

100TH CONGRESS
1ST SESSION

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 1987

Mr KASTENMEIER (for himself, Mr SYNAR, Mr BOUCHER, Mr MOORHEAD, Mr HUGHES, and Mr GARCIA) introduced the following bill, which was referred to the Committee on the Judiciary

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE**

4 This Act may be cited as the "Satellite Home Viewer
5 Copyright Act of 1987"

6 **SEC. 2 AMENDMENTS TO TITLE 17, UNITED STATES CODE.**

7 Title 17, United States Code, is amended as follows:

8 (1) Section 111 is amended—

1 (A) in subsection (a)—

2 (i) in clause (3) by striking “or” at the
3 end;

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

6 (iii) by inserting the following after
7 clause (3)

8 “(4) the secondary transmission is made by a sat-
9 ellite carrier for private viewing pursuant to a compul-
10 sory license under section 119; or”, and

11 (B) in subsection (d)(2)(A) by inserting before
12 “Such statement” the following:

13 “In determining the total number of subscribers
14 and the gross amounts paid to the cable system
15 for the basic service of providing secondary trans-
16 missions of primary broadcast transmitters, the
17 system shall not include subscribers and amounts
18 collected from subscribers receiving secondary
19 transmissions for private viewing pursuant to sec-
20 tion 119.”

21 (2) Chapter 1 of title 17, United States Code, is
22 amended by adding at the end the following new sec-
23 tion:

1 "§ 119. Limitations on exclusive rights: Secondary trans-
2 missions of superstations for private viewing

3 "(a) SECONDARY TRANSMISSIONS BY SATELLITE CAR-
4 RIERS.—

5 "(1) Subject to the provisions of clauses (2), (3),
6 and (4) of this subsection, secondary transmissions of a
7 primary transmission made by a superstation and em-
8 bodying a performance or display of a work shall be
9 subject to statutory licensing if the secondary transmis-
10 sion is made by a satellite carrier to the public for pri-
11 vate viewing, and the carrier makes a direct charge for
12 such retransmission service to each subscriber receiving
13 the secondary transmission or to a distributor that has
14 contracted with the carrier for direct or indirect deliv-
15 ery of the secondary transmission to the public for pri-
16 vate viewing

17 "(2) Notwithstanding the provisions of clause (1)
18 of this subsection, the willful or repeated secondary
19 transmission to the public by a satellite carrier of a pri-
20 mary transmission made by a superstation and embody-
21 ing a performance or display of a work is actionable as
22 an act of infringement under section 501, and is fully
23 subject to the remedies provided by sections 502
24 through 506 and 509, where the satellite carrier has
25 not deposited the statement of account and royalty fee
26 required by subsection (b)

1 “(3) Notwithstanding the provisions of clause (1)
2 of this subsection, the secondary transmission to the
3 public by a satellite carrier of a primary transmission
4 made by a superstation and embodying a performance
5 or display of a work is actionable as an act of infringe-
6 ment under section 501, and is fully subject to the
7 remedies provided by sections 502 through 506 and
8 sections 509 and 510, if the content of the particular
9 program in which the performance or display is em-
10 bodied, or any commercial advertising or station an-
11 nouncement transmitted by the primary transmitter
12 during, or immediately before or after, the transmission
13 of such program, is in any way willfully altered by the
14 satellite carrier through changes, deletions, or addi-
15 tions, or is combined with programming from any other
16 broadcast signal.

17 “(4) Notwithstanding the provisions of clause (1)
18 of this subsection, the willful or repeated secondary
19 transmission to the public by a satellite carrier of a pri-
20 mary transmission made by a superstation and embody-
21 ing a performance or display of a work is actionable as
22 an act of infringement under section 501, and is fully
23 subject to the remedies provided by sections 502
24 through 506 and 509, if the satellite carrier discrimi-
25 nates against a distributor in a manner which violates

1 the Communications Act of 1934 or rules issued by the
2 Federal Communications Commission with respect to
3 discrimination.

