"censorship." "The purpose and function of syndicated exclusivity is to regulate the content of selected, identifiable communications distributed over cable television media," it said.

New rules would "interfere with a cable operator's editorial discretion as to what programing to carry"—unmitigated by the fact that viewers can receive the same programing via their local stations, TBS said. The First Amendment rights of cable programers are violated because, in imposing the rules, the FCC is favoring one class of speakers—local broadcasters—over another—distant broadcasters, it said.

United Video, which distributes superstations to cable systems via satellite, said that if the rules are reimposed, broadcasters, cable operators and programers "will be caught up in a maelstrom of confusion."

Cable operators would have to spend $191 million in the first year after new rules take effect to staff and equip headends to delete programs and to keep track of what has to be deleted. United Video suggested, however, that it's more likely that cable system will drop signals altogether than incur the extra expense of deleting programs. As a result, 44 million cable homes will be deprived of an average of four channels.

The Motion Picture Association of America argued that syndex rules are needed to insure that cable systems honor the market-exclusive contracts between broadcasters and program syndicators. "The recognition of these rights is essential to maintain an optimal flow of new creative television programing to the marketplace."

Cable-imported duplicative programing hurts local broadcasting, siphoning away viewers and causing them to lose rating points and revenues, the MPAA said. And when broadcasters are hurt, so are the program syndicators. "When syndicators are denied [by the lack of commission regulations] the option to grant local stations enforceable market-exclusive rights in programs, broadcasters often react by choosing not to license for their market syndicated programs imported on distant signals, or by offering lower license fees."

The MPAA said consumers would benefit from reimposition of the rules. "Such provisions would not diminish the availability of syndicated programing to consumers, but would in fact encourage cable to provide more new and diverse programing in lieu of duplicative syndicated programing.

"The interests of cable subscribers are disserved when cable offers duplication rather than variety and diversity," the MPAA said. "The interests of cable subscribers are disserved when local TV outlets are weakened by the invasion of their market-exclusive rights by cable carriage of distant signals that duplicate their programing."

In the absence of the rules, the National Association of Broadcasters said television stations are unable "to negotiate with program suppliers for true syndicated program exclusivity. The best that can be bargained for...is a limited form of quasi exclusivity. Stations are paying substantial sums, higher prices in absolute and relative terms than ever before, for limited exclusivity. In markets of all sizes, the syndicated programs of local stations are duplicated on cable systems by the carriage of nonlocal stations, both superstations and nonsuperstations."

To make its point, NAB cited 14 cases in which local stations are being adversely affected—losing audience—because the local cable system is importing the same programing on a distant broadcast signal.

Also, with new rules, the NAB said, localism will suffer. "When a local station is unable to attract or maintain all of the local audience for a particular program because of audience dilution from program duplication on local cable systems, great damage is done to the structure of, and incentives for, local service...Nonlocal broadcast stations which duplicate the exclusive syndicated programs of local stations on local cable systems destroy a vital link between a local television station and the local audience."

The Association of Independent Television Stations, whose members have arguably the most to gain from reimposition of the rules, provided detailed research that it claimed demonstrates "clearly that distant signal duplication of local independent television station programing has a critical negative impact on the local station's audience ratings, and consequently its advertising revenues for that programing. When aggregated across all duplicated programs imported into its home market [NCTA cited 199 hours weekly as a 'typical' amount of duplication in a selected market], the impact on a local station's revenues can be devastating, especially for a new station attempting to establish a foothold in an intensely competitive market or for a station in a small or medium-sized market" (BROADCASTING, July 20).

Noncommercial stations, excluded from syndex protection in the original rules, don't want to be left out the second time around. The Corporation of Public Broadcasting and the National Association of Public Television Stations said public stations rely on syndicated programing to create unique program schedules "essential to building and maintaining a local revenue base of private, public and corporate funding." □

The HBO-Showtime struggle for Hollywood films

HBO chief says his service was forced into exclusive deal with Paramount by Showtime, which he invites into deal; Showtime declines invitation, explains how it plans to stay competitive

HBO, which beat out Showtime/The Movie Channel two weeks ago for exclusive rights to 85 Paramount Pictures films, would be willing to return to the bargaining table and let its chief competitor "buy into the deal," said Michael Fuchs, the pay service's chairman and chief executive officer.

In remarks last week at the Television Critics Association summer press tour in Los Angeles, Fuchs said: "We don't want exclusive deals...If Showtime wants to buy into that deal, we'd be glad to renegotiate." Fuchs's suggestion elicited a terse response from Paramount. "A deal is a deal," a spokeswoman said, but she added that "the ball is now in Showtime's court." Later in the TCA tour, a top Showtime programing executive said the service had no interest in Fuchs's offer (see below).

Fuchs blamed Showtime for forcing HBO to buy the movies on an exclusive basis, saying, "The other major buyer...sort of set the terms for the deal." He said that Paramount approached HBO to bid for the movie package, and he speculated the reason the studio chose HBO was that Showtime/TMC owner Viacom has $2.4 billion in debt.

Industry sources have estimated the

HBO's Fuchs

agreement to be worth more than $500 million (BROADCASTING, July 20). It takes effect with the release of "Crocodile Dundee II" in May 1988 and is expected to span five years, depending on the film release schedule. Analysts expect the loss next year of Showtime's existing five-year exclusive Paramount movie pact to hurt the second-ranked pay service.

HBO's recent victory offsets a defeat it suffered in March when the National Football League awarded ESPN the rights next season to four preseason games, eight regular-season contests and the Pro Bowl. Seth Abraham, HBO's senior vice president, programing operations and sports, said NFL officials told the pay service that if the league sold the rights to HBO, it expected "to have trouble in Washington" since ESPN has 43.7 million cable homes (50% of U.S. households) and HBO reaches about 15 million. "So they didn't sell to HBO, and they had trouble in Washington," said Abraham, referring to an inquiry into the deal by the Federal Trade Commission. "They had the right outcome with the wrong players."

HBO bids were aimed at Thursday night games because "we didn't want to have the