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[Report No. 100-887, Part I]

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

MAY 4, 1988

Additional sponsors Mr ECKART, Mr WISE, Mr OLIN, Mr PENNY, Mr WILSON, Mr STAGGERS, Mr TAUKE, Mr PRICE of Illinois, Mr SKELTON, Mr GUNDERSON, Mr HYDE, Mr SUNDQUIST, Mr BARNARD, Mr FAUNTRROY, Mr CAMPBELL, Mr SMITH of New Hampshire, Mr HAMMER-SCHMIDT, and Mrs VUCANOVICH

AUGUST 18, 1988

Additional sponsors Mrs SMITH of Nebraska, Mr HATCHER, and Mr HOUGHTON

AUGUST 18, 1988

Reported with amendments and referred to the Committee on Energy and Commerce for a period ending not later than September 29, 1988, for consideration of such provisions of the bill and amendments as fall within the jurisdiction of that committee pursuant to clause 1(h), rule X

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 30, 1987]

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 1988"*

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—*

9 (A) *in subsection (a)—*

10 (i) *in paragraph (3) by striking "or" at*
 11 *the end;*

12 (ii) *by redesignating paragraph (4) as*
 13 *paragraph (5); and*

14 (iii) *by inserting the following after*
 15 *paragraph (3)*

16 "*(4) the secondary transmission is made by a sat-*
 17 *ellite carrier for private home viewing pursuant to a*
 18 *statutory license under section 119; or", and*

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

1 *“In determining the total number of subscribers*
2 *and the gross amounts paid to the cable system for*
3 *the basic service of providing secondary transmis-*
4 *sions of primary broadcast transmitters, the*
5 *system shall not include subscribers and amounts*
6 *collected from subscribers receiving secondary*
7 *transmissions for private home viewing pursuant*
8 *to section 119.”*

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

12 ***“§ 119. Limitations on exclusive rights: Secondary transmis-***
13 ***sions of superstations and network stations for***
14 ***private home viewing***

15 ***“(a) SECONDARY TRANSMISSIONS BY SATELLITE***
16 ***CARRIERS —*** —

17 ***“(1) SUPERSTATIONS —****Subject to the provisions*
18 *of paragraphs (3), (4), and (6), secondary transmis-*
19 *sions of a primary transmission made by a supersta-*
20 *tion and embodying a performance or display of a*
21 *work shall be subject to statutory licensing under this*
22 *section if the secondary transmission is made by a sat-*
23 *ellite carrier to the public for private home viewing,*
24 *and the carrier makes a direct or indirect charge for*
25 *each retransmission service to each household receiving*

1 *the secondary transmission or to a distributor that has*
2 *contracted with the carrier for direct or indirect deliv-*
3 *ery of the secondary transmission to the public for pri-*
4 *vate home viewing.*

5 *“(2) NETWORK STATIONS.—*

6 *“(A) IN GENERAL.—Subject to the provi-*
7 *sions of subparagraphs (B) and (C) and para-*
8 *graphs (3), (4), (5), and (6), secondary transmis-*
9 *sions of programming contained in a primary*
10 *transmission made by a network station and em-*
11 *bodying a performance or display of a work shall*
12 *be subject to statutory licensing under this section*
13 *if the secondary transmission is made by a satel-*
14 *lite carrier to the public for private home viewing,*
15 *and the carrier makes a direct charge for such re-*
16 *transmission service to each subscriber receiving*
17 *the secondary transmission.*

18 *“(B) SECONDARY TRANSMISSIONS TO UN-*
19 *SERVED HOUSEHOLDS.—The statutory license*
20 *provided for in subparagraph (A) shall be limited*
21 *to secondary transmissions to persons who reside*
22 *in unserved households.*

23 *“(C) NOTIFICATION TO NETWORKS.—A*
24 *satellite carrier that makes secondary transmis-*
25 *sions of a primary transmission by a network sta-*

