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REPT 100-887
Part 2

SATELLITE HOME VIEWERS ACT OF 1988

SEPTEMBER 29, 1988 —Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H R 2848]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H R 2848) to amend title 17, United States Code, relating to copyrights, to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations for private viewing by earth station owners, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass

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89-277

The amendments are as follows

Strike out all after the enacting clause and insert in lieu thereof the following

SECTION 1 SHORT TITLE

This Act may be cited as the "Satellite Home Viewer Act of 1988"

SEC 2 AMENDMENTS TO TITLE 17 UNITED STATES CODE

Title 17, United States Code, is amended as follows

(1) Section 111 is amended—

(A) in subsection (a)—

(i) in paragraph (3) by striking "or" at the end,

(ii) by redesignating paragraph (4) as paragraph (5), and

(iii) by inserting the following after paragraph (3)

"(4) the secondary transmission is made by a satellite carrier for private home viewing pursuant to a statutory license under section 119, or", and

(B) in subsection (d)(1)(A) by inserting before "Such statement" the following

"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"

(2) Chapter 1 of title 17, United States Code, is amended by adding at the end the following new section

"§ 119 Limitations on exclusive rights Secondary transmissions of superstations and network stations for private home viewing

"(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS —

"(1) SUPERSTATIONS —Subject to the provisions of paragraphs (3), (4), and (6) of this subsection, secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing

"(2) NETWORK STATIONS —

"(A) IN GENERAL —Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection, secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct charge for such retransmission service to each subscriber receiving the secondary transmission

"(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS —The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households

"(C) NOTIFICATION TO NETWORKS —A satellite carrier that makes secondary transmissions of a primary transmission by a network station pursuant to subparagraph (A) shall, 90 days after the effective date of the Satellite Home Viewer Act of 1988, or 90 days after commencing such secondary transmissions, whichever is later, submit to the network that owns or is affiliated with the network station a list identifying (by street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection The submission re-

quirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights, on or after the effective date of the Satellite Home Viewer Act of 1988, a document identifying the name and address of the person to whom such submissions are to be made The Register shall maintain for public inspection a file of all such documents

"(3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS —Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station 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, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C)

"(4) WILLFUL ALTERATIONS —Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station 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 announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal

"(5) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS —

"(A) INDIVIDUAL VIOLATIONS —The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household 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, except that—

"(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

"(ii) any statutory damages shall not exceed $5 for such subscriber for each month during which the violation occurred

"(B) PATTERN OF VIOLATIONS —If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

"(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out, and

"(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out

"(C) PREVIOUS SUBSCRIBERS EXCLUDED —Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before July 7, 1988

"(6) DISCRIMINATION BY A SATELLITE CARRIER —Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station 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, if the satellite carrier unlawfully discriminates against a distributor

"(7) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS —The statutory license created by this section shall apply only to secondary transmissions to households located in the United States, or any of its territories, trust territories, or possessions

"(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING —

"(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS —A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal, prescribe by regulation—

"(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal, from time to time prescribe by regulation, and

"(B) a royalty fee for that 6-month period, computed by—

"(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 12 cents,

"(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 3 cents, and

"(iii) adding together the totals from clauses (i) and (ii)

"(2) INVESTMENT OF FEES —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 (other than the costs deducted under paragraph (4)), 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 Copyright Royalty Tribunal as provided by this title

"(3) PERSONS TO WHOM FEES ARE DISTRIBUTED —The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Tribunal under paragraph (4)

"(4) PROCEDURES FOR DISTRIBUTION —The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures

"(A) FILING OF CLAIMS FOR FEES —During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license 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

"(B) DETERMINATION OF CONTROVERSY, DISTRIBUTIONS —After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees If the Tribunal determines that no such controversy exists, the Tribunal shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents If the Tribunal finds the existence of a controversy, the Tribunal shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees

"(C) WITHHOLDING OF FEES DURING CONTROVERSY —During the pendency of any proceeding under this subsection, the Copyright Royalty Tribunal 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) DETERMINATION OF ROYALTY FEES —

"(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES —The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective until December 31, 1992, unless a royalty fee is established under paragraph (2), (3), or (4) of this subsection After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or in accordance with the compulsory arbitration procedure specified in paragraphs (3) and (4)

"(2) FEE SET BY VOLUNTARY NEGOTIATION —

"(A) NOTICE OF INITIATION OF PROCEEDINGS —On or before July 1, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B)

"(B) NEGOTIATIONS —Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees If the parties fail to identify common agents, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties to the negotiation proceeding The parties to each negotiation proceeding shall bear the entire cost thereof

"(C) AGREEMENTS BINDING ON PARTIES, FILING OF AGREEMENTS —Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe

"(D) PERIOD AGREEMENT IS IN EFFECT —The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1994

"(3) FEE SET BY COMPULSORY ARBITRATION —

"(A) NOTICE OF INITIATION OF PROCEEDINGS —On or before December 31, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2) Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select

"(B) SELECTION OF ARBITRATION PANEL —Not later than 10 days after publication of the notice initiating an arbitration proceeding, and in accordance with procedures to be specified by the Copyright Royalty Tribunal, one arbitrator shall be selected from the published list by copyright owners who claim to be entitled to royalty fees under subsection (b)(4) and who are not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and one arbitrator shall be selected from the published list by satellite carriers and distributors who are not parties to such a voluntary agreement The two arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same list, who shall serve as chairperson of the arbitrators If either group fail to agree upon the selection of an arbitrator, or if the arbitrators selected by such groups fails to agree upon the selection of a chairperson, the Copyright Royalty Tribunal shall promptly select the arbitrator or chairperson, respectively The arbitrators selected under this paragraph shall constitute an Arbitration Panel

"(C) ARBITRATION PROCEEDING —The Arbitration Panel shall conduct an arbitration proceeding in accordance with such procedures as it may adopt The Panel shall act on the basis of a fully documented written record Any copyright owner who claims to be entitled to royalty fees under subsection (b)(4), any satellite carrier, and any distributor, who is not party to a volun-

tary agreement filed with the Copyright Office in accordance with paragraph (2), may submit relevant information and proposals to the Panel The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct

"(D) FACTORS FOR DETERMINING ROYALTY FEES —In determining royalty fees under this paragraph, the Arbitration Panel shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing The fee shall also be calculated to achieve the following objectives

"(i) To maximize the availability of creative works to the public

"(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions

"(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication

"(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices

"(E) REPORT TO COPYRIGHT ROYALTY TRIBUNAL —Not later than 60 days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in subparagraph (D)

"(F) ACTION BY COPYRIGHT ROYALTY TRIBUNAL —Within 60 days after receiving the report of the Arbitration Panel under subparagraph (E), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly inconsistent with the criteria set forth in subparagraph (D) If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order, consistent with the criteria set forth in subparagraph (D), setting the royalty fee under this paragraph The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence) The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying

"(G) PERIOD DURING WHICH DECISION OF PANEL OR ORDER OF TRIBUNAL EFFECTIVE —The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribunal in accordance with this paragraph, or established by any order issued under subparagraph (F), shall become effective on the date when the decision of the Tribunal is published in the Federal Register under subparagraph (F), and shall remain in effect until modified in accordance with paragraph (4), or until December 31, 1994

"(H) PERSONS SUBJECT TO ROYALTY FEE —The royalty fee adopted or ordered under subparagraph (F) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2)

"(4) JUDICIAL REVIEW —Any decision of the Copyright Royalty Tribunal under paragraph (3) with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register The pendency of an appeal under this paragraph shall not relieve satellite carriers of the obligation under subsection (b)(1) to deposit the statement of account and royal-

ty fees specified in that subsection The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal and the statutory criteria set forth in paragraph (3)(D), that the Arbitration Panel or the Tribunal acted in an arbitrary manner If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B), and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with paragraph (3)

"(d) DEFINITIONS —As used in this section—

"(1) DISTRIBUTOR —The term 'distributor' means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities

"(2) NETWORK STATION —The term 'network station' has the meaning given that term in section 111(f) of this title, and includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station

"(3) PRIMARY NETWORK STATION —The term 'primary network station' means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network

"(4) PRIMARY TRANSMISSION —The term 'primary transmission' has the meaning given that term in section 111(f) of this title

"(5) PRIVATE HOME VIEWING —The term 'private home viewing' means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission

"(6) SATELLITE CARRIER —The term 'satellite carrier' means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing

"(7) SECONDARY TRANSMISSION —The term 'secondary transmission' has the meaning given that term in section 111(f) of this title

"(8) SUBSCRIBER —The term 'subscriber' means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor

"(9) SUPERSTATION —The term 'superstation' means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier

"(10) UNSERVED HOUSEHOLD —The term 'unserved household', with respect to a particular television network, means a household that—

"(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

"(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network

"(e) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner"

(3) Section 501 of title 17, United States Code, is amended by adding at the end the following

"(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station"

(4) Section 801(b)(3) of title 17, United States Code, is amended by striking "and 116" and inserting ", 116, and 119(b)"

(5) Section 804(d) of title 17, United States Code, is amended by striking "sections 111 or 116" and inserting "section 111, 116, or 119"

(6) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by adding at the end the following new item

"119 Limitations on exclusive rights Secondary transmissions of superstations and network stations for private home viewing

