

orthopaedic articles; suture materials; therapeutic and assistive devices adapted for the disabled; massage apparatus; apparatus, devices and articles for nursing infants; sexual activity apparatus, devices and articles.

11. Apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys; jewellery, precious and semi-precious stones; horological and chronometric instruments.

15. Musical instruments; music stands and stands for musical instruments; conductors' batons.

16. Paper and cardboard; printed matter; bookbinding material; photographs; stationery and office requisites, except furniture; adhesives for stationery or household purposes; drawing materials and materials for artists; paintbrushes; instructional and teaching materials; plastic sheets, films and bags for wrapping and packaging; printers' type, printing blocks.

17. Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials; plastics and resins in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, tubes and hoses, not of metal.

18. Leather and imitations of leather; animal skins and hides; luggage and carrying bags; umbrellas and parasols; walking sticks; whips, harness and saddlery; collars, leashes and clothing for animals.

19. Materials, not of metal, for building and construction; rigid pipes, not of metal, for building; asphalt, pitch, tar and bitumen; transportable buildings, not of metal; monuments, not of metal.

20. Furniture, mirrors, picture frames; containers, not of metal, for storage or transport; unworked or semi-worked bone, horn, whalebone or mother-of-pearl; shells; meerschaum; yellow amber.

21. Household or kitchen utensils and containers; cookware and tableware, except forks, knives and spoons; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware.

22. Ropes and string; nets; tents and tarpaulins; awnings of textile or synthetic materials; sails; sacks for the

transport and storage of materials in bulk; padding, cushioning and stuffing materials, except of paper, cardboard, rubber or plastics; raw fibrous textile materials and substitutes therefor.

23. Yarns and threads for textile use.

24. Textiles and substitutes for textiles; household linen; curtains of textile or plastic.

25. Clothing, footwear, headwear.

26. Lace, braid and embroidery, and haberdashery ribbons and bows; buttons, hooks and eyes, pins and needles; artificial flowers; hair decorations; false hair.

27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings, not of textile.

28. Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk, cheese, butter, yoghurt and other milk products; oils and fats for food.

30. Coffee, tea, cocoa and artificial coffee; rice, pasta and noodles; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; chocolate; ice cream, sorbets and other edible ices; sugar, honey, treacle; yeast, baking-powder; salt, seasonings, spices, preserved herbs; vinegar, sauces and other condiments; ice (frozen water).

31. Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.

32. Beers; non-alcoholic beverages; mineral and aerated waters; fruit beverages and fruit juices; syrups and other non-alcoholic preparations for making beverages.

33. Alcoholic beverages, except beers; alcoholic preparations for making beverages.

34. Tobacco and tobacco substitutes; cigarettes and cigars; electronic cigarettes and oral vaporizers for smokers; smokers' articles; matches.

Services

35. Advertising; business management; business administration; office functions.

36. Insurance; financial affairs; monetary affairs; real estate affairs.

37. Building construction; repair; installation services.

38. Telecommunications.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials.

41. Education; providing of training; entertainment; sporting and cultural activities.

42. Scientific and technological services and research and design relating thereto; industrial analysis and industrial research services; design and development of computer hardware and software.

43. Services for providing food and drink; temporary accommodation.

44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

45. Legal services; security services for the physical protection of tangible property and individuals; personal and social services rendered by others to meet the needs of individuals.

Dated: November 28, 2018.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2018-26373 Filed 12-4-18; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 387

[Docket No. 15-CRB-0010-CA-S]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges (Judges) publish a final rule requiring affected cable systems to pay a separate per-telecast royalty (a Sports Surcharge) in addition to the other royalties that those cable systems must pay under Section 111 of the Copyright Act.

DATES:

Effective date: December 6, 2018.

Applicability date: January 1, 2019.

ADDRESSES: *Docket:* For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 15-CRB-0010-CA-S.

FOR FURTHER INFORMATION CONTACT:

Anita Blaine, CRB Program Specialist, by telephone at (202) 707-7658 or email at crb@loc.gov.

SUPPLEMENTARY INFORMATION: On July 30, 2018, the Copyright Royalty Judges

(Judges) published a modified proposed rule that establishes affected cable operators' obligation to pay a Sports Surcharge royalty. 83 FR 36509.

The Judges solicited general comments for or against the proposal and specific comments on the following questions: Could the proposed provision in section 387.2 (e)(9) ("Nothing herein shall preclude any copyright owner of a live television broadcast, the secondary transmission of which would have been subject to deletion under the FCC Sports Blackout Rule, from receiving a share of royalties paid pursuant to this paragraph.") apply to the secondary transmissions of the live television broadcasts of any entity *other than* a current member of the Joint Sports Claimants (JSC)?¹ If the answer is yes, which entities' transmissions would qualify for a share? If the answer is no (*i.e.*, only JSC members could qualify), then is the current proposal nevertheless consistent with the section 111 license? If so, why? *Id.* at 36511.

