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UPDATE
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Copyright Office Amends Cable Compulsory Copyright Rules

On December 12, 2024, the U.S. Copyright Office published a rule amending the regulations governing the royalty reporting practices of cable operators under section 111 of the Copyright Act ("Compulsory Copyright Rules"). The regulations are effective January 27, 2025. There is no small company exemption – all cable operators must comply with the Compulsory Copyright Rules.

Summary. The rule revises the Copyright Office's Compulsory Copyright Rules related to the reporting requirements in the statement of account forms ("SOAs"). Specifically, the rule revises the regulatory definition of "gross receipts" to clarify that equipment fees (formerly called "converter" fees) and broadcast fees (e.g., retransmission consent/broadcast surcharges) must be included and reported in Space E of the SOA. In addition, the rule removes the regulatory provision requiring remitters to provide information regarding "Services Other Than Secondary Transmissions" in Space F and eliminates all references to Grade B contour. Lastly, the rule changes regulations regarding the processing of refunds, supplemental or amended payments, or calculation of interest, as well as case management procedures.

These revisions require new SOA forms, which the Copyright Office is preparing. Until new forms are developed, cable operators should use the most current forms available on the Office's website. We provide below a summary of the specific revisions.

Gross Receipts, Subscriber, and Rate Information.

- Equipment Fees. The Copyright Office revised the regulatory definition of "gross receipts" to clarify that all equipment fees (formerly called "converter" fees) used to access broadcast signals must be included in gross receipts. Importantly, if an operator charges a fee for the use of a software application in lieu of physical equipment, that fee should be included in the operator's gross receipts calculations.
- Broadcast Fees/Surcharges. The Copyright Office clarified that broadcast fees (no matter how described) must be included in gross receipts. The Office reasoned that broadcast fees are charges for the service of providing broadcast transmissions, and subscribers cannot receive broadcast transmissions without paying those charges. Accordingly, the Copyright Office determined that such fees are within the scope of charges that traditionally have been included in gross receipts.
- Franchise Fees. The Copyright Office again concluded that franchise fees should not be included in gross receipts because franchise fees are not directly linked to the service of broadcast transmissions in the same way that broadcast fees are linked.
- Gross receipts calculations for bundled services. When cable services are bundled with non-cable services, such as double-play and triple-play bundles, gross receipts include amounts that would have been collected if such subscribers received cable services as

an unbundled stand-alone product. The Copyright Office therefore reasoned that including the full, non-bundled value of the video services is consistent with Congress's intent that the "gross receipts" reported serve as the baseline against which royalties are calculated.

Copyright Office Reporting Practices.

- Closing Out Statements of Account. The Copyright Office will now close out SOA examinations, and place the SOA with other publicly available records, if a filer fails to reply to correspondence after 90 days. If a cable operator wants to submit a reply, pay additional royalties or make necessary corrections, the operator will now need to file an amended SOA along with a filing fee. Failure to respond within the prescribed 90-day window will forfeit any potential refund of an overpayment associated with any issue with the SOA identified by the Office in its correspondence.
- Royalty Refunds. Royalty refunds for amounts of $50.00 or less will now only be issued upon request before the SOA is closed and made available for public inspection.
- Payment of Supplemental Royalty Fees and Filing Fees by EFT. All payments of supplemental royalty fees and filing fees must be made by EFT (i.e. pay.gov).
- Interest Assessment. The Copyright Office maintained its long-held policy that interest payments are not required if the interest charge is less than $5.00.

These changes are applicable to your upcoming 2024/2 SOA filing due March 3, 2025. If you have questions about the Copyright Office's rules, copyright forms, or fees, please contact Alma Hoxha at (314) 462-9000 ext. 4 or ahoxha@cinnamonmueller.com or Bruce Beard at (314) 394-1535 or bbeard@cinnamonmueller.com.

FCC Orders Reporting Requirements for Retransmission Consent Blackouts

On January 3, 2025, the FCC released an Order requiring MVPDs to notify the FCC of television broadcast station blackouts lasting over 24 hours that occur due to a retransmission consent negotiation impasse. The rule applies to either a primary stream or multicast stream of a commercial full power, Class A, or LPTV station.

MVPDs will not be required to comply until the web reporting portal is functional. The FCC's Media Bureau will announce specific submission instructions via public notice at least 30 days before the requirements go into effect.

Background. Section 325 of the Cable Television Consumer Protection and Competition Act prohibits broadcast television stations and MVPDs from failing to negotiate retransmission consent in good faith. However, the FCC is aware that cable and satellite TV subscribers are increasingly experiencing blackouts of broadcast station channels while being subjected to ever rising retransmission consent fees. Today, neither broadcast stations nor MVPDs are under any obligation to report broadcast station blackouts occurring on MVPD platforms. As a result, the FCC does not have a systematic method for learning of significant MVPD service disruptions involving broadcast programming. Consequently, the FCC decided to establish a reporting framework for broadcast station blackouts occurring on MVPD platforms to better enable the FCC to perform its duties and foster greater public transparency around blackouts caused by failed retransmission consent negotiations.

Reporting Requirements.

- Initial Blackout Notification. If a blackout lasts more than 24 hours, MVPDs must file an initial notification no later than two business days after the 24-hour period has elapsed. The initial notification will provide basic blackout information, both public and confidential, to the FCC, and must include:
    - The MVPD's name;
    - The station(s) no longer being retransmitted, including the call sign, Facility ID, the network affiliation(s), if any, of each affected primary and multicast stream, and the unaffected streams, if any;
    - The DMA(s) in which affected subscribers reside; and
    - The date and time of the initial interruption to programming.

Additionally, MVPDs must report a good faith estimate of the number of subscribers affected. The FCC will treat this estimate as presumptively confidential.

- Final Blackout Notification. This notice must be submitted no later than two business days after the end of the reportable blackout and should publicly state the date on which retransmission resumed for each station included in the initial notification.

Supplemental Reporting. A broadcaster may seek correction of an Initial or Final Blackout Notification if the notification contains a substantive error.

Submissions. Notifications will be submitted through an online reporting portal designed, hosted, and administered by the FCC (modeled after the Network Outage Reporting System – NORS). Similar to NORS, the FCC will provide a file template to promote the ease of reporting, maintain a list of ongoing and past blackouts, and allow users to easily update or resolve blackout notices. MVPDs will use an electronic, "fill in the blank" template to report the required information on each blackout notice.

If you have questions about the new blackout requirements or retransmission consent in general, please contact Scott Friedman at (314) 462-9000 ext. 3 or sfriedman@cinnamonmueller.com, or Alma Hoxha at (314) 462-9000 ext. 4 or ahoxha@cinnamonmueller.com.