SEC 3 SYNDICATED EXCLUSIVITY, REPORT ON DISCRIMINATION

Title VII of The Communications Act of 1934 (47 U S C 601 et seq) is amended by adding at the end the following

"SYNDICATED EXCLUSIVITY

"SEC 712 (a) The Federal Communications Commission shall, within 120 days after the effective date of the Satellite Home Viewer Act of 1988, initiate a combined inquiry and rulemaking proceeding for the purpose of—

"(1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming (as defined by the Commission) for private viewing (as defined in section 705 of this Act) similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television, and

"(2) adopting such rules if the Commission considers the imposition of such rules to be feasible

"(b) In the event that the Commission adopts such rules, any willful and repeated secondary transmission made by a satellite carrier to the public of a primary transmission embodying the performance or display of a work which violates such Commission rules shall be subject to the remedies, sanctions, and penalties provided by title V and section 705 of this Act

"DISCRIMINATION

"SEC 713 The Federal Communications Commission shall, within 1 year after the effective date of the Satellite Home Viewer Act of 1988, prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on whether, and the extent to which, there exists discrimination described in section 119(a)(6) of title 17, United States Code"

SEC 4 INQUIRY ON ENCRYPTION STANDARD

Section 705 of the Communications Act of 1934 (47 U S C 605) is amended by adding at the end thereof the following

"(f) Within 6 months after the date of enactment of the Satellite Home Viewer Act of 1988, the Federal Communications Commission shall initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing In conducting such inquiry, the Commission shall take into account—

"(1) consumer costs and benefits of any such standard, including consumer investment in equipment in operation,

"(2) incorporation of technological enhancements, including advanced television formats,

"(3) whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming,

"(4) the costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable systems and satellite master antenna television systems,

"(5) the effect of any such standard on competition in the manufacture of decryption equipment, and

"(6) the impact of the time delay associated with the Commission procedures necessary for establishment of such standards

"(g) If the Commission finds, based on the information gathered from the inquiry required by subsection (f), that a universal encryption standard is necessary and in the public interest, the Commission shall initiate a rulemaking to establish such a standard."

SEC 5 PIRACY OF SATELLITE CABLE PROGRAMMING

Section 705 of the Communications Act of 1934 (47 U S C 605) is amended—

(1) in subsection (c)—

(A) by striking "and" at the end of paragraph (4),

(B) by striking the period at the end of paragraph (5) and inserting ", and", and

(C) by adding at the end the following

"(6) the term 'any person aggrieved' shall include any person with proprietary rights in the intercepted communication by wire or radio including wholesale or retail distributors of satellite cable programming, and, in the case of a violation of paragraph (4) of subsection (d), shall also include any person engaged in the lawful manufacture, distribution, or sale of equipment necessary to authorize or receive satellite cable programming",

(2) in subsection (d)(1), by striking "$1,000" and inserting "$2,000",

(3) in paragraph (2) of subsection (d), by striking "$25,000" and all that follows through the end of that paragraph and inserting "$50,000 or imprisoned for not more than 2 years, or both, for the first such conviction and shall be fined not more than $100,000 or imprisoned for not more than 5 years, or both, for any subsequent conviction",

(4) in subsection (d)(3)(A), by inserting "or paragraph (4) of subsection (d)" immediately after "subsection (a)",

(5) in subsection (d)(3)(B) by striking "may" the first time it appears,

(6) in subsection (d)(3)(B)(i), by inserting "may" immediately before "grant",

(7) in subsection (d)(3)(B)(ii), by inserting "may" immediately before "award",

(8) in subsection (d)(3)(B)(iii), by inserting "shall" immediately before "direct",

(9) in subsection (d)(3)(C)(i)(II)—

(A) by inserting "of subsection (a)" immediately after "violation",

(B) by striking "$250" and inserting "$1,000", and

(C) by inserting immediately before the period the following ", and for each violation of paragraph (4) of this subsection involved in the action an aggrieved party may recover statutory damages in a sum not less than $10,000, or more than $100,000, as the court considers just",

(10) in subsection (d)(3)(C)(ii), by striking "$50,000" and inserting "$100,000 for each violation of subsection (a)",

(11) in subsection (d)(3)(C)(iii), by striking "$100" and inserting "$250", and

(12) by striking paragraph (4) of subsection (d) and inserting the following

"(4) Any person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or is intended for any other activity prohibited by subsection (a), shall be fined not more than $500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation"

SEC 6 EFFECTIVE DATE

This Act and the amendments made by this Act take effect on January 1, 1989, except that the authority of the Register of Copyrights to issue regulations pursuant to section 119(b)(1) of title 17, United States Code, as added by section 2 of this Act, takes effect on the date of the enactment of this Act

SEC. 7 TERMINATION

This Act and the amendments made by this Act (other than the amendments made by section 5) cease to be effective on December 31, 1994

Amend the title so as to read "A bill to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations and network stations for private home viewing,

to prevent piracy of satellite cable programming, and for other purposes"

PURPOSE OF THE LEGISLATION

H R 2848, "the Satellite Home Viewer Act", as amended and reported by the Committee, amends the Communications Act of 1934 and the Copyright Act of 1976 for the purpose of ensuring availability of satellite-delivered video programming to home satellite antenna owners This legislation creates an interim statutory license in the Copyright Act for satellite carriers to retransmit television broadcast signals of superstations and network stations to earth station owners for private home viewing

H R 2848 directs the Federal Communications Commission to institute a proceeding to determine the feasibility of imposing syndicated exclusivity rules for satellite carriage of broadcast signals The legislation clarifies that violations of any such rules, if enacted by the Commission, are violations of the Communications Act and should be subject to such sanctions and penalties as are contained in the Communications Act The legislation also clarifies and strengthens current law concerning unauthorized descrambling or interception of satellite-delivered cable programming Finally, this legislation requires the Commission to initiate an inquiry into the need for a universal decryption standard for home satellite antenna users

BACKGROUND AND NEED FOR LEGISLATION

HISTORY OF THE SATELLITE CABLE PROGRAMMING INDUSTRY

Reception of television signals via backyard satellite dishes began in 1976, one year after Home Box Office Inc (HBO) began delivering its movies to cable television operators by satellite At that time, however, reception of such signals by owners of backyard satellite dishes was not authorized by law

The former Section 605 of the Communications Act of 1934 (amended and redesignated as section 705 by the Cable Communications Policy Act of 1984) made it illegal to receive radio communications without authorization In a number of cases in the early 1980's, the court ruled that the unauthorized reception of pay television signals, including signals intended for use by cable systems, consitituted a prohibited "use" of the signal under Section 605 of the Communications Act (See, e g , *Chartwell Communications Group* v *Westbrook,* 637 F 2d 459 (6th Cir , 1980)) The FCC took the view that home satellite dish owners receiving satellite signals without authorization were involved in an illegal practice

Congress conferred full legal status on the television receive-only (TVRO) industry in the Cable Communications Policy Act of 1984 (Cable Act) (P L 98-549) The Cable Act expressly legalized the sale and use of backyard dishes It allowed backyard dish owners to receive satellite-relayed cable programming free-of-charge if the programming is not encrypted, or "scrambled," or if a marketing system authorizing private viewing had not been established The Cable Act substantially increased penalties for unauthorized signal reception—including reception of scrambled signals Although the

legislation did not require scrabmled signals to be sold to backyard dish owners, programmers have an incentive to market scrambled signals to backyard dish owners During the debate on the legislation, Congress noted an expectation that increased penalties for unauthorized reception of cable services would allow cable programmers to obtain payment for their programming more easily

Since the passage of the Cable Act, the backyard satellite dish industry has experienced explosive growth, particularly in the South and Midwest The number of backyard satellite earth stations in operation in the United States has increased from an estimated 5,000 in 1980 to over 2 million today Complete home receiving systems, which once sold for as much as $36,000, now are advertised for as little as $1,000 or less In addition, technology has reduced the size of the backyard dish significantly—from the 30-foot-wide dishes of several years ago to dishes approximately six to ten feet in diameter today

"SCRAMBLING" OF SATELLITE CABLE PROGRAMMING

The technological development of home earth station equipment enabled home dish owners to intercept satellite delivered signals that originally were intended to be distributed only to cable systems Cable systems pay satellite carriers a per subscriber fee for delivering to the system a broadcast signal, the systems then send out the signal over the wire to their subscribers Dish owners, on the other hand, initially paid no fee to the carriers for the signals they received In order to impede this unauthorized reception of their satellite-delivered signals, most resale satellite carriers and certain copyright holders in satellite delivered signals decided to encode, or scramble, their signals and to provide descrambling capacity only to paying subscribers

Many home dish owners have stated objections to the scrambling and current marketing practices of satellite delivered video programming because they believe that they have a right to receive satellite programming at a price comparable to that paid by cable system subscribers to the same programming Some consumers have expressed concern about the cost of descrambling devices, price discrimination for programming services available to dish owners, and access to the programming available to cable subscribers The satellite dish industry and most dish owners, however, have consistently agreed that copyright holders deserve to be fairly compensated by viewers of their programming

In recent years the three major television networks have begun to scramble their satellite feeds to their owned and affiliated stations, and several companies have begun to retransmit, scramble and sell newtwork station and superstation signals to home satellite antenna owners This practice raises several questions under the Copyright Act of 1976 (Copyright Act)