The Judges received joint comments from the JSC, NCTA-The Internet & Television Association, and American Cable Association stating support for the modified proposed rule as consistent with the section 111 license, answering the question in the affirmative, and specifying that "non-JSC members (*e.g.*, MLS)"² might qualify for a share of the royalties. Joint Comments of the Moving Parties at 5. The Judges received no other comments.

The joint commenters point out that the focus of the proposed rule is to specify the circumstances in which cable systems will owe and make Sports Surcharge royalty payments, *i.e.*, a "pay-in" methodology. *Id.* at 4. The modified proposed language applies to Surcharge payments for events of JSC members *and other entities*, if any, who sought protection under the Sports Blackout Rule in the two years prior to its repeal. The joint commenters are not aware of any other protected entities, but they proposed removing the reference to the JSC in the rule to address the Judges' concern that the language in the rule as originally proposed appeared limiting and exclusionary. Although JSC members may be the only entities that invoked the protection, even entities who did not invoke the protection may be entitled to receive a share of the Surcharge funds in the future. *Id.* at 5–6. The modified proposed rule also

eliminates the reference to "eligible" sports events as it only included by definition JSC-member events. *Id.* at 3–4.

The joint commenters believe the original proposed rule did not implicate any of the concerns the Judges expressed because distribution of shares is not a subject of this rule. Distribution of royalty fees will be determined by the Judges or by agreement of interested parties. The modified proposed rule nonetheless states expressly that copyright owners are not precluded from sharing in future payments for the regulated secondary transmissions. *Id.* at 4, 6.

The removal of the references to JSC-member events in the proposed rule and the addition of the section clarifying that no entity will be precluded from receiving shares based on this rule allay the concerns of the Judges.

List of Subjects in 37 CFR Part 387

Copyright, Cable television, Royalties.

For the reasons set forth in the preamble, and under the authority of chapter 8, title 17, United States Code, the Copyright Royalty Judges amend 37 CFR chapter III as follows:

PART 387—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

■ 1. The authority citation for part 387 continues to read as follows:

Authority: 17 U.S.C. 801(b)(2), 803(b)(6).

■ 2. Amend § 387.2 by redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e) to read as follows:

§ 387.2 Royalty fee for compulsory license for secondary transmission by cable systems.

* * * * *

(e) *Sports programming surcharge.* Commencing with the first semiannual accounting period of 2019 and for each semiannual accounting period thereafter, in the case of an affected cable system filing Form SA3 as referenced in 37 CFR 201.17(d)(2)(ii) (2014), the royalty rate shall be, in addition to the amounts specified in paragraphs (a), (c), and (d) of this section, a surcharge of 0.025 percent of the affected cable system's gross receipts for the secondary transmission to subscribers of each live television broadcast of a sports event where the secondary transmission of that broadcast would have been subject to deletion under the FCC Sports Blackout Rule. For purposes of this paragraph:

(1) The term "cable system" shall have the same meaning as in 17 U.S.C. 111(f)(3);

(2) An "affected cable system"—

(i) Is a "community unit," as the comparable term is defined or interpreted in accordance with § 76.5(dd) of the rules and regulations of the Federal Communications Commission, in effect as of November 23, 2014, 47 CFR 76.5(dd) (2014);

(ii) That is located in whole or in part within the 35-mile specified zone of a television broadcast station licensed to a community in which a sports event is taking place, provided that if there is no television broadcast station licensed to the community in which a sports event is taking place, the applicable specified zone shall be that of the television broadcast station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed; and

(iii) Whose royalty fee is specified by 17 U.S.C. 111(d)(1)(B);

(3) A "television broadcast" of a sports event must qualify as a "non-network television program" within the meaning of 17 U.S.C. 111(d)(3)(A);

(4) The term "specified zone" shall be defined as the comparable term is defined or interpreted in accordance with § 76.5(e) of the rules and regulations of the Federal Communications Commission in effect as of November 23, 2014, 47 CFR 76.5(e) (2014);

(5) The term "gross receipts" shall have the same meaning as in 17 U.S.C. 111(d)(1)(B) and shall include all gross receipts of the affected cable system during the semiannual accounting period except those from the affected cable system's subscribers who reside in:

(i) The local service area of the primary transmitter, as defined in 17 U.S.C. 111(f)(4);

(ii) Any community where the cable system has fewer than 1000 subscribers;

(iii) Any community located wholly outside the specified zone referenced in paragraph (e)(4) of this section; and

(iv) Any community where the primary transmitter was lawfully carried prior to March 31, 1972;

(6) The term "FCC Sports Blackout Rule" refers to § 76.111 of the rules and regulations of the Federal Communications Commission in effect as of November 23, 2014, 47 CFR 76.111 (2014);

(7) Subject to paragraph (e)(8) of this section, the surcharge will apply to the secondary transmission of a primary

¹ The Joint Sports Claimants are the Office of the Commissioner of Baseball, the National Football League, the National Basketball Association, the Women's National Basketball Association, the National Hockey League, and the National Collegiate Athletic Association.

