(202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2011–4804 Filed 3–2–11; 8:45 am]

BILLING CODE 4510–FN–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 2010–10]

Section 302 Report

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: Congress has directed the Copyright Office ("Office") to prepare a report addressing possible mechanisms, methods, and recommendations for phasing out the statutory licensing requirements set forth in Sections 111, 119, and 122 of the Copyright Act. This notice seeks comment on marketplace solutions to replace the use of the statutory licenses for the retransmission of over-the-air broadcast signals, suggestions for ways to implement market-based licensing practices, and legislative and regulatory actions that would be needed to bring about these changes.

DATES: Comments due 45 days after date of publication in the **Federal Register**. Reply comments due 75 days after date of publication in the **Federal Register**.

ADDRESSES: All comments and reply comments shall be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/section302*. The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–0796 for special instructions.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Assistant General Counsel, or 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 or by electronic mail at *bgol@loc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

There are three statutory licenses in the U.S Copyright Act governing the retransmission of distant and local television broadcast station signals. The cable statutory license, codified in Section 111 of the Act, permits a cable operator to retransmit both local and distant radio and television station signals to its subscribers who pay a fee for cable service. The satellite carrier statutory license, codified in Section 119 of the Act, permits a satellite carrier to provide distant broadcast television station signals to its subscribers. Satellite carriers may also retransmit local television station signals into the stations' local markets on a royalty-free basis pursuant to the Section 122 statutory license. Use of this license is contingent upon the satellite carrier complying with the rules, regulations, and authorizations established by the Federal Communications Commission ("FCC") governing the carriage of local television station signals. *See* 17 U.S.C. 122(a)(2).

Sections 111, 119, and 122 operate in place of transactions that would otherwise be left to the open marketplace. They allow cable operators and satellite carriers to retransmit the television broadcast content carried on local and distant broadcast signals without having to incur the transaction costs associated with individual negotiations for such programming. In exchange for the statutory right to publicly perform copyrighted broadcast programming, the users of the Section 111 and Section 119 licenses pay royalties in accordance with the separate rate structures set forth in the law. Larger cable operators pay a percentage of royalties based upon the gross receipts generated by a cable system, while satellite carriers pay royalties on a per subscriber, per signal, per month basis. Cable operators and satellite carriers must file Statements of Account (and pay royalty fees) every six months with the Office and report which broadcast signals they have retransmitted.

Under the statutory licenses, local and distant broadcast television stations transmit a variety of programming, including network and syndicated programming, movies, sports programming, local news broadcasts, noncommercial shows, religious material, and music of all types. The cable operators and satellite carriers pay royalties at the rate set forth by law. These royalty fees are collected by the Copyright Office and invested in government securities until the time that copyright owners can seek and participate in the process of allocating such fees. Under Chapter 8 of the Copyright Act, the Copyright Royalty Judges ("CRJs"), not the Office, are charged with authorizing the distribution of the royalty fees and adjudicating royalty claim disputes arising under Sections 111 and 119 of the Act.[1]

Prior to the enactment of the Copyright Act of 1976, U.S. copyright

[1] Copyright owners who have historically claimed a share of the statutory royalties are as follows: (1) "Program Suppliers" (commercial entertainment programming) (2) "Joint Sports Claimants" (professional and college sports programming); (3) "Commercial Television Claimants" (local commercial television programming); (4) "Public Television Claimants" (national and local noncommercial television programming); (5) "National Public Radio" (noncommercial radio programming); (6) "Devotional Claimants" (religious television programming); (7) "Music Claimants" (musical works included in television programming); and (8) "Canadian Claimants" (Canadian television programming).

law recognized only one statutory (or, as it was then called, "compulsory") license, for the making and distribution of phonorecords of musical compositions that had already been distributed to the public. The 1976 Act added a number of other statutory license provisions, including Section 111. In 1988, Congress passed the Satellite Home Viewer Act, codifying Section 119 as part of the Copyright Act. Section 119 was designed to sunset after a period of five years, but Congress has reauthorized that Section four times hence in 1994, 1999, 2004, and again in 2010 (as noted below). Currently, Section 119 is due to expire on December 31, 2014. In 1999, as part of the Satellite Home Viewer Improvement Act ("SHVIA"), Congress enacted Section 122, the local-into-local license. Section 122, as well as Section 111, are permanent and are not subject to "sunset" like Section 119, although Congress in 2010 had updated the text of both sections to some degree.[2]