The Copyright Act provides that the owner of the copyright has the exclusive right to reproduce, distribute copies of, and publicly perform and display the copyrighted work (17 U S C Section 106) A copyright holder generally has the exclusive right to decide who shall make use of his or her work and persons desiring to repro-

duce, distribute or publicly perform or display the copyrighted work must obtain the copyright holder's consent

The Copyright Act, however, does contain a limited exception from copyright liability Currently, under Section 111(a)(3) "passive carriers" are provided an exemption from liability for secondary transmissions of copyrighted works where the carrier "has no direct or indirect control over the content or selection of the primary transmission, or over the particular recipients of the secondary transmission " A carrier's activities with regard to a secondary transmission must "consist solely of providing wires, cables or other communications channels for the use of others" Since most satellite carriers of broadcast station signals scramble the signals and market decoding devices and packages of programming to home dish owners, there is continuing uncertainty about whether or not such carriers are liable under the Copyright Act

Some analysts of the copyright laws assert that by selling, renting, or relicensing descrambling devices to subscribing earth station owners, a carrier exercises direct control over which individual members of the public receive the signals they transmit Moreover, it has been claimed that the activities of satellite carriers, which almost always include the scrambling of a broadcast signal, represent a far more sophisticated and active involvement in selling signals to the public than does an active of merely providing "wires, cables, or other communications channels"

In a March 17, 1986 letter to Representative Robert W Kastenmeier, Chairman of the Judiciary Committee's Courts, Civil Liberties and Administration of Justice Subcommittee, Mr Ralph Oman, Registrar of Copyrights, set forth his "preliminary judgment" that the sale or licensing of descrambling devices to satellite earth station owners by common carriers falls outside the purview of the copyright exemption granted "passive carriers" for secondary transmissions of copyrighted works, particularly when the carrier itself scrambles the signal "The exemption failing," Mr Oman concluded, "the resale carrier requires the consent of the copyright owner of the underlying programming"

Similarly, in testimony before the Telecommunications Subcommittee in 1986, one common carrier, Southern Satellite, which delivers WTBS, stated its belief that the section 111(a)(3) exemption was not available to the carriers of satellite delivered broadcasting programming Southern Satellite stated

> [I]f Southern Satellite delivered WTBS to the backyard dish user, there is no provision in the law for a copyright royalty payment to the copyright owner Although it could be argued that since Southern Satellite is a common carrier and since the TVRO dish owner uses the signal for purely private viewing, there is no copyright liability However, that position runs directly contrary to the philosophy (section 111) of the Copyright Act and as a result we believe that it is a very tenuous position

The Cable Compulsory License

During the early years of the cable industry, there was continuing controversy over the legal status of cable carriage of broadcast signals In 1968, the Supreme Court ruled in *Fortnightly Corp* v

United Artists television, 392 U S 390, that cable retransmission of broadcast signals did not constitute infringement of the property rights protected by the Copyright Act of 1909 The Court determined that with regard to the "local signal" question presented in the particular case, cable operated more as a viewer than as a broadcaster, and therefore did not incur copyright liability for retransmitting local signals to its subscribers

In *Teleprompter Corp* v *Columbia Broadcasting System*, 415 U S 394 (1974), the Supreme Court reaffirmed its 1968 decision Further, the Court held that the act of retransmitting distant as well as local signals without permission of the program copyright owner or the broadcast operator did not violate the Copyright Act of 1909 The decision clarified the long standing question whether the Copyright Act of 1909 protected programs transmitted on broadcast signals from being retransmitted by cable operators Critics of the Court's ruling maintained that the two decisions attenuated programming property rights, which rights, they argued, are a necessary preconditioned for the successful operation of market forces

In the 1976 Copyright Act, Congress extended copyright protection to cable retransmissions of broadcast programs Cable systems were, however, not made fully liable for the use of others' programming, but instead were granted a "compulsory license" The compulsory license gives cable television operators guaranteed access to copyrighted programming carried by television stations in exchange for payment of a specified percentage of the cable system's gross receipts to the Copyright Royalty Tribunal (CRT) This statutory royalty fee is then distributed, based on filings made with the CRT, to the copyright owners whose work are being retransmitted on cable The net effect of the compulsory license is to allow cable system, by paying the predetermined fee to the CRT, to retransmit copyrighted programs without purchasing rights in the open marketplace

Over the past several years, some satellite carriers have contended that the compulsory license covers secondary transmissions of broadcast signals by new technologies such as satellites At least one court, however, has expressly rejected that contention In *Pacific & Southern Co Inc* v *Satellite Broadcast Network, Inc* (D Ga , 1988, Slip Opinion), the Court held that the cable compulsory copyright license does not cover Satellite Broadcast Network's (SBN) satellite retransmission of broadcast signals to backyard dish owners In making his ruling, the Judge stated that "The clear statutory definition of 'cable system' contained in the Copyright Act indicates that SBN is not a cable system entitled to a compulsory license to retransmit broadcast signals free from copyright liability"

As a result of the *SBN* decision, it has become increasingly clear that satellite retransmission of broadcast signals for sale to home earth station owners is probably not exempt from copyright liability under present law The Committee believes that the public interest best will be served by creating an interim statutory solution that will allow carriers of broadcast signals to serve home satellite antenna users until marketplace solutions to this problem can be developed

PIRACY OF SATELLITE-DELIVERED CABLE PROGRAMMING

In general, "piracy" refers to the decoding or decryption of scrambled programming without the authorization of the programmer nor payment for the programming This theft of service is accomplished by alerting legitimate decoders, such as the VideoCipher II, with illicit decoder technolgy For example, legitimate chips which decode the service are cloned and placed in decoder boxes to which access is restricted The Satellite Broadcasting and Communications Association has indicated that there are approximately 350,000-400,000 pirated descrambler boxes, compared with about 400,000 untampered boxes

During the 100th Congress, the Subcommittee on Telecommunications and Finance held two hearings during which the testimony on the problem of piracy was reviewed (July 1, 1987 and June 15, 1988) Testimony at the hearing demonstrated that piracy has become an increasingly distressing problem to the satellite industry and seriously threatens to undermine the industry's survival According to the testimony submitted to the Subcommittee, piracy most seriously threatens legitmate satellite dealers and satellite programmers, who otherwise would be receiving payment for their programming or descrambling devices

According to testimony from one satellite dish dealer, "the dealer who sells a chipped [unauthorized] decoder sells it at an average profit of $1000 or more, and usually sells legitimate satellite equipment at his own cost, making all profits on the illegal chips It is impossible for an honest dealer to compete against this type of price structure "

General Instrument Corp (GI), the makers of VideoCipher II, has taken several measures to combat the piracy problem GI recently announced the introduction of VideoCipher II-Plus System in June 1989, includes, among other things, integrated module, that may be distributed directly to consumers and selected dealers To descramble signals, consumers will have to insert the cards into their integrated receiver/descramblers In a further effort to reduce piracy, GI recently announced a plan to monitor more closely the distribution of decoders Additionally, other industry representatives, including the Satellite Broadcasting and Communications Association, the Motion Picture Association of America, and the National Cable Television Association have increased efforts and resources toward combating the problem

In response to the piracy problem, the Federal Communications Commission has increased enforcement efforts under Section 705(a) of the Communications Act and Title 18 U S Code Section 2511(1), each of which prohibit the unauthorized interception and use of satellite and other radio communications In a recent report, the Commission recommended that the Congress raise the civil and criminal penalties in Section 705(a) to emphasize the importance of stopping piracy and enhance the ability of law enforcement authorities and aggrieved private parties to deter piracy

NEED FOR LEGISLATION

Despite the explosion in recent years of new technologies and outlets delivering video programming, millions of Americans are

not sharing in the prorgramming bounty available from broadcasters or over cable systems Presently, as many as one to six million households are in areas where the reception of off-air network signals is not possible or is of unacceptable quality A number of these households are not presently served, and likely never will be served, by cable systems

The Satellite Broadcasting and Communications Association testified before the Telecommunications Subcommittee that approximately 500,000 of the 2 million households with satellite television antennas subscribe to satellite delivered television networks or independent superstations or both Each month approximately 10,000 to 15,000 new subscribers are added Many of these consumers live in rural areas and are dependent upon satellite antenna systems for the delivery of any video programming

The legality of satellite delivered broadcast signals to home satellite antenna owners is unsettled For many years, there have been questions about the legality of such carriage under the passive carriage exemption provided under Section 111(a) of the Copyright Act of 1976 In light of the recent *SBN* decision in which a District Court held that the cable compulsory copyright license does not apply to satellite carriers, there is no clearly legal method by which to provide retransmitted boradcast programming to home satellite antenna owners It is therefore appropriate for the Committee to address this exceedingly important issue H R 2848 resolves the legal issues surrounding provision of broadcast signals to rural America by creating an interim statutory license under the Copyright Act of 1976 for the secondary retransmission of superstations and television network stations for private home viewing

As a general rule, the Committee does not favor interference with workable marketplace relationships for the transfer of exhibition rights in programming In the instant case, however, the Committee perceived a need to address an existing problem that may serve to deny millions of American households access to satellite delivered broadcast television signals This problem has been addressed narrowly, by endorsing a temporary, transitional statutory license to bridge the gap until the marketplace can function effectively