² Major League Soccer.

transmission of a live television broadcast of a sports event only where the holder of the broadcast rights to the sports event or its agent has provided the affected cable system—

(i) Advance written notice regarding the secondary transmission as required by § 76.111(b) and (c) of the FCC Sports Blackout Rule; and

(ii) Documentary evidence that the specific team on whose behalf the notice is given had invoked the protection afforded by the FCC Sports Blackout Rule during the period from January 1, 2012, through November 23, 2014;

(8) In the case of collegiate sports events, the number of events involving a specific team as to which an affected cable system must pay the surcharge will be no greater than the largest number of events as to which the FCC Sports Blackout Rule was invoked in a particular geographic area by that team during any one of the accounting periods occurring between January 1, 2012, and November 23, 2014;

(9) Nothing herein shall preclude any copyright owner of a live television broadcast, the secondary transmission of which would have been subject to deletion under the FCC Sports Blackout Rule, from receiving a share of royalties paid pursuant to this paragraph (e).

* * * * *

Dated: October 1, 2018.

David R. Strickler,
Copyright Royalty Judge.

Jesse M. Feder,
Copyright Royalty Judge.

Suzanne M. Barnett,
Chief Copyright Royalty Judge.

Approved by:

Carla D. Hayden,
Librarian of Congress.

[FR Doc. 2018-26275 Filed 12-4-18; 8:45 am]

BILLING CODE 1410-72-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 16

[EPA-HQ-OEI-2014-0849; FRL-9941-44-OEI]

Revision of the Agency’s Privacy Act Regulations for EPA-63

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action on revisions to the Agency’s Privacy Act regulations in order to exempt a new system of records, EPA-

63, the eDiscovery Enterprise Tool Suite, from certain requirements of the Privacy Act because records in EPA’s eDiscovery Enterprise Tool Suite are maintained for use in civil and criminal actions. A notice has been published in the **Federal Register** on July 27, 2018 for the creation of this new system of records that will contain information collected using the Agency’s suite of tools that search and preserve electronically stored information (ESI) in support of the Agency’s eDiscovery (electronic discovery) and Freedom of Information Act processes.

DATES: This rule is effective on March 6, 2019 without further notice, unless EPA receives adverse comment by January 7, 2019. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OEI-2014-0849, at <https://www.regulations.gov/>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Brian K. Thompson, Acting Director, eDiscovery Division, Office of Enterprise Information Programs, U.S. Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Avenue NW, Washington, DC 20460; email: thompson.briank@epa.gov; telephone number: 202-564-4256.

SUPPLEMENTARY INFORMATION:

I. Why is EPA using a direct final rule?

The EPA is publishing this rule without a prior proposed rule because

we view this as a noncontroversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of the **Federal Register**, we are publishing a separate document that will serve as the proposed rule to exempt a new system of records, EPA-63, the eDiscovery Enterprise Tool Suite, from certain requirements of the Privacy Act if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. General Information

The EPA published a Privacy Act system of records notice for information collected using the eDiscovery Enterprise Tool Suite. Depending on the specific need, the Agency will use a combination of several electronic tools that together assist with the preservation, search, processing, review and production of electronically stored information (ESI). The tool suite will be used to preserve, search, collect, sort and review ESI including email messages, word processing documents, media files, spreadsheets, presentations, scanned documents and data sets in support of legal discovery. The Agency will also use these tools to search for ESI that is responsive to requests for information submitted under the Freedom of Information Act (FOIA), or other formal information requests.

The records in EPA’s eDiscovery Enterprise Tool Suite are maintained for use in civil and criminal actions. The Agency’s system of records, EPA-63, is maintained by the Office of Environmental Information, Office of Enterprise Information Programs, eDiscovery Division, on behalf of Agency offices that will require use of the eDiscovery tool suite for both civil and criminal actions. When information is maintained for the purpose of civil actions, the relevant provision of the Privacy Act is 5 U.S.C. 552a(d)(5) which states “nothing in this [Act] shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.” 5 U.S.C. 552a(d)(5).

The system is also maintained for support of criminal enforcement activity by the EPA. In those cases, the system