II. Section 302 of the Satellite Television Extension and Localism Act

A. Background

On May 27, 2010, the President signed the Satellite Television Extension and Localism Act of 2010. *See* Public Law 111–175, 124 Stat. 1218 (2010) (hereinafter "STELA"). The legislation extended the term of the Section 119 license for another five years, updated the statutory license structures to account for changes resulting from the nationwide transition to digital television, and revised the Section 111 and Section 122 licenses in several other respects. In addition, STELA instructed the Copyright Office, the Government Accountability Office ("GAO") and the FCC to conduct studies and report findings to Congress on different structural and regulatory aspects of the broadcast signal carriage marketplace in the United States.

Section 302 of STELA, entitled "Report on Market Based Alternatives to Statutory Licensing," charges the Copyright Office with the following:

Not later than 18 months after the date of the enactment of this Act, and after consultation with the Federal Communications Commission, the Register of Copyrights shall submit to the appropriate Congressional committees a report containing:

(1) Proposed mechanisms, methods, and recommendations on how to implement a phase-out of the statutory licensing requirements set forth in sections 111, 119, and 122 of title 17, United States Code, by making such sections inapplicable to the secondary transmission of a performance or display of a work embodied in a primary transmission of a broadcast station that is authorized to license the same secondary transmission directly with respect to all of the performances and displays embodied in such primary transmission;

(2) any recommendations for alternative means to implement a timely and effective phase-out of the statutory licensing requirements set forth in sections 111, 119, and 122 of title 17, United States Code; and

(3) any recommendations for legislative or administrative actions as may be appropriate to achieve such a phase-out.

In response to these directives, the Office now seeks comments and information from the public on several issues that are central to the scope and operation of Section 302 and critical to the Office's analysis of the legal and business landscapes.[3] This Notice of Inquiry ("NOI") summarizes these issues, raises a number of specific questions for public consideration, and invites other comments as appropriate and relevant.

B. Fulfilling the Mandates of Section 302

1. Section 302: Goals of the study

The Office expects to achieve several goals in its report to Congress. First, it seeks to provide Congress with a balanced appraisal of the marketplace arrangements that could occupy the space left open if Sections 111, 119, and 122 were eliminated from the Copyright Act. Next, it intends to offer Congress a choice of options from which it might approach and repeal the statutory licenses. Finally, in order to provide context and points of comparison for our report, the Office intends to discuss the current state of licensing in the video programming marketplace.

2. Replacing the Statutory Licenses

In the absence of the statutory licenses, cable operators and satellite carriers would need to rely on marketplace mechanisms to clear the public performance rights for the content transmitted by broadcast stations. The intent here is to explore marketplace alternatives that would permit cable operators and satellite carriers to retransmit the entire broadcast signal just as they have been allowed to do under the statutory licenses. The Office submits that there are at least three different approaches that should be considered in this discussion: (1) Sublicensing, (2) private licensing, and (3) collective licensing. The Office seeks comment on the viability of each of these approaches and welcomes input on other possible licensing options.

a. *Sublicensing.* Section 302(1) of STELA directs the Office to study how to implement a phase-out of the Section 111, 119 and 122 statutory licenses "by making such sections inapplicable to the secondary transmission of a performance or display of a work embodied in a primary transmission of a broadcast station that is authorized to license the same secondary transmission directly with respect to all of the performances and displays embodied in such primary transmission." This approach involves a marketplace transaction known as sublicensing. Sublicensing in the context of the video program marketplace involves non-exclusive contractual arrangements whereby a television station, while negotiating licenses with copyright owners for the public performance of copyrighted programming in a local market, would also negotiate permission for the broadcast station to sublicense to third party distributors such as cable operators and satellite carriers. Sublicense agreements are essentially non-exclusive contracts that allow broadcast stations to convey performance rights to others in the distribution chain. Both the extent of the rights and the fees for further use could be fixed as part of the initial contract between the copyright owner and the broadcaster.

