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April 4, 2019

VIA E-MAIL

Anna B. Chauvet
Assistant General Counsel
Library of Congress
U.S. Copyright Office
101 Independence Avenue, SE
Washington, DC 20559-6003

Re: Notice of Ex Parte, *Statutory Cable, Satellite, and DART License Reporting Practices*,
Docket No. 2005-6

Dear Ms. Chauvet:

On April 3, 2019, the undersigned, along with Seth Davidson of Mintz, Levin, Cohn, Ferris, Glosky and Popeo P.C. and Steven Horvitz of Davis Wright Tremaine LLP (the Cable Representatives) spoke with you regarding the April 1, 2019 ex parte letter submitted to the Copyright Office (“Office”) by Robert Garrett on behalf of the Sports Representatives (“Sports Letter”).

The Sports Letter restated the Sports Representatives’ request for the addition to the proposed Sports Surcharge Addendum (“Addendum”) of two “certifying” questions and a related instruction. In response, we reiterated the position previously taken by NCTA on this issue – namely that the Sports Representatives’ proposed additions to the Addendum will create confusion and needlessly add to the burden on cable operators and the Office’s Licensing Division (see letter from Diane Burstein to the Office dated March 21, 2019)

Representatives’ proposed certifying questions ask each operator to indicate (i) whether it received notification that the secondary transmission of distant signal broadcasts of specific sports events would require payment of the Sports Surcharge and (ii) whether the operator had made a secondary transmission of any distant station broadcast identified in such notification. In the event an operator answers both questions in the affirmative, the additional language proposed by the Sports Representatives would instruct the operator to complete the Addendum. However, these questions and the related instruction are inherently confusing. An operator could answer both questions in the affirmative but not actually have any obligation to pay the Sports Surcharge because, for example, the notice

was untimely or identified distant signal broadcasts that are covered by one of the several exemptions to the Sports Surcharge. Some operators may unnecessarily pay the surcharge in such situations, while in other instances may correctly leave the form blank, only to have that decision questioned by a licensing examiner.

Because the instructions accompanying the original draft of the Addendum are clear on their face, and because there is no demonstrable need to impose additional regulatory burdens, the Office should reject the Sports Representatives' request to add new questions and instructions to the Addendum.

Finally, we briefly discussed the importance of the Office not adding any new material to the underlying Form SA3 at this time. Any changes to the underlying form should await the conclusion of the Office's pending "Reporting Practices" rulemaking.

Pursuant to the "ex parte communications" notice adopted by the Office on December 6, 2017 and instructions received orally from the Office, this summary of our ex parte discussion is being submitted via e-mail for posting on the Office's website.^{1/}

Respectfully submitted,

/s/ Diane Burstein

Diane Burstein

cc: Regan A. Smith

¹ *Statutory Cable, Satellite, and DART License Reporting Practices*, Request for Reply Comment; Notice of Ex-Parte Communication, 82 Fed. Reg. 58153, 58154 (Dec. 11, 2017).