

Before the
U.S. COPYRIGHT OFFICE
Library of Congress
Washington, D.C.

In the matter of:)
Section 302 Report) Docket No. RM 2010-10
_____))
_____)

REPLY COMMENTS OF THE CANADIAN CLAIMANTS GROUP

The Canadian Claimants Group (“CCG”) hereby submits reply comments in response to the Copyright Office’s Notice, in the above captioned proceeding, 76 Fed. Reg. 11816 (March 3, 2011).

SUMMARY OF THE CCG’S COMMENTS

While the CCG maintains that the simplification of the Section 111 royalty structure to a per subscriber royalty formula would represent an important reform of the existing statutory license, the CCG believes that of the three alternatives identified in the Notice of Inquiry, the collective licensing regime discussed in the Comments of the Office of the Commissioner of Major League Baseball would cause the least disruption to current carriage patterns.

DISCUSSION¹

I. If Any Change Is Made To The Current Cable Compulsory License Under Section 111, The Current System Should Be Simplified

As previously recommended by the CCG to the Copyright Office and the Copyright Office to Congress, a simplified, per subscriber royalty formula would accomplish the policy

¹ The CCG has also jointly filed reply comments with the other Phase I claimant groups from the Section 111 royalty proceedings in response to ivi Inc.’s initial comments.

goal of implementing a more realistic marketplace alternative to the current system.² Other commenters also supported simplification.³ Additionally, the Devotional Claimants, a claimant group similarly situated to the CCG in the Section 111 royalty proceedings, attached its 2007 comments that echoed the unduly protracted (and accordingly expensive) nature of the current system.⁴ A transition to a per subscriber royalty that permits rate adjustment to best reflect fair marketplace value would be the best solution for obtaining the goal of allowing “cable operators and satellite carriers to retransmit the entire broadcast signal just as they have been allowed to do under the statutory licenses.”⁵ Only then will cable operators, copyright owners, and broadcasters begin to understand the cost of retransmitting signals in a manner more grounded in market realities.

² Comments of the Canadian Claimants Group, at pp. 5-6 (Apr. 25, 2011) (hereinafter “CCG Comments”) (citing A Report of the Register of Copyrights, *A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals*, 136 (Aug. 1, 1997) (available at: <http://www.copyright.gov/reports/study.pdf>); A Report of the Register of Copyrights, *Satellite Home Viewer Extension and Reauthorization Act Section 109 Report*, 206 (June 30, 2008) (available at: <http://www.copyright.gov/reports/section109-final-report.pdf>).

³ Comments of Broadcast Music, Inc. and the American Society of Composers Authors and Publishers, at p. 16 (Apr. 25, 2011) (stating if the Section 111 and 119 licenses are not eliminated, the two should be harmonized with the Section 111 rates being converted to per subscriber rates that reflect fair marketplace value.) *See also* Comments of Dish Network L.L.C., at p. 9 (Apr. 25, 2011) (“For example, cable providers continue to pay royalties based on an antiquated system tied to cable system size and gross receipts, whereas satellite providers pay a flat, per-subscriber fee.”)

⁴ *See* Comments of Devotional Claimants, Attach. 1, pp. 3-4 (Apr. 18, 2011).

⁵ Section 302 Report, 76 Fed. Reg. at 11817 (stating the intent of the notice of inquiry is to explore market place inquiries to enable cable and satellite operators to continue to retransmit entire broadcast signals as done under the current license.)

II. To The Extent The Copyright Office Endorses Any Of The Three Alternatives Identified In The Notice Of Inquiry, The Most Feasible Alternative Is The Collective Licensing Approach

While the CCG fully supports its previously stated position that a per subscriber royalty formula should be adopted if the Section 111 license is to be changed, among the three alternatives presented by the Copyright Office in its Notice of Inquiry, the collective licensing approach will cause the least disruption to the retransmission of distant signals. The approach to collectives offered by the Office of the Commissioner of Baseball is the most plausible. Under that approach, the parties form their own collective groups similar to those in the Phase I hearings under Section 111, and the Copyright Royalty Board serves as a rate court.⁶ This system also would be similar to the one used in Canada.⁷ As noted by the Commissioner's Office and other parties, however, the creation of collectives raises significant antitrust concerns that should be resolved prior to the adoption of the approach.⁸

CONCLUSION

As stated in its initial comments, the CCG recommends that the compulsory license system be improved through simplification. As for the alternatives presented by the Copyright Office for consideration, the CCG does not believe that sublicensing an entire signal lineup or direct licensing are viable options for obtaining the stated goal of enabling cable and satellite

⁶ Comments of the Office of the Commissioner of Baseball, at p. 4 (Apr. 25, 2011) (hereinafter "The Commissioner's Comments").

⁷ See CCG Comments, at p. 8.

⁸ The Commissioner's Comments, at p. 4. See also Comments of the National Cable & Telecommunications Association, at p.15 (Apr. 25, 2011); Comments of Verizon, at pp. 12-14 (Apr. 25, 2011).

operators to continue to retransmit entire broadcast signals as done under the current license. Of the three alternatives, collective licensing would be the most likely to permit the continued retransmission of entire broadcast signals but would require antitrust exemptions and the adoption of a rate court mechanism to address setting tariffs.

Dated: May 25, 2011

/s/ L. Kendall Satterfield_____

L. Kendall Satterfield
Eugene J. Benick
FINKELSTEIN THOMPSON LLP
1050 30th Street, N.W.
Washington, D.C. 20007
Tel. (202) 337-8000
Fax (202) 337-8090
ksatterfield@finkelsteinthompson.com
ebenick@finkelsteinthompson.com

Victor J. Cosentino
LARSON & GASTON, LLP
200 S. Los Robles Ave, Suite 530
Pasadena, CA 91101
Tel. (626) 795-6001
Fax (626) 795-0016
victor.cosentino@larsonlaw.net

Counsel for Canadian Claimants