In establishing a six year sunset on the statutory license, the Committee expects that the marketplace and competition will eventually serve the needs of home satellite dish owners It is the Committee's expectation that during the pendency of this legislation the home satellite antenna marketplace will grow and develop so that marketplace forces will satisfy the programming needs and demands of home satellite antenna owners in the years to come, eliminating any further need for government intervention

H R 2848 also addresses what has been identified as potentially the greatest threat to a viable home satellite antenna industry, which is the unauthorized decryption or interception of satellite cable programming Affected industries, consumers, and the Federal Communications Commission all have stated the need for clearer and more stringent penalties for piracy of video signals The Committee believes that the piracy provision contained in H R 2848 provides law enforcement authorities greater ability to stem the growing problem of theft of satellite delivered programming

HEARINGS

During the 100th Congress, the Committee's Subcommittee on Telecommunications and Finance has held a series of hearings focusing on the public policy implications of the scrambling of satellite-delivered video programming On July 1, 1987 and June 13, 1988 the Subcommittee held hearings on H R 1885, legislation designed, among other purposes, to ensure the continued availability of satellite-delivered video programming Witnesses at those hearings included the Honorable Dennis R Patrick, Chairman, Federal Communications Commission, the Honorable Alfred Sikes, Assistant Secretary for Communications and Information Policy, National Telecommunications and Information Administration, Mr Larry Carlson, Senior Vice President for Cinemax and New Business Development, Home Box Office, Mr Ronald Lightstone, Senior Vice President, VIACOM International, Inc, Mr James P Mooney, President and Chief Executive Officer, National Cable Television Association, Mr B R Phillips, II, Chief Executive Officer, National Rural Telecommunications Cooperative, Mr David G Wolford, Chief Executive Officer, Home Satellite Services, Mr Marty Lafferty, Vice Presdient, Direct Broadcast Sales, Turner Broadcasting Systems, Mr Federick W Finn, Esq, Brown and Finn, Mr Charles C Hewitt, President, Satellite Broadcasting and Communications Association, Mr Larry Dunham, VideoCipher Division, General Instruments Corporation, Mr Donald Berg, Vice President Sales and Marketing, Channel Master, Ms Millie Fontenot, Owner, Satellite Earth Stations East, Inc, Mr George Kocian, Owner Tiverton Dish Farm, Mr Michael J Fuchs, Chairman and Chief Executive Officer, Home Box Office, Inc, Mr Michael Hobbs, Senior Vice President for Policy and Planning, Public Broadcasting Service, Mr Winston H Cox, Chairman and Chief Executive Officer, Showtime/ The Movie Channel, Mr Robert L Schmidt, President, Wireless Cable Association, Mr Timothy Robertson, President, Christian Broadcasting Network, and Mr Sid Swartz, President, West, Inc

The Subcommittee on Telecommunnications and Finance held a hearing on H R 2848 on Friday, September 23, 1988 Testimony was received from Mr Preston R Padden, President, Association of Independent Television Stations, Inc, Mr Mark C Ellison, Vice President, Government Affairs & General Counsel, Satellite Broadcasting and Communications Association, Mr Timothy A Boggs, Vice President Public Affairs, Warner Communications Inc, and Mr Steven Effros, President, Community Antenna Television Association

COMMITTEE CONSIDERATION

On September 23, 1988, the Subcommittee on Telecommunications and Finance met in open session and ordered reported the bill H R 2848, as amended, by a voice vote, a quorum being present During the markup, the Subcommittee adopted an amendment in the nature of a substitute offered by Representative Billy Tauzin The Subcommittee substitute, creates a new Section 712 of the Communications Act, requires the FCC to institute a proceeding to determine the feasibility of imposing syndicated exclusivity rules for satellite carriage of broadcast signals, and clarifies that viola-

tions of any such rules would be violations of the Communications Act The Subcommittee Substitute also added an anti-theft or "piracy" provision that clarifies and strenghthens current law concerning unauthorized descrambling of satellite cable programming The Substitute also contained a requirement that the FCC initiate an Inquiry into the need for a universal decryption standard for home satellite antenna users

On September 27, 1988, the Committee met in open session and ordered reported the bill H R 2848, as amended, by a voice vote, a quorum being present During Committee markup a technical amendment was adopted

Committee Oversight Findings

Pursuant to clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the Subcommittee held oversight hearings and made findings that are reflected in the legislative report

Committee on Government Operations

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations

Committee Cost Estimate

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost incurred in carrying out H R 2848 would be $300,000 over the next two fiscal years

U S Congress,
Congressional Budget Office,
Washington, DC, September 28, 1988

Hon John D Dingell,
Chairman, Committee on Energy and Commerce,
U S House of Representatives, Washington, DC

Dear Mr Chairman The Congressional Budget Office has reviewed H R 4992, a bill to expand our national telecommunications system for the benefit of the hearing impaired and speech impaired populations, and for other purposes, as ordered reported by the House Committee on Energy and Commerce, September 27, 1988

The bill would direct the Federal Communications Commission (FCC), in consultation with the Architectural and Transportation Barriers Compliance Board, to issue regulations requiring federal departments and agencies to be equipped with telecommunications devices for the deaf (TDDs) The FCC also would be required to publish the TDD access numbers In addition, the bill would require congressional offices to be equipped with TDDs

It is uncertain how many TDDs the federal government would have to purchase if H R 4992 were enacted because the bill only requires the FCC to "ensure that federal departments and agencies are equipped with TDDs" The bill does not define federal departments and agencies, so it is difficult to determine how many TDDs would be required

If, for example, only the head office of each federal agency needed a TDD, then TDDs (at about $250 each) for approximately 500 offices would cost a total of $125,000 in 1990 If, on the other hand, federal departments and agencies were required to have a TDD in each location, then TDDs for about 7,000 buildings would cost a total of $1 8 million The cost of this requirement ultimately would depend on the number and type of TDDs purchased The cost of acquiring TDDs for congressional offices would depend on the same factors, and would range from $100,000 to $200,000

Other costs of this bill are not expected to be significant Enactment of H R 4992 would not affect the budgets of state or local governments

If you wish further details on this estimate, we will be pleased to provide them The CBO staff contact is Marta Morgan, who can be reached at 226-2860

Sincerely,

JAMES L BLUM,
Acting Director

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill H R 2848 would have no inflationary impact

SECTION-BY-SECTION ANALYSIS

SECTION 1 SHORT TITLE

The short title of the proposed legislation is the "Satellite Home Viewer Act of 1988"

SECTION 2 AMENDMENTS TO TITLE 17, UNITED STATES CODE

Section 2 of the proposed legislation contains amendments to the Copyright Act of 1976 a new section 119 is added to the Act, creating an interim statutory license for the secondary transmission by satellite carriers of superstations and network stations for private home viewing, only necessary technical and cross-referencing amendments are made to section 111 of the Act, regarding the cable television compulsory license

Amendments to section 111(a) Cross-references to the cable television compulsory license

The bill amends section 111(a) by inserting a new clause (4) to clarify that, notwithstanding the carrier exemption to the cable compulsory licensing provisions in section 111(a)(3), a satellite carrier that retransmits superstations and network stations for private home viewing by earth station owners is exempted from copyright liability for such retransmission only if it secures a statutory license under section 119 Section 111(a)(3) remains in effect to exempt from copyright liability passive common carriers that retransmit broadcast signals to cable systems

Amendment to section 111(d)(2)(A) Relationship between the cable compulsory license and the statutory license for satellite carriers

The bill amends section 111(d)(2)(A) to clarify the obligations of both the satellite carrier and the cable system in instances in which a cable system engages in such distributorship activities on behalf of a satellite carrier In such cases, the satellite carrier has the responsibility for filing statements of account and paying royalties for publicly performing copyrighted programming under the new section 119 statutory license Under this scheme, a cable system/distributor would segregate the subscription fees collected on behalf of the satellite carrier from those collected from cable subscribers pursuant to the section 111 cable compulsory license The cable system would only report in its section 111 statements of account the number of cable subscribers served and the amount of gross receipts collected pursuant to section 111, and would pay royalties to section 111

New section 119 The interim statutory license for satellite carriers

Section 119(a) The scope of the license —Sections 119(a) (1) and (2) establish a statutory license for satellite carriers generally A license is available where a secondary transmission of the signal of a superstation or a network station is made available by a satellite carrier to the public for private home viewing, and the carrier makes a direct charge for such retransmission service from each subscriber receiving the secondary transmission, or from a distributor (such as a cable system) that has contracted with the carrier to deliver the retransmission directly or indirectly to the viewing public

The bill contains special provisions in sections 119(a) (2) and (5) relating to network stations in recognition of the fact that a small percentage of television households cannot now receive clear signals of the three national television networks The bill confines the license to the so-called "white areas," that is, households not capable of receiving the signal of a particular network by conventional rooftop antennas, and which have not subscribed, within the 90 days preceding the date on which they subscribe to the satellite carrier's service, to a cable system that provides the signal of a primary network station affiliated with that network

Utilizing the existing definition in Section 111(f), the new statutory license for retransmission of network stations applies, at the present time, exclusively to those stations owned by or affiliated with the three major commercial networks (ABC, CBS, and NBC) and the stations associated with the Public Broadcasting Service This distinction is based upon the testimony and written materials supplied by the three commercial networks, which assert that their stations continue to occupy a special role in the television industry

