Par. (5). Pub. L. 105–298, §202(a)(1), designated existing provisions as subpar. (A), inserted ''except as provided in subparagraph (B),'' after ''(A)'', and added subpar. (B).

Par. (7). Pub. L. 105–298, §202(b), inserted ''or of the audiovisual or other devices utilized in such performance,'' after ''phonorecords of the work,''.

1997—Par. (8). Pub. L. 105–80, §12(a)(6)(A), substituted semicolon for period at end.

Par. (9). Pub. L. 105–80, §12(a)(6)(B), substituted ''; and'' for period at end.

Par. (10). Pub. L. 105–80, §12(a)(6)(C), substituted ''paragraph (4)'' for ''paragraph 4 above''.

1982—Par. (10). Pub. L. 97–366 added par. (10).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–298 effective 90 days after Oct. 27, 1998, see section 207 of Pub. L. 105–298, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–366 effective 30 days after Oct. 25, 1982, see section 2 of Pub. L. 97–366, set out as a note under section 708 of this title.

## §111. Limitations on exclusive rights: Secondary transmissions

(a) CERTAIN SECONDARY TRANSMISSIONS EXEMPTED.—The secondary transmission of a performance or display of a work embodied in a primary transmission is not an infringement of copyright if—

(1) the secondary transmission is not made by a cable system, and consists entirely of the relaying, by the management of a hotel, apartment house, or similar establishment, of signals transmitted by a broadcast station licensed by the Federal Communications Commission, within the local service area of such station, to the private lodgings of guests or residents of such establishment, and no direct charge is made to see or hear the secondary transmission; or

(2) the secondary transmission is made solely for the purpose and under the conditions specified by clause (2) of section 110; or

(3) the secondary transmission is made by any carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others: *Provided*, That the provisions of this clause extend only to the activities of said carrier with respect to secondary transmissions and do not exempt from liability the activities of others with respect to their own primary or secondary transmissions;

(4) the secondary transmission is made by a satellite carrier pursuant to a statutory license under section 119; or

(5) the secondary transmission is not made by a cable system but is made by a governmental body, or other nonprofit organization, without any purpose of direct or indirect commercial advantage, and without charge to the recipients of the secondary transmission other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.

(b) SECONDARY TRANSMISSION OF PRIMARY TRANSMISSION TO CONTROLLED GROUP.—Notwithstanding the provisions of subsections (a) and (c), the secondary transmission to the public of a performance or display of a work embodied in a primary transmission is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if the primary transmission is not made for reception by the public at large but is controlled and limited to reception by particular members of the public: *Provided*, *however*, That such secondary transmission is not actionable as an act of infringement if—

(1) the primary transmission is made by a broadcast station licensed by the Federal Communications Commission; and

(2) the carriage of the signals comprising the secondary transmission is required under the rules, regulations, or authorizations of the Federal Communications Commission; and

(3) the signal of the primary transmitter is not altered or changed in any way by the secondary transmitter.

(c) SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—

(1) Subject to the provisions of clauses (2), (3), and (4) of this subsection and section 114(d), secondary transmissions to the public by a cable system of a performance or display of a work embodied in a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico shall be subject to statutory licensing upon compliance with the requirements of subsection (d) where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

(2) Notwithstanding the provisions of clause (1) of this subsection, the willful or repeated secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, in the following cases:

(A) where the carriage of the signals comprising the secondary transmission is not permissible under the rules, regulations, or authorizations of the Federal Communications Commission; or

(B) where the cable system has not deposited the statement of account and royalty fee required by subsection (d).

(3) Notwithstanding the provisions of clause (1) of this subsection and subject to the provisions of subsection (e) of this section, the secondary transmission to the public by a cable system of a performance or display of a work embodied in a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico is actionable as an act of infringement under section 501, and is fully subject to the

remedies provided by sections 502 through 506 and section 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcements transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the cable system through changes, deletions, or additions, except for the alteration, deletion, or substitution of commercial advertisements performed by those engaged in television commercial advertising market research: *Provided*, That the research company has obtained the prior consent of the advertiser who has purchased the original commercial advertisement, the television station broadcasting that commercial advertisement, and the cable system performing the secondary transmission: *And provided further*, That such commercial alteration, deletion, or substitution is not performed for the purpose of deriving income from the sale of that commercial time.

(4) Notwithstanding the provisions of clause (1) of this subsection, the secondary transmission to the public by a cable system of a performance or display of a work embodied in a primary transmission made by a broadcast station licensed by an appropriate governmental authority of Canada or Mexico is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if (A) with respect to Canadian signals, the community of the cable system is located more than 150 miles from the United States-Canadian border and is also located south of the forty-second parallel of latitude, or (B) with respect to Mexican signals, the secondary transmission is made by a cable system which received the primary transmission by means other than direct interception of a free space radio wave emitted by such broadcast television station, unless prior to April 15, 1976, such cable system was actually carrying, or was specifically authorized to carry, the signal of such foreign station on the system pursuant to the rules, regulations, or authorizations of the Federal Communications Commission.

(d) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—

(1) A cable system whose secondary transmissions have been subject to statutory licensing under subsection (c) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation—

(A) a statement of account, covering the six months next preceding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers, the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, and such other data as the Register of Copyrights may from time to time prescribe by regulation. In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions pursuant to section 119. Such statement shall also include a special statement of account covering any nonnetwork television programming that was carried by the cable system in whole or in part beyond the local service area of the primary transmitter, under rules, regulations, or authorizations of the Federal Communications Commission permitting the substitution or addition of signals under certain circumstances, together with logs showing the times, dates, stations, and programs involved in such substituted or added carriage; and

(B) except in the case of a cable system whose royalty is specified in subclause (C) or (D), a total royalty fee for the period covered by the statement, computed on the basis of specified percentages of the gross receipts from subscribers to the cable service during said period for the basic service of providing secondary transmissions of primary broadcast transmitters, as follows:

(i) 0.675 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to paragraphs (ii) through (iv);

(ii) 0.675 of 1 per centum of such gross receipts for the first distant signal equivalent;

(iii) 0.425 of 1 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents;

(iv) 0.2 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter; and

in computing the amounts payable under paragraphs (ii) through (iv), above, any fraction of a distant signal equivalent shall be computed at its fractional value and, in the case of any cable system located partly within and partly without the local service area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located without the local service area of such primary transmitter; and

(C) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters total $80,000 or less, gross receipts of the cable system for the purpose of this subclause shall be computed by subtracting from such actual gross receipts the amount by which $80,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than $3,000. The royalty fee

payable under this subclause shall be 0.5 of 1 per centum, regardless of the number of distant signal equivalents, if any; and

(D) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than $80,000 but less than $160,000, the royalty fee payable under this subclause shall be (i) 0.5 of 1 per centum of any gross receipts up to $80,000; and (ii) 1 per centum of any gross receipts in excess of $80,000 but less than $160,000, regardless of the number of distant signal equivalents, if any.

(2) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Librarian of Congress upon authorization by the Copyright Royalty Judges.

(3) The royalty fees thus deposited shall, in accordance with the procedures provided by clause (4), be distributed to those among the following copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period:

(A) any such owner whose work was included in a secondary transmission made by a cable system of a nonnetwork television program in whole or in part beyond the local service area of the primary transmitter; and

(B) any such owner whose work was included in a secondary transmission identified in a special statement of account deposited under clause (1)(A);

(C) any such owner whose work was included in nonnetwork programming consisting exclusively of aural signals carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programs.