In its 1997 Report to Congress entitled "A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals" ("1997 Report"), the Office asked, as an alternative to statutory licensing, whether the government should require broadcast stations to acquire cable retransmission rights from copyright owners, and allow the cable operator to negotiate with the broadcast station for the entire signal. The Office noted that this mechanism was first suggested by the FCC as a marketplace alternative to the Section 111 license.[4] The Office did not make

[2] With each reauthorization, Congress has modified the terms and conditions of the Section 119 license and, in some cases, reduced its scope. For example, in 2004, Congress narrowed Section 119 by inserting an "if local-no distant" provision, which effectively limited a satellite carrier's statutory right to carry distant signals in those markets where local into local service is offered.

[3] The Office notes that on June 30, 2008, it submitted a comprehensive Report to Congress regarding the efficacy of the Section 111, 119, and 122 licenses. *See Satellite Home Viewer Extension and Reauthorization Act 109 Report: A Report of the Register of Copyrights,* June 2008 ("Section 109 Report"). The Office cites to the record established in the Section 109 proceeding throughout this inquiry.

[4] 1997 Report at 24–25. In its 1989 statutory licensing study, the FCC stated that, in the absence of Section 111, television stations would be able to acquire cable retransmission rights to "packages" of the programming that they broadcast. It further

Continued

any specific recommendations regarding sublicensing in its 1997 Report.

In the Section 109 Report, however, the Office did state that sublicensing was a possible, and reasonable, alternative to statutory licensing. The Office noted that it is a market-driven concept that has been in practice as long as cable operators have carried non-broadcast networks. It further noted that sublicensing has been so successful that there are now over 500 channels of video programming available for distribution in the multichannel marketplace.[5] The Office concluded that Sections 111 and 119 have impeded the development of a sublicensing system and only when these statutory licenses are repealed will it be known whether sublicensing is a workable solution.

Sublicensing is not an option that was viewed positively by all commenters in the Section 109 proceeding. In its comments, NAB argued that a sublicensing approach, under which broadcasters would be expected to acquire distant market retransmission rights and then license them to cable operators and satellite carriers, would not work as a direct substitute for the statutory licenses. According to NAB, broadcasters whose stations are currently retransmitted as distant signals, typically by a handful of systems in adjacent television markets, have no core financial incentive to engage in sublicensing. It commented that since broadcasters rely principally on advertising revenues, and advertisers would not assign value to potential audiences in a few scattered cable communities outside the station's home market, "there is no direct economic incentive for such broadcasters to undertake the cost and administrative burden of acting as a clearinghouse for such distant carriage rights." NAB Reply Comments in the Section 109 Proceeding at 7–8.

NAB stated that neither the prevalence of cable networks nor even the rise of an after-market for the delivery of individual broadcast network programs supports the proposition that sublicensing would be a viable alternative to the statutory licenses. It commented that the factors relevant in those situations are not applicable to broadcasters, who focus their economic activities on the local market. NAB concluded that the fundamental economic model that drives such cable networks simply does not translate to the broadcast station context. *Id.*

Issues and Questions. The Office seeks comment on whether sublicensing is an effective alternative to both the local and distant signal statutory licenses, including specifically, comments about the current state of sublicensing of television programming in the United States. For example, how does sublicensing function in the marketplace today, especially with regard to basic cable networks? Are broadcast stations truly different from cable networks as the NAB suggests? What percentage of the public view broadcast stations through their cable and satellite subscriptions rather than directly over the air? If most of the public accesses television stations through multichannel video programming distributors, would this provide an incentive for the broadcasters to take another look at sublicensing the content for secondary transmission? Are there sublicensing examples from other countries that may be used as models in this regard? The Office also welcomes any scholarly articles on sublicensing audiovisual content or related issues that will inform the debate.