Under the bill, satellite carriers are provided a limited interim compulsory license for the sole purpose of facilitating the transmission of each network's programming to "white areas' which are unserved by that network The Committee believes that this approach will satisfy the public interest in making available network programming in these (typically rural) areas, while also respecting the

public interest in protecting the network-affiliate distribution system

This television network-affiliate distribution system involves a unique combination of national and local elements, which has evolved over a period of decades The network provides the advantages of program acquisition or production and the sale of advertising on a national scale, as well as the special advantages flowing from the fact that its service covers a wide range of programs throughout the broadcast day, which can be scheduled so as to maximize the attractiveness of the overall product But while the network is typiclly the largest single supplier of nationally produced programming for its affiliates, the affiliate also decides which network programs are locally broadcast, produces local news and other programs of special interest to its local audience, and creates an overall program schedule containing network, local and syndicated programming

The Committee believes that historically and currently the network-affiliate partnership serves the broad public interest It combines the efficiencies of national production, distribution and selling with a significant decentralization of control over the ultimate service to the public It also provides a highly effective means whereby the special strengths of national and local program service support each other This method of reconciling the values served by both centralization and decentralization in television broadcast service has served the country well

The networks and their affiliates contend that the exclusivity provided an affiliate as the outlet for its network in its own market is an essential element of the overall system They assert that by enhancing the economic value of the network service to the affiliate, exclusivity increases the affiliate's resources and incentive to support and promote the network in its competition with the other broadcast networks and the other nationally distributed broadcast and nonbroadcast program services

The Committee intends by this provision to satisfy both aspects of the public interest—bringing network programming to unserved areas while preserving the exclusivity that is an integral part of today's network-affiliate relationship

Section 119 requires the satellite carrier to notify the network of the retransmission of its signal by submitting to the network a list identifying the names and addresses of all subscribers to that service In addition, on the 15th of each month the satellite carriers must submit to the network a list identifying the names and addresses of the subscribers added or dropped since the last report These notifications are only required if the network has filed information with the Copyright Office concerning the name and address of the person who shall receive the notification Special penalties are provided for violations by service outside the "white areas" Willful or repeated individual violations of the "white area" restrictions are subject to ordinary remedies for copyright infringement, except that no damages may be awarded if the satellite carrier took corrective action by promptly withdrawing service from ineligible subscribers, and statutory damages are limited to a maximum of $5 00 per month for each ineligible subscriber

If the satellite carrier engages in a willful or repeated pattern or practice of violations, the court shall issue a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmission of any network station affiliated with the same network The injunction would be applicable within the geographical area within which the violation took place—whether local, regional, or national If the satellite carier engages in a pattern of violations, the statutory damages maximum is $250,000 for each six month period, but only with regard to persons who suscribed on or after July 7, 1988

By amendment of section 501 of title 17, United States Code, a network station holding a license to perform a particular version of a work is treated as a legal or beneficial owner of the work if the secondary transmission by satellite carrier occurs within the local service area of the station, for purposes of infringement under section 119(a)(5)

Noncompliance with Reporting and Payment Requirements —Section 119(a)(3) provides that a satellite carrier is also subject to full copyright liability if the carrier does not deposit the statement of account or pay the royalty required by Subsection (b) or has failed to make the submissions to the networks required by paragraph 2(c)

Discrimination by a satellite carrier —Section 119(a)(6) provides a cause of action against a satellite carrier's "willful or repeated" retransmission of the signals of superstations and network stations to the public for private home viewing (under sections 502 through 506 and section 509 of the Copyright Act) if the satellite carrier unlawfully discriminates against any distributor

This section is intended primarily to protect against misconduct by a satellite carrier exercising the statutory license granted by the Act The Committee wishes to stress that this subsection, along with subsections 119(a)(3) and 119(a)(4), establish limitations on the scope of the license granted by this Act In each case, copyright infringement remedies are provided as recourse against abuse of the license by a satellite carrier

The Committee agrees with the assessment of the Judiciary Committee, expressed in its report on H R 2848, that the regulatory status under the Communications Act of the sale of superstations or network stations for private home viewing by dish owners is largely unresolved

Some of the superstation signals will be provided under the statutory license granted by this Act by certain resale carriers that were licensed by the FCC under Title II of the Communications Act The Commission licensed these carriers to provide common carrier transmission service of these stations to cable headends for their retransmission to cable subscribers These transmissions are common carrier services subject to Title II of the Communications Act and the passive carrier exemption of the Copyright Act The situation changes, however, when these carriers engage in the sale of the programming they transmit The Commission's current rules do not address the regulatory status of these carriers when they sell the programming directly to the public

The matter is further complicated by the fact that deregulatory initiatives over the last several years at the Commission have led

to a situation in which there is unlicensed, open entry for what amounts to a C-Band direct broadcast satellite service Some entities, such as Netlink, have entered the market as unregulated service providers, not as common carriers They are not licensed under Title II of the Communications Act, but they will qualify for the statutory license under this Act and will provide superstation and network stations in the same home earth station market as their competitors, the Title II carriers

The resolution of these issues must rest with the Commission The Committee does not wish to prejudge or direct the FCC's resolution of these questions with the enactment of this legislation However, the Committee is aware that neither the Communications Act nor the FCC's current rules currently bar discrimination against distributors of superstation or network station signals for private viewing

Nothing in this Act affects the authority of the Commission to promulgate rules to address such discrimination and, in fact, this legislation amends the Communications Act with a new Section 713 directing the FCC to examine whether and to what extent such discrimination actually occurs If the Commission finds regulations on discrimination against distributors of superstations and network stations to home earth stations to be necessary and in the public interest, it may establish such rules

The Committee notes that the term "discrimination" as it is used in section 119(a)(6) of the Copyright Act is expressly limited to discrimination within the jurisdiction of the Commission pursuant to the Communications Act The purpose of section 119(a)(6) is to make certain discriminatory acts involving particular parties actionable under the Copyright Act In adopting this language, the Committee does not intend the Commission to address issues and concerns that are outside its jurisdiction and expertise

Geographic limitation —Section 119(a)(7) provides that the statutory license created in section 119 applies only to secondary transmissions to households located in the United States, or any of its territories, trust possessions, or possessions This section parallels section 111(f) or title 17, United States Code, which applies to cable television

Section 119(b) Operation of the statutory license for satellite carriers

Requirements for a license —The statutory license provided for in section 119(a) is contingent upon fulfillment of the administrative requirements set forth in section 119(b)(1) That provision directs satellite carriers whose retransmissions are subject to licensing under section 119(a) to deposit with the Register of Copyrights a semiannual statement of account and royalty fee payment The dates for filing such statements of account and royalty fee payments and the six-month period which they are to cover are to be determined by the Register of Copyrights

The statutory royalty fees set forth in section 119(b)(1)(B) are twelve cents per subscriber per superstation signal retransmitted and three cents for each subscriber for each network station retransmitted These fees approximate the same royalty fees paid by cable households for receipt of similar copyrighted signals and are modeled on those contained in the 1976 Copyright Act Royalty fees

for retransmission of a network station would be 1/4 those of an independent station, since "the viewing of non-network programs on network stations is considered to approximate 25 percent" H Rept 94-1476, 94th Congress, 2d Session (1976) The copyright owners of these non-network programs would be entitled to receive compensation for the retransmission of the programs to "white areas" Owners of copyright in network programs would not be entitled to compensations for such retransmissions, since those copyright owners are compensated for national distribution by the networks when the programming is acquired The statutory fees set forth in this section apply only in the limited circumstances described in section 119(c)

Collection and distibution of royalty fees —Section 119(b)(2) provides that royalty fees paid by satellite carriers under the statutory license shall be received by the Register of Copyrights and, after the Register deducts the reasonable cost incurred by the Copyright Office in administering the license, deposited in the Treasury of the United States The fees are distributed subsequently, pursuant to the determination of the Copyright Royalty Tribunal under chapter 8 of the Copyright Act of 1976

Persons to whom fees are distributed —The copyright owners entitled to participate in the distribution of the royalty fees paid by satellite carriers under the license are specified in section 119(b)(3)

Procedures for distribution —Section 119(b)(4) sets forth the procedure for the distribution of the royalty fees paid by satellite carriers, which parallels the distribution procedure under the section III cable compulsory license During the month of July of each year, every person claiming to be entitled to license fees must file a claim with the Copyright Royalty Tribunal, in accordance with such provisions as the Tribunal shall establish The claimants may agree among themselves as to the division and distribution of such fees

After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether a controversy exists concerning the distribution of royalty fees If no controversy exists, the Tribunal—after deducting reasonable administrative costs—shall distribute the fees to the copyright owners entitled or their agents If the Tribunal finds the existence of a controversy, it shall, pursuant to the provisions of chapter 8, conduct a proceeding to determine the distribution of royalty fees

The bill does not include specific provisions to guide the Copyright Royalty Tribunal in determining the appropriate division among competing copyright owners of the royalty fees collected from satellite carriers under section 119

Secion 119(c) Alternative methods for determining royalty fees applicable during two phases of the statutory license for satellite carriers