1 *tion pursuant to subparagraph (A) shall, 90 days*
2 *after the effective date of the Satellite Home*
3 *Viewer Copyright Act of 1988, or 90 days after*
4 *commencing such secondary transmissions, which-*
5 *ever is later, submit to the network that owns or*
6 *is affiliated with the network station a list identi-*
7 *fying (by street address, including county and zip*
8 *code) all subscribers to which the satellite carrier*
9 *currently makes secondary transmissions of that*
10 *primary transmission. Thereafter, on the 15th of*
11 *each month, the satellite carrier shall submit to*
12 *the network a list identifying (by street address,*
13 *including county and zip code) any persons who*
14 *have been added or dropped as such subscribers*
15 *since the last submission under this subpara-*
16 *graph. Such subscriber information submitted by*
17 *a satellite carrier may only be used for purposes*
18 *of monitoring compliance by the satellite carrier*
19 *with this subsection. The submission requirements*
20 *of this subparagraph shall apply to a satellite car-*
21 *rier only if the network to whom the submissions*
22 *are to be made places on file with the Register of*
23 *Copyrights, on or after the effective date of the*
24 *Satellite Home Viewer Copyright Act of 1988, a*
25 *document identifying the name and address of the*

1 *person to whom such submissions are to be made*
2 *The Register shall maintain for public inspection*
3 *a file of all such documents.*

4 “(3) *NONCOMPLIANCE WITH REPORTING AND*
5 *PAYMENT REQUIREMENTS.—Notwithstanding the pro-*
6 *visions of paragraphs (1) and (2), the willful or repeat-*
7 *ed secondary transmission to the public by a satellite*
8 *carrier of a primary transmission made by a supersta-*
9 *tion or a network station and embodying a performance*
10 *or display of a work is actionable as an act of infringe-*
11 *ment under section 501, and is fully subject to the*
12 *remedies provided by sections 502 through 506 and*
13 *509, where the satellite carrier has not deposited the*
14 *statement of account and royalty fee required by sub-*
15 *section (b), or has failed to make the submissions to*
16 *networks required by paragraph (2)(C).*

17 “(4) *WILLFUL ALTERATIONS —Notwithstanding*
18 *the provisions of paragraphs (1) and (2), the secondary*
19 *transmission to the public by a satellite carrier of a*
20 *primary transmission made by a superstation or a net-*
21 *work station and embodying a performance or display*
22 *of a work is actionable as an act of infringement under*
23 *section 501, and is fully subject to the remedies provid-*
24 *ed by sections 502 through 506 and sections 509 and*
25 *510, if the content of the particular program in which*

1 *the performance or display is embodied, or any com-*
2 *mercial advertising or station announcement transmit-*
3 *ted by the primary transmitter during, or immediately*
4 *before or after, the transmission of such program, is in*
5 *any way willfully altered by the satellite carrier*
6 *through changes, deletions, or additions, or is combined*
7 *with programming from any other broadcast signal.*

8 “(5) VIOLATION OF TERRITORIAL RESTRIC-
9 TIONS ON STATUTORY LICENSE FOR NETWORK STA-
10 TIONS —

11 “(A) INDIVIDUAL VIOLATIONS —*The will-*
12 *ful or repeated secondary transmission by a satel-*
13 *lite carrier of a primary transmission made by a*
14 *network station and embodying a performance or*
15 *display of a work to a subscriber who does not*
16 *reside in an unserved household is actionable as*
17 *an act of infringement under section 501 and is*
18 *fully subject to the remedies provided by sections*
19 *502 through 506 and 509, except that—*

20 “(i) *no damages shall be awarded for*
21 *such act of infringement if the satellite carri-*
22 *er took corrective action by promptly with-*
23 *drawing service from the ineligible subscrib-*
24 *er, and*

1 “(u) any statutory damages shall not
2 exceed \$5 for such subscriber for each month
3 during which the violation occurred.