b. *Private Licensing.* Another possibility is that interested parties would develop and choose to engage in forms of direct licensing in the event statutory licensing were eliminated. Under this option, a cable operator or satellite carrier would negotiate with each copyright owner of a specific broadcast program for the right to perform the work publicly. On this point, it is important to note that the current distant signal licenses do not bar such arrangements. Copyright owners and cable operators have always been free to enter into private licensing agreements for the retransmission of distant broadcast programming. The Copyright Office has, in fact, accepted the use of private licensing in lieu of the cable statutory license to clear the public performance rights for broadcast content carried on the signal.[6] On this point, the Office notes that there are public records in the Copyright Office noting the existence of private copyright license agreements between television station group owner Entravision Communications Corporation and cable operators in Rhode Island for the carriage of broadcast content transmitted by WUNI–TV.[7] Broadcast stations that own the rights to the programs they transmit have also negotiated programming agreements with satellite carriers outside the context of Section 119. For example, DirecTV reported that it has entered into agreements for the retransmission of broadcast programming transmitted by certain television stations in Puerto Rico. *See* Section 109 Report at 86. Nevertheless, the private licensing of broadcast content has not been widespread because cable operators and satellite carriers have grown accustomed to using the statutory licenses and few broadcast stations own all the rights to the programming carried on their signals.

Under one possible private licensing model, the copyright owner and either the cable system or satellite carrier would enter into a written agreement covering the public performance right for the copyrighted work. The statutory license would be replaced with a marketplace-based license from a single individual or entity that has the right to authorize the retransmission of the copyrighted content carried on the broadcast signal, such as in the case of WUNI–TV, noted above. The Office seeks comment on whether privately negotiated copyright licenses, of the type described above, are a plausible and effective marketplace alternative to the three existing statutory licenses. To gauge the practicality of private licensing options, the Office seeks comment on how many private copyright licenses currently exist and how they function. Moreover, the Office seeks comment on whether there are any successful private licensing models in operation outside the United States that the Office may examine for purposes of this inquiry.

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stated that cable operators could then negotiate with a single entity, the broadcast station, for carriage rights to each package. The FCC remarked that the creation of dozens of cable networks by the cable and content industries provided "convincing evidence" that the transactions costs associated with full copyright liability are quite manageable. The FCC believed that this method is efficient and practical. The FCC concluded that this "networking" mechanism that is so widely employed in other forms of video distribution, appeared well-suited to the acquisition of cable retransmission rights for broadcast signals as well. *Id.,* citing 1989 FCC Study, 4 FCC Rcd at 6712.

[5] This point was raised by Disney in its testimony submitted to the Copyright Office during hearings on Section 109 of the SHVERA in 2007. *See* Section 109 Hearing Testimony of Preston Padden at 2 (July 24, 2007).

[6] *See Policy Decision Concerning Status of Low Power Television Stations,* 49 FR 46829, 46830 (Nov. 28, 1984) ("If copyright owners and cable systems uniformly agree that negotiated retransmission consents supersede the compulsory license requirements, the Copyright Office has no reason to question this interpretation provided that the negotiated license covers retransmission rights for all copyrighted works carried by a particular broadcasting station for the entire broadcast day for each day of the entire accounting period.").

[7] *See* Letter to Faye W. Eden, Coxcom Inc., from Donna M. Thacker, Sr. Licensing Examiner, U.S. Copyright Office, dated March 30, 2002 (acknowledging that WUNI has been carried by Cox under a private licensing agreement) (letter on file with the Licensing Division of the Copyright Office).

Finding Copyright Owners. The Office recognizes that private licensing may be difficult when there are multiple copyright owners in the marketplace. There are thousands of hours of programming broadcast by television stations on a weekly basis.[8] Before private negotiations can commence, cable operators and satellite carriers must be able to identify the rights holders to the programs carried by broadcast stations. This daunting task has been ameliorated by the existing statutory licensing systems, but it would have to be confronted if Sections 111, 119, and 122, were repealed.