The bill establishes a four-year phase and a two-year phase for the statutory license for satellite carriers, in each phase the royalty fee is determined in a different manner In the first (four year) phase, pursuant to section 119(c)(1), the statutory fees established in section 119(b)(1)(B) (twelve cents per subscriber per superstation signal retransmitted and three cents per subscriber per network

signal retransmitted) shall apply The first phase shall be in effect from January 1, 1989, until December 31, 1992 In the second phase, the fee shall be set by the voluntary negotiation or compulsory arbitration procedures established in section 119(c)(2) and 119(c)(3)

Section 119(c)(2) requires the Copyright Royalty Tribunal to initiate voluntary negotiation proceedings betwen satellite carriers, distributors, and copyright owners, eighteen months before the bill's first phase runs out, to encourage the parties to negotiate a fee for the second phase before the statutory fee expires The parties may designate common agents to negotiate, agree to, or pay the relevant fees, if the parties fail to do so, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties The costs of the negotiation proceeding shall be paid by the parties If the parties reach a voluntary agreement, copies of the agreement must be filed in a timely manner with the Copyright Office, and the negotiated fee will remain in effect from the date specified in the agreement until December 31, 1994

If some or all of the parties have not voluntarily negotiated a fee for the second phase by December 31, 1991, twelve months before the expiration of the first phase, section 119(c))3) provides that the Copyright Royalty Tribunal shall initiate a compulsory arbitration proceeding for the purpose of determining a reasonable royalty fee to be paid under section 119 for the second phase The Tribunal shall publish notice of the initiation of the proceeding as well as a list of potential arbitrators Within ten days of the publication of this notice, one arbitrator must be chosen by the copyright owners and one by the satellite carriers and their distributors The two arbitrators must choose a third arbitrator from the same list within ten days

The three arbitrators (Arbitration Panel) shall have sixty days from the publication of the initial notice to conduct an arbitration proceeding and to determine a royalty fee, using guidelines specified in the bill All costs involved in this proceeding must be paid for by the parties The Arbitration Panel shall submit its determination in the form of a report, along with the written record, to the Copyright Royalty Tribunal The Tribunal shall have sixty days to review the report and either accept or reject the Panel's determination and publish the action in the Federal Register If the Tribunal rejects the determination, the Tribunal shall, within the same sixty day period, issue an order setting the royalty fee Thus, within 120 days of the publication of the initial notice, a new royalty fee shall be determined through a compulsory arbitration procedure, to be effective from January 1, 1993, until December 31, 1994, or until modified by the United States Court of Appeals for the District of Columbia Circuit pursuant to section 199(c)(4) The fee shall apply to all copyright owners, satellite carriers, and distributors not party to a voluntary agreement

Section 119(c)(3)(D) provides guidelines by which the Arbitration Panel shall determine royalty fees In particular, the Panel must consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station

Section 199(c)(4) provides that the rate adopted or determined by the Copyright Royalty Tribunal pursuant to the compulsory arbitration proceeding may be appealed to the District of Columbia Circuit Court of Appeals within thirty days of publication However, while appeal of the rate is pending, satellite carriers would still be required to deposit statements of account and royalties and to pay royalty fees calculated under the rate that is at issue on appeal The bill gives the court jurisdiction to enter its own determination with respect to the royalty rate, to order the repayment of any excess fees deposited under section 119(b)(1)(B), and to order the payment of any underpaid fees with interest, in accordance with its final judgement The court may also vacate the Tribunal's decision and remand the case for further arbitration proceedings

Section 119(d) Definitions

A "distributor" is defined as any entity which contracts with a carrier to distribute secondary transmissions received from the carrier either as a single channel, or in a package with other programming, to individual subscribers for a private home viewing, either directly or indirectly through other program distribution entities

The term "primary transmission" and secondary transmission" are defined so as to have the same meaning under section 119 as they have under section 111

The term "private home viewing" is defined as viewing, for private use in an individual's household by means of equipment which is operated by such individual and which serves only such individual's household, of a secondary transmission delivered by satellite of a primay transmission of a television broadcast station licensed by the FCC

A "satellite carrier" is broadly defined as an entity that uses the facilities of a domestic satellite service licensed by the FCC and that owns or leases a capacity or service on a satellite in order to provide the point-to-multipoint relay of television station signals to numerous receive-only earth stations, except to the extent the entity provides such distribution pursuant to tariff that is not restricted to private home viewing

The term "network station" has the same meaning as the term in section 111(f) and includes a translator station or terrestrial satellite station that rebroadcasts the network station

A "primary network station" is a network station that broadcasts the basic programming service of one particular national network

The term "subscriber" is defined as an individual who receives a secondary transmission service for private home viewing by means of a satellite transmission under section 119, and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor

A "superstation" is defined as a television broadcast station, other than a network station, that is licensed by the Federal Communications Commission and that is retransmitted by a satellite carrier

The term "unserved household" means a household that with respect to a particular television network, (A) cannot receive, through use of a conventional outdoor antenna, a signal of Grade B

intensity (as defined by the FCC, currently in 47 C F R section 73 683(a)) of a primary network station affiliated with that network, and (B) has not, within 90 days before the date on which the household subscribes (initially or upon renewal) to receive by satellite a network station affiliated with tht network subscribed to a cable system that provides the signal of a primary network station affiliated with that network

Because the household must be able to receive the signal of a "primary" network station to fall outside the definition of unserved household, a household that is able to receive only the signal of a secondary network station, which would be defined as "unserved" if it is a station affiliated with two or more networks that does not broadcast or rebroadcast the basic programming service of any single national network

Section 119(e) Exclusivity of the statutory license

The bill explicitly provides that neither the cable compulsory license, nor the exemptions of section 111 (such as the passive carrier exemption) can be construed during the six-year statutory license period to apply to secondary transmissions by satellite carrier for private home viewing of programming contained in a superstation or network station transmission Unless the statutory license of section 119 is obtained, during the six-year interim period the secondary transmission by satellite carrier for private home viewing can take place only with consent of the copyright owner

SECTION 3 SYNDICATED EXCLUSIVITY, REPORT ON DISCRIMINATION

Section 3 amends Title VII of the Communications Act by adding several new sections as follows

Section 712(1) Syndicated Exclusivity

The bill directs the Federal Communications Commission (FCC), within 120 days after the date of enactment, to undertake a combined inquiry and rulemaking proceeding regarding the feasibility of imposing syndicated exclusivity rules for private home viewing The Committee believes strongly that it is necessary and appropriate that the Commission undertake this Inquiry pursuant to its authority under the Communications Act The FCC has had sole responsibility for addressing and administering the syndicated exclusivity rules in the past, and will continue to have sole responsibility under this legislation

Free local over-the-air television stations continue to play an important role in providing the American people information and entertainment The Committee is concerned that changes in technology, and accomplaying changes in law and regulation, do not undermine the base of free local television service upon which the American people continue to rely The Committee is concerned that retransmissions of broadcast television programming to home earth stations could violate the exclusive program contracts that have been purchased by local television stations Depriving local stations of the ability to enforce their program contracts could cause an erosion of audiences for such local stations because their programming would no longer be unique and distinctive

Accordingly, the Committee directs the Federal Communications Commission to consider the feasibility of imposing syndicated exclusivity rules with respect to satellite retransmission of television broadcast programming In the Committee's view, it is reasonable to premise a grant of a statutory license on the existence of appropriate safeguards to protect the rights of other parties who might be affected by the grant of such statutory licenses

The Committee also believes that while some adjustments may be necessary or appropriate to reflect the differences between cable and satellite technologies, the cable television syndicated exclusivity rules could serve as a model for rules governing the satellite industry

The Committee directs the Commission to undertake a comprehensive assessment of the feasibility of imposing syndicated exclusivity The Inquiry should be broadbased and balanced The mere fact that imposition of, or compliance with, syndicated exclusivity rules might be incrementally more costly for satellite carriers shall not be deemed to render such rules as not "feasible" as that term is used in this section

Section 712(2)

In the event the Commission adopts rules imposing syndicated exclusivity for private home viewing, the bill provides that violations of such rules shall be subject to the remedies, sanctions and penalties under Title V and Section 705 of the Communications Act

The Committee amendment clarifies that violations of the syndicated exclusivity rules are to be enforced by the sanctions and penalties provided in the Communications Act

Section 713 Discrimination

The bill directs the FCC within a year of the enactment of this Act, to prepare and submit a report to the Senate Committee on Commerce, Science and Transportation and the House Committee on Energy and Commerce on whether, and the extent to which, there exists unlawful discrimination against distributors of secondary transmissions from satellite carriers

The Committee notes that the term "discrimination" as it is used in new Section 713 of the Communications Act and new Section 119(a)(6) of the Copyright Act is expressly limited to discrimination within the jurisdiction of the Commission pursuant to the Communications Act The purpose of Section 119(a)(6) is to make certain discriminatory acts involving particular parties actionable under the Copyright Act In adopting this language, the Committee does not intend the Commission to address issues and concerns that are outside its jurisdiction and expertise

SECTION 4 INQUIRY ON ENCRYPTION STANDARD

This section amends section 705 of the Communications Act to require the FCC, within six months after the date of enactment of this legislation, to initiate an inquiry concerning the need for a universal encryption standard that permits the decryption of satel-

lite cable programming intended for private viewing by home satellite antenna users

