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persons who are unable to read normal printed material as a result of their handicap, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of a radio subcarrier authorization referred to in clause (8)(iii), Provided, That the provisions of this clause shall not be applicable to more than one performance of the same work by the same performers or under the auspices of the same organization.

- (10) notwithstanding paragraph 4 above, the following is not an infringement of copyright: performance of a nondramatic literary or musical work in the course of a social function which is organized and promoted by a nonprofit veterans' organization or a nonprofit fraternal organization to which the general public is not invited, but not including the invitees of the organizations, if the proceeds from the performance, after deducting the reasonable costs of producing the performance, are used exclusively for charitable purposes and not for financial gain. For purposes of this section the social functions of any college or university fraternity or sorority shall not be included unless the social function is held solely to raise funds for a specific charitable purpose.

*(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2549; Pub. L. 97-366, Sec. 3, Oct. 25, 1982, 96 Stat. 1759.)*

**17 U.S.C. 111 Limitations on exclusive rights: Secondary transmissions**

(a) **Certain Secondary Transmissions Exempted.** - The secondary transmission of a primary transmission embodying a performance or display of a work is not an infringement of copyright if -

- (1) the secondary transmission is not made by a cable system, and consists entirely of the relaying, by the management of a hotel, apartment house, or similar establishment, of signals transmitted by a broadcast station licensed by the Federal Communications Commission, within the local service area of such station, to the private lodgings of guests or residents of such establishment, and no direct charge is made to see or hear the secondary transmission; or
- (2) the secondary transmission is made solely for the purpose and under the conditions specified by clause (2) of section 110; or
- (3) the secondary transmission is made by any carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others: Provided, That the provisions of this clause extend only to the activities of said carrier with respect to secondary transmissions and do not exempt from liability the activities of others with respect to their own primary or secondary transmissions;
- (4) the secondary transmission is made by a satellite carrier for private home viewing pursuant to a statutory license under section 119; or
- (5) the secondary transmission is not made by a cable system but is made by a governmental body, or other nonprofit organization, without any purpose of direct or indirect commercial advantage, and without charge to the recipients of the secondary transmission other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.

(b) **Secondary Transmission of Primary Transmission to Controlled Group.** - Notwithstanding the provisions of subsections (a) and (c), the secondary transmission to the public of a primary transmission embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the primary transmission is not made for reception by the public at large but is controlled and limited to reception by particular members of the public: Provided, however, That such secondary transmission is not actionable as an act of infringement if -

- (1) the primary transmission is made by a broadcast station licensed by the Federal

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- Communications Commission; and
- (2) the carriage of the signals comprising the secondary transmission is required under the rules, regulations, or authorizations of the Federal Communications Commission; and
  - (3) the signal of the primary transmitter is not altered or changed in any way by the secondary transmitter.
- (c) Secondary Transmissions by Cable Systems. -
- (1) Subject to the provisions of clauses (2), (3), and (4) of this subsection and section 114(d), secondary transmissions to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work shall be subject to compulsory licensing upon compliance with the requirements of subsection (d) where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.
  - (2) Notwithstanding the provisions of clause (1) of this subsection, the willful or repeated secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, in the following cases:
    - (A) where the carriage of the signals comprising the secondary transmission is not permissible under the rules, regulations, or authorizations of the Federal Communications Commission; or
    - (B) where the cable system has not deposited the statement of account and royalty fee required by subsection (d).
  - (3) Notwithstanding the provisions of clause (1) of this subsection and subject to the provisions of subsection (e) of this section, the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcements transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the cable system through changes, deletions, or additions, except for the alteration, deletion, or substitution of commercial advertisements performed by those engaged in television commercial advertising market research: Provided, That the research company has obtained the prior consent of the advertiser who has purchased the original commercial advertisement, the television station broadcasting that commercial advertisement, and the cable system performing the secondary transmission: And provided further, That such commercial alteration, deletion, or substitution is not performed for the purpose of deriving income from the sale of that commercial time.
  - (4) Notwithstanding the provisions of clause (1) of this subsection, the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 509, if (A) with respect to Canadian signals, the community of the cable system is located more than 150 miles from the United

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States-Canadian border and is also located south of the forty-second parallel of latitude, or (B) with respect to Mexican signals, the secondary transmission is made by a cable system which received the primary transmission by means other than direct interception of a free space radio wave emitted by such broadcast television station, unless prior to April 15, 1976, such cable system was actually carrying, or was specifically authorized to carry, the signal of such foreign station on the system pursuant to the rules, regulations, or authorizations of the Federal Communications Commission.

