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In the Matter of	Comments of:
Retransmission of Digital Broadcast Signals Pursuant to the Cable Statutory License	Phillip V. Marano VILLANOVA SCHOOL OF LAW 299 Spring Mill Road, Villanova, PA 19085 phillip.marano@villanova.edu
Docket No. RM 2005-5	Submitted via U.S. Postal Service December 13, 2006

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I - INTRODUCTION

I am a third year student at Villanova University School of Law, and I welcome the opportunity to submit these comments in response to the U.S. Copyright Office's (the Office) notice of inquiry (NOI). While I am aware that the deadline for initial comments has passed, I respectfully request that the Office consider the following opinions and information in any subsequent, related rulemaking. I have had the benefit of reading all the initial comments, thus I would not object to characterizing my comment as a general reply comment.

The following comment touches on what I feel to be the practical and legal implications of the copyright owners' petition. At the risk of extreme oversimplification, the copyright owners' petition essentially requests an alteration of Office rules with regard to the retransmission of digital broadcast signals under the 17 U.S.C. § 111 cable statutory license. I write about several pertinent issues on my own behalf as both a student of the law and an avid digital television subscriber/viewer.

A. Motivation for Comment

My initial concern falls squarely upon the increased costs that the proposed changes potentially impose upon cable providers. Such costs may result from increased record keeping burdens, Statement of Account (SOA) requirements, or additional royalty fees associated with digital cable services. I am concerned with these costs because I feel it is only logical to assume that they will inevitably trickle down to digital cable subscribers such as myself.

For as long as I can remember, I have watched and enjoyed cable television. I have received and paid bills to cable companies ever since I became responsible for them at the age of 18. I have subscribed for cable services throughout several different areas of both New Jersey and Pennsylvania. Most importantly, I have griped along with many other cable subscribers over the years as costs of subscription have increased, and also as new costs have been invented such as lease payments for digital converter boxes.

Despite such monetary concerns, I have a sincere desire as a student of the law to provide the Office with a researched opinion on the practical and legal implications of the copyright owners' recommended alterations. After all, Intellectual Property is my favorite subject of study in law school. I am a member of the Villanova Law School Intellectual Property Society, and I am currently enrolled in two IP classes: "Intellectual Property" and "Law and the Internet."

B. Roadmap of Comment

Section I of my comment contains a brief background on the Cable Statutory License, the factual history of the NOI, and the specific NOI issues that I will address. Section II presents my discussion and conclusions on the legal and practical implications of the NOI. Lastly, Section III contains an ultimate summation of both the information and opinions presented in this comment.

I – BACKGROUND

Although a fair portion of the following background information is presented in the NOI, it is summarized here in the interest of comment completeness. Additional information has been provided to properly frame particular conclusions I have made on the issues.

A. The Statutory Cable License

The Copyright Act provides that "the owner of copyright under this title has the exclusive rights to do and authorize" certain enumerated actions, the most relevant being "copying," "public performance" and "public display."[1] However, the Copyright Act also contains provisions that limit such exclusive rights. These sections of the Copyright Act are analogized by some to the U.S. tax code for both their sheer size and intricacy.

Specifically, 17 U.S.C. § 111 carves out certain secondary transmissions from the realm of copyright infringement. It essentially creates a "cable statutory license" to retransmit a performance or display of a work embodied in a primary transmission.[2] Primary transmissions are those made to the public by a transmitting facility (essentially a television station) which is licensed by the Federal Communications Commission.[3] A secondary transmission is the further, simultaneous transmission of a primary transmission.[4] Such secondary transmissions are, for the most part made by cable systems (also known as cable companies). Thus the cable statutory license protects qualified cable systems from infringement actions by copyright owners when making secondary transmissions.