The FCC currently has no such standards To date, this situation has not created a significant problem because, to the Committee's knowledge, all satellite cable programming networks that have scrambled have done so using the VideoCipher II technology developed by General Instrument Corp Any home satellite earth station owner presently need only purchase a single descrambling unit, either as a stand-alone module or built into their satellite systems, in order to descramble any programming service they might wish to purchase

Recently, however technological and market developments raise the possibility that this situation may change Manufacturers are developing new decryption technologies for the market General Instrument Corp and other companies are working on decryption systems that mnay provide programmers with greater signal security and home earth station owners with greater descrambling capacity

The Committee believes that more information is needed to determine whether a universal, decryption standard is needed or would be helpful Accordingly, the Commission is instructed to begin an Inquiry that will take into account consumer costs and benefits, the incorporation of technological enhancements, including advanced television formats, whether such standard would be effective in preventing present and future unauthorized decryption of satellite programming, the costs and benefits of such standard on other authorized users of encrypted satellite cable programming, including cable and Satellite Master Antenna Television (SMATV) systems, the impact of any market disruption that would occur because of the time delays necessary for the establishment of such standard by the Commission, and the effect of such standard on competition in the manufacture of decryption equipment

If the Commission finds, as a result of the information gathered from the Inquiry and from other information before the Commission, that a universal encryption standard is in the public interest, the Committee intends for the Commission to move immediately to initiate a rulemaking to establish such a standard

SECTION 5 PIRACY OF SATELLITE CABLE PROGRAMMING

Section 5 of the Act amends Section 705 of the Communications Act pertaining to the piracy of satellite cable programming The Committee's amendment is intended to deter piracy practices by (1) stiffening applicable civil and criminal penalties, (2) expanding standing to sue, and (3) making the manufacture, sale, modification, importation, exportation, sale or distribution of devices or equipment with knowledge that its primary purpose is to assist in unauthorized decryption of satellite cable programming expressly actionable as a criminal act

The Committee believes these changes are essential to preserve the longterm viability of the TVRO industry It has been estimated than more than one-third of the one million VideoCipher III descramblers (the industry's *de factor* standard) sold by manufacturer General Instrument have been compromised by black market de-

coding chips Unquestionably, piracy is costing those who hold rights in satellite-delivered cable programming tens of millions of dollars in revenues

The piracy problem is rampant both among commercial users of the VideoCipher II (hotels, lounges, and other establishments) and among private home users The depth of the problem is such that there has been a steady increase in the number of new prosecutions and civil suits brought against alleged "pirates"

The Committee wants to give both prosecutors and civil plaintiffs the legal tools they need to bring piracy under control The Committee commends and encourages inter-industry effort to deal with piracy, and believes the new remedies and increased penalties adopted through this provision will contribute to these important efforts

The Committee has noted reports that the Federal Bureau of Investigation has notified FBI field offices, through its Manual of Investigative and Operational Guidelines (MIOG), that investigating satellite signal theft is "not a top priority" The Committee admonishes relevant authorities and government entities, including the FBI, to expend the resources necessary to attack massive and increasing levels of piracy

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic existing law in which no change is proposed is shown in roman)

TITLE 17, UNITED STATES CODE

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

Sec
101 Definitions

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119 Limitations on exclusive rights Secondary transmissions of superstations and network stations for private home viewing

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§ 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) * * *

* * * * * * *

(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 transmission and do not exempt from liability the activities of others respect to their own primary or secondary transmissions [or]

(4) the secondary transmission is made by a satellite carrier for private home viewing purusant to a statutory license under section 119, or

[(4)(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

* * * * * * *

(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, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), 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 after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), 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 pusuant to section 119* Such statement shall also include a special statement of account covering any non-network 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

§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS —

(1) SUPERSTATIONS —Subject to the provisions of paragraphs (3), (4), and (6) of this subsection, secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing

(2) NETWORK STATIONS —

(A) IN GENERAL —Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection, secondary transmission of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct charge for such retransmission service to each subscriber receiving the secondary transmission

(B) SECONDARY TRANSMISSION TO UNSERVED HOUSEHOLDS —The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households

(C) NOTIFICATION TO NETWORKS —A satellite carrier that makes secondary transmissions of a primary transmission by a network station pursuant to subparagraph (A) shall, 90 days after the effective date of the Satellite Home Viewer Act of 1988, or 90 days after commencing such secondary transmission, whichever is later, submit to the network that owns or is affiliated with the network station a list identifying (by street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission Thereafter, on the 15th day of each month, the satellite carrier shall submit to the network a list identifying (by street address, including county and zip code) any person who have been added or dropped as such subscribers since the last submission under this subparagraph Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights, on or after the effective date of the Satellite Home Viewer Act of 1988, a document identifying the name and address of the person to whom such submissions are to be made The Register shall maintain for public inspection a file of all such documents

(3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS —Notwithstanding the provisions of paragraphs (1) and

(2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station 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, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C) /

(4) WILLFUL ALTERATIONS —Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station 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 announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal

(5) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS —

(A) INDIVIDUAL VIOLATIONS —The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household 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, except that—

(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

(ii) any statutory damages shall not exceed $5 for such subscriber for each month during which the violation occurred

(B) PATTERN OF VIOLATIONS —If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, or the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000

for each 6-month period during which the pattern or practice was carried out, and

(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out

(C) PREVIOUS SUBSCRIBERS EXCLUDED —Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before July 7, 1988

(6) DISCRIMINATION BY A SATELLITE CARRIER —Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station 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, if the satellite carrier unlawfully discriminates against a distributor

(7) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS — The statutory license created by this section shall apply only to secondary transmissions to households located in the United States, or any of its territories, trust territories, or possessions

(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING —

(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS —A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal, prescribe by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal, from time to time prescribe by regulation, and

(B) a royalty fee for that 6-month period, computed by—

(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 12 cents,

(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 3 cents, and

(iii) adding together the totals from clauses (i) and (ii)

(2) INVESTMENT OF FEES.—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 (other than the costs deducted under paragraph (4)), 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 Copyright Royalty Tribunal as provided by this title.

(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Tribunal under paragraph (4).

(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license 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.

(B) DETERMINATION OF CONTROVERSY, DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, the Tribunal shall, after deducting reasonable administrataive costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Tribunal finds the existence of a controversy, the Tribunal shall, pursuant to chapter 8 of this title, conduct a proceding to determine the distribution of royalty fees.

(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Tribunal 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) DETERMINATION OF ROYALTY FEES.—

(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES — The rate of the royalty fees payable under subsection (b)(1)(B) shall be effective until December 31, 1992, unless a royalty fee is established under paragraph (2), (3), or (4) of this subsection After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or in accordance with the compulsory arbitration procedure specified in paragarphs (3) and (4)

(2) FEE SET BY VOLUNTARY NEGOTIATION —

(A) NOTICE OF INITIATION OF PROCEEDINGS —On or before July 1, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers sunder subsection (b)(1)(B)

(B) NEGOTIATIONS —Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees If the parties fail to identify common agents, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties to the negotiation proceeding The parties to each negotiation proceeding shall bear the entire cost thereof

(C) AGREEMENTS BINDING ON PARTIES, FILING OF AGREEMENTS —Voluntary agreements negotiated at any time in accordance with this paragraph shall be bindiang upon all satellite carriers, distributors, and copyright owners that are parties thereto Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe

(D) PERIOD AGREEMENT IS IN EFFECT —The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1994

(3) FEE SET BY COMPULSORY ARBITRATION —

(A) NOTICE OF INITIATION OF PROCEEDINGS —On or before December 31, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2) Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select

(B) SELECTION OF ARBITRATION PANEL —Not later than 10 days after publication of the notice initiating an arbitration proceeding, and in accordance with procedures to be specified by the Copyright Royalty Tribunal, one arbitrator shall be selected from the published list by copyright owners who claim to be entitled to royalty fees under subsection (b)(4) and who are not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and one arbitrator shall be selected from the published list by satellite carriers and distributors who are not parties to such a voluntary agreement The two arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same list, who shall serve as chairperson of the arbitrators If either group fails to agree upon the selection of an arbitrator, or if the arbitrators selected by such groups fail to agree upon the selection of a chairperson, the Copyright Royalty Tribunal shall promptly select the arbitrator or chairperson, respectively The arbitrators selected under this paragraph shall constitute an Arbitration Panel

(C) ARBITRATION PROCEEDING —The Arbitration Panel shall conduct an arbitration proceeding in accordance with such procedures as it may adopt The Panel shall act on the basis of a fully documented written record Any copyright owner who claims to be entitled to royalty fees under subsection (b)(4), any satellite carrier, and any distributor, who is not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), may submit relevant information and proposals to the Panel The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct

(D) FACTORS FOR DETERMINING ROYALTY FEES —In determining royalty fees under this paragraph, the Arbitration Panel shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing The fee shall also be calculated to achieve the following objectives

(i) To maximize the availability of creative works to the public

(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions

(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new

markets for creative expression and media for their communication

(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices

(E) REPORT TO COPYRIGHT ROYALTY TRIBUNAL —Not later than 60 days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in subparagraph (D)

(F) ACTION BY COPYRIGHT ROYALTY TRIBUNAL —Within 60 days after receiving the report of the Arbitration Panel under subparagraph (E), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly inconsistent with the criteria set forth in subparagraph (D) If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order, consistent with the criteria set forth in subparagraph (D), setting the royalty fee under this paragraph The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence) The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying

