copyright law, the cable television industry has not been paying copyright royalties for its retransmission of over-the-air broadcast signals. Both decisions urged the Congress, however, to consider and determine the scope and extent of such liability in the pending revision bill.

The difficult problem of determining the copyright liability of cable television systems has been before the Congress since 1965. In 1967, this Committee sought to address and resolve the issues in H.R. 2512, an early version of the general revision bill (see H.R. Rep. No. 83, 90th Cong., 1st Sess.). However, largely because of the cable-copyright impasse, the bill died in the Senate.

The history of the attempts to find a solution to the problem since 1967 has been explored thoroughly in the voluminous hearings and testimony on the general revision bill, and has also been succinctly summarized by the Register of Copyrights in her Second Supplementary Report, Chapter V.

The Committee now has before it the Senate bill which contains a series of detailed and complex provisions which attempt to resolve the question of the copyright liability of cable television systems. After extensive consideration of the Senate bill, the arguments made during and after the hearings, and of the issues involved, this Committee has also concluded that there is no simple answer to the cable-copyright controversy. In particular, any statutory scheme that imposes copyright liability on cable television systems must take account of the intricate and complicated rules and regulations adopted by the Federal Communications Commission to govern the cable television industry. While the Committee has carefully avoided including in the bill any provisions which would interfere with the FCC's rules or which might be characterized as affecting "communications policy", the Committee has been cognizant of the interplay between the copyright and the communications elements of the legislation.

We would, therefore, caution the Federal Communications Commission, and others who make determinations concerning communications policy, not to rely upon any action of this Committee as a basis for any significant changes in the delicate balance of regulation in areas where the Congress has not resolved the issue. Specifically, we would urge the Federal Communications Commission to understand that it was not the intent of this bill to touch on issues such as pay cable regulation or increased use of imported distant signals. These matters are ones of communications policy and should be left to the appropriate committees in the Congress for resolution.

In general, the Committee believes that cable systems are commercial enterprises whose basic retransmission operations are based on the carriage of copyrighted program material and that copyright royalties should be paid by cable operators to the creators of such programs. The Committee recognizes, however, that it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system. Accordingly, the Committee has determined to maintain the basic principle of the Senate bill to establish a compulsory copyright license for the retransmission of those over-the-air broadcast signals that a cable system is authorized to carry pursuant to the rules and regulations of the FCC.

The compulsory license is conditioned, however, on certain requirements and limitations. These include compliance with reporting re-

quirements, payment of the royalty fees established in the bill, a ban on the substitution or deletion of commercial advertising, and geographic limits on the compulsory license for copyrighted programs broadcast by Canadian or Mexican stations. Failure to comply with these requirements and limitations subjects a cable system to a suit for copyright infringement and the remedies provided under the bill for such actions.

In setting a royalty fee schedule for the compulsory license, the Committee determined that the initial schedule should be established in the bill. It recognized, however, that adjustments to the schedule would be required from time to time. Accordingly, the Copyright Royalty Commission, established in chapter 8, is empowered to make the adjustments in the initial rates, at specified times, based on standards and conditions set forth in the bill.

In setting an initial fee schedule, the Senate bill based the royalty fee on a sliding scale related to the gross receipts of a cable system for providing the basic retransmission service, and rejected a statutory scheme that would distinguish between "local" and "distant" signals. The Committee determined, however, 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 programing, including network programing which is broadcast in "distant" markets, does not injure the copyright owner. The copyright owner contracts with the network on the basis of his programing reaching all markets served by the network and is compensated accordingly.

By contrast, their transmission of distant non-network programing by cable systems causes damage to the copyright owner by distributing the program in an area beyond which it has been licensed. Such retransmission adversely affects the ability of the copyright owner to exploit the work in the distant market. It is also of direct benefit to the cable system by enhancing its ability to attract subscribers and increase revenues. For these reasons, the Committee has concluded that the copyright liability of cable television systems under the compulsory license should be limited to the retransmission of distant non-network programing.

In implementing this conclusion, the Committee generally followed a proposal submitted by the cable and motion picture industries, the two industries most directly affected by the establishment of copyright royalties for cable television systems. Under the proposal, the royalty fee is determined by a two step computation. First, a value called a "distant signal equivalent" is assigned to all "distant" signals. Distant signals are defined as signals retransmitted by a cable system, in whole or in part, outside the local service area of the primary transmitter. Different values are assigned to independent, network, and educational stations because of the different amounts of viewing of non-network programing carried by such stations. For example, the viewing of non-network programs on network stations is considered to approximate 25 percent. These values are then combined and a scale of percentages is applied to the cumulative total.

The Committee also considered various proposals to exempt certain categories of cable systems from royalty payments altogether. The Committee determined that the approach of the Senate bill to require some payment by every cable system is sound, but established separate

fee schedules for cable systems whose gross receipts for the basic retransmission service do not exceed either $80,000 or $160,000 semiannually. It is the Committee's view that the fee schedules adopted for these systems are now appropriate, based on their relative size and the services performed.

All the royalty payments required under the bill are paid on a semiannual basis to the Register of Copyrights. Each year they are distributed by the Copyright Royalty Commission to those copyright owners who may validly claim that their works were the subject of distant non-network retransmissions by cable systems.

Based on current estimates supplied to the Committee, the total royalty fees paid under the initial schedule established in the bill should approximate $8.7 million. Compared with the present number of cable television subscribers, calculated at 10.8 million, copyright payments under the bill would therefore approximate 81 cents per subscriber per year. The Committee believes that such payments are modest and will not retard the orderly development of the cable television industry or the service it provides to its subscribers.

Analysis of provisions

Throughout Section 11, the operative terms are "primary transmission" and "secondary transmission." These terms are defined in subsection (f) entirely in relation to each other. In any particular case, the "primary" transmitter is the one whose signals are being picked up and further transmitted by a "secondary" transmitter which, in turn, is someone engaged in "the further transmitting of a primary transmission simultaneously with the primary transmission." With one exception provided in subsection (f) and limited by subsection (e), the section does not cover or permit a cable system, or indeed any person, to tape or otherwise record a program off-the-air and later to tranmit the program from the tape or record to the public. The one exception involves cable systems located outside the continental United States, but not including cable systems in Pueto Rico, or, with limited exceptions, Hawaii. These systems are permitted to record and retransmit programs under the compulsory license, subject to the restrictive conditions of subsection (e), because off-the-air signals are generally not available in the offshore areas.

General exemptions

Certain secondary transmissions are given a general exemption under clause (1) of section 111(a). The first of these applies to secondary transmisisons consisting "entirely of the relaying, by the management of a hotel, apartment house, or similar establishment" of a transmission to the private lodgings of guests or residents and provided "no direct charge is made to see or hear the secondary transmission."

The exemption would not apply if the secondary transmission consists of anything other than the mere relay of ordinary broadcasts. The cutting out of advertising, the running in of new commercials, or any other change in the signal relayed would subject the secondary transmitter to full liability. Moreover, the term "private lodgings" is limited to rooms used as living quarters or for private parties, and does not include dining rooms, meeting halls, theatres, ballrooms, or similar places that are outside of a normal circle of a family and its social acquaintances. No special exception is needed to make clear that