4 “(B) *PATTERN OF VIOLATIONS.*—If a satel-
5 lite carrier engages in a willful or repeated pat-
6 tern or practice of delivering a primary transmis-
7 sion made by a network station and embodying a
8 performance or display of a work to subscribers
9 who do not reside in unserved households, then in
10 addition to the remedies set forth in subparagraph
11 (A)—

12 “(i) if the pattern or practice has been
13 carried out on a substantially nationwide
14 basis, the court shall order a permanent in-
15 junction barring the secondary transmission
16 by the satellite carrier, for private home
17 viewing, of the primary transmissions of any
18 primary network station affiliated with the
19 same network, and the court may order stat-
20 utory damages of not to exceed \$250,000 for
21 each 6-month period during which the pat-
22 tern or practice was carried out; and

23 “(u) if the pattern or practice has been
24 carried out on a local or regional basis, the
25 court shall order a permanent injunction bar-

1 ring the secondary transmission, for private
2 home viewing in that locality or region, by
3 the satellite carrier of the primary transmis-
4 sions of any primary network station affili-
5 ated with the same network, and the court
6 may order statutory damages of not to exceed
7 \$250,000 for each 6-month period during
8 which the pattern or practice was carried
9 out.

10 “(C) PREVIOUS SUBSCRIBERS EX-
11 CLUDED.—Subparagraphs (A) and (B) do not
12 apply to secondary transmissions by a satellite
13 carrier to persons who subscribed to receive such
14 secondary transmissions from the satellite carrier
15 or a distributor before July 4, 1988

16 “(6) DISCRIMINATION BY A SATELLITE CARRI-
17 ER.—Notwithstanding the provisions of paragraph (1),
18 the willful or repeated secondary transmission to the
19 public by a satellite carrier of a primary transmission
20 made by a superstation or a network station and em-
21 bodying a performance or display of a work is action-
22 able as an act of infringement under section 501, and
23 is fully subject to the remedies provided by sections
24 502 through 506 and 509, if the satellite carrier dis-
25 criminates against a distributor in a manner which

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

4 “(7) *GEOGRAPHIC LIMITATION ON SECONDARY*
5 *TRANSMISSIONS.—The statutory license created by*
6 *this section shall apply only to secondary transmis-*
7 *sions to households located in the United States, or*
8 *any of its territories, trust territories, or possessions.*

9 “(b) *STATUTORY LICENSE FOR SECONDARY TRANS-*
10 *MISSIONS FOR PRIVATE HOME VIEWING.—*

11 “(1) *DEPOSITS WITH THE REGISTER OF COPY-*
12 *RIGHTS.—A satellite carrier whose secondary trans-*
13 *missions are subject to statutory licensing under sub-*
14 *section (a) shall, on a semiannual basis, deposit with*
15 *the Register of Copyrights, in accordance with require-*
16 *ments that the Register shall, after consultation with*
17 *the Copyright Royalty Tribunal, prescribe by regula-*
18 *tion—*

19 “(A) *a statement of account, covering the*
20 *preceding 6-month period, specifying the names*
21 *and locations of all superstations and network sta-*
22 *tions whose signals were transmitted, at any time*
23 *during that period, to subscribers for private home*
24 *viewing as described in subsections (a)(1) and*
25 *(a)(2), the total number of subscribers that re-*

1 *ceived such transmissions, and such other data as*
2 *the Register of Copyrights may, after consultation*
3 *with the Copyright Royalty Tribunal, from time*
4 *to time prescribe by regulation; and*

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

7 “(i) *multiplying the total number of*
8 *subscribers receiving each secondary trans-*
9 *mission of a superstation during each calen-*
10 *dar month by 12 cents;*

11 “(ii) *multiplying the number of sub-*
12 *scribers receiving each secondary transmis-*
13 *sion of a network station during each calen-*
14 *dar month by 3 cents, and*