(4) The royalty fees thus deposited shall be distributed in accordance with the following procedures:

(A) During the month of July in each year, every person claiming to be entitled to statutory license fees for secondary transmissions shall file a claim with the Copyright Royalty Judges, in accordance with requirements that the Copyright Royalty Judges shall prescribe by regulation. Notwithstanding any provisions of the antitrust laws, for purposes of this clause any claimants may agree among themselves as to the proportionate division of statutory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) After the first day of August of each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Copyright Royalty Judges shall authorize the Librarian of Congress to proceed to distribute such fees to the copyright owners entitled to receive them, or to their designated agents, subject to the deduction of reasonable administrative costs under this section. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

(C) During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall have the discretion to authorize the Librarian of Congress to proceed to distribute any amounts that are not in controversy.

(e) NONSIMULTANEOUS SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—

(1) Notwithstanding those provisions of the second paragraph of subsection (f) relating to nonsimultaneous secondary transmissions by a cable system, any such transmissions are actionable as an act of infringement under section 501, and are fully subject to the remedies provided by sections 502 through 506 and section 510, unless—

(A) the program on the videotape is transmitted no more than one time to the cable system's subscribers; and

(B) the copyrighted program, episode, or motion picture videotape, including the commercials contained within such program, episode, or picture, is transmitted without deletion or editing; and

(C) an owner or officer of the cable system (i) prevents the duplication of the videotape while in the possession of the system, (ii) prevents unauthorized duplication while in the possession of the facility making the videotape for the system if the system owns or controls the facility, or takes reasonable precautions to prevent such duplication if it does not own or control the facility, (iii) takes adequate precautions to prevent duplication while the tape is being transported, and (iv) subject to clause (2), erases or destroys, or causes the erasure or destruction of, the videotape; and

(D) within forty-five days after the end of each calendar quarter, an owner or officer of the cable system executes an affidavit attesting (i) to the steps and precautions taken to prevent duplication of the videotape, and (ii) subject to clause (2), to the erasure or destruction of all videotapes made or used during such quarter; and

(E) such owner or officer places or causes each such affidavit, and affidavits received pursuant to clause (2)(C), to be placed in a file, open to public inspection, at such system's main office in the community where the transmission is made or in the nearest community where such system maintains an office; and

(F) the nonsimultaneous transmission is one that the cable system would be authorized to transmit under the rules, regula-

tions, and authorizations of the Federal Communications Commission in effect at the time of the nonsimultaneous transmission if the transmission had been made simultaneously, except that this subclause shall not apply to inadvertent or accidental transmissions.

(2) If a cable system transfers to any person a videotape of a program nonsimultaneously transmitted by it, such transfer is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, except that, pursuant to a written, nonprofit contract providing for the equitable sharing of the costs of such videotape and its transfer, a videotape nonsimultaneously transmitted by it, in accordance with clause (1), may be transferred by one cable system in Alaska to another system in Alaska, by one cable system in Hawaii permitted to make such nonsimultaneous transmissions to another such cable system in Hawaii, or by one cable system in Guam, the Northern Mariana Islands, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands, to another cable system in any of those three territories, if—

(A) each such contract is available for public inspection in the offices of the cable systems involved, and a copy of such contract is filed, within thirty days after such contract is entered into, with the Copyright Office (which Office shall make each such contract available for public inspection); and

(B) the cable system to which the videotape is transferred complies with clause (1)(A), (B), (C)(i), (iii), and (iv), and (D) through (F); and

(C) such system provides a copy of the affidavit required to be made in accordance with clause (1)(D) to each cable system making a previous nonsimultaneous transmission of the same videotape.

(3) This subsection shall not be construed to supersede the exclusivity protection provisions of any existing agreement, or any such agreement hereafter entered into, between a cable system and a television broadcast station in the area in which the cable system is located, or a network with which such station is affiliated.

(4) As used in this subsection, the term ''videotape'', and each of its variant forms, means the reproduction of the images and sounds of a program or programs broadcast by a television broadcast station licensed by the Federal Communications Commission, regardless of the nature of the material objects, such as tapes or films, in which the reproduction is embodied.

(f) DEFINITIONS.—As used in this section, the following terms and their variant forms mean the following:

A ''primary transmission'' is a transmission made to the public by the transmitting facility whose signals are being received and further transmitted by the secondary transmission service, regardless of where or when the performance or display was first transmitted.

A ''secondary transmission'' is the further transmitting of a primary transmission simultaneously with the primary transmission, or nonsimultaneously with the primary transmission if by a ''cable system'' not located in whole or in part within the boundary of the forty-eight contiguous States, Hawaii, or Puerto Rico: *Provided, however*, That a nonsimultaneous further transmission by a cable system located in Hawaii of a primary transmission shall be deemed to be a secondary transmission if the carriage of the television broadcast signal comprising such further transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

A ''cable system'' is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service. For purposes of determining the royalty fee under subsection (d)(1), two or more cable systems in contiguous communities under common ownership or control or operating from one headend shall be considered as one system.

The ''local service area of a primary transmitter'', in the case of a television broadcast station, comprises the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, or such station's television market as defined in section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to section 76.55(e) or 76.59 of title 47 of the Code of Federal Regulations, or in the case of a television broadcast station licensed by an appropriate governmental authority of Canada or Mexico, the area in which it would be entitled to insist upon its signal being retransmitted if it were a television broadcast station subject to such rules, regulations, and authorizations. In the case of a low power television station, as defined by the rules and regulations of the Federal Communications Commission, the ''local service area of a primary transmitter'' comprises the area within 35 miles of the transmitter site, except that in the case of such a station located in a standard metropolitan statistical area which has one of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), the number of miles shall be 20 miles. The ''local service area of a primary transmitter'', in the case of a radio broadcast station, comprises the primary service area of such station, pursuant to the rules and regulations of the Federal Communications Commission.

A ''distant signal equivalent'' is the value assigned to the secondary transmission of any nonnetwork television programming carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programming. It is computed by assigning a value of one to each independent station and a value of one-quarter to each network station and noncommercial educational station for the nonnetwork programming so carried pursuant to the rules, regulations, and authorizations of the Federal Communications Commission. The foregoing values for independent, network, and noncommercial educational stations are subject, however, to the following exceptions and limitations. Where the rules and regulations of the Federal Communications Commission require a cable system to omit the further transmission of a particular program and such rules and regulations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, or where such rules and regulations in effect on the date of enactment of this Act permit a cable system, at its election, to effect such deletion and substitution of a nonlive program or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located, no value shall be assigned for the substituted or additional program; where the rules, regulations, or authorizations of the Federal Communications Commission in effect on the date of enactment of this Act permit a cable system, at its election, to omit the further transmission of a particular program and such rules, regulations, or authorizations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, the value assigned for the substituted or additional program shall be, in the case of a live program, the value of one full distant signal equivalent multiplied by a fraction that has as its numerator the number of days in the year in which such substitution occurs and as its denominator the number of days in the year. In the case of a station carried pursuant to the late-night or specialty programming rules of the Federal Communications Commission, or a station carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry, the values for independent, network, and noncommercial educational stations set forth above, as the case may be, shall be multiplied by a fraction which is equal to the ratio of the broadcast hours of such station carried by the cable system to the total broadcast hours of the station.

A ''network station'' is a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of that station's typical broadcast day.

An ''independent station'' is a commercial television broadcast station other than a network station.

A ''noncommercial educational station'' is a television station that is a noncommercial educational broadcast station as defined in section 397 of title 47.

