalf of the Public Broadcasting Service)
3. David Ervin, Crowell & Moring LLP (on behalf of the National Association of Broadcasters)
4. Arnold Lutzker, Lutzker & Lutzker LLP (on behalf of the Settling Devotional Claimants)