15 “(iii) *adding together the totals from*
16 *clauses (i) and (ii)*

17 “(2) *INVESTMENT OF FEES —The Register of*
18 *Copyrights shall receive all fees deposited under this*
19 *section and, after deducting the reasonable costs in-*
20 *curring by the Copyright Office under this section*
21 *(other than the costs deducted under paragraph (4)),*
22 *shall deposit the balance in the Treasury of the United*
23 *States, in such manner as the Secretary of the Treas-*
24 *ury directs. All funds held by the Secretary of the*
25 *Treasury shall be invested in interest-bearing United*

1 *States securities for later distribution with interest by*
2 *the Copyright Royalty Tribunal as provided by this*
3 *title.*

4 “(3) *PERSONS TO WHOM FEES ARE DISTRIBUT-*
5 *ED.—The royalty fees deposited under paragraph (2)*
6 *shall, in accordance with the procedures provided by*
7 *paragraph (4), be distributed to those copyright owners*
8 *whose works were included in a secondary transmis-*
9 *sion for private home viewing made by a satellite carri-*
10 *er during the applicable 6-month accounting period*
11 *and who file a claim with the Copyright Royalty Tri-*
12 *bunal under paragraph (4).*

13 “(4) *PROCEDURES FOR DISTRIBUTION.—The*
14 *royalty fees deposited under paragraph (2) shall be dis-*
15 *tributed in accordance with the following procedures:*

16 “(A) *FILING OF CLAIMS FOR FEES.—*
17 *During the month of July in each year, each*
18 *person claiming to be entitled to statutory license*
19 *fees for secondary transmissions for private home*
20 *viewing shall file a claim with the Copyright*
21 *Royalty Tribunal, in accordance with require-*
22 *ments that the Tribunal shall prescribe by regula-*
23 *tion. For purposes of this paragraph, any claim-*
24 *ants may agree among themselves as to the pro-*
25 *portionate division of statutory license fees among*

1 *them, may lump their claims together and file*
2 *them jointly or as a single claim, or may desig-*
3 *nate a common agent to receive payment on their*
4 *behalf.*

5 “(B) *DETERMINATION OF CONTROVERSY;*
6 *DISTRIBUTIONS.—After the first day of August of*
7 *each year, the Copyright Royalty Tribunal shall*
8 *determine whether there exists a controversy con-*
9 *cerning the distribution of royalty fees. If the Tri-*
10 *bunal determines that no such controversy exists,*
11 *the Tribunal shall, after deducting reasonable ad-*
12 *ministrative costs under this paragraph, distribute*
13 *such fees to the copyright owners entitled to re-*
14 *ceive them, or to their designated agents. If the*
15 *Tribunal finds the existence of a controversy, the*
16 *Tribunal shall, pursuant to chapter 8 of this title,*
17 *conduct a proceeding to determine the distribution*
18 *of royalty fees.*

19 “(C) *WITHHOLDING OF FEES DURING*
20 *CONTROVERSY.—During the pendency of any*
21 *proceeding under this subsection, the Copyright*
22 *Royalty Tribunal shall withhold from distribution*
23 *an amount sufficient to satisfy all claims with re-*
24 *spect to which a controversy exists, but shall have*

1 *discretion to proceed to distribute any amounts*
2 *that are not in controversy.*

3 “(c) *DETERMINATION OF ROYALTY FEES.—*

4 “(1) *APPLICABILITY AND DETERMINATION OF*
5 *ROYALTY FEES.—The rate of the royalty fee payable*
6 *under subsection (b)(1)(B) shall be effective until De-*
7 *cember 31, 1992, unless a royalty fee is established*
8 *under paragraph (2), (3), or (4) of this subsection.*
9 *After that date, the fee shall be determined either in ac-*
10 *cordance with the voluntary negotiation procedure spec-*
11 *ified in paragraph (2) or in accordance with the com-*
12 *pulsory arbitration procedure specified in paragraphs*
13 *(3) and (4)*

