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## **LIBRARY OF CONGRESS**

### **U.S. Copyright Office**

#### **37 CFR Part 201**

**[Docket No. 2013-5]**

#### **Authentication of Electronic Signatures on Electronically Filed Statements of Account**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Final rule.

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**SUMMARY:** The United States Copyright Office is amending its regulation prescribing requirements related to the submission of Statements of Account under the section 111 license for secondary transmissions of broadcast programming by cable systems. The amendments will allow cable systems operating under the statutory license to electronically sign Statements of Account, and to submit them to the Office electronically.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Sarang V. Damle, General Counsel and Associate Register of Copyrights, by email at [sdam@loc.gov](mailto:sdam@loc.gov), or Regan A. Smith, Deputy General Counsel, by email at [resm@loc.gov](mailto:resm@loc.gov). Each can be contacted by telephone by calling (202) 707-8350.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background.**

Section 111 of the Copyright Act, title 17 of the United States Code, provides cable operators with a statutory license to retransmit a performance or display of a work

embodied in a primary transmission made by a television station licensed by the Federal Communications Commission (“FCC”). As section 111 directs, the Copyright Office has issued a regulation prescribing deposit requirements for cable operators to make use of this license. 37 CFR 201.17; *see* 17 U.S.C. 111(d). Cable system statutory licensees are required to file Statements of Account (“SOAs”) and pay royalty and filing fees to the Copyright Office, which are received by its Licensing Division. SOAs contain information on a cable operator’s channel line-ups and gross receipts for the sale of cable service to the public. Cable systems are directed to file either a short- or long-form SOA (called the “SA1/2” and “SA3” forms, respectively), depending upon whether the system has reported semiannual gross receipts of more or less than \$527,600. 37 CFR 201.17(d). Payments made under the cable statutory license are remitted semi-annually to the Office, which invests the royalties in United States Treasury securities pending distribution of the funds to those copyright owners who are entitled to receive a share of the fees.

Currently, the process for submission of SOAs is paper-based, and each cable system filer (or “remitter”) is required to include “the handwritten signature” of a person of authority (*e.g.*, a corporate officer if the system is owned by a corporation) accompanying a “declaration of the veracity of the statements of fact contained in the [SOA] and the good faith of the person signing in making such statement of fact.” 37 CFR 201.17(e)(14). On June 26, 2013, the Copyright Office issued a notice of proposed rulemaking (“NPRM”) proposing amendments to its regulations to allow remitters to use electronic signatures and file Statements of Account electronically. 78 FR 38240 (June 26, 2013). At that time, as part of a broader reengineering of the workflow of the Licensing Division, the Office was in the process of configuring and deploying a software package

to serve as an electronic filing system. 78 FR at 38241. The NPRM presumed that electronic signatures and submission of SOAs, and, eventually, royalty payments, would occur through deployment of this new system. The Office received two comments in response to the NPRM: one from National Cable & Telecommunications Association (“NCTA”), which is addressed below, and another from Hooks Management Group, LLC, which expressed overall support for electronic filing.

Since the issuance of the NPRM, the Office discovered a number of issues with the development of the new system, which caused reassessment of the project in its original form.<sup>1</sup> Accordingly, the Office shifted efforts to identify a more cost-effective and efficient solution, and requested that the Library of Congress terminate the contract.

At that same time, the Office made plans to develop an alternate, spreadsheet-based form to allow the electronic submission of SOAs. In addition to the PDF forms already available on the Office’s website, the Office will now post fillable electronic short- and long-form SOAs (“SA1/2E” and “SA3E” forms) on its website at <https://www.copyright.gov/licensing/> and <https://www.copyright.gov/forms/>. These forms employ a format similar to a preparatory tool already used by many stakeholders to file SOAs with the Office, while making the forms and option of electronic submission available to all remitters. Informal feedback from stakeholders regarding the Office’s decision to terminate the original project and implement a more cost-effective solution has been positive.

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<sup>1</sup> For example, the vendor hired to develop this software indicated that it would be unable to fulfill the deliverables under the current development contract and that basic operation and maintenance would rise in 2017 to a costly annual overhead expense. Further, the Office learned that after June 2018, the vendor would no longer be supporting the software version that had been licensed, and that a significant additional expenditure of funds would be necessary to move the project to a new software version.