The caveat of the statutory license is that cable systems making secondary transmissions, must submit a semi-annual royalty fee to the Office. The rationale behind these royalties is that the "retransmission of distant non-network programming by cable systems causes damage to the copyright owners by distributing the program in an area beyond which it has been licensed."[5]

Such royalty fees are eventually distributed to entitled copyright owners such as the members of the Motion Picture Association of America or the Joint Sports Claimants. The fees that secondary transmitters pay are derived from a certain fixed percentage of their gross receipts. Information such as "calculated gross receipts," "reported gross receipts," and "distant signal equivalents" (DSE) is required disclosure from secondary transmitters; it is reported to the Office via the use of SOA forms. This information aids the Office in verifying gross receipts and determining which Copyright Owners are entitled to royalties.

Additionally, the Office is charged with the task of promulgating the rules which implement the statutory license, such as structuring SOA forms and defining pertinent

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[1] 17 U.S.C. § 106.

[2] Please note that 17 U.S.C. § 111 and the term "cable statutory license" may be used interchangeably throughout the entirety of the comment.

[3] 17 U.S.C. § 111(f).

[4] Id.

[5] Notes of Committee on the Judiciary, House Report No. 94-1476.

SOA form terminology. For instance, the Office has ruled that any fees charged for converters boxes necessary to receive broadcast signals must be included in the cable system's calculation of gross receipts, which in turn is used to calculate its royalty obligations.[6]

B. The Notice of Inquiry.

The Motion Picture Association of America (MPAA), the National Basketball Association, the National Football League, the National Collegiate Athletic Association, the National Hockey League, and the Women's National Basketball Association (collectively, Joint Sports Claimants) have petitioned the Office to clarify the applicability of its existing cable statutory license rules to the retransmission of digital broadcast signals.

These copyright owners argue that the cable statutory license was created "nearly thirty years ago, at a time when all broadcast stations were analog and transmitted a single stream of programming... It was not until 1997 that the FCC adopted rules governing transition of the broadcast television industry from analog to digital signals, and thereby authorized each individual broadcaster to transmit multiple streams of programming over various channels... Congress has never specifically addressed in Section 111 the issues arising from cable carriage of digital broadcast signals."[7]

Such rational for a petition is suspiciously innocuous. Upon closer inspection, it is clear that this is not the first petition that copyright owners have filed on the subject. On June 7, 2005, the MPAA petitioned the Office to commence a rulemaking proceeding addressing the reporting practices of cable operators under the statutory license. The impetus for the copyright owner's June 7th petition can be viewed as twofold:

- First, despite "significant technological, marketing and regulatory changes in the cable television industry... there have been relatively few modifications to the SOA forms that cable operators must file. . . ."[8] and
- Second, the copyright owners felt they were not receiving proper disclosure and royalty amounts from cable providers under the statutory license.[9]

The latter rational is of great interest in light of the popular view that the movie industry is inordinately wealthy. However, the MPAA made a convincing showing of the

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[6] *Compulsory License for Cable Systems*, 43 Fed. Reg. 27827, 27828 (June 27, 1978); see also 37 C.F.R. § 201.17(b)(1); Form SA 1-2, General Instructions, p. v; Form SA 3, General Instructions, p. vi.

[7] Petition for rulemaking by Program Suppliers and Joint Sports Claimants (collectively "Copyright Owners") filed May 23, 2005.

[8] Petition for Rulemaking by the MPAA filed June 7, 2005

[9] Id.

disparity between cable providers "calculated gross receipts" and their "reported gross receipts." Calculated gross receipts generally represent a cable system's number of subscribers and the rates those subscribers pay. Reported gross receipts generally represent the full amount a cable system received for monthly services for all tiers of service, including additional set and converter box fees. Thus calculated gross receipts are essentially an early estimate of reported gross receipts. The two should approximately calculate to be equal; the MPAA is quick to point out that this is rarely the case.[10]

