

July 31, 2014

VIA EMAIL

Jacqueline C. Charlesworth
General Counsel and Associate Register
United States Copyright Office
101 Independence Avenue, SE
Washington, D.C. 20559

Re: *Docket No. 2012-5 – Verification of Statements of Account Submitted By Cable Operators and Satellite Carriers*

Dear Ms. Charlesworth:

During the “Public Roundtable” hosted by the Copyright Office on July 9, 2014, representatives of the undersigned “Joint Stakeholders” committed to consult with one another regarding three issues raised by the Office: (1) the establishment of a period of consultation among the auditor, copyright owner(s) and statutory licensee being audited prior to the commencement of an audit; (2) the applicable standard governing the audit; and (3) the sharing and/or shifting of audit costs by the copyright owner(s) and statutory licensee being audited. In fulfillment of the aforementioned commitment, the Joint Stakeholders propose the following revisions to the compromise proposal originally submitted to the Office on October 24, 2012.

1. Consultation Period. Joint Stakeholders recommend that the Office redesignate Section 201.16(e)(4) as Section 201.16(e)(5) and insert the following new paragraph (4):

Within ten (10) days following the selection of the auditor, the auditor shall meet by telephone or in person with designated representatives of the participating copyright owners and the statutory licensee to review the scope of the audit and the schedule for conducting and completing the audit.

2. Audit Standard. In keeping with other audit provisions administered by the Copyright Office, *see, e.g.*, 37 C.F.R. §384.6(e), the Joint Stakeholders’ October 24, 2012 proposed rules contained several references to AICPA’s Generally Accepted Auditing Standards (“GAAS”) as the standard governing audits of cable and satellite statements of accounts. We understand the Office’s concern that those standards, which are typically applied in the course of auditing financial statements, may not be the appropriate reference standard here. However, we have been unable to reach consensus on whether it would suffice to simply replace the references to GAAS with references to the AICPA’s “Attestation Standards.”

3. Cost-sharing/Cost-shifting: The Joint Stakeholders recommend that the Office replace Section 201.16(j) of the October 24, 2012 proposal with the following revised procedure for sharing and/or shifting the audit costs:

(j) Costs of the Audit.

(1) If the auditor's final report concludes that there was no net aggregate underpayment or a net aggregate underpayment of 5 percent or less, the participating copyright owner(s) shall pay for the full costs of the auditor. If the auditor's final report concludes that there was a net aggregate underpayment of 10 percent or more, the statutory licensee that is the subject of the audit shall pay the full costs of the auditor. If the auditor's final report concludes that there was a net aggregate underpayment of more than 5 percent but less than 10 percent, the costs of the auditor shall be split evenly between the statutory licensee and the participating copyright owner(s). In the event the statutory licensee disputes the amount of the net aggregate underpayment identified by the auditor, and an action is brought in a court of competent jurisdiction to determine the royalties due for the period(s) covered by the auditor's final report, there shall be a final true-up of the amount of the auditor's costs borne by either party based on the final outcome of that action relative to the cost responsibilities set forth herein.

(2) If a statutory licensee is responsible for any portion of the costs of the auditor, a representative of the participating copyright owner(s) will provide the statutory licensee with an itemized accounting of the auditor's total costs and the statutory licensee shall reimburse such representative for the appropriate share of those costs no later than thirty (30) days following the deadline for the statutory licensee to exercise its right to cure under paragraph (i)(1).

(3) No later than the fifteenth of each month during the course of the audit, the auditor shall provide the participating copyright owner(s) and the statutory licensee with itemized statements of the costs incurred by the auditor during the previous month. [No change from October 24, 2012 proposal].

(4) No portion of the auditor's costs that exceed the amount of the net aggregate underpayment may be recovered from the statutory licensee. [No change from October 24, 2012 proposal].

The Joint Stakeholders urge that the Office adopt the Joint Stakeholders' October 24, 2012 proposed rules, as modified herein, without further changes.

Sincerely,

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