(Pub. L. 94–553, title I, §101, Oct. 19, 1976, 90 Stat. 2550; Pub. L. 99–397, §§1, 2(a), (b), Aug. 27, 1986, 100 Stat. 848; Pub. L. 100–667, title II, §202(1), Nov. 16, 1988, 102 Stat. 3949; Pub. L. 101–318, §3(a), July 3, 1990, 104 Stat. 288; Pub. L. 103–198, §6(a), Dec. 17, 1993, 107 Stat. 2311; Pub. L. 103–369, §3, Oct. 18, 1994, 108 Stat. 3480; Pub. L. 104–39, §5(b), Nov. 1, 1995, 109 Stat. 348; Pub. L. 106–113, div. B, §1000(a)(9) [title I, §1011(a)(1), (2), (b)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–543; Pub. L. 108–419, §5(a), Nov. 30, 2004, 118 Stat. 2361; Pub. L. 108–447, div. J, title IX [title I, §107(b)], Dec. 8, 2004, 118 Stat. 3406; Pub. L. 109–303, §4(a), Oct. 6, 2006, 120 Stat. 1481; Pub. L. 110–229, title VIII, §807, May 8, 2008, 122 Stat. 874; Pub. L. 110–403, title II, §209(a)(2), Oct. 13, 2008, 122 Stat. 4264.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

**Introduction and General Summary.** The complex and economically important problem of ''secondary transmissions'' is considered in section 111. For the most part, the section is directed at the operation of cable television systems and the terms and conditions of their liability for the retransmission of copyrighted works. However, other forms of secondary transmissions are also considered, including apartment house and hotel systems, wired instructional systems, common carriers, nonprofit ''boosters'' and translators, and secondary transmissions of primary transmissions to controlled groups.

Cable television systems are commercial subscription services that pick up broadcasts of programs originated by others and retransmit them to paying subscribers. A typical system consists of a central antenna which receives and amplifies television signals and a network of cables through which the signals are transmitted to the receiving sets of individual subscribers. In addition to an installation charge, the subscribers pay a monthly charge for the basic service averaging about six dollars. A large number of these systems provide automated programing. A growing number of CATV systems also originate programs, such as movies and sports, and charge additional fees for this service (pay-cable).

The number of cable systems has grown very rapidly since their introduction in 1950, and now total about 3,450 operating systems, servicing 7,700 communities. Systems currently in operation reach about 10.8 million homes. It is reported that the 1975 total subscriber revenues of the cable industry were approximately $770 million.

Pursuant to two decisions of the Supreme Court (*Fortnightly Corp. v. United Artist Television, Inc.*, 392 U.S. 390 (1968) [88 S.Ct. 2084, 20 L.Ed.2d 1176, rehearing denied 89 S.Ct. 65, 393 U.S. 902, 21 L.Ed.2d 190], and *Teleprompter Corp. v. CBS, Inc.*, 415 U.S. 394 (1974)) [94 S.Ct. 1129, 39 L.Ed.2d 415], under the 1909 copyright law, the cable television industry has not been paying copyright royalties for its retransmission of over-the-air broadcast signals. Both decisions urged the Congress, however, to consider and determine the scope and extent of such liability in the pending revision bill.

The difficult problem of determining the copyright liability of cable television systems has been before the Congress since 1965. In 1967, this Committee sought to address and resolve the issues in H.R. 2512, an early version of the general revision bill (see H.R. Rep. No. 83, 90th Cong., 1st Sess.). However, largely because of the cable-copyright impasse, the bill died in the Senate.

The history of the attempts to find a solution to the problem since 1967 has been explored thoroughly in the voluminous hearings and testimony on the general revision bill, and has also been succinctly summarized by the Register of Copyrights in her Second Supplementary Report, Chapter V.

The Committee now has before it the Senate bill which contains a series of detailed and complex provisions which attempt to resolve the question of the copyright liability of cable television systems. After extensive consideration of the Senate bill, the arguments made during and after the hearings, and of the issues involved, this Committee has also concluded that there is no simple answer to the cable-copyright controversy. In particular, any statutory scheme that imposes copyright liability on cable television systems must take account of the intricate and complicated rules and regulations adopted by the Federal Communications Commission to govern the cable television industry. While the Committee has carefully avoided including in the bill any provisions which would interfere with the FCC's rules or which might be characterized as affecting ''communications policy'', the Committee has been cognizant of the interplay between the copyright and the communications elements of the legislation.

We would, therefore, caution the Federal Communications Commission, and others who make determinations concerning communications policy, not to rely upon any action of this Committee as a basis for any significant changes in the delicate balance of regulation in areas where the Congress has not resolved the issue. Specifically, we would urge the Federal Communications Commission to understand that it was not the intent of this bill to touch on issues such as pay cable regulation or increased use of imported distant signals. These matters are ones of communications policy and should be left to the appropriate committees in the Congress for resolution.

In general, the Committee believes that cable systems are commercial enterprises whose basic retransmission operations are based on the carriage of copyrighted program material and that copyright royalties should be paid by cable operators to the creators of such programs. The Committee recognizes, however, that it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system. Accordingly, the Committee has determined to maintain the basic principle of the Senate bill to establish a compulsory copyright license for the retransmission of those over-the-air broadcast signals that a cable system is authorized to carry pursuant to the rules and regulations of the FCC.

The compulsory license is conditioned, however, on certain requirements and limitations. These include compliance with reporting requirements, payment of the royalty fees established in the bill, a ban on the substitution or deletion of commercial advertising, and geographic limits on the compulsory license for copyrighted programs broadcast by Canadian or Mexican stations. Failure to comply with these requirements and limitations subjects a cable system to a suit for copyright infringement and the remedies provided under the bill for such actions.

In setting a royalty fee schedule for the compulsory license, the Committee determined that the initial schedule should be established in the bill. It recognized, however, that adjustments to the schedule would be required from time to time. Accordingly, the Copyright Royalty Commission, established in chapter 8 [§ 801 et seq. of this title], is empowered to make the adjustments in the initial rates, at specified times, based on standards and conditions set forth in the bill.

In setting an initial fee schedule, the Senate bill based the royalty fee on a sliding scale related to the gross receipts of a cable system for providing the basic retransmission service and rejected a statutory scheme that would distinguish between ''local'' and ''distant'' signals. The Committee determined, however, that there was no evidence that the retransmission of ''local'' broadcast signals by a cable operator threatens the existing market for copyright program owners. Similarly, the retransmission of network programing, including network programing which is broadcast in ''distant'' markets, does not injure the copyright owner. The copyright owner contracts with the network on the basis of his programing reaching all markets served by the network and is compensated accordingly.

By contrast, their retransmission of distant non-network programing by cable systems causes damage to the copyright owner by distributing the program in an area beyond which it has been licensed. Such retransmission adversely affects the ability of the copyright owner to exploit the work in the distant market. It is also of direct benefit to the cable system by enhancing its ability to attract subscribers and increase revenues. For these reasons, the Committee has concluded that the copyright liability of cable television systems under the compulsory license should be limited to the retransmission of distant non-network programing.

In implementing this conclusion, the Committee generally followed a proposal submitted by the cable and motion picture industries, the two industries most directly affected by the establishment of copyright royalties for cable television systems. Under the proposal, the royalty fee is determined by a two step computation. First, a value called a ''distant signal equivalent'' is assigned to all ''distant'' signals. Distant signals are defined as signals retransmitted by a cable system, in whole or in part, outside the local service area of the primary transmitter. Different values are assigned to independent, network, and educational stations because of the different amounts of viewing of non-network programing carried by such stations. For example, the viewing of non-network programs on network stations is considered to approximate 25 percent. These values are then combined and a scale of percentages is applied to the cumulative total.

