

CONGRESS SHOULD BE WARY OF PROPOSALS TO “HARMONIZE” THE CABLE AND SATELLITE COMPULSORY LICENSES

The Copyright Office has proposed that Congress “harmonize” the cable and satellite compulsory copyright licenses by jettisoning the gross receipts-based formula employed by the cable industry for more than 30 years and replacing it with a “flat fee” approach similar to that used by the satellite industry. Unfortunately, its proposal represents a solution in search of a problem.

The Office’s proposal reflects a case where the pursuit of the perfect would be the enemy of the good.

- The cable compulsory license is a great public policy success story.
 - Nearly \$4 billion in royalties paid to copyright owners.
 - Rights to countless hours of television programming efficiently cleared.
 - Millions of Americans – particularly those in smaller and rural markets – afforded uninterrupted access to a full complement of broadcast stations.
- The flat fee royalty model is not inherently simpler or better than cable’s gross receipts formula.
 - The DBS flat fee license has been the subject of years of litigation and ongoing calls for Congressional intervention. This also has been the case for other flat fee licenses (such as the webcasting licenses).
- Harmonizing the licenses cannot and will not achieve perfect “parity” between cable and satellite.
 - The two licenses, while different in their approaches, already achieve a rough measure of competitive balance that takes into account historical, regulatory, and technological differences in the industries.
 - Any wholesale revision of the cable compulsory license will create uncertainty and disrupt established market patterns and consumer expectations.
 - Cable has consistently supported the creation and extension of the satellite license and has never sought to use its license to gain a competitive advantage over its competitors.
 - There is near unanimity amongst the stakeholders (cable, satellite, broadcast, and copyright owners) in opposing “harmonization” of the two licenses.
- To the extent that there are specific compensation issues that need to be addressed, the cable industry is committed to working with Congress on targeted “fixes” to actual, demonstrated problems.
 - One such targeted reform would address the Copyright Office’s recent and mistaken determination that Congress intended cable operators to pay royalties for “phantom” distant signals that are presumed to be delivered to cable subscribers, even when such signals are not, in actual fact, delivered to such subscribers.
 - While not directly related to the compulsory copyright license, we also believe the time has come for Congress to address the Communication Act’s broken retransmission consent regime.

CONGRESS SHOULD NOT TEMPT THE LAW OF UNINTENDED CONSEQUENCES BY MAKING UNNECESSARY CHANGES IN THE CABLE COMPULSORY LICENSE.