14 “(2) *FEE SET BY VOLUNTARY NEGOTIATION.—*

15 “(A) *NOTICE OF INITIATION OF PROCEED-*
16 *INGS.—On or before July 1, 1991, the Copyright*
17 *Royalty Tribunal shall cause notice to be pub-*
18 *lished in the Federal Register of the initiation of*
19 *voluntary negotiation proceedings for the purpose*
20 *of determining the royalty fee to be paid by satel-*
21 *lite carriers under subsection (b)(1)(B).*

22 “(B) *NEGOTIATIONS.—Satellite carriers,*
23 *distributors, and copyright owners entitled to roy-*
24 *alty fees under this section shall negotiate in good*
25 *faith in an effort to reach a voluntary agreement*

1 *or voluntary agreements for the payment of royal-*
2 *ty fees. Any such satellite carriers, distributors,*
3 *and copyright owners may at any time negotiate*
4 *and agree to the royalty fee, and may designate*
5 *common agents to negotiate, agree to, or pay such*
6 *fees. If the parties fail to identify common agents,*
7 *the Copyright Royalty Tribunal shall do so, after*
8 *requesting recommendations from the parties to*
9 *the negotiation proceeding. The parties to each ne-*
10 *gotiation proceeding shall bear the entire cost*
11 *thereof*

12 *“(C) AGREEMENTS BINDING ON PARTIES,*
13 *FILING OF AGREEMENTS.—Voluntary agreements*
14 *negotiated at any time in accordance with this*
15 *paragraph shall be binding upon all satellite car-*
16 *riers, distributors, and copyright owners that are*
17 *parties thereto. Copies of such agreements shall be*
18 *filed with the Copyright Office within thirty days*
19 *after execution in accordance with regulations*
20 *that the Register of Copyrights shall prescribe*

21 *“(D) PERIOD AGREEMENT IS IN*
22 *EFFECT.—The obligation to pay the royalty fees*
23 *established under a voluntary agreement which*
24 *has been filed with the Copyright Office in ac-*
25 *cordance with this paragraph shall become effec-*

1 *tive on the date specified in the agreement, and*
2 *shall remain in effect until December 31, 1994.*

3 “(3) *FEE SET BY COMPULSORY ARBITRA-*
4 *TION.—*

5 “(A) *NOTICE OF INITIATION OF PROCEED-*
6 *INGS.—On or before December 31, 1991, the*
7 *Copyright Royalty Tribunal shall cause notice to*
8 *be published in the Federal Register of the initi-*
9 *ation of arbitration proceedings for the purpose of*
10 *determining a reasonable royalty fee to be paid*
11 *under subsection (b)(1)(B) by satellite carriers*
12 *who are not parties to a voluntary agreement filed*
13 *with the Copyright Office in accordance with*
14 *paragraph (2). Such notice shall include the*
15 *names and qualifications of potential arbitrators*
16 *chosen by the Tribunal from a list of available ar-*
17 *bitrators obtained from the American Arbitration*
18 *Association or such similar organization as the*
19 *Tribunal shall select.*

20 “(B) *SELECTION OF ARBITRATION*
21 *PANEL —Not later than 10 days after publication*
22 *of the notice initiating an arbitration proceeding,*
23 *and in accordance with procedures to be specified*
24 *by the Copyright Royalty Tribunal, one arbitra-*
25 *tor shall be selected from the published list by*

1 *copyright owners who claim to be entitled to roy-*
2 *alty fees under subsection (b)(4) and who are not*
3 *party to a voluntary agreement filed with the*
4 *Copyright Office in accordance with paragraph*
5 *(2), and one arbitrator shall be selected from the*
6 *published list by satellite carriers and distributors*
7 *who are not parties to such a voluntary agree-*
8 *ment. The two arbitrators so selected shall, within*
9 *ten days after their selection, choose a third arbi-*
10 *trator from the same list, who shall serve as chair-*
11 *person of the arbitrators. If either group fails to*
12 *agree upon the selection of an arbitrator, or if the*
13 *arbitrators selected by such groups fails to agree*
14 *upon the selection of a chairperson, the Copyright*
15 *Royalty Tribunal shall promptly select the arbi-*
16 *trator or chairperson, respectively. The arbitrators*
17 *selected under this paragraph shall constitute an*
18 *Arbitration Panel.*

