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VIA E-MAIL

Suzanne Wilson, Esq.
General Counsel and Associate Register of Copyrights
U.S. Copyright Office
Library of Congress
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. Wilson:

NCTA – The Internet & Television Association (NCTA) submits this notice of an *ex parte* meeting held by video conference on November 1, 2022 in the above-captioned Copyright Office rulemaking proceeding. The participants in the meeting on behalf of NCTA and MPA (hereinafter the NCTA-MPA Representatives) were Mary Beth Murphy of NCTA, Seth Davidson of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., and Robert Scott of Davis Wright Tremaine LLP (all on behalf of NCTA) and Dennis Lane of Stinson LLP (on behalf of MPA).¹ Participating from the Copyright Office were you, David Welkowitz, and Jordana Rubel.

During the November 1, 2022 meeting, NCTA responded to questions regarding simplification of Section 201.17(e)(6) of the Office’s rules and Space E of the Statement of Account (SOA) forms. As we noted, earlier in this proceeding NCTA urged the Office to revise the rule and Space E so that cable operators would be required to report only the number of basic service subscribers as of the last day of the accounting period.² NCTA argued that this simplified approach would be more consistent with Congressional intent, would reduce reporting burdens, and would not adversely affect copyright owners, because, coupled with the gross receipts information reported in Space K, it would enable them to

¹ ATT, through its counsel, Michael Nilsson of HWG LLP, was unable to attend, but authorized the NCTA Representatives to indicate that ATT supported the NCTA-MPA agreement with respect to the simplification of Space E.

² See Comments of NCTA – The Internet and Television Association, Docket No. 2005-6, at 8-9 (filed Oct. 4, 2018).

calculate an average per subscriber gross receipts amount they could use in deciding whether to make an informal inquiry or seek an audit of a particular system.³

In May 2020, NCTA and MPA informed the Office that following extensive discussions and negotiations, we had reached agreement on a comprehensive resolution of the issues raised in this rulemaking.⁴ Among other things, we agreed on a compromise to streamline Space E to be consistent with the Copyright Act's reporting requirement, minimize administrative burdens, and provide a more meaningful comparison between Space E and Space K, thus resolving the concerns expressed by copyright owners. Specifically, we suggested that Space E be revised to require reporting of the average monthly number of subscribers during the accounting period (i.e., six months) and the average monthly revenues for basic service collected per subscriber per accounting period.⁵ This approach draws both from the copyright owners' suggestion that the information reported on Space E include an operator's average monthly fee actually paid by subscribers and NCTA's proposal to reduce unnecessarily detailed and burdensome rate and subscriber data. In response, the non-MPA copyright owners objected to the simplified Space E proposed by the NCTA-MPA Agreement *only* to the extent that they want Space E to report gross receipts on a monthly basis, not semiannually as proposed in the NCTA-MPA Agreement.⁶

In response to questions from the Office during our November 1, 2022 meeting, we reiterated that reporting the average monthly number of subscribers and revenue in Space E on an accounting period basis – semiannually – is appropriate. In addition to the burden of providing more detailed information in Space E, requiring monthly or even quarterly reporting of subscriber numbers and revenues could have significant adverse business consequences. As we explained previously, cable operators regard system-level information regarding subscriber counts and revenue as proprietary and thus limit its public disclosure. Copyright SOAs are one of the very few public documents that report subscriber counts and revenue on a system-by-system basis, and for decades this disclosure, consistent with Section 111(d)(1)(A) of the Copyright Act, has been based on six-month time periods. To the extent such information needs to be shared with outside parties – including in the SOA audit process -- it is shared under strict confidentiality requirements. Mandating public disclosure of this highly sensitive

³ See *id.*; Reply Comments of NCTA – The Internet and Television Association in Docket No. 2005-6, at 11-14 (filed Oct. 25, 2018) (NCTA Reply Comments).

⁴ See Letter from Mary Beth Murphy, Vice President & Deputy General Counsel, NCTA, and Dennis Lane, Stinson LLP, to Regan A. Smith, General Counsel and Associate Register of Copyrights, U.S. Copyright Office, Docket No. 2005-6 (filed May 20, 2020).

⁵ See *id.*, Attachment at 2; see Letter from Mary Beth Murphy, Vice President & Deputy General Counsel, NCTA, and Dennis Lane, Stinson LLP, to Regan A. Smith, General Counsel and Associate Register of Copyrights, U.S. Copyright Office, Docket No. 2005-6, at 7 (filed May 22, 2020) (laying out proposed wording for the instructions to Space E).

⁶ See Letter from John I. Stewart Jr., Crowell & Moring LLP, to Regan A. Smith, General Counsel and Associate Register of Copyrights, U.S. Copyright Office, Docket No. 2005-6, at 2-3 (filed June 18, 2020); *id.* at 2 n.2 (“The Copyright Owners take no position on the aspect of the NCTA-MPA Agreement that proposed the reporting of subscriber and fees data for all subscribers rather than separately by subscriber category, as had been proposed by Copyright Owners in earlier comments in this Rulemaking.”). *But see* Letter from David J. Ervin, Crowell & Moring LLP, to Suzanne Wilson, General Counsel and Associate Register of Copyrights, U.S. Copyright Office, Docket No. 2005-6 (filed Sept. 13, 2022) (requesting more detailed information in Space E).

information, for example, could enable competitors to analyze operators' success and failure under discrete promotional campaigns.⁷

In contrast to these real world harms from more detailed disclosure, the copyright owners have not identified a benefit to be achieved by requiring that information be broken out on a more frequent basis. The purported need for more detailed information to be included in Space E at the outset of this proceeding was to allow copyright owners to make a more meaningful comparison between the information in Space E and the gross receipts information reported in Space K.⁸ The copyright owners have not explained how breaking out per-subscriber revenue on a month-by-month basis would assist them in making this calculation. Moreover, to the extent that the owners have suggested to the Office that more frequent breakouts of subscriber and revenue information is necessary to allow them to identify unusual increases or decreases in such information, there is no evidence that comparisons of semi-annual data from one accounting period to the next is inadequate for that purpose. Given the lack of a countervailing benefit to be achieved by requiring more frequent breakouts of this information, the Office should decline to do so.

The NCTA-MPA Representatives appreciate the Office's interest in resolving these issues and are available to respond to any follow-up questions the Office might have.

Respectfully submitted,

/s/ Mary Beth Murphy

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⁷ See Letter from Mary Beth Murphy Vice President & Deputy General Counsel, NCTA, and Dennis Lane, Stinson LLP, to Regan A. Smith, General Counsel and Associate Register of Copyrights, U.S. Copyright Office, Docket No. 2005-6, at 7 (filed July 30, 2020); see also NCTA Reply Comments at 12 (proposed modifications to Space E would “potentially disclose competitively sensitive information with no corresponding benefit for copyright owners or the Office”).

⁸ We also noted that when the initial proposal for more detailed information in Space E was made in 2005, Congress had not yet afforded copyright owners the right to audit cable operators' SOAs. The audit mechanism further reduces the purported need for additional detail in Space E. See NCTA Reply Comments at 14. We recognize that the audit process entails costs, but we are hopeful that resolution of the other substantive issues in this proceeding will reduce disputes about the information reported on the SOA.

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