4 “(b) STATUTORY LICENSE FOR SECONDARY TRANS-
5 MISSIONS FOR PRIVATE VIEWING.—

6 “(1) A satellite carrier whose secondary transmis-
7 sions are subject to statutory licensing under subsection
8 (a) shall, on a semiannual basis, deposit with the Reg-
9 ister of Copyrights, in accordance with requirements
10 that the Register shall, after consultation with the
11 Copyright Royalty Tribunal, prescribe by regulation—

12 “(A) a statement of account, covering the
13 preceding 6-month period, specifying the names
14 and locations of all superstations whose signals
15 were transmitted, at any time during that period,
16 to subscribers for private viewing as described in
17 subsection (a)(1), the total number of subscribers
18 that received such transmissions, and such other
19 data as the Register of Copyrights may, after con-
20 sultation with the Copyright Royalty Tribunal,
21 from time to time prescribe by regulation, and

22 “(B) a royalty fee for that 6-month period,
23 computed by multiplying the number of subscrib-
24 ers receiving each secondary transmission during
25 each calendar month by 12 cents.

1 “(2) The Register of Copyrights shall receive all
2 fees deposited under this section and, after deducting
3 the reasonable costs incurred by the Copyright Office
4 under this section (other than the costs deducted under
5 clause (4)), shall deposit the balance in the Treasury of
6 the United States, in such manner as the Secretary of
7 the Treasury directs. All funds held by the Secretary
8 of the Treasury shall be invested in interest-bearing
9 United States securities for later distribution with in-
10 terest by the Copyright Royalty Tribunal as provided
11 by this title

12 “(3) The royalty fees deposited under clause (2)
13 shall, in accordance with the procedures provided by
14 clause (4), be distributed to those copyright owners
15 whose works were included in a secondary transmis-
16 sion for private viewing made by a satellite carrier
17 during the applicable 6-month accounting period and
18 who file a claim with the Copyright Royalty Tribunal
19 under clause (4)

20 “(4) The royalty fees deposited under clause (2)
21 shall be distributed in accordance with the following
22 procedures:

23 “(A) During the month of July in each year,
24 each person claiming to be entitled to compulsory
25 license fees for secondary transmissions for private

1 viewing shall file a claim with the Copyright Roy-
2 alty Tribunal, in accordance with requirements
3 that the Tribunal shall prescribe by regulation
4 Notwithstanding any provision of the antitrust
5 laws, for purposes of this clause any claimants
6 may agree among themselves as to the propor-
7 tionate division of compulsory licensing fees
8 among them, may lump their claims together and
9 file them jointly or as a single claim, or may des-
10 ignate a common agent to receive payment on
11 their behalf.

12 “(B) After the first day of August of each
13 year, the Copyright Royalty Tribunal shall deter-
14 mine whether there exists a controversy concern-
15 ing the distribution of royalty fees. If the Tribunal
16 determines that no such controversy exists, the
17 Tribunal shall, after deducting reasonable adminis-
18 trative costs under this clause, distribute such fees
19 to the copyright owners entitled to receive them,
20 or to their designated agents. If the Tribunal finds
21 the existence of a controversy, the Tribunal shall,
22 pursuant to chapter 8 of this title, conduct a pro-
23 ceeding to determine the distribution of royalty
24 fees

1 “(C) During the pendency of any proceeding
2 under this subsection, the Copyright Royalty Tri-
3 bunal shall withhold from distribution an amount
4 sufficient to satisfy all claims with respect to
5 which a controversy exists, but shall have discre-
6 tion to proceed to distribute any amounts that are
7 not in controversy

8 “(c) DETERMINATION OF ROYALTY FEES —

9 “(1) METHODS FOR DETERMINING ROYALTY
10 FEES.—The rate of the royalty fee payable under sub-
11 section (b)(1)(B) shall be effective until December 31,
12 1991, unless a royalty fee is established under clause
13 (2) or (3) of this subsection. After that date, the fee
14 shall be determined either in accordance with the vol-
15 untary negotiation procedure specified in clause (2) of
16 this subsection or in accordance with the compulsory
17 arbitration procedure specified in clauses (3) and (4) of
18 this subsection

19 “(2) FEE SET BY VOLUNTARY NEGOTIATION.—

20 “(A) On or before July 1, 1990, the Copy-
21 right Royalty Tribunal shall cause notice to be
22 published in the Federal Register of the initiation
23 of voluntary negotiation proceedings for the pur-
24 pose of determining the royalty fee to be paid by

1 satellite carriers under subsection (b)(1)(B) of this
2 section.