The Committee also considered various proposals to exempt certain categories of cable systems from royalty payments altogether. The Committee determined that the approach of the Senate bill to require some payment by every cable system is sound, but established separate fee schedules for cable systems whose gross receipts for the basic retransmission service do not exceed either $80,000 or $160,000 semiannually. It is the Committee's view that the fee schedules adopted for these systems are now appropriate, based on their relative size and the services performed.

All the royalty payments required under the bill are paid on a semiannual basis to the Register of Copyrights. Each year they are distributed by the Copyright Royalty Commission to those copyright owners who may validly claim that their works were the subject of distant non-network retransmissions by cable systems.

Based on current estimates supplied to the Committee, the total royalty fees paid under the initial schedule established in the bill should approximate $8.7 million. Compared with the present number of cable television subscribers, calculated at 10.8 million, copyright payments under the bill would therefore approximate 81 cents per subscriber per year. The Committee believes that such payments are modest and will not retard the orderly development of the cable television industry or the service it provides to its subscribers.

**Analysis of Provisions.** Throughout section 111, the operative terms are ''primary transmission'' and ''secondary transmission.'' These terms are defined in subsection (f) entirely in relation to each other. In any particular case, the ''primary'' transmitter is the one whose signals are being picked up and further transmitted by a ''secondary'' transmitter which in turn, is someone engaged in ''the further transmitting of a primary transmission simultaneously with the primary transmission.'' With one exception provided in subsection (f) and limited by subsection (e), the section does not cover or permit a cable system, or indeed any person, to tape or otherwise record a program off-the-

air and later to transmit the program from the tape or record to the public. The one exception involves cable systems located outside the continental United States, but not including cable systems in Puerto Rico, or, with limited exceptions, Hawaii. These systems are permitted to record and retransmit programs under the compulsory license, subject to the restrictive conditions of subsection (e), because off-the-air signals are generally not available in the offshore areas.

**General Exemptions.** Certain secondary transmissions are given a general exemption under clause (1) of section 111(a). The first of these applies to secondary transmissions consisting ''entirely of the relaying, by the management of a hotel, apartment house, or similar establishment'' of a transmission to the private lodgings of guests or residents and provided ''no direct charge is made to see or hear the secondary transmission.''

The exemption would not apply if the secondary transmission consists of anything other than the mere relay of ordinary broadcasts. The cutting out of advertising, the running in of new commercials, or any other change in the signal relayed would subject the secondary transmitter to full liability. Moreover, the term ''private lodgings'' is limited to rooms used as living quarters or for private parties, and does not include dining rooms, meeting halls, theatres, ballrooms, or similar places that are outside of a normal circle of a family and its social acquaintances. No special exception is needed to make clear that the mere placing of an ordinary radio or television set in a private hotel room does not constitute an infringement.

**Secondary Transmissions of Instructional Broadcasts.** Clause (2) of section 111(a) is intended to make clear that an instructional transmission within the scope of section 110(2) is exempt whether it is a ''primary transmission'' or a ''secondary transmission.''

**Carriers.** The general exemption under section 111 extends to secondary transmitters that act solely as passive carriers. Under clause (3), a carrier is exempt if it ''has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission.'' For this purpose its activities must ''consist solely of providing wires, cables, or other communications channels for the use of others.''

Clause (4) would exempt the activities of secondary transmitters that operate on a completely nonprofit basis. The operations of nonprofit ''translators'' or ''boosters,'' which do nothing more than amplify broadcast signals and retransmit them to everyone in an area for free reception, would be exempt if there is no ''purpose of direct or indirect commercial advantage,'' and if there is no charge to the recipients ''other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.'' This exemption does not apply to a cable television system.

**Secondary Transmissions of Primary Transmissions to Controlled Group.** Notwithstanding the provisions of subsections (a) and (c), the secondary transmission to the public of a primary transmission embodying a performance or display is actionable as an act of infringement if the primary transmission is not made for reception by the public at large but is controlled and limited to reception by particular members of the public. Examples of transmissions not intended for the general public are background music services such as MUZAK, closed circuit broadcasts to theatres, pay television (STV) or pay-cable.

The Senate bill contains a provision, however, stating that the secondary transmission does not constitute an act of infringement if the carriage of the signals comprising the secondary transmission is required under the rules and regulations of the FCC. The exclusive purpose of this provision is to exempt a cable system from copyright liability if the FCC should require cable systems to carry to their subscribers a ''scrambled'' pay signal of a subscription television station.

The Committee is concerned, however, that the Senate bill is not clearly limited to the situation where a cable system is required by the FCC to carry a ''scrambled'' pay television signal. The Committee believes that the provision should not include any authority or permission to ''unscramble'' the signal. Further, the Senate bill does not make clear that the exception would not apply if the primary transmission is made by a cable system or cable system network transmitting its own originated program, *e.g.*, pay-cable. For these reasons, the subsection was amended to provide that the exception would only apply if (1) the primary transmission to a controlled group is made by a broadcast station licensed by the FCC; (2) the carriage of the signal is required by FCC rules and regulations; and (3) the signal of the primary transmitter is not altered or changed in any way by the secondary transmitter.

**Compulsory License.** Section 111(c) establishes the compulsory license for cable systems generally. It provides that, subject to the provisions of clauses (2), (3) and (4), the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the FCC or by an appropriate governmental authority of Canada or Mexico is subject to compulsory licensing upon compliance with the provisions of subsection (d) where the carriage of the signals comprising the secondary transmission is permissible under the rules and regulations of the FCC. The compulsory license applies, therefore, to the carriage of over-the-air broadcast signals and is inapplicable to the secondary transmission of any nonbroadcast primary transmission such as a program originated by a cable system or a cable network. The latter would be subject to full copyright liability under other sections of the legislation.

**Limitations on the Compulsory License.** Sections 111(c)(2), (3) and (4) establish limitations on the scope of the compulsory license, and provide that failure to comply with these limitations subjects a cable system to a suit for infringement and all the remedies provided in the legislation for such actions.

Section 111(c)(2) provides that the ''willful or repeated'' carriage of signals not permissible under the rules and regulations of the FCC subjects a cable system to full copyright liability. The words ''willful or repeated'' are used to prevent a cable system from being subjected to severe penalties for innocent or casual acts (''Repeated'' does not mean merely ''more than once,'' of course; rather, it denotes a degree of aggravated negligence which borders on willfulness. Such a condition would not exist in the case of an innocent mistake as to what signals or programs may properly be carried under the FCC's complicated rules). Section 111(c)(2) also provides that a cable system is subject to full copyright liability where the cable system has not recorded the notice, deposited the statement of account, or paid the royalty fee required by subsection (d). The Committee does not intend, however, that a good faith error by the cable system in computing the amount due would subject it to full liability as an infringer. The Committee expects that in most instances of this type the parties would be able to work out the problem without resort to the courts.

**Commercial Substitution.** Section 111(c)(3) provides that a cable system is fully subject to the remedies provided in this legislation for copyright infringement if the cable system willfully alters, through changes, deletions, or additions, the content of a particular program or any commercial advertising or station announcements transmitted by the primary transmitter during, or immediately before or after, the transmission of the program. In the Committee's view, any willful deletion, substitution, or insertion of commercial advertisements of any nature by a cable system or changes in the program content of the primary transmission, significantly alters the basic nature of the cable retransmission service, and makes its function similar to that of a broadcaster. Further, the placement of substitute advertising in a program by a cable system on a ''local'' signal harms the advertiser and, in turn, the copyright owner, whose compensation for the work is directly related to the size of the audience that

the advertiser's message is calculated to reach. On a ''distant'' signal, the placement of substitute advertising harms the local broadcaster in the distant market because the cable system is then competing for local advertising dollars without having comparable program costs. The Committee has therefore attempted broadly to proscribe the availability of the compulsory license if a cable system substitutes commercial messages. Included in the prohibition are commercial messages and station announcements not only during, but also immediately before or after the program, so as to insure a continuous ban on commercial substitution from one program to another. In one situation, however, the Committee has permitted such substitution when the commercials are inserted by those engaged in television commercial advertising market research. This exception is limited to those situations where the research company has obtained the consent of the advertiser who purchased the original commercial advertisement, the television station whose signal is retransmitted, and the cable system, and provided further that no income is derived from the sale of such commercial time.