## **II. Discussion.**

The Office now amends its regulations to permit the electronic signature and submission of SOAs. These regulatory amendments are expected to allow the Office to immediately receive SOAs submitted by remitters via email. Permitting electronic submission and signatures will provide a more efficient and convenient method for remitters over the current paper-based system. In addition, electronic submission of documents will provide the data included in SOAs in a more useable format to the Office and to copyright owners interested in viewing and extracting this information.

The comments focused principally on the electronic authentication and signature requirement of the proposed rule. As discussed below, the Office has simplified its approach to electronic signature and submission of SOAs from that set forth in the NPRM. This new approach has allowed the Office to streamline the regulatory language of the proposed rule.

*Signatures.* The NPRM had presumed it was necessary to establish “a robust identity authentication system for the preparation and electronic filing of SOAs.” 78 FR at 38241. In part, this was because the electronic system as originally conceived would eventually be expanded to handle royalty payments. Under this assumption, the NPRM tentatively concluded that it was necessary to implement a Level 3-qualifying method of identity assurance used for electronic transactions filed with the federal government under the Office of Management and Budget (“OMB”)’s manual, *E-Authentication Guidance for Federal Agencies, [OMB 04-04]*. *Id.* at 38242. Among other things, this authentication would establish “the identity of the individual(s) preparing the form” and

“the individual(s) charged with the responsibility of certifying and signing the SOA during a secure online session.” *Id.*

In its comment, NCTA urged the Office “to modify its rules to expressly permit the use of facsimile or ‘s-signatures’ on paper statements of account.” NCTA Comments at 1. NCTA suggested that allowing cable operators to use “s-signatures” (*e.g., /s/ John Smith*) would provide greater flexibility in preparing submissions, without posing a risk to copyright owners. NCTA also suggested that the “robust identity authentication system,” with “complex” accompanying rules envisioned by the NPRM was overly complex, and pointed out that the FCC has not adopted an authentication or verification process when accepting routine filings by NCTA members. NCTA Comments at 4-5.

In light of NCTA’s comment, and the decision to move to a different solution for electronic completion and submission of SOAs, the Office has reassessed its requirements with respect to electronic submission and use of electronic signatures. Under the reconceived procedure, electronic SOAs would come in on their own, and royalty payments would continue to separately be sent to the Office using an electronic funds transfer. This diminishes the need for a robust authentication system. Indeed, the OMB’s guidance for authentication and verification is not intended to apply to electronically signed documents.<sup>2</sup> The Office also recently assessed the requirements for electronic signatures in a recently published notice of proposed rulemaking concerning the modernization of copyright recordation (“Recordation NPRM”), which tentatively concluded that documents bearing electronic signatures should be recordable under section 205. As the Recordation NPRM also noted, the Electronic Signatures in Global

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<sup>2</sup> *E-Authentication Guidance for Federal Agencies*, [OMB 04-04], § 1.2 (Dec. 16, 2003).

and National Commerce Act (“E-Sign Act”), enacted in 2000, provides that “with respect to any transaction in or affecting interstate or foreign commerce . . . a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form.” 15 U.S.C. 7001(a)(1). The E-Sign Act defines “electronic signature” broadly as “an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.” *Id.* at 7006(5). Although the E-Sign Act does not restrict the Office’s authority to issue regulations related to section 111, the Office views the E-Sign Act as persuasive guidance.

The Government Paperwork Elimination Act is also persuasive, in that it directs executive agencies to provide “for the option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper” and “for the use and acceptance of electronic signatures, when practicable.” *See* Pub. L. No. 105-277, tit. xvii, sec. 1704, 112 Stat. 2681, 2681-750 (1998). And, as NCTA pointed out, other agencies, including the FCC and the United States Patent and Trademark Office, already consider electronic or s-signatures to be valid original signatures on virtually all documents. NCTA Comments at 3.

Based on this reassessment, the final rule amends the signature requirements in section 201.17(e)(14) to expressly permit the submission of any legally valid signature, including electronic signatures, and does not include some of the more complex definitions and requirements proposed by the NPRM as a new section 201.17(e)(15). In addition, the Office is removing the current handwritten signature requirement, and will now allow the use of electronic or s-signatures on all forms—*e.g.*, the paper SA1/2 and

SA3 forms, and their electronic counterparts designated as SA1/2E, and SA3E—although the Office will continue to accept handwritten signatures on the paper-based SA1/2 and SA3 forms.

