

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 258

[Docket No. RM 2009–2]

Section 119 and Changes in the Consumer Price Index

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office makes royalty rate adjustments for satellite carriers based upon changes in the Consumer Price Index. This year, the change in the Consumer Price Index for the relevant time period was 0.03%, a change so small that the rates remain unaffected for the 2009 licensing period.

EFFECTIVE DATES: This regulation is effective March 23, 2009 and the rates are applicable for the period of January 1, 2009, through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Assistant General Counsel, and Tanya M. Sandros, Deputy General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Pursuant to Section 119(c) and our implementing rules, we are hereby giving notice to the public of royalty rate adjustments for the accounting period commencing January 1, 2009, based on changes in the Consumer Price Index. This action is consistent with voluntary agreements reached between satellite carriers and copyright owners under the Copyright Act.

Section 119 and royalty payments for analog television signals. In 2004, Congress enacted the Satellite Home Viewer Extension and Reauthorization Act (“SHVERA”). SHVERA extended for an additional five years the statutory license for satellite carriers retransmitting over-the-air television broadcast stations to their subscribers and made a number of amendments to the Section 119 license. One of the amendments sets forth a process for adjusting the royalty fees paid by satellite carriers for retransmitting analog television network stations and superstations. 17 U.S.C. 119(c)(1). The law directed the Librarian of Congress to publish a notice in the **Federal Register** announcing the initiation of a voluntary negotiation period, the result of which may be a rate settlement between the parties. The Library published such a notice on December 30, 2004, and, pursuant to the statute, requested that

any agreements be submitted no later than January 10, 2005. 69 FR 78482 (December 30, 2004).

The Office received one agreement, submitted jointly by the satellite carriers DirecTV, Inc. and EchoStar Satellite L.L.C., the copyright owners of motion pictures and syndicated television series represented by the Motion Picture Association of America, and the copyright owners of sports programming represented by the Office of the Commissioner of Baseball. Section 119(c)(1)(D)(ii)(II) requires the Library to “provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.” 17 U.S.C. 119(c)(1)(D)(ii)(II). The Library published a Notice of Proposed Rulemaking on January 26, 2005, to fulfill this requirement. 70 FR 3656 (January 26, 2005). The Library subsequently adopted the rates in the voluntary agreement as final. 70 FR 17320 (Apr. 6, 2005).

The terms and conditions of the agreement were codified at Section 258.3 of the Copyright Office’s rules. Subpart (h) of this rule specifically states, with regard to private home viewing, that the 2008 rate per subscriber per month for distant superstations and network stations shall be adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all urban consumers from January 2008 to January 2009. Similarly, for viewing in commercial establishments, the 2008 rate per subscriber per month for viewing distant superstations in commercial establishments shall also be adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all urban consumers from January 2008 to January 2009.

Section 119 and royalty payments for digital television signals. Another SHVERA amendment to Section 119 set forth a process, for the first time, for adjusting the royalty fees paid by satellite carriers for the retransmission of digital broadcast signals. 17 U.S.C. 119(c)(2). The initial rates were the rates set by the Librarian in 1997 for the retransmission of analog broadcast signals, 37 CFR 258.3(b)(1)&(2), reduced by 22.5 percent. 17 U.S.C. 119(c)(2)(A). These rates are to be adjusted in accordance with the procedures set forth in Section 119(c)(1) as directed by Section 119(c)(2) of the Copyright Act.

On March 8, 2005, the Copyright Office received a letter from EchoStar Satellite, L.L.C., DirecTV, Inc., Program Suppliers, and the Joint Sports Claimants requesting that the Office

begin the process of setting the rates for the retransmission of digital broadcast signals by initiating a voluntary negotiation period so that rates for both digital and analog signals would be in place before the July 31, 2005, deadline for satellite carriers to pay royalties for the first accounting period of 2005. The Office granted the request and, pursuant to Section 119(c)(1), published a Notice in the **Federal Register** initiating a voluntary negotiation period and requesting that any agreements reached during this period be submitted no later than April 25, 2005. See 70 FR 15368 (March 25, 2005).

In accordance with the March 25 Notice, the Office received one agreement, submitted jointly by EchoStar Satellite L.L.C. and DirecTV, Inc., the copyright owners of motion pictures and syndicated television series represented by the Motion Picture Association of America, and the copyright owners of sports programming represented by the Office of the Commissioner of Baseball. The agreement proposed rates for the private home viewing of distant superstations and distant network stations for the 2005–2009 period, as well as the viewing of those signals for commercial establishments.

As required by statute, the Library provided public notice of the royalty fees from the voluntary agreement and afforded parties an opportunity to state that they object to those fees. 17 U.S.C. 119(c)(1)(D)(ii)(II). The Library published a Notice of Proposed Rulemaking on May 17, 2005, to fulfill this requirement. 70 FR 28231 (May 17, 2005). Consequently, the Library adopted the rates as set forth in the voluntary agreement as final. 70 FR 39178 (July. 7, 2005).

The terms and conditions of the agreement were codified at Section 258.4 of the Copyright Office’s rules. Subpart (d) of the rule states the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers for the first three years of the licensing period and the process for readjusting the rates for the last two years of the five year licensing period (2008 and 2009).

The Copyright Office’s regulations prescribe that the 2009 rates should be adjusted according to the following schedule. For private home viewing, the 2008 rate per subscriber per month for distant superstations and network stations is to be adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009. For viewing in commercial establishments, the 2008

rate per subscriber per month for viewing distant superstations in commercial establishments is to be adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

2009 rates. The purpose of this Notice is to announce the royalty rates for the secondary transmission of the analog and digital transmissions of network and superstations to reflect changes in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) for the relevant period is .03% (January 2008 figure was 211.080; the figure for January 2009 is 211.143, based on 1982–1984=100 as a reference base). Rounding off to the nearest cent, the rates are as follows. For private home viewing of analog stations: 24 cents per subscriber per month for distant superstations and 24 cents per subscriber per month for distant network stations. For viewing in commercial establishments: 48 cents per subscriber per month for distant superstations. For private home viewing of digital stations: 24 cents per subscriber per month for distant superstations and 24 cents per

subscriber per month for distant network stations. For viewing in commercial establishments: 48 cents per subscriber per month for distant superstations.

List of Subjects in 37 CFR Part 258

Copyright, Satellite, Television.

Final Regulations

■ For the reasons set forth above, the Copyright Office amends 37 CFR chapter II as follows:

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

■ 1. The authority citation for part 258 continues to read as follows:

Authority: 17 U.S.C. 119, 702, 802.

■ 2. Section 258.3 is amended by revising paragraph (h) to read as follows:

§ 258.3 Royalty fee for secondary transmission of analog signals of broadcast stations by satellite carriers.

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(h) Commencing January 1, 2009, the royalty rate for secondary transmission of analog signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) 24 cents per subscriber per month for distant superstations.

(ii) 24 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 48 cents per subscriber per month for distant superstations.

■ 3. Section 258.4 is amended by revising paragraph (e) to read as follows:

§ 258.4 Royalty fee for secondary transmission of digital signals of broadcast stations by satellite carriers.

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■ (e) Commencing January 1, 2009, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) 24 cents per subscriber per month for distant superstations.

(ii) 24 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 48 cents per subscriber per month for distant superstations.

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Dated: March 16, 2009

Marybeth Peters,

Register of Copyrights

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