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May 20, 2020

VIA E-MAIL

Regan A. Smith, 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. Smith:

After extensive discussions and negotiations, NCTA – The Internet and Television Association (“NCTA”) and the Motion Picture Association (“MPA”) have reached agreement on a comprehensive resolution of the issues raised by the above-referenced rulemaking. On May 18, 2020, the undersigned, Seth Davidson of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C., and Steven Horvitz of Davis Wright Tremaine LLP (all on behalf of NCTA), together with Dennis Lane of Stinson LLP and Jane Saunders of the Motion Picture Association (on behalf of MPA) met telephonically with you, Anna Chauvet, and David Welkowitz (participating in the call for the Copyright Office) to discuss the NCTA-MPA agreement, as summarized in the attached Exhibit.

At the outset of the call, it was noted that counsel for MLB (serving as representative for the non-MPA copyright owners that are parties to this proceeding) had previously been informed by counsel for NCTA (acting on behalf of itself and MPA) of the basic parameters of the joint NCTA-MPA agreement and had been given the opportunity to discuss the proposed agreement. Having not received any substantive response by or on behalf of any of the other non-MPA copyright owners, counsel for NCTA notified counsel for MLB of the scheduled call with the Office. Thereafter, counsel for MLB authorized NCTA and MPA to state only that the Joint Sports Claimants did not support the “proposal regarding gross receipts” as it had been explained to them and that “none of the other copyright owners have indicated that they support the proposal.”



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The NCTA and MPA participants on the call then reviewed with Copyright Office participants the NCTA-MPA agreement as summarized in the Exhibit. In order to address various questions about the agreement raised by the Copyright Office participants, it was agreed that NCTA and MPA would supplement this *ex parte* notice with more detailed answers. NCTA and MPA intend jointly to submit this additional information as soon as possible.

Pursuant to the “ex parte communications” notice adopted by the Office on December 6, 2017 and instructions received orally from the Office, this letter and a copy of the Exhibit are being submitted via e-mail for posting on the Office’s website. *See 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).* A copy of this letter and the Exhibit also are being served via e-mail on each party to the proceeding.

Respectfully submitted,

/s/ **Mary Beth Murphy**

Mary Beth Murphy

Attachment

cc: Anna Chauvet, Esq.
David Welkowitz, Esq.
Seth Davidson, Esq.
Steven Horvitz, Esq.
Dennis Lane, Esq.
Jane Saunders, Esq.
Service List

Statutory Cable, Satellite, and DART License Reporting Practices,
Docket No. 2005-6

NCTA – The Internet and Television Association (“NCTA”) and the Motion Picture Association (“MPA”) submit this joint proposal in an effort to comprehensively resolve disputed issues in the above-referenced rulemaking proceeding. This document summarizes NCTA’s and MPA’s proposed resolution of each of the issues on which the Notice of Proposed Rulemaking sought comment. The commenting parties were already in general agreement during the comment period on many of those issues, as summarized in Part II below. Part I addresses those contested issues on which NCTA and MPA have now reached agreement.

I. RESOLUTION OF DISPUTED ISSUES

After extensive discussions and negotiations, NCTA and MPA have reached agreement on previously contested issues regarding revisions to the definition of “gross receipts” and the content of Space E of the Statement of Account (“SOA”) forms.

- ***Definition of Gross Receipts.*** NCTA and MPA have reached agreement on the following revised gross receipts definition (Section 201.17(b)(1)) that addresses each issue related to the definition of gross receipts raised during the proceeding. The agreed upon revision is consistent with Congress’s intent not to include in gross receipts subscriber revenues from services other than basic service and accounts for current cable industry marketing and accounting practices for identifying and reporting basic service revenues from a bundled services product:

“Gross receipts for the “basic service of providing secondary transmissions of primary broadcast transmitters” include the full amount of monthly (or other periodic) service fees actually collected from subscribers for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals. For these purposes, the full amount of such basic service fees includes separately itemized fees that are directly related to the provision of basic service and that a subscriber is required to pay to the cable operator in order to receive basic service, but does not include installation (including connection, relocation, disconnection, or reconnection) fees, equipment fees, or separate charges for services other than the basic service of providing secondary transmissions of primary broadcast transmitters. In cases where other services such as Internet and/or telephony are bundled with a video service that includes the basic service of providing secondary transmissions of primary broadcast transmitters for a single discounted price, gross receipts include only those revenues attributable to basic service. In calculating the amount of such revenues attributable to basic service in those cases, a cable operator shall apply Generally Accepted Accounting Principles to allocate revenue to the individual products and services sold in a bundled offering. All such gross receipts shall be aggregated

and the distant signal equivalent (DSE) calculations shall be made against the aggregated amount.”