19 “(C) *ARBITRATION PROCEEDING.—The Ar-*
20 *bitration Panel shall conduct an arbitration pro-*
21 *ceeding in accordance with such procedures as it*
22 *may adopt. The Panel shall act on the basis of a*
23 *fully documented written record. Any copyright*
24 *owner who claims to be entitled to royalty fees*
25 *under subsection (b)(4), any satellite carrier, and*

1 *any distributor, who is not party to a voluntary*
2 *agreement filed with the Copyright Office in ac-*
3 *cordance with paragraph (2), may submit relevant*
4 *information and proposals to the Panel. The par-*
5 *ties to the proceeding shall bear the entire cost*
6 *thereof in such manner and proportion as the*
7 *Panel shall direct.*

8 “(D) *FACTORS FOR DETERMINING ROYAL-*
9 *TY FEES.—In determining royalty fees under this*
10 *paragraph, the Arbitration Panel shall consider*
11 *the approximate average cost to a cable system for*
12 *the right to secondarily transmit to the public a*
13 *primary transmission made by a broadcast sta-*
14 *tion, the fee established under any voluntary*
15 *agreement filed with the Copyright Office in ac-*
16 *cordance with paragraph (2), and the last fee pro-*
17 *posed by the parties, before proceedings under this*
18 *paragraph, for the secondary transmission of su-*
19 *perstations or network stations for private home*
20 *viewing. The fee shall also be calculated to*
21 *achieve the following objectives:*

22 “(i) *To maximize the availability of*
23 *creative works to the public.*

24 “(ii) *To afford the copyright owner a*
25 *fair return for his or her creative work and*

1 *the copyright user a fair income under exist-*
2 *ing economic conditions.*

3 “(iii) *To reflect the relative roles of the*
4 *copyright owner and the copyright user in*
5 *the product made available to the public with*
6 *respect to relative creative contribution, tech-*
7 *nological contribution, capital investment,*
8 *cost, risk, and contribution to the opening of*
9 *new markets for creative expression and*
10 *media for their communication.*

11 “(iv) *To minimize any disruptive*
12 *impact on the structure of the industries in-*
13 *volved and on generally prevailing industry*
14 *practices.*

15 “(E) *REPORT TO COPYRIGHT ROYALTY*
16 *TRIBUNAL —Not later than 60 days after publi-*
17 *cation of the notice initiating an arbitration pro-*
18 *ceeding, the Arbitration Panel shall report to the*
19 *Copyright Royalty Tribunal its determination*
20 *concerning the royalty fee Such report shall be*
21 *accompanied by the written record, and shall set*
22 *forth the facts that the Panel found relevant to its*
23 *determination and the reasons why its determina-*
24 *tion is consistent with the criteria set forth in sub-*
25 *paragraph (D).*

1 “(F) ACTION BY COPYRIGHT ROYALTY TRI-
2 BUNAL — Within 60 days after receiving the
3 report of the Arbitration Panel under subpara-
4 graph (E), the Copyright Royalty Tribunal shall
5 adopt or reject the determination of the Panel.
6 The Tribunal shall adopt the determination of the
7 Panel unless the Tribunal finds that the determi-
8 nation is clearly inconsistent with the criteria set
9 forth in subparagraph (D) If the Tribunal rejects
10 the determination of the Panel, the Tribunal
11 shall, before the end of that 60-day period, and
12 after full examination of the record created in the
13 arbitration proceeding, issue an order, consistent
14 with the criteria set forth in subparagraph (D),
15 setting the royalty fee under this paragraph. The
16 Tribunal shall cause to be published in the Feder-
17 al Register the determination of the Panel, and
18 the decision of the Tribunal with respect to the de-
19 termination (including any order issued under the
20 preceding sentence). The Tribunal shall also pub-
21 licize such determination and decision in such
22 other manner as the Tribunal considers appropri-
23 ate. The Tribunal shall also make the report of
24 the Arbitration Panel and the accompanying
25 record available for public inspection and copying.