3 “(B) Satellite carriers, distributors, and copy-
4 right owners entitled to royalty fees under this
5 section shall negotiate in good faith in an effort to
6 reach a voluntary agreement or voluntary agree-
7 ments for the payment of royalty fees. Notwith-
8 standing any provision of the antitrust laws, any
9 such satellite carriers, distributors, and copyright
10 owners may at any time negotiate and agree to
11 the royalty fee, and may designate common
12 agents to negotiate, agree to, or pay such fees. If
13 the parties fail to identify common agents, the
14 Copyright Royalty Tribunal shall do so, after re-
15 questing recommendations from the parties to the
16 negotiation proceeding. The parties to each nego-
17 tiation proceeding shall bear the entire cost
18 thereof.

19 “(C) Voluntary agreements negotiated at any
20 time in accordance with this clause shall be bind-
21 ing upon all satellite carriers, distributors, and
22 copyright owners that are parties thereto. Copies
23 of such agreements shall be filed with the Copy-
24 right Office within thirty days after execution in

1 accordance with regulations that the Register of
2 Copyrights shall prescribe

3 “(D) The obligation to pay the royalty fees
4 established under a voluntary agreement which
5 has been filed with the Copyright Office in ac-
6 cordance with this clause shall become effective
7 on the date specified in the agreement, and shall
8 remain in effect until December 31, 1995.

9 “(3) FEE SET BY COMPULSORY ARBITRATION.—

10 “(A) On or before December 31, 1990, the
11 Copyright Royalty Tribunal shall cause notice to
12 be published in the Federal Register of the initi-
13 ation of arbitration proceedings for the purpose of
14 determining a reasonable royalty fee to be paid
15 under subsection (b)(1)(B) of this section by satel-
16 lite carriers who are not parties to a voluntary
17 agreement filed with the Copyright Office in ac-
18 cordance with clause (2) of this subsection. Such
19 notice shall include the names and qualifications
20 of potential arbitrators chosen by the Tribunal
21 from a list of available arbitrators obtained from
22 the American Arbitration Association or such
23 similar organization as the Tribunal shall select

24 “(B) Not later than ten days after publication
25 of the notice initiating an arbitration proceeding,

1 and in accordance with procedures to be specified
2 by the Copyright Royalty Tribunal, one arbitrator
3 shall be selected from the published list by copy-
4 right owners who claim to be entitled to royalty
5 fees under subsection (b)(4) of this section and
6 who are not party to a voluntary agreement filed
7 with the Copyright Office in accordance with
8 clause (2) of this subsection, and one arbitrator
9 shall be selected from the published list by satel-
10 lite carriers and distributors who are not parties
11 to such a voluntary agreement. The two arbitra-
12 tors so selected shall, within ten days after their
13 selection, choose a third arbitrator from the same
14 list, who shall serve as chairperson of the arbitra-
15 tors. If either group fails to agree upon the selec-
16 tion of an arbitrator, or if the arbitrators selected
17 by such groups fails to agree upon the selection of
18 a chairperson, the Copyright Royalty Tribunal
19 shall promptly select the arbitrator or chairperson,
20 respectively. The arbitrators selected under this
21 paragraph shall constitute an Arbitration Panel.

22 “(C) The Arbitration Panel shall conduct an
23 arbitration proceeding in accordance with such
24 procedures as it may adopt. The Panel shall act
25 on the basis of a fully documented written record

1 Any copyright owner who claims to be entitled to
2 royalty fees under subsection (b)(4) of this section,
3 any satellite carrier, and any distributor, who is
4 not party to a voluntary agreement filed with the
5 Copyright Office in accordance with clause (2) of
6 this subsection, may submit relevant information
7 and proposals to the Panel. The parties to the
8 proceeding shall bear the entire cost thereof in
9 such manner and proportion as the Panel shall
10 direct.