**Canadian and Mexican Signals.** Section 111(c)(4) provides limitations on the compulsory license with respect to foreign signals carried by cable systems from Canada or Mexico. Under the Senate bill, the carriage of any foreign signals by a cable system would have been subject to full copyright liability, because the compulsory license was limited to the retransmission of broadcast stations licensed by the FCC. The Committee recognized, however, that cable systems primarily along the northern and southern border have received authorization from the FCC to carry broadcast signals of certain Canadian and Mexican stations.

In the Committee's view, the authorization by the FCC to a cable system to carry a foreign signal does not resolve the copyright question of the royalty payment that should be made for copyrighted programs originating in the foreign country. The latter raises important international questions of the protection to be accorded foreign copyrighted works in the United States. While the Committee has established a general compulsory licensing scheme for the retransmission of copyrighted works of U.S. nationals, a broad compulsory license scheme for all foreign works does not appear warranted or justified. Thus, for example, if in the future the signal of a British, French, or Japanese station were retransmitted in the United States by a cable system, full copyright liability would apply.

With respect to Canadian and Mexican signals, the Committee found that a special situation exists regarding the carriage of these signals by U.S. cable systems on the northern and southern borders, respectively. The Committee determined, therefore, that with respect to Canadian signals the compulsory license would apply in an area located 150 miles from the U.S.-Canadian border, or south from the border to the 42nd parallel of latitude, whichever distance is greater. Thus the cities of Detroit, Pittsburgh, Cleveland, Green Bay and Seattle would be included within the compulsory license area, while cities such as New York, Philadelphia, Chicago, and San Francisco would be located outside the area.

With respect to Mexican signals, the Commission determined that the compulsory license would apply only in the area in which such signals may be received by a U.S. cable system by means of direct interception of a free space radio wave. Thus, full copyright liability would apply if a cable system were required to use any equipment or device other than a receiving antenna to bring the signal to the community of the cable system.

Further, to take account of those cable systems that are presently carrying or are specifically authorized to carry Canadian or Mexican signals, pursuant to FCC rules and regulations, and whether or not within the zones established, the Committee determined to grant a compulsory license for the carriage of those specific signals on those cable systems as in effect on April 15, 1976.

The Committee wishes to stress that cable systems operating within these zones are fully subject to the payment of royalty fees under the compulsory license for those foreign signals retransmitted. The copyright owners of the works transmitted may appear before the Copyright Royalty Commission and, pursuant to the provisions of this legislation, file claims to their fair share of the royalties collected. Outside the zones, however, full copyright liability would apply as would all the remedies of the legislation for any act of infringement.

**Requirements for a Compulsory License.** The compulsory license provided for in section 111(c) is contingent upon fulfillment of the requirements set forth in section 111(d). Subsection (d)(1) directs that at least one month before the commencement of operations, or within 180 days after the enactment of this act [Oct. 19, 1976], whichever is later, a cable system must record in the Copyright Office a notice, including a statement giving the identity and address of the person who owns or operates the secondary transmission service or who has power to exercise primary control over it, together with the name and location of the primary transmitter whose signals are regularly carried by the cable system. Signals ''regularly carried'' by the system mean those signals which the Federal Communications Commission has specifically authorized the cable system to carry, and which are actually carried by the system on a regular basis. It is also required that whenever the ownership or control or regular signal carriage complement of the system changes, the cable system must within 30 days record any such changes in the Copyright Office. Cable systems must also record such further information as the Register of Copyrights shall prescribe by regulation.

Subsection (d)(2) directs cable systems whose secondary transmissions have been subject to compulsory licensing under subsection (c) to deposit with the Register of Copyrights a semi-annual statement of account. The dates for filing such statements of account and the six-month period which they are to cover are to be determined by the Register of Copyrights after consultation with the Copyright Royalty Commission. In addition to other such information that the Register may prescribe by regulation, the statements of account are to specify the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were carried by the system, the total number of subscribers to the system, and the gross amounts paid to the system for the basic service of providing secondary transmissions. If any non-network television programming was retransmitted by the cable system beyond the local service area of the primary transmitter, pursuant to the rules of the Federal Communications Commission, which under certain circumstances permit the substitution or addition of television signals not regularly carried, the cable system must deposit a special statement of account listing the times, dates, stations and programs involved in such substituted or added carriage.

**Copyright Royalty Payments.** Subsection (d)(2)(B), (C) and (D) require cable systems to deposit royalty fee payments for the period covered by the statements of account. These payments are to be computed on the basis of specified percentages of the gross receipts from cable subscribers during the period covered by the statement. For purposes of computing royalty payments, only receipts for the basic service of providing secondary transmissions of primary broadcast transmitters are to be considered. Other receipts from subscribers, such as those for pay-cable services or installation charges, are not included in gross receipts.

Subsection (d)(2)(B) provides that, except in the case of a cable system that comes within the gross receipts limitations of subclauses (C) and (D), the royalty fee is computed in the following manner:

Every cable system pays .675 of 1 percent of its gross receipts for the privilege of retransmitting distant nonnetwork programming, such amount to be applied

against the fee, if any, payable under the computation for ''distant signal equivalents.'' The latter are determined by adding together the values assigned to the actual number of distant television stations carried by a cable system. The purpose of this initial rate, applicable to all cable systems in this class, is to establish a basic payment, whether or not a particular cable system elects to transmit distant non-network programming. It is not a payment for the retransmission of purely ''local'' signals, as is evident from the provision that it applies to and is deductible from the fee payable for any ''distant signal equivalents.''

The remaining provisions of subclause (B) establish the following rates for ''distant signal equivalents:''

The rate from zero to one distant signal equivalent is .675 of 1 percent of gross subscriber revenues. An additional .425 of 1 percent of gross subscriber revenues is to be paid for each of the second, third and fourth distant signal equivalents that are carried. A further payment of .2 of 1 percent of gross subscriber revenues is to be made for each distant signal equivalent after the fourth. Any fraction of a distant signal equivalent is to be computed at its fractional value and where a cable system is located partly within and partly without the local service area of a primary transmitter, the gross receipts subject to the percentage payment are limited to those gross receipts derived from subscribers located without the local service area of such primary transmitter.

Pursuant to the foregoing formula, copyright payments as a percentage of gross receipts increase as the number of distant television signals carried by a cable system increases. Because many smaller cable systems carry a large number of distant signals, especially those located in areas where over-the-air television service is sparse, and because smaller cable systems may be less able to shoulder the burden of copyright payments than larger systems, the Committee decided to give special consideration to cable systems with semi-annual gross subscriber receipts of less than $160,000 ($320,000 annually). The royalty fee schedules for cable systems in this category are specified in subclauses (C) and (D).