The MPAA argued that without an accurate representation of calculated gross receipts there is no way for copyright owners to check the veracity of reported gross receipts. This is because under the cable statutory license, unlike other compulsory licenses, copyright owners are not provided the right to audit cable systems; rather they "rely almost exclusively on SOA information for compliance review."[11]

In reply, on behalf of cable systems, the National Cable & Telecommunications Association (NCTA) submitted compelling exculpatory evidence. They pointed out that calculated gross receipts are reported "as of the last day of the accounting period, whereas [reported] gross receipts are accumulated over [an] entire six month period."[12] During this time disparity, both tier pricing and the number of paying customers can fluctuate for any number of reasons.[13] Such fluctuation, they argued, is the reason for disparities between reported and calculated gross receipts.

Thus, the backdrop of this continuing battle between copyright owners and cable providers seems clear: Copyright owners seem generally unsatisfied with current SOA reporting efficiency and they potentially feel short changed in their royalty payments. Cable systems seem content with the status quo and also seem to have their hands tied when it comes to certain SOA reporting inefficiencies. It is with this view that I turn to digital broadcast signals.[14]

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[10] Id. In its most compelling example, the MPAA notes that Time Warner Entertainment/ ADV-NEWHSE GP calculated gross receipts of around six million dollars but reported gross receipts of approximately forty-one million dollars. The difference between calculated and reported gross receipts in that instance is a whopping thirty-five million dollars. This is almost a 585 percent disparity.

[11] Id. at 2.

[12] Comments of the National Cable & Television Communications Association, Filed September 25, 2006.

[13] Id. at 5. Such reasons include, inflation, changes in channels offered, increased programming costs, promotions and discounts.

[14] Additional consideration should be given to the motivations of the Joint Sports Claimants. It is now clear that Sports Leagues plan to begin making live digital web broadcasts of network telecasts. Such web broadcasts will include "alternate camera angles, additional sound, and in-game statistics that aren't available on the TV channel." The Hollywood Reporter, *NFL Makes Play for Live Webcasts*, November 30, 2006, available at <http://news.com.com/2100-1026_3-6139552.html> last visited November 30, 2006. As convergence between the internet and television continues, the Joint Sports Claimants seemingly wish to secure royalties for any retransmissions of digital broadcasts pursuant to the cable statutory license.

Despite the new digital spin that the copyright owners have placed on their latest petition, at the heart of the issue remains the fact that they are seeking an increase in SOA reporting efficiency. The logical assumption is that inconsistencies in digital broadcast reporting practices among cable systems largely contribute to SOA reporting inefficiencies. This perspective is inherent in the copyright owner's assertion that cable systems are increasingly retransmitting both digital and analog signals, but not uniformly reporting carriage of both signals.[15]

C. Notice of Inquiry Issues Addressed

A myriad of specific issues are raised by this NOI, however I will only address a select few. "One significant aspect of the Office's NOI is that it concludes . . . that the statutory license applies to the retransmission of digital signals . . . the Office had not previously expressed an opinion on [this]."[16] First, I will address, on a general level, how digital broadcast signals apply to the cable statutory license. Second, I will address the copyright owner's proposed changes to copyright office regulations, and SOA forms. Specifically, I will discuss how the Office should treat reporting requirements in light of the temporary coexistence of digital and analog signals. Lastly I will address issues related to digital converter box fees.

II – DISCUSSION

THE CABLE STATUTORY LICENSE APPLIES TO BOTH DIGITAL AND ANALOG BROADCAST SIGNALS, THUS CABLE SYSTEMS CURRENTLY RETRANSMITTING BOTH SHOULD PAY ROYALTIES FOR BOTH.

Hundreds of stations presently transmit both analog and digital signals from their broadcast facilities.[17] The exact number was more than 1,537 as of October 25, 2005.[18] The reason for the cable system's gold rush to digital television is the Federal Communications Commission (FCC). "In 1997, the FCC adopted it initial rules governing the transition of the broadcast television industry from analog to digital

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[15] Petition for Rulemaking of the Program Suppliers and Joint Sports Claimants, Filed May 23, 2005, at 11.