11 “(D) In determining royalty fees under this
12 clause, the Arbitration Panel shall consider the
13 approximate average cost to a cable system for
14 the right to secondarily transmit to the public a
15 primary transmission made by a broadcast station,
16 the fee established under any voluntary agreement
17 filed with the Copyright Office in accordance with
18 clause (2) of this subsection, and the last fee pro-
19 posed by the parties, before proceedings under
20 this clause, for the secondary transmission of su-
21 perstations for private viewing. The fee shall also
22 be calculated to achieve the following objectives:

23 “(i) To maximize the availability of cre-
24 ative works to the public.

1 “(ii) To afford the copyright owner a
2 fair return for his or her creative work and
3 the copyright user a fair income under exist-
4 ing economic conditions

5 “(iii) To reflect the relative roles of the
6 copyright owner and the copyright user in
7 the product made available to the public with
8 respect to relative creative contribution,
9 technological contribution, capital invest-
10 ment, cost, risk, and contribution to the
11 opening of new markets for creative expres-
12 sion and media for their communication

13 “(iv) To minimize any disruptive impact
14 on the structure of the industries involved
15 and on generally prevailing industry prac-
16 tices

17 “(E) Not later than sixty days after publica-
18 tion of the notice initiating an arbitration proceed-
19 ing, the Arbitration Panel shall report to the
20 Copyright Royalty Tribunal its determination con-
21 cerning the royalty fee. Such report shall be ac-
22 companied by the written record, and shall set
23 forth the facts that the Board found relevant to its
24 determination and the reasons why its determina-

1 tion is consistent with the criteria set forth in
2 paragraph (D) of this clause.

3 “(F) Within 60 days after receiving the
4 report of the Arbitration Panel under paragraph
5 (E) of this clause, the Copyright Royalty Tribunal
6 shall adopt or reject the determination of the
7 Panel The Tribunal shall adopt the determination
8 of the Panel unless the Tribunal finds that the de-
9 termination is clearly inconsistent with the criteria
10 set forth in paragraph (D) of this clause. If the
11 Tribunal rejects the determination of the Panel,
12 the Tribunal shall, before the end of that 60-day
13 period, and after full examination of the record
14 created in the arbitration proceeding, issue an
15 order, consistent with the criteria set forth in
16 paragraph (D) of this clause, setting the royalty
17 fee under this clause The Tribunal shall cause to
18 be published in the Federal Register the determi-
19 nation of the Panel, and the decision of the Tribu-
20 nal with respect to the determination (including
21 any order issued under the preceding sentence)
22 The Tribunal shall also publicize such determina-
23 tion and decision in such other manner as the Tri-
24 bunal considers appropriate. The Tribunal shall
25 also make the report of the Arbitration Panel and

1 the accompanying record available for public in-
2 spection and copying.

3 “(G) The obligation to pay the royalty fee
4 established under a determination of the Arbitra-
5 tion Panel which is confirmed by the Copyright
6 Royalty Tribunal in accordance with this clause,
7 or established by any order issued under para-
8 graph (F) of this clause, shall become effective on
9 the date when the decision of the Tribunal is pub-
10 lished in the Federal Register under paragraph
11 (F) of this clause, and shall remain in effect until
12 modified in accordance with clause (4) of this sub-
13 section, or until December 31, 1995

14 “(H) The royalty fee adopted or ordered
15 under paragraph (F) of this clause shall be binding
16 on all satellite carriers, distributors, and copyright
17 owners, who are not party to a voluntary agree-
18 ment filed with the Copyright Office under clause
19 (2) of this subsection

20 “(4) JUDICIAL REVIEW.—Any decision of the
21 Copyright Royalty Tribunal under clause (3) of this
22 subsection with respect to a determination of the Arbi-
23 tration Panel may be appealed, by any aggrieved party
24 who would be bound by the determination, to the
25 United States Court of Appeals for the District of Co-

1 lumbia Circuit, within thirty days after the publication
2 of the decision in the Federal Register. The pendency
3 of an appeal under this clause shall not relieve satellite
4 carriers of the obligation under subsection (b)(1) of this
5 section to deposit the statement of account and royalty
6 fees specified in that subsection. The court shall have
7 jurisdiction to modify or vacate a decision of the Tribu-
8 nal only if it finds, on the basis of the record before the
9 Tribunal and the statutory criteria set forth in clause
10 (3)(D) of this subsection, that the Arbitration Panel or
11 the Tribunal acted in an arbitrary manner. If the court
12 modifies the decision of the Tribunal, the court shall
13 have jurisdiction to enter its own determination with
14 respect to royalty fees, to order the repayment of any
15 excess fees deposited under subsection (b)(1)(B) of this
16 section, and to order the payment of any underpaid
17 fees, and the interest pertaining respectively thereto, in
18 accordance with its final judgment. The court may fur-
19 ther vacate the decision of the Tribunal and remand
20 the case for arbitration proceedings in accordance with
21 clause (3) of this subsection.