In lieu of the payments required in subclause (B), systems earning less than $80,000, semi-annually, are to pay a royalty fee of .5 of 1 percent of gross receipts. Gross receipts under this provision are computed, however, by subtracting from actual gross receipts collected during the payment period the amount by which $80,000 exceeds such actual gross receipts. Thus, if the actual gross receipts of the cable system for the period covered are $60,000, the fee is determined by subtracting $20,000 (the amount by which $80,000 exceeds actual gross receipts) from $60,000 and applying .5 of 1 percent to the $40,000 result. However, gross receipts in no case are to be reduced to less than $3,000.

Under subclause (D), cable systems with semi-annual gross subscriber receipts of between $80,000 and $160,000 are to pay royalty fees of .5 of 1 percent of such actual gross receipts up to $80,000, and 1 percent of any actual gross receipts in excess of $80,000. The royalty fee payments under both subclauses (C) and (D) are to be determined without regard to the number of distant signal equivalents, if any, carried by the subject cable systems.

**Copyright Royalty Distribution.** Section 111(d)(3) provides that the royalty fees paid by cable systems under the compulsory license shall be received by the Register of Copyrights and, after deducting the reasonable costs incurred by the Copyright Office, deposited in the Treasury of the United States. The fees are distributed subsequently, pursuant to the determination of the Copyright Royalty Commission under chapter 8 [§801 et seq. of this title].

The copyright owners entitled to participate in the distribution of the royalty fees paid by cable systems under the compulsory license are specified in section 111(d)(4). Consistent with the Committee's view that copyright royalty fees should be made only for the retransmission of distant non-network programming, the claimants are limited to (1) copyright owners whose works were included in a secondary transmission made by a cable system of a distant non-network television program; (2) any copyright owner whose work is included in a secondary transmission identified in a special statement of account deposited under section 111(d)(2)(A); and (3) any copyright owner whose work was included in distant non-network programming consisting exclusively of aural signals. Thus, no royalty fees may be claimed or distributed to copyright owners for the retransmission of either ''local'' or ''network'' programs.

The Committee recognizes that the bill does not include specific provisions to guide the Copyright Royalty Commission in determining the appropriate division among competing copyright owners of the royalty fees collected from cable systems under Section 111. The Committee concluded that it would not be appropriate to specify particular, limiting standards for distribution. Rather, the Committee believes that the Copyright Royalty Commission should consider all pertinent data and considerations presented by the claimants.

Should disputes arise, however, between the different classes of copyright claimants, the Committee believes that the Copyright Royalty Commission should consider that with respect to the copyright owners of ''live'' programs identified by the special statement of account deposited under Section 111(d)(2)(A), a special payment is provided in Section 111(f).

Section 111(d)(5) sets forth the procedure for the distribution of the royalty fees paid by cable systems. During the month of July of each year, every person claiming to be entitled to compulsory license fees must file a claim with the Copyright Royalty Commission, in accordance with such provisions as the Commission shall establish. In particular, the Commission may establish the relevant period covered by such claims after giving adequate time for copyright owners to review and consider the statements of account filed by cable systems. Notwithstanding any provisions of the antitrust laws, the claimants may agree among themselves as to the division and distribution of such fees. After the first day of August of each year, the Copyright Royalty Commission shall determine whether a controversy exists concerning the distribution of royalty fees. If no controversy exists, the Commission, after deducting its reasonable administrative costs, shall distribute the fees to the copyright owners entitled or their agents. If the Commission finds the existence of a controversy, it shall, pursuant to the provisions of chapter 8 [§801 et seq. of this title], conduct a proceeding to determine the distribution of royalty fees.

**Off-Shore Taping by Cable Systems.** Section 111(e) establishes the conditions and limitation upon which certain cable systems located outside the continental United States, and specified in subsection (f), may make tapes of copyrighted programs and retransmit the taped programs to their subscribers upon payment of the compulsory license fee. These conditions and limitations include compliance with detailed transmission, record keeping, and other requirements. Their purpose is to control carefully the use of any tapes made pursuant to the limited recording and retransmission authority established in subsection (f), and to insure that the limited objective of assimilating offshore cable systems to systems within the United States for purposes of the compulsory license is not exceeded. Any secondary transmission by a cable system entitled to the benefits of the taping authorization that does not comply with the requirements of section 111(e) is an act of infringement and is fully subject to all the remedies provided in the legislation for such actions.

**Definitions.** Section 111(f) contains a series of definitions. These definitions are found in subsection (f) rather than in section 101 because of their particular application to secondary transmissions by cable systems.

*Primary and Secondary Transmissions.* The definitions of ''primary transmission'' and ''secondary transmission'' have been discussed above. The definition of

''secondary transmission'' also contains a provision permitting the nonsimultaneous retransmission of a primary transmission if by a cable system ''not located in whole or in part within the boundary of the forty-eight contiguous states, Hawaii or Puerto Rico.'' Under a proviso, however, a cable system in Hawaii may make a nonsimultaneous retransmission of a primary transmission if the carriage of the television broadcast signal comprising such further transmission is permissible under the rules, regulations or authorizations of the FCC.

The effect of this definition is to permit certain cable systems in offshore areas, but not including cable systems in the offshore area of Puerto Rico and to a limited extent only in Hawaii, to tape programs and retransmit them to subscribers under the compulsory license. Puerto Rico was excluded based upon a communication the Committee received from the Governor of Puerto Rico stating that the particular television broadcasting problems which the definition seeks to solve for cable systems in other noncontiguous areas do not exist in Puerto Rico. He therefore requested that Puerto Rico be excluded from the scope of the definition. All cable systems covered by the definition are subject to the conditions and limitations for nonsimultaneous transmissions established in section 111(e).

*Cable System*. The definition of a ''cable system'' establishes that it is a facility that in whole or in part receives signals of one or more television broadcast stations licensed by the FCC and makes secondary transmissions of such signals to subscribing members of the public who pay for such service. A closed circuit wire system that only originates programs and does not carry television broadcast signals would not come within the definition. Further, the definition provides that, in determining the applicable royalty fee and system classification under subsection (d)(2)(B), (C), or (D) cable systems in contiguous communities under common ownership or control or operating from one headend are considered as one system.

*Local Service Area of a Primary Transmitter*. The definition of ''local service area of a primary transmitter'' establishes the difference between ''local'' and ''distant'' signals and therefore the line between signals which are subject to payment under the compulsory license and those that are not. It provides that the local service area of a television broadcast station is the area in which the station is entitled to insist upon its signal being retransmitted by a cable system pursuant to FCC rules and regulations. Under FCC rules and regulations this so-called ''must carry'' area is defined based on the market size and position of cable systems in 47 C.F.R. §§76.57, 76.59, 76.61 and 76.63. The definition is limited, however, to the FCC rules in effect on April 15, 1976. The purpose of this limitation is to insure that any subsequent rule amendments by the FCC that either increase or decrease the size of the local service area for its purposes do not change the definition for copyright purposes. The Committee believes that any such change for copyright purposes, which would materially affect the royalty fee payments provided in the legislation, should only be made by an amendment to the statute.

The ''local service area of a primary transmitter'' of a Canadian or Mexican television station is defined as the area in which such station would be entitled to insist upon its signals being retransmitted if it were a television broadcast station subject to FCC rules and regulations. Since the FCC does not permit a television station licensed in a foreign country to assert a claim to carriage by a U.S. cable system, the local service area of such foreign station is considered to be the same area as if it were a U.S. station.

The local service area for a radio broadcast station is defined to mean ''the primary service area of such station pursuant to the rules and regulations of the Federal Communications Commission.'' The term ''primary service area'' is defined precisely by the FCC with regard to AM stations in Section 73.11(a) of the FCC's rules. In the case of FM stations, ''primary service area'' is regarded by the FCC as the area included within the field strength contours specified in Section 73.311 of its rules.

