

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

In the Matter of

*Verification of Statements of
Account Submitted by Cable
Operators and Satellite Carriers*

Docket No. 2012-05

COMMENTS OF DIRECTV, LLC.

DIRECTV, LLC (“DIRECTV”) hereby comments on the above-captioned *Notice* concerning audits of statements of account submitted by cable operators and satellite carriers pursuant to the statutory licenses for carriage of broadcast signals.¹ DIRECTV generally agrees with the Copyright Office’s proposals, particularly with the tentative decision to harmonize the cable and satellite regimes both with each other and with similar rules governing other statutory licenses. DIRECTV’s only suggestion is to make the proposed rules more evenhanded in one respect. Just as cable operators and satellite carriers must “cure” any shortfalls resulting from mistaken underpayments, they should be able to seek refunds or credits arising from any mistaken overpayments.

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DIRECTV agrees with the Copyright Office’s tentative decision to harmonize the cable and satellite regimes.² DIRECTV was intimately involved in the negotiations that

¹ Notice of Proposed Rulemaking, Docket No. 2012-5, 77 Fed. Reg. 35643 (June 24,, 2012) (“*Notice*”).

² *Notice*, 77 Fed. Reg. at 35644.

led up to the drafting of STELA.³ It is unaware that any party ever expressed any intention to treat satellite and cable differently with respect to audits. Nor can it think of any policy reason to create two separate audit mechanisms. Indeed, to DIRECTV's knowledge, the only instance of *any* party seeking separate cable and satellite audit mechanisms is the copyright owners' instant request to perform retroactive audits on satellite operators.⁴ In any event, as the Copyright Office pointed out, there are strong policy reasons not to apply laws retroactively, and a presumption that Congress does not intend such a result absent a specific directive—a directive that cannot be found in the satellite provision.⁵

DIRECTV also agrees with nearly all of the Office's substantive proposals. From DIRECTV's perspective, creating satellite statements of account is a relatively mechanical exercise, involving nothing more than multiplying the number of distant signals provided to subscribers by the applicable royalty rate. DIRECTV thus expects that, should the copyright owners choose to audit its statements of account, such audits should prove straightforward for all concerned. The Office's proposed rules reflect this, and DIRECTV generally supports them.

DIRECTV does, however, have one suggestion for improvement. The Copyright Office proposes to give satellite carriers a period to cure underpayments—a proposal that

³ Satellite Television Extension and Localism Act of 2010 ("STELA"), Pub. L. No. 111-175, 124 Stat.1218, 1245 (2010).

⁴ *Notice*, 73 Fed. Reg. at 35645.

⁵ *Id.* ("Section 119(b)(2) does not contain any language that expressly permits copyright owners to audit a Statement of Account for an accounting period that predated the enactment of STELA. Nor does it contain any language that expressly permits the Office to adopt regulations providing for the verification of Statements of Account on a retroactive basis.").

DIRECTV supports.⁶ No corresponding provision, however, is proposed with respect to *overpayments*. This reflects an unfortunate disparity in existing rules, which require restitution of underpayments in perpetuity, but allow licensees to recover for mistaken overpayments only if such overpayments are discovered within thirty days.⁷ DIRECTV believes such a disparity is indefensible. Mistakes in statements of account should be rectified regardless of who happens to benefit from such rectification. DIRECTV thus suggests coupling the requirement that satellite carriers cure underpayments with an option to deduct overpayments from future statements of account.

Respectfully submitted,

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⁶ *Id.* at 35648-49. DIRECTV assumes (and believes the Copyright Office might wish to clarify) that, at least in the absence of fraud, timely cure would serve as a complete defense to claims of infringement during the period in question.

⁷ 37 C.F.R. § 201.11(h)(3)(i) (“The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 30 days from the last day of the applicable Statement of Account filing period, or before the expiration of 30 days from the date of receipt at the Copyright Office of the royalty payment that is the subject of the request, whichever time period is longer.”).