(d) Compulsory License for Secondary Transmissions by Cable Systems. -

(1) A cable system whose secondary transmissions have been subject to compulsory licensing under subsection (c) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation -

(A) a statement of account, covering the six months next preceding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers, the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, and such other data as the Register of Copyrights may from time to time prescribe by regulation. In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing pursuant to section 119. Such statement shall also include a special statement of account covering any nonnetwork television programming that was carried by the cable system in whole or in part beyond the local service area of the primary transmitter, under rules, regulations, or authorizations of the Federal Communications Commission permitting the substitution or addition of signals under certain circumstances, together with logs showing the times, dates, stations, and programs involved in such substituted or added carriage; and

(B) except in the case of a cable system whose royalty is specified in subclause (C) or (D), a total royalty fee for the period covered by the statement, computed on the basis of specified percentages of the gross receipts from subscribers to the cable service during said period for the basic service of providing secondary transmissions of primary broadcast transmitters, as follows:

- (i) 0.675 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to paragraphs (ii) through (iv);
- (ii) 0.675 of 1 per centum of such gross receipts for the first distant signal equivalent;
- (iii) 0.425 of 1 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents;
- (iv) 0.2 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter; and in computing the amounts payable under paragraphs (ii) through (iv), above, any fraction of a distant signal equivalent shall be computed at its fractional value and, in the case of any cable system located partly within and partly without the local service

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- area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located without the local service area of such primary transmitter; and
- (C) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters total \$80,000 or less, gross receipts of the cable system for the purpose of this subclause shall be computed by subtracting from such actual gross receipts the amount by which \$80,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than \$3,009. The royalty fee payable under this subclause shall be 0.5 of 1 per centum, regardless of the number of distant signal equivalents, if any; and
  - (D) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than \$80,000 but less than \$160,000, the royalty fee payable under this subclause shall be
    - (i) 0.5 of 1 per centum of any gross receipts up to \$80,000; and
    - (ii) 1 per centum of any gross receipts in excess of \$80,000 but less than \$160,000, regardless of the number of distant signal equivalents, if any.
- (2) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Librarian of Congress in the event no controversy over distribution exists, or by a copyright arbitration royalty panel in the event a controversy over such distribution exists.
  - (3) The royalty fees thus deposited shall, in accordance with the procedures provided by clause (4), be distributed to those among the following copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period:
    - (A) any such owner whose work was included in a secondary transmission made by a cable system of a nonnetwork television program in whole or in part beyond the local service area of the primary transmitter; and
    - (B) any such owner whose work was included in a secondary transmission identified in a special statement of account deposited under clause (1)(A);
    - (C) any such owner whose work was included in nonnetwork programming consisting exclusively of aural signals carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programs.
  - (4) The royalty fees thus deposited shall be distributed in accordance with the following procedures:
    - (A) During the month of July in each year, every person claiming to be entitled to compulsory license fees for secondary transmissions shall file a claim with the Librarian of Congress, in accordance with requirements that the Librarian of Congress shall prescribe by regulation. Notwithstanding any provisions of the antitrust laws, for purposes of this clause any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

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- (B) After the first day of August of each year, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, determine whether there exists a controversy concerning the distribution of royalty fees. If the Librarian determines that no such controversy exists, the Librarian shall, after deducting reasonable administrative costs under this section, distribute such fees to the copyright owners entitled to such fees, or to their designated agents. If the Librarian finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty fees.
  - (C) During the pendency of any proceeding under this subsection, the Librarian of Congress shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.
- (c) Nonsimultaneous Secondary Transmissions by Cable Systems. -
- (1) Notwithstanding those provisions of the second paragraph of subsection (f) relating to nonsimultaneous secondary transmissions by a cable system, any such transmissions are actionable as an act of infringement under section 501, and are fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, unless -
    - (A) the program on the videotape is transmitted no more than one time to the cable system's subscribers; and
    - (B) the copyrighted program, episode, or motion picture videotape, including the commercials contained within such program, episode, or picture, is transmitted without deletion or editing; and
    - (C) an owner or officer of the cable system
      - (i) prevents the duplication of the videotape while in the possession of the system,
      - (ii) prevents unauthorized duplication while in the possession of the facility making the videotape for the system if the system owns or controls the facility, or takes reasonable precautions to prevent such duplication if it does not own or control the facility,
      - (iii) takes adequate precautions to prevent duplication while the tape is being transported, and
      - (iv) subject to clause (2), erases or destroys, or causes the erasure or destruction of, the videotape; and
    - (D) within forty-five days after the end of each calendar quarter, an owner or officer of the cable system executes an affidavit attesting
      - (i) to the steps and precautions taken to prevent duplication of the videotape, and
      - (ii) subject to clause (2), to the erasure or destruction of all videotapes made or used during such quarter; and
    - (E) such owner or officer places or causes each such affidavit, and affidavits received pursuant to clause (2)(C), to be placed in a file, open to public inspection, at such system's main office in the community where the transmission is made or in the nearest community where such system maintains an office; and
    - (F) the nonsimultaneous transmission is one that the cable system would be authorized to transmit under the rules, regulations, and authorizations of the Federal Communications Commission in effect at the time of the nonsimultaneous transmission if the transmission had been made