*Distant Signal Equivalent*. The definition of a ''distant signal equivalent'' is central to the computation of the royalty fees payable under the compulsory license. It is the value assigned to the secondary transmission of any non-network television programming carried by a cable system, in whole or in part, beyond the local service area of the primary transmitter of such programming. It is computed by assigning a value of one (1) to each distant independent station and a value of one-quarter (¼) to each distant network station and distant noncommercial educational station carried by a cable system, pursuant to the rules and regulations of the FCC. Thus, a cable system carrying two distant independent stations, two distant network stations and one distant noncommercial educational station would have a total of 2.75 distant signal equivalents.

The values assigned to independent, network and noncommercial educational stations are subject, however, to certain exceptions and limitations. Two of these relate to the mandatory and discretionary program deletion and substitution rules of the FCC. Where the FCC rules require a cable system to omit certain programs (e.g., the syndicated program exclusivity rules) and also permit the substitution of another program in place of the omitted program, no additional value is assigned for the substituted or additional program. Further, where the FCC rules on the date of enactment of this legislation permit a cable system, at its discretion, to make such deletions or substitutions or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located, no additional value is assigned for the substituted or additional programs. However, the latter discretionary exception is subject to a condition that if the substituted or additional program is a ''live'' program (e.g., a sports event), then an additional value is assigned to the carriage of the distant signal computed as a fraction of one distant signal equivalent. The fraction is determined by assigning to the numerator the number of days in the year on which the ''live'' substitution occurs, and by assigning to the denominator the number of days in the year. Further, the discretionary exception is limited to those FCC rules in effect on the date of enactment of this legislation [Oct. 19, 1976]. If subsequent FCC rule amendments or individual authorizations enlarge the discretionary ability of cable systems to delete and substitute programs, such deletions and substitutions would be counted at the full value assigned the particular type of station provided above.

Two further exceptions pertain to the late-night or specialty programming rules of the FCC or to a station carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry. In this event, the values for independent, network and noncommercial, educational stations set forth above, as the case may be, are determined by multiplying each by a fraction which is equal to the ratio of the broadcast hours of such station carried by the cable system to the total broadcast hours of the station.

*Network Station*. A ''network station'' is defined as a television broadcast station that is owned or operated by, or affiliated with, one or more of the U.S. television networks providing nationwide transmissions and that transmits a substantial part of the programming supplied by such networks for a substantial part of that station's typical broadcast day. To qualify as a network station, all the conditions of the definition must be met. Thus, the retransmission of a Canadian station affiliated with a Canadian network would not qualify under the definition. Further, a station affiliated with a regional network would not qualify, since a regional network would not provide nationwide transmissions. However, a station affiliated with a network providing

nationwide transmissions that also occasionally carries regional programs would qualify as a ''network station,'' if the station transmits a substantial part of the programming supplied by the network for a substantial part of the station's typical broadcast day.

*Independent Station*. An ''independent station'' is defined as a commercial television broadcast station other than a network station. Any commercial station that does not fall within the definition of ''network station'' is classified as an ''independent station.''

*Noncommercial Educational Station*. A ''noncommercial educational station'' is defined as a television station that is a noncommercial educational broadcast station within the meaning of section 397 of title 47 [47 U.S.C. 397].

REFERENCES IN TEXT

The date of enactment of this Act, referred to in the fifth undesignated par. of subsec. (f), defining ''distant signal equivalent'', is Oct. 19, 1976.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–403, §209(a)(2)(A), struck out ''and 509'' after ''506'' in introductory provisions.

Subsec. (c)(2). Pub. L. 110–403, §209(a)(2)(B)(i), struck out ''and 509'' after ''506'' in introductory provisions.

Subsec. (c)(3). Pub. L. 110–403, §209(a)(2)(B)(ii), substituted ''section 510'' for ''sections 509 and 510''.

Subsec. (c)(4). Pub. L. 110–403, §209(a)(2)(B)(iii), struck out ''and section 509'' after ''506''.

Subsec. (e)(1). Pub. L. 110–403, §209(a)(2)(C)(i), substituted ''section 510'' for ''sections 509 and 510'' in introductory provisions.

Subsec. (e)(2). Pub. L. 110–403, §209(a)(2)(C)(ii), struck out ''and 509'' after ''506'' in introductory provisions.

Pub. L. 110–229 substituted ''the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands'' for ''or the Trust Territory of the Pacific Islands'' in introductory provisions.

2006—Subsec. (d)(2). Pub. L. 109–303, §4(a)(1), substituted ''upon authorization by the Copyright Royalty Judges.'' for ''in the event no controversy over distribution exists, or by the Copyright Royalty Judges. in the event a controversy over such distribution exists.''

Subsec. (d)(4)(B). Pub. L. 109–303, §4(a)(2)(A), substituted second sentence for former second sentence which read as follows: ''If the Copyright Royalty Judges determine that no such controversy exists, the Librarian shall, after deducting reasonable administrative costs under this section, distribute such fees to the copyright owners entitled to such fees, or to their designated agents.'' and ''find'' for ''finds'' in last sentence.

Subsec. (d)(4)(C). Pub. L. 109–303, §4(a)(2)(B), added subpar. (C) and struck out former subpar. (C) which read as follows: ''During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.''

2004—Subsec. (a)(4). Pub. L. 108–447 struck out ''for private home viewing'' after ''satellite carrier''.

Subsec. (d)(1)(A). Pub. L. 108–447 struck out ''for private home viewing'' after ''secondary transmissions''.

Subsec. (d)(2). Pub. L. 108–419, §5(a)(1), substituted ''the Copyright Royalty Judges.'' for ''a copyright arbitration royalty panel''.

Subsec. (d)(4)(A). Pub. L. 108–419, §5(a)(2)(A), substituted ''Copyright Royalty Judges'' for ''Librarian of Congress'' in two places.

Subsec. (d)(4)(B). Pub. L. 108–419, §5(a)(2)(B), substituted, in first sentence, ''Copyright Royalty Judges shall'' for ''Librarian of Congress shall, upon the recommendation of the Register of Copyrights,'', in second sentence, ''Copyright Royalty Judges determine'' for ''Librarian determines'', and, in third sentence, ''Copyright Royalty Judges'' for ''Librarian'' in two places and ''conduct a proceeding'' for ''convene a copyright arbitration royalty panel''.

Subsec. (d)(4)(C). Pub. L. 108–419, §5(a)(2)(C), substituted ''Copyright Royalty Judges'' for ''Librarian of Congress''.

1999—Subsecs. (a), (b). Pub. L. 106–113, §1000(a)(9) [title I, §1011(b)(1)(A), (B)], substituted ''performance or display of a work embodied in a primary transmission'' for ''primary transmission embodying a performance or display of a work'' in introductory provisions.

Subsec. (c)(1). Pub. L. 106–113, §1000(a)(9) [title I, §1011(a)(2), (b)(1)(C)(i)], inserted ''a performance or display of a work embodied in'' after ''by a cable system of'', struck out ''and embodying a performance or display of a work'' after ''governmental authority of Canada or Mexico'', and substituted ''statutory'' for ''compulsory''.

Subsec. (c)(3), (4). Pub. L. 106–113, §1000(a)(9) [title I, §1011(b)(1)(C)(ii)], substituted ''a performance or display of a work embodied in a primary transmission'' for ''a primary transmission'' and struck out ''and embodying a performance or display of a work'' after ''governmental authority of Canada or Mexico''.

