

99<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5572

To amend title 17, United States Code, relating to copyrights, to provide for the temporary compulsory licensing of the secondary transmission by satellite carriers of superstations for private viewing by earth station owners

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 1986

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

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## A BILL

To amend title 17, United States Code, relating to copyrights, to provide for the temporary compulsory 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 Act of 1986".

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  
20 section 119.”

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

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

3 "(a) SECONDARY TRANSMISSIONS BY SATELLITE  
4 CARRIERS.—

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 compulsory licensing if the secondary trans-  
10 mission is made by a satellite carrier to the public for  
11 private viewing, and the carrier makes a direct charge  
12 for such retransmission service to each subscriber re-  
13 ceiving the secondary transmission or to a distributor  
14 that has contracted with the carrier for direct or indi-  
15 rect delivery of the secondary transmission to the  
16 public for private 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) COMPULSORY LICENSE FOR SECONDARY TRANS-  
5 MISSIONS FOR PRIVATE VIEWING.—

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

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

23 “(B) a royalty fee for that 6-month period,  
24 computed by multiplying the number of subscrib-

1           ers receiving each secondary transmission during  
2           each calendar month by 12 cents.

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

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

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

1           “(A) During the month of July in each year,  
2 each person claiming to be entitled to compulsory  
3 license fees for secondary transmissions for private  
4 viewing shall file a claim with the Copyright Roy-  
5 alty Tribunal, in accordance with requirements  
6 that the Tribunal shall prescribe by regulation.  
7 Notwithstanding any provision of the antitrust  
8 laws, for purposes of this clause any claimants  
9 may agree among themselves as to the propor-  
10 tionate division of compulsory licensing fees  
11 among them, may lump their claims together and  
12 file them jointly or as a single claim, or may des-  
13 ignate a common agent to receive payment on  
14 their behalf.

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

1           ceeding to determine the distribution of royalty  
2           fees.

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

10          “(c) DETERMINATION OF ROYALTY FEES —

11           “(1) METHODS FOR DETERMINING ROYALTY  
12           FEES.—The rate of the royalty fee payable under sub-  
13           section (b)(1)(B) shall be effective until December 31,  
14           1990, unless a royalty fee is established under clause  
15           (2) or (3) of this subsection. After that date, the fee  
16           shall be determined either in accordance with the vol-  
17           untary negotiation procedure specified in clause (2) of  
18           this subsection or in accordance with the compulsory  
19           arbitration procedure specified in clauses (3) and (4) of  
20           this subsection.

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

22           “(A) On or before July 1, 1989, the Copy-  
23           right Royalty Tribunal shall cause notice to be  
24           published in the Federal Register of the initiation  
25           of voluntary negotiation proceedings for the pur-



1 pose of determining the royalty fee to be paid by  
2 satellite carriers under subsection (b)(1)(B) of this  
3 section.

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

20 “(C) Voluntary agreements negotiated at any  
21 time in accordance with this clause shall be bind-  
22 ing upon all satellite carriers, distributors, and  
23 copyright owners that are parties thereto. Copies  
24 of such agreements shall be filed with the Copy-  
25 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, 1994.

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

10 “(A) On or before December 31, 1989, 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  
16          practices.

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  
2 inspection 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, 1994

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 Columbia 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 an independent station licensed by the Federal  
16 Communications Commission that—

17 “(A) was secondarily transmitted by a satel-  
18 lite carrier for nationwide distribution on June 1,  
19 1986, 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, 1987, 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, 1994.