[16] Memorandum to Clients, Fleischman and Walsh, L.L.P., September 22, 2006, available at <http://199.236.73.119/library/Sept222006.pdf> last visited November 27, 2006.

[17] Notice of Inquiry, 71 Red. Reg. 54948 (Sept. 20, 2006); citing Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, 21 FCC Rcd. 2503 (2006) ("12th Annual Video Competition Report") at ¶95.

[18] Id.

technology and authorized each individual television station licensee to broadcast in digital format."[19]

In fact, "Congress has mandated [that] digital television migration must be complete by February 17, 2009 at which time broadcasters must cease all analog television broadcasting and return their analog licenses to the FCC."[20] Thus, until that time, it is a cable system's choice whether or not to retransmit digital television.

A. Cable Systems Benefit from Digital Signals

It is clear that not all cable systems currently retransmit digital signals. Those that do, market digital cable to consumers as superior to traditional cable, and rightfully so. Digital cable can provide "all your favorite T.V. programming . . . with *crystal-clear digital picture and sound*"[21] (emphasis added).

Basic equity principles dictate that the statutory cable license cannot apply to just analog cable television alone. Digital cable gives cable systems a new product to sell, and essentially a new way to draw customers. Providing digital cable allows cable systems to draw greater subscription numbers, and charge those subscribers greater fees for related digital services. Imagine how unjust the result would be where cable systems need only pay royalties for secondary transmissions of analog broadcasts. This would occur despite the fact that the majority of their subscribers are actually viewing digital and not analog broadcasts.

The NTCA reports that "as an initial matter, virtually all secondary transmissions of digital signals on cable consist of local carriage."[22] To this end, the legislative history of 17 U.S.C. § 111 provides that:

> . . . there was no evidence that the retransmission of 'local' broadcast signals by a cable operator threatens the existing market for copyright program owners. Similarly, the retransmission of network programming, including network programming which is broadcast in 'distant' markets, does not injure the copyright owner. The copyright owner contracts with the network on the basis of his programming reaching all markets served by the network and is compensated accordingly.[23]

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[19] Notice of Inquiry, 71 Red. Reg. 54948 (Sept. 20, 2006); citing Advanced Television Systems and Their Impact on Existing Television Broadcast Service, 12 FCC Rcd. 12809 (1997).

[20] Comments of Capital Broadcasting Inc., Filed November 6, 2006; citing 47 U.S.C. 309(j)(14).

[21] See http://www.timewarnercable.com/corporate/products/digitalcable/digitalcabledetailspage.html, last visited November 27, 2006.

[22] Comments of NTCA, Filed on November 6, 2006.

[23] Notes on Committee on the Judiciary, House Report No. 94-1476.

The implication is that since "virtually all secondary transmissions of digital signals consist of local carriage," digital cable largely falls outside of the scope of the cable statutory license.

It is puzzling that although "the cable industry has no objection to reporting carriage of digital signals on statements of accounts,"[24] they so strongly object to "additional royalties for carriage of digital broadcast signals from stations already on cable."[25] If virtually all digital cable transmissions are local, then it should be of no consequence whether or not *distant* digital retransmissions create additional royalties.

B. The Impending Doom of Analog Signals

Capitol Broadcasting Inc., has said that "Congress intended digital cable to supplant, not supplement analog television programming."[26] I could not have put it better myself. In a little less than over two year's time, analog television broadcasting will be gone. In the interim it is best to provide a rule that clearly establishes the cable statutory license's applicability to digital retransmission without hindering the national transition to digital cable.

EXTENSIVE CHANGES TO OFFICE RULES AND SOA FORMS ARE UNECCESSARY TO EFFECTUATE THE CABLE STATUTORY LICENSE'S APPLICABILITY TO DIGITAL SIGNALS.