*Accounting Periods and Deposits.* To account for electronic submission, and as set out in the proposed rule, the Office is removing the term “physically” from Section 201.17(c)(2), which presently includes a reference to SOAs being “physically received.”

*Forms; Electronic Submission.* The Office is amending section 201.17(d) to account for its provision of the electronic forms, as described above. In addition, the amendment makes explicit that SOAs should be submitted to the Licensing Division in accordance with instructions provided on the form itself or otherwise made available on the Office’s website at <https://www.copyright.gov/licensing/>. In practice, as it has done with other electronically submitted forms, such as notices submitted under section 115, the Office plans to require the electronic forms (*e.g.*, the SA1/2E and SA3E forms) to be submitted electronically, and to allow paper-based forms (*e.g.*, the SA1/2 and SA3 forms) to be submitted either via physical mail or electronically.<sup>3</sup>

*Copies of Statements of Account.* In light of the changes to section 201.17(d), which clarify that instructions for submitting forms will be provided by the Office on its website or the form itself, the Office is removing section 201.17(l), which currently proscribes the number of physical copies that must be filed by licensees.

*Corrections, supplemental payments, and refunds.* As raised in the NPRM, and following the same rationale allowing for the electronic signature and submission of

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<sup>3</sup> See Requirements and Instructions for Electronically Submitting a Section 115 Notice of Intention to the Copyright Office, <https://www.copyright.gov/licensing/115/noi-instructions.html> (“The NOI must be emailed as an Excel file, and must not be converted to PDF or any other file format.”).

SOAs, the Office is updating its rule to allow for electronic signatures and submission in connection with corrections, supplemental payments, and refunds. In addition, as proposed in the NPRM, the Office is now codifying its practice of accepting a signed and certified amended SOA in lieu of a sworn affidavit or statement under 28 U.S.C. 1746 currently required by the regulation. In practice, the Office receives few sworn affidavits or statements that are not part of an amended SOA, and so to facilitate efficiency and clarity, the final rule removes references to separate affidavits or statements and simply requires remitters to submit an amended SOA.

*Batch Submissions.* The proposed rule also included language permitting the submission of multiple SOAs by the same cable operator in one group or “batch” filing. NCTA’s comment raised a concern that this change would be “unnecessarily burdensome” by imposing overly rigid requirements for the review, signature, and submission of SOAs upon remitters. NCTA Comments at 4. In light of the Office’s redirected efforts described above and NCTA’s comment, the final rule does not include this originally-proposed amendment.

### **List of Subjects in 37 CFR Part 201**

Copyright.

### **Regulations**

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 201 as follows:

## **PART 201—GENERAL PROVISIONS**

1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

2. Amend § 201.17 by:
  - a. Revising the first sentence of paragraph (c)(2);
  - b. Revising paragraph (d);
  - c. Revising paragraphs (e)(14) introductory text and (e)(14)(iii)(A);
  - d. Removing paragraph (l);
  - e. Redesignating paragraphs (m) and (n) as paragraphs (l) and (m), respectively; and
  - f. Revising newly redesignated paragraph (l)(4)(iii)(B).

The revisions read as follows:

**§201.17 Statements of account covering compulsory licenses for secondary transmissions by cable systems.**

\* \* \* \*

(c) \* \* \*

(2) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such Statement and fee were received in the Copyright Office. \*

\* \* \* \*

(d) *Statement of Account forms and submission.* Cable systems should submit each Statement of Account using an appropriate form provided by the Copyright Office on its website and following the instructions for completion and submission provided on the Office's website or the form itself.

(e) \* \* \*

(14) A legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006, of:

(iii) \* \* \*

(A) The printed name of the person signing the Statement of Account;

\* \* \* \* \*

(l) \* \* \*

(4) \* \* \*

(iii) \* \* \*

(B) In the case of a request filed under paragraph (m)(2)(ii) of this section, where the royalty fee was miscalculated and the amount deposited in the Copyright Office was either too high or too low, the request must be accompanied by an amended Statement of Account. The amended Statement shall include an explanation of why the royalty fee was improperly calculated and a detailed analysis of the proper royalty calculations.

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Dated: May 12, 2017.

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**Karyn Temple Claggett,**  
*Acting Register of Copyrights and*  
*Director of the U.S. Copyright Office*

Approved by:

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**Carla D. Hayden,**  
*Librarian of Congress*

**[BILLING CODE 1410-30-P]**

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