

**Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.**

In the Matter of)
)
Retransmissions of Digital Broadcast) Docket No. _____
Signals Pursuant To The Cable Compulsory)
License)
)

PETITION FOR RULEMAKING

Pursuant to 17 U.S.C. § 702, the Motion Picture Association of America, Inc., its member companies and other producers and/or distributors of movies, series and specials broadcast by television stations (“Program Suppliers”) and the Office of the Commissioner of Baseball, National Basketball Association, the National Football League, the National Collegiate Athletic Association, the National Hockey League and the Women’s National Basketball Association (“Joint Sports Claimants” or “JSC”) (collectively, “Copyright Owners”) respectfully request that the Copyright Office commence a rulemaking to clarify the applicability of existing rules to the retransmission of digital broadcast signals under the compulsory license set forth in Section 111 of the Copyright Act, 17 U.S.C. § 111.¹

BACKGROUND

1. Section 111(c) of the Copyright Act, 17 U.S.C. § 111(c), affords cable systems a compulsory license to retransmit a “performance or display of a work embodied in a primary

¹ Petitioners also intend to file very shortly another petition for rulemaking which will seek to clarify and/or modify existing regulations governing cable operator reporting practices under Section 111.

transmission made by a broadcast station licensed by the Federal Communications Commission” That provision was enacted nearly thirty years ago, at a time when all broadcast stations were analog and transmitted a single stream of programming on either a VHF or an UHF channel. It was not until 1997 that the FCC adopted rules governing transition of the broadcast television industry from analog to digital signals, and thereby authorized each individual broadcaster to transmit multiple streams of programming over various channels. *See In the Matter of Advanced Television Systems and Their Impact on Existing Television Broadcast Service*, 12 F.C.C. Rcd. 14,588 (Apr. 21, 1997).

Congress has never specifically addressed in Section 111 the issues arising from cable carriage of digital broadcast signals. By contrast, Congress recently amended Section 119, the satellite compulsory license, to cover satellite carrier retransmission of digital broadcast signals. Among other things, Section 103 of the Satellite Home Viewer Expansion and Reauthorization Act of 2004, P.L. 108-447, Title IX, § 103 (“SHVERA”), contains separate provisions concerning the royalty to be paid for the retransmission of digital broadcast signals by satellite carriers, and it affords copyright owners and satellite carriers the opportunity to negotiate royalty rates for digital broadcast signals separate from analog signals. *See id.* As the Copyright Office is aware, Copyright Owners, DirecTV and EchoStar have successfully negotiated rates for carriage of distant digital (as well as analog) signals for the 2005-10 period. Absent that negotiated agreement, a Copyright Arbitration Royalty Panel would have determined fair market value rates for those digital signals.

2. Prior to SHVERA, in a letter dated June 18, 2003, EchoStar Satellite Corporation (“EchoStar”) asked the Copyright Office for guidance on the treatment of distant digital network

signals under 17 U.S.C. § 119. On August 19, 2003 the Copyright Office responded to EchoStar, stating:

Because by its terms, Section 119 does not distinguish between analog or digital over-the-air television signals, it appears that the [Section 119] license applies to secondary transmissions of both, provided, of course, that all other terms and conditions of the license are satisfied.

That response was made without soliciting or obtaining comments from Copyright Owners or other interested parties. The Copyright Office's August 19, 2003, letter also did not purport to address the issue of whether cable operators could rely upon the Section 111 compulsory license to retransmit digital signals; nor did it provide any guidance on how royalty calculations under either Section 111 or Section 119 would be affected by the carriage of digital signals or how satellite carriers and cable systems might report the carriage of such signals.

3. Cable operators are increasingly retransmitting digital signals of broadcast stations. *See Carriage of Digital Television Broadcast Signals*, -- F.C.C. Rcd. ---, 2005 WL 425326, at ¶ 24 (Feb. 23, 2005) ("Second Digital Must Carry Order") (cable operators are carrying in excess of 500 digital broadcast stations). If cable operators do carry digital broadcast signals relying upon the Section 111 compulsory license (and perhaps upon the Copyright Office's August 19, 2003 letter), it is important that they properly report such carriage and pay the royalties that Section 111 requires. Based upon a review of statements of account filed with the Copyright Office by cable operators as well as other material, Copyright Owners are concerned that cable operators are not reporting and calculating their Section 111 royalties properly.

