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NEWSLETTER

Copyright Office Opposes Practical Compulsory License For Internet Retransmission Of Copyrighted Broadcast Signals

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Television broadcasters often do not own the copyrights in the programs and music broadcast over their stations. As a result, they typically are unable to grant the right to retransmit their signals, a right subject to the control of the multitude of copyright owners who provide programming. Because it is virtually impossible for a retransmitter to deal with each of these copyright owners, the Copyright Act includes two statutory "compulsory" licenses in favor of cable and direct broadcast satellite systems. In a recent report to Congress, the U.S. Copyright Office has announced its opposition, for now, to a similar license for Internet retransmission. The lack of such a license will likely slow Internet retransmission of television.

As technology has developed, the functions of computers and television sets have converged. Television sets now provide Internet access and may soon perform other interactive functions formerly performed by computers. Computers provide TV-like audio and video entertainment programming. The technology already exists to transmit radio and television signals over the Internet.

Under the Copyright Act of 1976, the retransmission of a TV or radio signal containing copyrighted material requires prior consent of the copyright owner. Recognizing that cable and satellite retransmitters could not, as a practical matter, deal with each of the many copyright owners who own copyrighted material in a typical station's broadcast schedule, Congress included statutory "compulsory" licenses in their favor in the Copyright Act. These retransmission licenses can be obtained by submitting information to the U.S. Copyright Office and making payments into a Federally-administered royalty pool, which is then distributed to copyright owners. There is no need for the retransmitter to deal with each individual copyright owner.

Recently, Senator Orrin Hatch, Chairman of the Senate Judiciary Committee (which has jurisdiction over copyright matters), asked the Copyright Office to review the status of the cable and satellite compulsory retransmission licenses and to consider whether additional licenses should be established for new media, including the Internet. Based on hearings held last May and written submissions of interested parties, the

Copyright Office issued a report to Congress containing its recommendations.

The Copyright Office has for some time been philosophically opposed to compulsory licensing. As a result, it was no surprise when the Office recommended that Congress refrain from establishing an Internet compulsory license at this time. Absent such a statutory license, the only practical ways to permit Internet retransmission will be through (i) the creation of collective licensing organizations, possibly modeled after ASCAP and BMI, which license music performances, or (ii) licenses obtained "at the source" by television stations from their program producers. There are significant downsides to either course of action. Collective organizations obtain substantial market power, which can lead to abuse. Source licensing would require the station to obtain consent from each copyright owner, which can be almost as impractical as placing that burden on the retransmitter.

As the convergence of television sets and computers continues, Congress will no doubt examine this issue carefully. Several Congressional committees may hold hearings before Congress adjourns next year. It will be interesting to see whether Congress follows the approach recommended by the Copyright Office.