Subsec. (d). Pub. L. 106–113, §1000(a)(9) [title I, §1011(a)(2)], which directed substitution of ''statutory'' for ''compulsory'', was executed by substituting ''Statutory'' for ''Compulsory'' in heading to reflect probable intent of Congress.

Subsec. (d)(1). Pub. L. 106–113, §1000(a)(9) [title I, §1011(a)(2)], substituted ''statutory'' for ''compulsory'' in introductory provisions.

Subsec. (d)(1)(B)(i), (3)(C). Pub. L. 106–113, §1000(a)(9) [title I, §1011(a)(1)], substituted ''programming'' for ''programing''.

Subsec. (d)(4)(A). Pub. L. 106–113, §1000(a)(9) [title I, §1011(a)(2)], substituted ''statutory'' for ''compulsory'' in two places.

Subsec. (f). Pub. L. 106–113, §1000(a)(9) [title I, §1011(a)(1)], substituted ''programming'' for ''programing'' wherever appearing.

1995—Subsec. (c)(1). Pub. L. 104–39 inserted ''and section 114(d)'' after ''of this subsection''.

1994—Subsec. (f). Pub. L. 103–369, §3(b), in fourth undesignated par. defining local service area of a primary transmitter, inserted ''or such station's television market as defined in section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to section 76.55(e) or 76.59 of title 47 of the Code of Federal Regulations,'' after ''April 15, 1976,''.

Pub. L. 103–369, §3(a), inserted ''microwave,'' after ''wires, cables,'' in third undesignated par., defining cable system.

1993—Subsec. (d)(1). Pub. L. 103–198, §6(a)(1), struck out '', after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted),'' after ''Register shall'' in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 103–198, §6(a)(2), struck out '', after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted),'' after ''Register of Copyrights may''.

Subsec. (d)(2). Pub. L. 103–198, §6(a)(3), substituted ''All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Librarian of Congress in the event no controversy over distribution exists, or by a copyright arbitration royalty panel in the event a controversy over such distribution exists.'' for ''All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title. The Register shall submit to the Copyright Royalty Tribunal, on a semiannual basis, a compilation of all statements of account covering the relevant six-month period provided by clause (1) of this subsection.''

Subsec. (d)(4)(A). Pub. L. 103–198, §6(a)(4), substituted ''Librarian of Congress'' for ''Copyright Royalty Tribu-

nal'' before ''claim with the'' and for ''Tribunal'' before ''requirements that the''.

Subsec. (d)(4)(B). Pub. L. 103–198, § 6(a)(5), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, it shall, after deducting its reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.''

Subsec. (d)(4)(C). Pub. L. 103–198, § 6(a)(6), substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal''.

1990—Subsec. (c)(2)(B). Pub. L. 101–318, § 3(a)(1), struck out ''recorded the notice specified by subsection (d) and'' after ''where the cable system has not''.

Subsec. (d)(2). Pub. L. 101–318, § 3(a)(2)(A), substituted ''clause (1)'' for ''paragraph (1)''.

Subsec. (d)(3). Pub. L. 101–318, § 3(a)(2)(B), substituted ''clause (4)'' for ''clause (5)'' in introductory provisions.

Subsec. (d)(3)(B). Pub. L. 101–318, § 3(a)(2)(C), substituted ''clause (1)(A)'' for ''clause (2)(A)''.

1988—Subsec. (a)(4), (5). Pub. L. 100–667, § 202(1)(A), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d)(1)(A). Pub. L. 100–667, § 202(1)(B), inserted provision that determination of total number of subscribers and gross amounts paid to cable system for basic service of providing secondary transmissions of primary broadcast transmitters not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing under section 119.

1986—Subsec. (d). Pub. L. 99–397, § 2(a)(1), (4), (5), substituted ''paragraph (1)'' for ''clause (2)'' in par. (3), struck out par. (1) which related to recordation of notice with Copyright Office by cable systems in order for secondary transmissions to be subject to compulsory licensing, and redesignated pars. (2) to (5) as (1) to (4), respectively.

Pub. L. 99–397, § 2(a)(2), (3), which directed the amendment of subsec. (d) by substituting ''paragraph (4)'' for ''clause (5)'' in pars. (2) and (2)(B) could not be executed because pars. (2) and (2)(B) did not contain references to ''clause (5)''. See 1990 Amendment note above.

Subsec. (f). Pub. L. 99–397, § 2(b), substituted ''subsection (d)(1)'' for ''subsection (d)(2)'' in third undesignated par., defining a cable system.

Pub. L. 99–397, § 1, inserted provision in fourth undesignated par., defining ''local service area of a primary transmitter'', to cover that term in relation to low power television stations.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–303, § 6, Oct. 6, 2006, 120 Stat. 1483, provided that:

''(a) IN GENERAL.—Except as provided under subsection (b), this Act [see Short Title of 2006 Amendment note set out under section 101 of this title] and the amendments made by this Act shall be effective as if included in the Copyright Royalty and Distribution Reform Act of 2004 [Pub. L. 108–419].

''(b) PARTIAL DISTRIBUTION OF ROYALTY FEES.—Section 5 [amending section 801 of this title] shall take effect on the date of enactment of this Act [Oct. 6, 2006].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–419 effective 6 months after Nov. 30, 2004, subject to transition provisions, see section 6 of Pub. L. 108–419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104–39, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 3(b) of Pub. L. 103–369 effective July 1, 1994, see section 6(d) of Pub. L. 103–369, set out as an Effective and Termination Dates of 1994 Amendment note under section 119 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–198, § 7, Dec. 17, 1993, 107 Stat. 2313, provided that:

''(a) IN GENERAL.—This Act [see Short Title of 1993 Amendment note set out under section 101 of this title] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Dec. 17, 1993].

''(b) EFFECTIVENESS OF EXISTING RATES AND DISTRIBUTIONS.—All royalty rates and all determinations with respect to the proportionate division of compulsory license fees among copyright claimants, whether made by the Copyright Royalty Tribunal, or by voluntary agreement, before the effective date set forth in subsection (a) shall remain in effect until modified by voluntary agreement or pursuant to the amendments made by this Act.

''(c) TRANSFER OF APPROPRIATIONS.—All unexpended balances of appropriations made to the Copyright Royalty Tribunal, as of the effective date of this Act, are transferred on such effective date to the Copyright Office for use by the Copyright Office for the purposes for which such appropriations were made.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 3(e)(1) of Pub. L. 101–318 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 801 of this title] shall be effective as of August 27, 1986.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective Jan. 1, 1989, see section 206 of Pub. L. 100–667, set out as an Effective Date note under section 119 of this title.

## § 112. Limitations on exclusive rights: Ephemeral recordings

(a)(1) Notwithstanding the provisions of section 106, and except in the case of a motion picture or other audiovisual work, it is not an infringement of copyright for a transmitting organization entitled to transmit to the public a performance or display of a work, under a license, including a statutory license under section 114(f), or transfer of the copyright or under the limitations on exclusive rights in sound recordings specified by section 114(a), or for a transmitting organization that is a broadcast radio or television station licensed as such by the Federal Communications Commission and that makes a broadcast transmission of a performance of a sound recording in a digital format on a nonsubscription basis, to make no more than one copy or phonorecord of a particular transmission program embodying the performance or display, if—

(A) the copy or phonorecord is retained and used solely by the transmitting organization that made it, and no further copies or phonorecords are reproduced from it; and

(B) the copy or phonorecord is used solely for the transmitting organization's own transmissions within its local service area, or for purposes of archival preservation or security; and

(C) unless preserved exclusively for archival purposes, the copy or phonorecord is destroyed within six months from the date the transmission program was first transmitted to the public.