22 “(d) DEFINITIONS.—As used in this section—

23 “(1) ANTITRUST LAWS —The term ‘antitrust
24 laws’ has the meaning given that term in subsection (a)

1 of the first section of the Clayton Act (15 U S C.
2 12(a))

3 “(2) DISTRIBUTOR —The term ‘distributor’
4 means an entity which contracts to distribute second-
5 ary transmissions from a satellite carrier and, either as
6 a single channel or in a package with other program-
7 ming, provides the secondary transmission either di-
8 rectly to individual subscribers for private viewing or
9 indirectly through other program distribution entities.

10 “(3) INDEPENDENT STATION.—The term ‘inde-
11 pendent station’ has the meaning given that term in
12 section 111(f) of this title

13 “(4) PRIMARY TRANSMISSION —The term ‘pri-
14 mary transmission’ has the meaning given that term in
15 section 111(f) of this title.

16 “(5) PRIVATE VIEWING.—The term ‘private
17 viewing’ means the viewing, for private use in an indi-
18 vidual’s dwelling unit by means of equipment which is
19 operated by such individual, of a secondary transmis-
20 sion delivered by a satellite carrier of a primary trans-
21 mission of a television station licensed by the Federal
22 Communications Commission.

23 “(6) SATELLITE CARRIER —The term ‘satellite
24 carrier’ means a common carrier that is licensed by the
25 Federal Communications Commission to establish and

1 operate a channel of communications for point-to-multi-
2 point distribution of television station signals, and that
3 owns or leases a transponder on a satellite in order to
4 provide such point-to-multipoint distribution

5 “(7) SECONDARY TRANSMISSION.—The term
6 ‘secondary transmission’ has the meaning given that
7 term in section 111(f) of this title.

8 “(8) SUBSCRIBER.—The term ‘subscriber’ means
9 an individual who receives a secondary transmission
10 service for private viewing by means of a secondary
11 transmission from a satellite carrier and pays a fee for
12 the service, directly or indirectly, to the satellite carri-
13 er or to a distributor.

14 “(9) SUPERSTATION.—The term ‘superstation’
15 means a television broadcast station licensed by the
16 Federal Communications Commission that—

17 “(A) was secondarily transmitted by a satel-
18 lite carrier for nationwide distribution on June 1,
19 1987, or

20 “(B) is secondarily transmitted by a satellite
21 carrier and is then secondarily transmitted by
22 cable systems serving, in the aggregate, not less
23 than 10 percent of all cable television subscribers,
24 as reflected in the most current statements of ac-
25 count deposited by cable systems with the Regis-

1 ter of Copyrights in accordance with section
2 111(d)(2)(A) of this title.”

3 (3) Section 801(b)(3) of title 17, United States
4 Code, is amended by striking “and 116” and inserting
5 “, 116, and 119(b)”

6 (4) Section 804(d) of title 17, United States Code,
7 is amended by striking “sections 111 or 116” and in-
8 serting “section 111, 116, or 119”.

9 (5) The table of sections for chapter 1 of title 17,
10 United States Code, is amended by adding at the end
11 the following new item

“119 Limitations on exclusive rights Secondary transmissions of superstations for
private viewing”

12 **SEC. 3. EFFECTIVE DATE.**

13 This Act and the amendments made by this Act take
14 effect on January 1, 1988, except that the authority of the
15 Copyright Royalty Tribunal to set rates pursuant to the
16 amendments made by this Act takes effect upon the date of
17 the enactment of this Act.

18 **SEC. 4. TERMINATION**

19 This Act and the amendments made by this Act cease to
20 be effective on December 31, 1995.

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