On this point, the Office notes that certain parties are working on an extensive video program cataloging effort to identify the universe of audiovisual content available to the public. According to trade press reports, a new international coalition announced the launch of the Entertainment Identifier Registry ("EIDR"), a non-profit global independent registry that provides a uniform approach to cataloging movies, television shows, and other commercial audiovisual assets, with unique identifiers ("IDs"). The registry is set up as an industry resource to help streamline digital commerce and simplify consumer transactions.[9] The Office seeks comment on this effort and ask whether such a registry could be used to facilitate private copyright clearances by quickly identifying the copyright owner(s) associated with the rights to a particular broadcast program and perhaps serve as a clearing house for use of the work based on rate schedules established by copyright owners. If the EIDR is inapt for identifying the owners of broadcast content for retransmission purposes, the Office seeks comment on possible alternatives that would perform the same function.

In the Section 109 Report proceeding, the record revealed that cable operators were carrying, on average, two to three distant signals per system. *See* Section 109 Report at 51. The Office seeks comment on whether this information is still accurate or whether recent trendlines indicate either a decrease or increase in the number of distant signals carried. If the number of distant signals is low, then it may not be so burdensome to negotiate private license agreements with the copyright owners of the programming carried on this finite set of signals, if the owners of the copyrighted content could be easily identified. However, the Office recognizes that both cable operators and satellite carriers may have a heavier burden if they have to negotiate for the public performance rights of content on local broadcast signals, in the absence of Sections 111 and 122, given that there are nearly 1,800 full power television stations in the 210 markets across the United States. The Office notes, however, that hundreds of television stations are affiliated with several national broadcast networks and carry similar daytime and primetime programming across markets. Is it practicable to use private licensing arrangements to clear the rights for all programs transmitted by local television stations? Does the presence of a significant amount of national network programming on local broadcast stations makes private licensing a more manageable task?

Hold-ups. In the Section 109 Report proceeding, Echostar explained the "hold-up" phenomenon inherent in the rights clearance process. It asserted that when the last content owner in a station's broadcast line-up "comes to the table" to negotiate, this owner may have an unfair advantage. It stated that the copyright holder can "hold up" the negotiations by demanding excessive compensation for broadcast rights because without the agreement, the distributor will end up carrying a channel with a "hole" in its schedule. Echostar Comments in the Section 109 Proceeding at 8. The Office seeks comment on the extent of this problem and whether other program suppliers would see it as an opportunity to air their programming in the open slot. On the other hand, if hold-ups are, in fact, impediments to private negotiations, the Office asks whether this should be a reason not to recommend private licensing as a marketplace option and if there are legislative solutions that could address the problem.

c. *Collective Licensing.* Collective licensing is another possible alternative to statutory licensing. Like private licensing, it can take a variety of specific forms, but in general, it would require copyright owners to voluntarily empower one or more third party organizations to negotiate licenses with cable operators and satellite carriers for the public performance rights for their works transmitted by a television broadcast station. In the Section 109 Report, the Office found that collective licensing was a possible marketplace solution that users and copyright owners may consider for the efficient disposition of the public performance right to broadcast television programming. Section 109 Report at 90.

At this time, there are no collective licensing bodies in the United States whose business it is to license the public performance of audiovisual works transmitted by television broadcast signals. However, there are currently three performance rights organizations ("PROs") that administer the public performance right on behalf of the copyright owners of musical works: (1) The American Society of Composers, Authors and Publishers ("ASCAP"); (2) Broadcast Music, Inc. ("BMI"); and (3) SESAC, Inc. These organizations offer a blanket, nonexclusive license to users, allowing them to publicly perform the music in the PROs' respective repertories.

It should be noted that ASCAP and BMI operate under government supervision. To protect licensees from possible monopolistic behavior and antitrust concerns associated with PROs, the U.S. Department of Justice has entered into court-administered antitrust consent decrees with BMI and ASCAP. Both consent decrees have been updated over time and are similar in scope. The consent decrees allow ASCAP and BMI to administer the public performance right for musical works. They also require the PROs to grant a public performance license on a non-exclusive basis and deter discrimination amongst similarly situated licensees. The consent decrees require per-program licensing as an option for licensees instead of obliging everyone to purchase a blanket license. A significant provision in the consent decrees is the designation of the United States District Court for the Southern District of New York as a special rate court which resolves license fee disputes. If the PRO and the prospective licensee cannot agree on a reasonable fee for a proposed license, then either party can petition the special rate court to resolve the issue. SESAC is currently not bound by a consent decree, but in