A. Initial Considerations

The digital spin that copyright owners have placed on their most recent request for increased reporting efficiency seems to be a success. The regulations and reporting instruments of cable statutory license are clearly in need of updating for several reasons:

- To provide nationwide notice to cable systems that retransmission of digital cable signals is, in fact, covered by the cable statutory license,

- To provide guidance to cable systems in reporting their retransmission of digital broadcast signals,

- To clarify that provisions applying to converter box fees, are in fact applicable to digital converter fees (discussed at length below),

[24] Comments of NTCA, Filed on November 6, 2006.

[25] Id.

[26] Comments of Capitol Broadcasting Inc., Filed November 6, 2006.

- To potentially increase the ability of copyright owners to perform compliance reviews, and

- To include digital cable signals solely because they will be the sole form of television broadcast signals remaining as of 2009.

So long as there is general consensus that both Office rules and SOA forms are in need of some alterations, several of the NTCA arguments against increased disclosure burdens are worth noting.

First, the NTCA argues that the excessive disclosure of information on SOA forms would be unduly burdensome.[27] Second, it is true that excessive reporting requirements would run contrary to the Paperwork Reduction Act, which seeks to "minimize the paperwork burden for . . . persons resulting from the collection of information by the Federal Government."[28] Lastly, it is possible that excessive disclosure requirements might seek to improperly illicit sensitive, confidential business information, the disclosure of which would lead to a loss of competitive advantage in the marketplace.

Thus, the Office is charged with the difficult task of weighing these policy considerations against each other. The end result should effectively add retransmission of digital broadcast signals to the cable statutory license, but avoid unduly burdening cable systems with reporting requirements or hindering the nation's transition into the digital television age.

B. Substantive Recommendations

The most essential alteration should take place in section 37 C.F.R. §201.17(e)(9) by adding "analog or digital" just as the copyright owners have suggested. Additionally, §201.17(e)(9)(i) should be amended to read "including the designation 'TV' for analog signals and 'DT' for digital signals." This alteration is also in agreement with the copyright owner recommendations. The practical effect of these two amendments would be to give notice to cable systems that retransmission of both analog and digital signals need to be reported separately.

Likewise the SOA form should be amended to reflect these regulatory alterations. The amendments proposed by the copyright owners seem excessive with relation to tiers of service. It seems sufficient to ask cable systems simply to delineate between analog services and digital services, the number of subscribers for each and the varying rates for each.

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[27] Comments of the NTCA, filed September 25, 2006.

[28] Id. citing, Paperwork Reduction Act, 44 U.S.C. § 3501.

If the goal is to have cable systems distinguish and report analog versus digital transmissions, then these few simple alterations are sufficient. In fact such minimal requirements also comport with the cable system's assertion that there are no objections to reporting carriage of digital broadcast signals on SOA forms.

SUBSCRIBERS ARE EFFECTIVELY FORCED TO LEASE DIGITAL CABLE CONVERTERS, THUS CONVERTER FEES SHOULD BE INCLUDED IN GROSS RECEIPTS.

It is a well settled rule that "any fees charged for converters necessary to receive broadcast signals must be included in the cable system's gross receipts used to calculate its Section 111 royalty payment."[29] The NOI asserts that "currently, cable subscribers are generally unable to receive digital signals offered by their cable operator unless they obtain a special converter, i.e. digital set top box. . . ."[30]

A. Virtual Lack of Consumer Choice

When I first read that statement, I whole-heartedly agreed. I believed the only way to receive digital cable was from a cable company's converter box. But much to my surprise, the NCTA has made it clear that there several other ways to receive digital television signals. This is because basic tier digital signals are "in the clear," meaning they are not scrambled. Thus, anyone receiving a basic digital cable signal can simply go to the electronics store and:

- Buy a digital cable ready television and "plug and play" digital signals,[31]
- Buy a digital cable ready receiver or,[32]
- Buy a TiVo Series 3 digital video recorder.[33]

Thus the issue becomes, whether or not a cable system-provided converter box is actually *necessary* for digital cable reception. To be honest this was the first time I had ever heard of such products. As a consumer I operated under the belief that any use of an independent converter to receive television transmissions from a cable company was illegal, regardless of whether or not the converter was rightfully purchased.