- ***Space E Revisions.*** The Office’s rules (201.17(e)(6) and 201.17(e)(7)) and Spaces E and K of the SOA forms implement Section 111(d)(1)(A) of the Copyright Act, which directs the Office to collect information regarding a cable system’s “total number of subscribers” and the “gross amounts paid to the cable system” for basic service. Space E currently directs an operator to report: (i) a brief description of each “subscriber category” for which a charge is made for basic service; (ii) the number of subscribers in each subscriber category; and (iii) the “charge or charges” made per subscriber for each subscriber category. Total gross receipts are reported on Space K.

Responding to comments from copyright owners that the information reported in Space E does not provide a basis for a “meaningful comparison” with total gross receipts reported in Space K, the NPRM proposed modifying Space E to provide more detailed subscriber and rate information. The copyright owners agreed with the Office that operators should be required to provide more granular information in Space E. NCTA opposed making Space E more burdensome for operators to complete and argued instead that Space E could and should be streamlined.

NCTA and MPA have agreed that Space E can and should be streamlined to be consistent with the Copyright Act’s reporting requirement while minimizing the administrative burdens in a manner that provides a more meaningful comparison between Space E and Space K. Specifically, NCTA and MPA have agreed on the following revision to Section 201.17(e)(6):

“Secondary Transmission Service: Subscribers and Gross Rates’

- (i) The average monthly number of subscribers during the accounting period who receive and pay the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters; and*
- (ii) The average monthly amount per subscriber collected during the accounting period by the cable system for providing basic service.”*

Operators would be instructed to calculate the “average monthly subscribers” for the accounting period by dividing by six the sum of (a) the aggregate monthly number of residential subscribers for the accounting period and (b) the aggregate monthly number of bulk residential and commercial subscribers (calculated on an equivalent billing unit basis) for the accounting period.

II. UNDISPUTED ISSUES

Listed below are the issues raised in the NPRM on which all commenting parties agreed.

- ***Definition of Cable System.*** All parties agree that the Office's proposal to amend the regulatory definition of "cable system" is unnecessary and should not be adopted.
- ***Headend Location.*** All parties agree that there is no need at this time to require operators to report headend location information.
- ***Community County Data.*** All parties support the inclusion of county information on Space D of the SOA.
- ***Definition of Community.*** All parties agree with the Office's tentative conclusion that the definition of "community" should not be amended.
- ***Interest Payments & Infringement Liability.*** All parties agree with the Office's proposed treatment of interest payments and infringement liability.
- ***Electronic Fund Transfer Payments.*** All parties agree with the Office's proposal to eliminate the ability to pay filing and royalty fees via check or money order, provided that the Office will consider requests from small operators for a waiver of this requirement.
- ***Elimination of Space F.*** Because none of the information required by Space F is relevant to the provision of basic service, all parties agree that eliminating Space F would further the Office's goals of streamlining compulsory license reporting obligations without affecting the royalty reporting and payment practices.
- ***SOA Close Out.*** All parties agree with the Office's proposal to close out a SOA if a licensee fails to reply to correspondence from the Office after 90 days.
- ***Grade B Contour.*** None of the parties are opposed to the Office's proposal to eliminate references to the use of the Grade B contour in the SOA, subject to the clarification that cable operators may continue to rely on the Grade B contour to determine the status of a broadcast signal to the same extent as is currently allowed.

III. IMMEDIATE IMPLEMENTATION OF CHANGES

The parties recommend that the Office immediately implement the agreed-upon resolution of the issues discussed above by publishing revised instructions directing operators how to report the information required by the agreed-upon resolution on the current SOA forms until such time that new SOA forms are promulgated in connection with the Office's modernization project.

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