[8] Recent press reports indicate that seven companies (CBS, Disney, Discovery, Fox, NBC Universal, Time Warner, and Viacom) account for 90% of all the professionally produced video that people watch. *See* David Lieberman, *Web and Other Options are Shaking Up How We Watch TV,* USA TODAY, *http://www.usatoday.com* (Jan. 3, 2011). However, there are an indeterminable number of copyright owners who own the 10% of video programming not produced by the top seven.

[9] *See Leading Entertainment Companies Create Registry for Movie and Television Content,* GlobalNewsWire.com (Oct. 27, 2010), *http://www.globenewswire.com/* ("Members of EIDR will have open access to the registry and/or be able to supply their content to the registry for identification. For content distributors, access to unique IDs will help eliminate confusion between assets with the same name or different cuts of the same video, helping to ensure that the right products are being distributed to the consumer. For content producers, the ability to register all of their assets will help simplify their post-production process and potentially lead to greater distribution of their products. Other companies in the supply chain can benefit from a streamlined communication process between their suppliers and distributors.")

2009, a class action lawsuit, which is still pending, was filed on behalf of local television stations alleging that SESAC is engaged in price fixing and other anticompetitive acts.[10]

Questions for the Public. The Office generally seeks comment on the benefits, drawbacks, costs, and operation of collective licensing structures for copyrighted works. Specifically, the Office seeks comment on the U.S. system for the collective licensing of music and whether there are any lessons to be learned in developing a collective licensing body for audiovisual works. If collective licensing of broadcast television content in the United States was found to be the appropriate marketplace replacement for Sections 111, 119, and 122, would oversight mechanisms like the consent decrees noted above be necessary? The Office also seeks input on collective licensing models around the world that may be relevant to our study.[11] Finally, the Office asks whether there are any regulatory impediments or other legal issues that may prevent parties from entering into collective agreements.

d . *Other Licensing Alternatives.* This Notice raises specific questions about three marketplace approaches to licensing copyrighted broadcast television content in the marketplace. However, these identified licensing systems should not be viewed as the universe of possible options nor should comments be limited to these three approaches. Comment on other possible marketplace solutions, not mentioned above, that would facilitate the cable and satellite retransmission of programs carried by television broadcast stations, are encouraged.

3. Eliminating the Statutory Licenses

The Office has two core mandates under Section 302 of the STELA. The first is to consider and recommend possible alternatives to the current statutory licensing systems in the Copyright Act, with a particular but not an exclusive focus on sublicensing by broadcasters. The second is to consider and recommend "a timely and effective phase-out" of the three licenses. While this step concerns "process" rather than "substance," some of the suggested approaches are keyed to the market-based alternatives previously discussed. That is, any proposals addressing the elimination of the statutory licenses would need to be considered in the context of specific marketplace solutions. Thus, the phase-out options are offered as conceptual blueprints that may be redrawn in light of the comments regarding the appropriate replacements for the existing statutory licensing systems. Moreover, the approaches addressed below may not be the only phase-out options available. As such, recommendations on other possible alternatives are welcome and will be considered.

a. *The Per-Station Approach.* Under this plan, the respective statutory licenses would be unavailable where the public performance rights for all of the programs on a single broadcast station can be cleared through a single entity and carriage terms and conditions are made available to the distributor in a timely manner so that it is able to enter into a private carriage agreement. The Office believes that this approach closely approximates the intent of Congress as reflected in Section 302(1) of STELA. The Office seeks comment on whether this piecemeal approach is a viable "phase-out" option. Assuming that a single entity could clear the rights, would negotiations between the licensing entity and each cable system and satellite carrier be necessary? Would this option be more workable if the single entity holding the rights were required to establish a rate schedule based on criteria that would ensure uniformity of treatment among similarly situated cable systems and satellite carriers?