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[29] Notice of Inquiry, 71 Red. Reg. 54948 (Sept. 20, 2006), citing 37 C.F.R. 201.17(b)(1).

[30] Id.

[31] Comments of the NCTA, Filed November 6, 2006.

[32] Id. at 12.

[33] Id.

I attempted to shop for "digital cable converters" online and found advertisements for everything from digital camera converters, to Windows compatible video converters. I even found a "digital cable filter" which advertised that "they will never know you are watching the pay per views without paying!"[34] Admittedly, I was able to find actual digital cable converters on eBay, however these were all owned by individuals who had leased a cable system's converter long enough to now own it. These individuals were seeking to sell second hand Comcast and Motorola converters.

As an additional measure of investigation, I decided to poll a law school class to assess their knowledge as digital cable consumers. The overwhelming majority of law students polled knew what digital cable was. Additionally, just about everyone polled admitted that they pay a set fee each month to rent their digital cable converters. They even admitted that they were forced to pay additional fees for additional converter boxes in their homes.

However, when asked whether or not they were able to go to the store and buy their own digital converter to receive basic digital cable, not a single person believed that they could. Simply put, no one actually knows that they do not have to use the cable company's converter box to receive basic digital cable! This lack of choice on the part of consumers effectively results in the conclusion by consumers that cable system-provided converters are necessary! There is simply no other law-abiding option in the mind of the consumer.

The reality of the current circumstances for consumers clearly fits within the rationale and policy interests of the cable statutory license. A subscriber "must have a converter to receive, in usable form, the signals of all the television stations that constitute the cable system's 'basic service of providing secondary transmission of primary broadcast transmitters.' Fees paid to cable systems for converters, therefore, are clearly amounts paid for the system's secondary transmission service and are includable in that system's 'gross receipts.'"[35] Digital cable subscribers believe they must have a cable system-provided converter to receive basic digital cable because they simply know of no alternatives.

Consider the following hypothetical: I wish to establish a cable subscription in a new residence. I call my local cable company to set up an installation date. Assume that all I want is basic digital cable and that I do not know I can buy a digital ready T.V. or an independent cable converter. When I ask my cable company for basic digital cable, is it really feasible that they will tell me I can either lease their converter or buy one on my own? No. Is it feasible that the person installing my digital cable will present me with

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[34] <u>See</u> < http://www.digitalfiltering.com/> last visited November 27, 2006. Amusingly the same website provides a disclaimer that "It is against the law to receive channels without paying for them so you must call your cable company when you are going to watch a special order channel."

[35] Compulsory License for Cable Systems, 43 Red. Reg. 27827 (June 27 1978).

the choice to either lease the converter he has brought to my home or buy one on my own? Again, the answer is no.

B. Monthly Rental Fees in Package Deals

This lack of an effective choice on the part of consumers is only compounded by the manner in which cable companies structure their discounts and fee arrangements. Apparently, some cable companies have structured arrangements with subscribers whereby the subscribers may receive one type of service "free" "provided that they pay, among other things a . . . monthly fee for an HDTV converter."[36] In such an instance, the line between amounts being paid for converter rentals versus amounts being paid for additional services is hopelessly skewed.

Cable companies are in a position to make converter fees contingent upon subscription to other services or vice versa. Thus it becomes impossible to tell whether the consumer is actually paying for additional services beyond basic digital cable or the mere ability to view basic digital cable, or both. Regardless the proper focus should be upon the fact that cable system-provided converters are essentially necessary to view basic digital cable.