1 “(G) *PERIOD DURING WHICH DECISION*
2 *OF PANEL OR ORDER OF TRIBUNAL EFFEC-*
3 *TIVE.—The obligation to pay the royalty fee es-*
4 *tablished under a determination of the Arbitration*
5 *Panel which is confirmed by the Copyright Roy-*
6 *alty Tribunal in accordance with this paragraph,*
7 *or established by any order issued under subpara-*
8 *graph (F), shall become effective on the date when*
9 *the decision of the Tribunal is published in the*
10 *Federal Register under subparagraph (F), and*
11 *shall remain in effect until modified in accord-*
12 *ance with paragraph (4), or until December 31,*
13 *1994.*

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

20 “(4) *JUDICIAL REVIEW.—Any decision of the*
21 *Copyright Royalty Tribunal under paragraph (3) with*
22 *respect to a determination of the Arbitration Panel*
23 *may be appealed, by any aggrieved party who would be*
24 *bound by the determination, to the United States*
25 *Court of Appeals for the District of Columbia Circuit,*

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

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

22 *“(1) DISTRIBUTOR.—The term ‘distributor’*
23 *means an entity which contracts to distribute second-*
24 *ary transmissions from a satellite carrier and, either*
25 *as a single channel or in a package with other pro-*

1 *gramming, provides the secondary transmission either*
2 *directly to individual subscribers for private home*
3 *viewing or indirectly through other program distribu-*
4 *tion entities.*

5 “(2) *NETWORK STATION.*—*The term ‘network*
6 *station’ has the meaning given that term in section*
7 *111(f) of this title, and includes any translator station*
8 *or terrestrial satellite station that rebroadcasts all or*
9 *substantially all of the programming broadcast by a*
10 *network station.*

11 “(3) *PRIMARY NETWORK STATION.*—*The term*
12 *‘primary network station’ means a network station that*
13 *broadcasts or rebroadcasts the basic programming serv-*
14 *ice of a particular national network*

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

18 “(5) *PRIVATE HOME VIEWING* —*The term ‘pri-*
19 *rate home viewing’ means the viewing, for private use*
20 *in a household by means of satellite reception equip-*
21 *ment which is operated by an individual in that house-*
22 *hold and which serves only such household, of a sec-*
23 *ondary transmission delivered by a satellite carrier of*
24 *a primary transmission of a television station licensed*
25 *by the Federal Communications Commission.*

1 “(6) *SATELLITE CARRIER.*—*The term ‘satellite*
2 *carrier’ means an entity that uses the facilities of a do-*
3 *mestic satellite service licensed by the Federal Commu-*
4 *nications Commission to establish and operate a chan-*
5 *nel of communications for point-to-multipoint distribu-*
6 *tion of television station signals, and that owns or*
7 *leases a capacity or service on a satellite in order to*
8 *provide such point-to-multipoint distribution, except to*
9 *the extent that such entity provides such distribution*
10 *pursuant to tariff under the Communications Act of*
11 *1934, other than for private home viewing.*

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

15 “(8) *SUBSCRIBER.*—*The term ‘subscriber’ means*
16 *an individual who receives a secondary transmission*
17 *service for private home viewing by means of a second-*
18 *ary transmission from a satellite carrier and pays a*
19 *fee for the service, directly or indirectly, to the satellite*
20 *carrier or to a distributor*

21 “(9) *SUPERSTATION.*—*The term ‘superstation’*
22 *means a television broadcast station, other than a net-*
23 *work station, licensed by the Federal Communications*
24 *Commission that is secondarily transmitted by a satel-*
25 *lite carrier*