b. *The Staggered Approach.* An alternative means to eliminate the statutory licenses is for Congress to gradually phase them out over a period of time. Under this approach, Congress could first eliminate the distant signal licensing constructs on a set date and then repeal the local-into-local licensing constructs a few years later. Given that cable operators and satellite carriers retransmit significantly more local broadcast stations than distant broadcast stations, this method would allow the cable and satellite industries more time to plan ahead and clear public performance rights with copyright owners of programming transmitted by broadcast stations in a local market. The Office seeks comment on this approach and its benefits and drawbacks. The Office seeks specific comment on whether this method would be considered "timely" as that term is used in Section 302.

c. *The Statutory Sunset Approach.* Another possible approach to ending the statutory licensing systems for the retransmission of broadcast television signals is by Congressional edict. Under this framework, Congress would establish a hard date to repeal Sections 111, 119, and 122 all at once. For example, Congress could enact legislation in January 2013 that would repeal the licenses effective as of January 1, 2015. An alternative plan, at least for Section 119, is for Congress to sunset the satellite distant signal license in those markets where local-to-local service is available on a defined date.

The Office notes, however, that the elimination of the statutory licenses on a date certain could lead to channel line-up disruptions on a large scale as broadcast signals would likely be dropped by cable operators and satellite carriers unless a workable marketplace solution for the retransmission of broadcast content is in place beforehand. How much time would be needed to establish marketplace alternatives and would it be necessary to have a transition period during which the statutory license would remain available? The Office also notes that at least insofar as local broadcast stations are concerned, elimination of the statutory licenses would be difficult to implement if the Communications Act's broadcast signal carriage provisions remain in place. Without legislation addressing the issues surrounding the mandatory carriage of local television signals under title 47 of the U.S. Code, cable operators and satellite carriers would be stuck with a carriage obligation without the right to retransmit the programming carried on those signals. The Office seeks specific comment on these possibilities and asks for input on what other drawbacks may result from the adoption of a flash cut option.

III. Licensing Models in the New Video Programming Marketplace

As discussed below, cable operators, satellite carriers, and copyright owners have experimented with innovative content distribution strategies over the last decade. Creative licensing arrangements have developed alongside these new business models. The Office seeks comment on three new programming models: (1) Video on Demand; (2) DirecTV's "The 101" linear channel; and (3) online video distribution, and asks how these new licensing structures work and how they

[10] Amended Complaint at 2, 35–36, *Meredith Corp.* v. *SESAC,* No. 09–9177 (S.D.N.Y. Mar. 18, 2010).

[11] The Office notes, for example, that collective licensing has played a crucial role in the European Union. Anke Schierholz, *Collective Rights Management in Europe: Practice and Legal Framework, in* European Copyright Law: A Commentary 1150 (Michel M. Walter & Silke von Lewinski eds., 2010); *see also,* Daniel Gervais, *Collective Management of Copyright: Theory and Practice in the Digital Age,* COLLECTIVE MANAGEMENT OF COPYRIGHT: THEORY AND PRACTICE IN THE DIGITAL AGE (Wolters Kluwer, 2d ed. 2010); Thomas Riis & Jens Schovsbo, *Extended Collective Licenses and the Nordic Experience—Its a Hybrid but is It a Volvo or a Lemon?,* 33 Colum. J.L. & Arts 1, 11 (2010).

benefit all stakeholders in the distribution chain. This information will help the Office understand how the video programming marketplace functions and the kinds of licensing arrangements that drive the online market.

Video-on-Demand. Over the past decade, cable operators have offered video-on-demand ("VOD") services over their platforms. VOD allows subscribers to select and view individual television programs and movies, for free or for a fee, on an a la carte basis any time during the day. The Office seeks comment on how copyright owners license content for VOD distribution, and the extent to which it might obviate the need for continued operation of the section 111, 119 and 122 statutory licenses.

Linear Channel Packaging. DirecTV currently offers to its subscribers "The 101," a satellite channel carrying older, or recently cancelled, broadcast and cable programming. In contrast to VOD, which permits subscribers to select and choose individual program offerings, the 101 is a linear channel designed and structured by DirecTV that is available to its customers on a 24 hour/7 days a week basis. The Office seeks comment on how DirecTV obtains and licenses content for The 101, and the extent to which such services might obviate the need for continued operation of the section 111, 119 and 122 statutory licenses.