C. Second Digital Converter Fees

Another long standing rule is that additional converter fees are clearly a payment for basic secondary transmission service.[37] Additional converter fees relate simply to extra fees paid for multiple converters in a subscriber's home. Under the current regime, if a subscriber desires to receive digital cable in more than one television in the house, then that subscriber must rent an additional digital converter.

For all of the same reasons provided above, fees for additional converter sets should be included in a cable system's gross receipts. Consumers effectively have no other choice than to rent these converters, and cable companies should not be permitted the opportunity to structure fee arrangements that avoid adding converter fees into gross receipts.

D. Future Considerations and Recommendations

In sum, the cable statutory license requires inclusion of rental fees paid for cable converters into gross receipts because such converters are necessary to receive a signal. The same effectively rings true today with digital cable. Cable systems should not be permitted to "hide the ball" from consumers; nor should they be permitted to structure fee arrangements that blur the lines of what exactly consumers are paying for.

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[36] Petition for Rulemaking by the MPAA, Filed May 23, 2005; citing <http://www.timewarnercable.com/nebraska/products/hdtv.html> (visited May 20, 2005).

[37] Compulsory License for Cable Systems, 43 Fed. Reg. 958, 959 (Jan. 5, 1978).

It certainly rings true that "the fact that some cable systems are including such HDTV converter fees in their 'gross receipts' while others are not doing so underscores the need for the Office to clarify this issue to ensure consistency in the application of the relevant rules . . . ."[38] To this end, I support the proposed changes of the copyright owners to the Office rules as to converter box fees. Specifically, "gross receipts" should rightly include fees charged to subscribers for converters used to receive digital or HDTV. "Gross receipts" should also include additional fees charged to subscribers for any multiple digital converters.

However, some consideration should be given towards the future. It is altogether possible that some time in the future, consumers will become aware that they do not need to rent digital converter boxes from their cable providers. Theoretically, if cable system-provided converters are *only* being used for extra services and not basic digital cable, associated fees would seem to be outside the scope of "gross receipts." Essentially, they would have nothing to do with the system's "secondary transmission service."[39]

At the current time such developments seem very unlikely. So long as fees for rental of digital converters and basic digital subscriptions remain intertwined through package deals, consumer confusion on the issue is unlikely to ever subside.

III – CONCLUSION

As I have stated, my initial reaction as a consumer to this NOI was unfavorable. That was based on my reasoning that any increased financial burden to digital cable systems will trickle down to digital cable subscribers. However, as you have seen, my arguments have largely been in favor of the copyright owner's petition:

- The cable statutory license applies to digital signals because they are used by cable systems to draw increased profits from copyrighted works, which copyright owners should rightfully receive their share from. Additionally, digital signals will be the only form of television broadcast signals as of 2009, thus it is best that the cable statutory license encompass them as soon as possible.

- The regulations and SOA forms relating to the cable statutory license need only minimal alterations to make clear that digital broadcast signals are required in disclosure of cable systems. Disclosure should cover rudimentary data such as whether signals broadcast are analog or digital, how many subscribers there are of each, and what rates those subscribers pay.

[38] Petition for Rulemaking by the MPAA, filed May 23, 2005.

[39] Comments of the NTCA, filed on November 6, 2006.

- Currently, digital cable converter boxes are *necessary* to receive basic digital programming because a shocking minority of consumers actually knows that they can choose an independent brand. Additionally, this effective lack of choice is compounded by fee arrangements for digital cable whereby it is unclear exactly what the consumer is paying for, a digital converter, services beyond basic digital cable, or both.

Ultimately, it is clear that the cable statutory license will be in turmoil up until and possibly beyond 2009. It is a very interesting time to study intellectual property considering that advancing technology is changing the face of the law every day. I sincerely appreciate the time you have taken to read my comment. Please do not hesitate to contact me should you desire any clarification or elaboration on the information and recommendations contained herein.