1 “(10) *UNSERVED HOUSEHOLD* —The term ‘un-
2 *served household*’, with respect to a particular televi-
3 *sion network*, means a household that—

4 “(A) cannot receive, through the use of a
5 *conventional outdoor rooftop receiving antenna*, an
6 *over-the-air signal of grade B intensity* (as de-
7 *fined by the Federal Communications Commis-*
8 *sion) of a primary network station affiliated with*
9 *that network*, and

10 “(B) has not, within 90 days before the date
11 *on which that household subscribes*, either initial-
12 *ly or on renewal*, to receive secondary transmis-
13 *sions by a satellite carrier of a network station af-*
14 *filiated with that network*, subscribed to a cable
15 *system that provides the signal of a primary net-*
16 *work station affiliated with that network*

17 “(e) *EXCLUSIVITY OF THIS SECTION WITH RE-*
18 *SPECT TO SECONDARY TRANSMISSIONS OF BROADCAST*
19 *STATIONS BY SATELLITE TO MEMBERS OF THE*
20 *PUBLIC.*—No provision of section 111 of this title or any
21 *other law (other than this section) shall be construed to con-*
22 *tain any authorization, exemption, or license through which*
23 *secondary transmissions by satellite carrier for private home*
24 *viewing of programming contained in a primary transmis-*

1 sion made by a superstation or a network station may be
2 made without obtaining the consent of the copyright owner.”

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

5 “(e) With respect to any secondary transmission that is
6 made by a satellite carrier of a primary transmission em-
7 bodying the performance or display of a work and is action-
8 able as an act of infringement under section 119(a)(5), a
9 network station holding a copyright or other license to trans-
10 mit or perform the same version of that work shall, for pur-
11 poses of subsection (b) of this section, be treated as a legal or
12 beneficial owner if such secondary transmission occurs
13 within the local service area of that station.”

14 (4) Section 801(b)(3) of title 17, United States
15 Code, is amended by striking “and 116” and inserting
16 “, 116, and 119(b)”.

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

20 (6) The table of sections at the beginning of chap-
21 ter 1 of title 17, United States Code, is amended by
22 adding at the end the following new item:

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

1 **SEC. 3. SYNDICATED EXCLUSIVITY.**

2 *The Federal Communications Commission shall,*
3 *within 120 days after the effective date of this Act, initiate a*
4 *combined inquiry and rulemaking proceeding for the purpose*
5 *of—*

6 *(1) determining the feasibility of imposing syndi-*
7 *cated exclusivity rules with respect to the delivery of*
8 *syndicated programming, as defined by the Commis-*
9 *son, for private viewing similar to the rules issued by*
10 *the Commission with respect to syndicated exclusivity*
11 *and cable television, and*

12 *(2) adopting such rules if the Commission consid-*
13 *ers the imposition of such rules to be feasible*

14 **SEC. 4. REPORT ON DISCRIMINATION**

15 *The Federal Communications Commission shall,*
16 *within 1 year after the effective date of this Act, prepare and*
17 *submit to the Congress a report on whether, and the extent to*
18 *which, there exists discrimination referred to in section*
19 *119(a)(6) of title 17, United States Code, as added by sec-*
20 *tion 2 of this Act.*

21 **SEC 5. EFFECTIVE DATE.**

22 *This Act and the amendments made by this Act take*
23 *effect on January 1, 1989, except that the authority of the*
24 *Register of Copyrights to issue regulations pursuant to sec-*
25 *tion 119(b)(1) of title 17, United States Code, as added by*

1 *section 2 of this Act, takes effect on the date of the enactment*
2 *of this Act.*

3 **SEC. 6. TERMINATION.**

4 *This Act and the amendments made by this Act cease to*
5 *be effective on December 31, 1994.*

Amend the title so as to read: "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 and network stations for private home viewing."

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