Online Video. It is likely that more and more television programming will migrate to the Internet in the years ahead. Broadcast content is now widely available to consumers through streaming video services and per-program downloads available at Apple's iTunes store and other outlets. In fact, some estimate that fifty percent of broadcast network content is available on online platforms the day after it airs on television.[12] Many of these shows have been available for free online for a number of years through Web services such as Hulu.com or directly from the network's Web site. Is the television marketplace entering an era when the current statutory licenses are no longer needed because all broadcast programming is becoming available online?

In addition to the pantheon of free online video services, there are two burgeoning types of subscriber-based streaming television models that have gained notoriety in the marketplace. First is the "TV Everywhere" model where cable/satellite subscribers who can confirm their TV subscription through an online registration process, can watch live cable programming on the Web just as it appears on TV for no additional charge.[13] The second model is exemplified by online subscription services such as Hulu Plus and Netflix that allow subscribers to watch television shows and motion pictures online by paying a monthly fee directly to the service, without the need to be a cable or satellite subscriber.[14] And, it is worth noting that the broadcast industry is also taking part in the development of a secured online distribution system, powered by Syncbak, which will enable the online viewing of local television signals in their local markets.[15]

Questions for the public. The Office seeks comment on how broadcast content is licensed for distribution over the Internet and what types of business models are likely to succeed in the online space. Further, the Office seeks comment on whether the TV Everywhere effort and popular services, such as Hulu and Netflix, will eventually offer live broadcast signals to their subscribers with a broadband connection. If so, we ask what licensing models might be used to clear the public performance rights for programs carried by television broadcast stations for online distribution, by aggregators like Hulu, or through technological solutions, as exemplified by Syncbak, and whether these alternative means of obtaining access to broadcast programming will vitiate the rationale underlying the Section 111, 119 and 122 statutory licenses.

IV. Conclusion

The Office hereby seeks comment from the public on the factual and policy matters related to the study mandated by Section 302 of the Satellite Television Extension and Localism Act of 2010. If there are any additional pertinent issues not discussed above, the Office encourages interested parties to raise those matters in their comments. In addition, the Office is considering having a roundtable or formal hearing on the matters raised in this NOI in June 2011. An announcement of such a proceeding, if it were to occur, will be provided by public notice in the future.

Dated: February 25, 2011.

Maria A. Pallante,

Acting Register of Copyrights.

[FR Doc. 2011–4717 Filed 3–2–11; 8:45 am]

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[12] *How Much Network Programming Was Actually "On Online" This Season?* Clicker Blog, *http://www.clicker.com* (July 13, 2010).

[13] Comcast will begin to stream live content from Time Warner's cable networks later this year under their TV Everywhere licensing agreement. *See* Todd Spangler, *Comcast, Turner Broaden TV Everywhere Pact to Cover Live Streaming, http://www.broadcastingcable.com* (Feb. 2, 2011). There are no press reports indicating whether or when cable operators will be carrying broadcast content under the TV Everywhere plan.

[14] Hulu management has recently discussed recasting the service as an "online cable operator" that would use the Internet to send live television channels and video-on-demand content to subscribers. *See* Sam Schechner and Jessica Vascellaro, *Hulu Reworks Its Script as Digital Change Hits TV,* Wall Street Journal, January 27, 2011.

[15] Syncbak's proprietary authentication technology synchronizes broadband and broadcast delivery of television, creating a means for viewers to watch broadcast content in real-time on any broadband enabled device. *See http://www.syncbak.com.* Syncbak offers a technical solution to the Internet delivery of broadcast stations; it is not an agent for clearing the public performance rights for programs carried on such stations.

NATIONAL SCIENCE FOUNDATION

Submission for OMB Review; Comment Request Survey of Principal Investigators on Earthquake Engineering Research Awards Made by the National Science Foundation, 2003–2009

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Science Foundation has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 22, 2010 (volume 75, number 204, page 65385) and allowed 60-days for public comment. No comments were received from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.