(G) PERIOD DURING WHICH DECISION OF PANEL OR ORDER OF TRIBUNAL EFFECTIVE —The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribunal in accordance with this paragraph, or established by any order issued under subparagraph (F), shall become effective on the date when the decision of the Tribunal is published in the Federal Register under subparagraph (F), and shall remain in effect until modified in accordance with paragraph (4), or until December 31, 1994

(H) PERSONS SUBJECT TO ROYALTY FEE —The royalty fee adopted or ordered under subparagraph (F) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2)

(4) JUDICIAL REVIEW —Any decision of the Copyright Royalty Tribunal under paragraph (3) with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, to the United

States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register The pendency of an appeal under this paragraph shall not relieve satellite carriers of the obligation under subsection (b)(1) to deposit the statement of account and royalty fees specified in that subsection The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal and the statutory criteria set forth in paragraph (3)(D), that the Arbitration Panel or the Tribunal acted in an arbitrary manner If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B), and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with paragraph (3)

(d) DEFINITIONS —As used in this section—

(1) DISTRIBUTOR —The term "distributor" means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities

(2) NETWORK STATION —The term "network station" has the meaning given that term in section 111(f) of this title, and includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station

(3) PRIMARY NETWORK STATION —The term "primary network station" means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network

(4) PRIMARY TRANSMISSION —The term 'primary transmission' has the meaning given that term in section 111(f) of this title

(5) PRIVATE HOME VIEWING —The term "private home viewing" means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission

(6) SATELLITE CARRIER —The term "satellite carrier" means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing

(7) SECONDARY TRANSMISSION.—The term "secondary transmission" has the meaning given that term in section 111(f) of this title.

(8) SUBSCRIBER.—The term "subscriber" means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(9) SUPERSTATION.—The term "superstation" means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.

(10) UNSERVED HOUSEHOLD.—The term "unserved household", with respect to a particular television network, means a household that—

(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

(e) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner.

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

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§ 501. Infringement of copyright

(a) * * *

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(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.

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CHAPTER 8—COPYRIGHT ROYALITY TRIBUNAL

§ 801. Copyright Royalty Tribunal: Establishment and purpose

(a) There is hereby created an independent Copyright Royalty Tribunal in the legislative branch

(b) Subject to the provisions of this chapter, the purposes of the Tribunal shall be—

(1) * * *

* * * * * * *

(3) to distribute royalty fees deposited with the Register of Copyrights under sections 111 [and 116], *116, and 119(b),* and to determine, in cases where controversy exists, the distribution of such fees

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§ 804. Institution and conclusion of proceedings

(a) * * *

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(d) With respect to proceedings under section 801(b)(3), concerning the distribution of royalty fees in certain circumstances under [sections 111 or 116], *section 111, 116, or 119,* the Chairman of the Tribunal shall, upon determination by the Tribunal that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter

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COMMUNICATIONS ACT OF 1934

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TITLE VII—MISCELLANEOUS PROVISIONS

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UNAUTHORIZED PUBLICATION OF COMMUNICATIONS

SEC 705 (a) * * *

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(c)(1) For purposes of this section—

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(4) the term "private vewing" means the viewing for private use in an individual's dwelling unit by means of equipment, owned or operated by such individual, capable of receiving satellite cable programming directly from a satellite, [and]

(5) the term "private financial gain" shall not include the gain resulting to any individual for the private use of such individual's dwelling unit of any programming for which the individual has not obtained authorization for that use[ ] , *and*

(6) term "any person aggrieved" shall include any person with proprietary rights in the intercepted communication by wire or

radio including wholesale or retail distributors of satellite cable programming, and, in the case of a violation of paragraph (4) of subsection (d), shall also include any person engaged in the lawful manufacture, distribution, or sale of equipment necessary to authorize or receive satellite cable programming

(d)(1) Any person who willfully violates subsection (a) shall be fined not more than [$1,000] *$2,000* or imprisoned for not more than 6 months, or both

(2) Any person who violates subsection (a) willfully and for purposes of direct or indirect commercial advantage or private financial gain shall be fined not more than [$25,000 or imprisoned for not more than 1 year, or both, for the first such conviction and shall be fined not more than $50,000 or imprisoned for not more than 2 years, or both, for any subsequent conviction] *$50,000 or imprisoned for not more than 2 years, or both, for the first such conviction and shall be fined not more than $100,000 or imprisoned for not more than 5 years, or both, for any subsequent conviction*

(3)(A) Any person aggrieved by any violation of subsection (a) *or paragraph (4) of subsection (d)* may bring a civil action in a United States district court or in any other court of competent jurisdiction

(B)The court [may]—

(i) *may* grant temporary and final injuctions on such terms as it may deem reasonable to prevent or restrain violations of subsection (a),

(ii) *may* award damages as described in subparagraph (C), and

(iii) *shall* direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails

(C)(i) Damages awarded by any court under this section shall be computed, at the election of the aggrieved party, in accordance with either of the following subclauses,

(I) the party aggrieved may recover the actual damages suffered by him as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages, in determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator shall be required to prove his deductible expenses and the elements of profit attributable to factors other than the violation, or

(II) the party aggrieved may recover an award of statutory damages for each violation *of subsection (a)* involved in the action in a sum of not less than [$250] *$1,000* or more than $100,000, as the court considers just , *and for each violation of paragraph (4) of this subsection (d) involved in the action an aggrieved party may recover statutory damages in a sum not less than $10,000, or more than $100,000, as the court considers just*

(ii) In any case in which the court finds that the violation was committed willfully and for purposes of direct or indirect commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory, by an amount of not more than [$50,000] *$100,000 for each violation of subsection (a)* —

(iii) In any case where the courts finds that the violator was not aware and had no reason to believe that his acts constituted a violation of this section, the court in its discretion may reduce the award of damages to a sum of not less than [$100] *$250*

[(4) The importation, manufacture, sale, or distribution of equipment by any person with the intent of its use to assist in any activity prohibited by subsection (a) shall be subject to penalties and remedies under this subsection to the same extent and in the same manner as a person who has engaged in such prohibited activity]

(4) Any person who manufactures, assembles, modifies imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or is intended for any other activity prohibited by subsection (a), shall be fined not more than $500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation

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(f) Within 6 months after the date of enactment of the Satellite Home Viewer Act of 1988, the Federal Communications Commission shall initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing In conducting such inquiry, the Commission shall take into acount—

(1) consumer costs and benefits of any such standard, including consumer investment in equipment in operation,

(2) incorporation of technological enhancements, including advanced television formats,

(3) whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming,

(4) the costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable systems and satellite master antenna television systems,

(5) the effect of any such standard on competition in the manufacture of decryption equipment, and

(6) the impact of the time delay associated with the Commission procedures necessary for establishment of such standards

(g) If the Commission finds, based on the information gathered from the inquiry required by subsection (f) that a universal encryption standard is necessary in the public interest, the Commission shall initiate a rulemaking to establish such a standard

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SYNDICATED EXCLUSIVITY

SEC 712 (a) The Federal Communications Commission shall, within 120 days after the effective date of the Satellite Home

Viewer Act of 1988, initiate a combined inquiry and rulemaking proceeding for the purpose of—

(1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of snydicated programming (as defined by the Commission) for private viewing (as defined in section 705 of this Act) similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television, and

(2) adopting such rules if the Commission considers the imposition of such rules to be feasible

(b) In the event that the Commission adopts such rules, any willful and repeated secondary transmission made by a satellite carrier to the public of a primary transmission embodying the performance or display of a work which violates such Commission rules shall be subject to the remedies, sanctions, and penalties provided by title V and section 705 of this Act

DISCRIMINATION

SEC 713 The Federal Communications Commission shall, within 1 year after the effective date of the Satellite Home Viewer Act of 1988, prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on whether, and the extent to which, there exists discrimination described in section 119(a)(6) of title 17, United States Code

ADDITIONAL VIEWS ON H R 2848 BY MR TAUZIN

I applaud the Committee for taking this vital step to insure the availability of broadcast signals to the more than two million dish owners in America Because many of those dishes are located in rural areas where access to broadcast signals is limited, this legislation will make available for the first time, a luxury most of us take for granted—network news

Competition in the sale of home satellite dish programming has been a concern of mine and many members of the Committee since the first signal was scrambled Without it, there is little incentive for cable programmers to provide dish owners with the same consumer choices of program packages at fair and reasonable prices that cable subscribers now enjoy H R 1885, the Satellite Television Fair Marketing Act, which I introduced and 124 Members cosponsored this Congress, sought to encourage the sale of programming to third party packagers While we have not been successful in its enactment, its existence has served as a catalyst to encourage cable programmers to negotiate and sign contracts with third party program packagers The National Rural Telecommunications Cooperative (NRTC) signed programming agreements the day of H R 1885 Subcommittee markup, making it the first third-party program packager to establish long-term contractual relationships with major programming services The development of this package is a positive event in the evolution of the home dish market and has hopefully let the "Genie of competition" out of the bottle and into the marketplace

We will be monitoring the Genie to see whether he flourishes in the marketplace or withers and retreats to the bottle

BILLY TAUZIN

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