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100TH CONGRESS
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[Report No. 100-887, Parts I and II]

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 HAMMERSCHMIDT, 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*]

SEPTEMBER 29, 1988

Additional sponsor Mr ROBINSON

SEPTEMBER 29, 1988

Reported from the Committee on Energy and Commerce with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[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):*

1 “(A) the secondary transmission is made by a sat-
 2 ellite carrier for private home viewing pursuant to a
 3 statutory license under section 119, or”;

4 (B) in subsection (d)(1)(A) by inserting
 5 before “Such statement” the following:

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

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

17 **“§ 119. Limitations on exclusive rights: Secondary transmis-
 18 sions of superstations and network stations for
 19 private home viewing**

20 **“(a) SECONDARY TRANSMISSIONS BY SATELLITE
 21 CARRIERS.—**

22 **“(1) SUPERSTATIONS.—**Subject to the provisions
 23 of paragraphs (3), (4), and (6), secondary transmis-
 24 sions of a primary transmission made by a supersta-
 25 tion and embodying a performance or display of a

1 *work shall be subject to statutory licensing under this*
2 *section if the secondary transmission is made by a sat-*
3 *ellite carrier to the public for private home viewing,*
4 *and the carrier makes a direct or indirect charge for*
5 *each retransmission service to each household receiving*
6 *the secondary transmission or to a distributor that has*
7 *contracted with the carrier for direct or indirect deliv-*
8 *ery of the secondary transmission to the public for pri-*
9 *vate home viewing.*

10 *“(2) NETWORK STATIONS.—*

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

23 *“(B) SECONDARY TRANSMISSIONS TO UN-*
24 *SERVED HOUSEHOLDS.—The statutory license*
25 *provided for in subparagraph (A) shall be limited*

1 to secondary transmissions to persons who reside
2 in unserved households.

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

1 *rier only if the network to whom the submissions*
2 *are to be made places on file with the Register of*
3 *Copyrights, on or after the effective date of the*
4 *Satellite Home Viewer Copyright Act of 1988, a*
5 *document identifying the name and address of the*
6 *person to whom such submissions are to be made.*
7 *The Register shall maintain for public inspection*
8 *a file of all such documents.*

9 *“(3) NONCOMPLIANCE WITH REPORTING AND*
10 *PAYMENT REQUIREMENTS.—Notwithstanding the pro-*
11 *visions of paragraphs (1) and (2), the willful or repeat-*
12 *ed secondary transmission to the public by a satellite*
13 *carrier of a primary transmission made by a supersta-*
14 *tion or a network station and embodying a performance*
15 *or display of a work is actionable as an act of infringe-*
16 *ment under section 501, and is fully subject to the*
17 *remedies provided by sections 502 through 506 and*
18 *509, where the satellite carrier has not deposited the*
19 *statement of account and royalty fee required by sub-*
20 *section (b), or has failed to make the submissions to*
21 *networks required by paragraph (2)(C).*

22 *“(4) WILLFUL ALTERATIONS.—Notwithstanding*
23 *the provisions of paragraphs (1) and (2), the secondary*
24 *transmission to the public by a satellite carrier of a*
25 *primary transmission made by a superstation or a net-*

1 *work station and embodying a performance or display*
2 *of a work is actionable as an act of infringement under*
3 *section 501, and is fully subject to the remedies provid-*
4 *ed by sections 502 through 506 and sections 509 and*
5 *510, if the content of the particular program in which*
6 *the performance or display is embodied, or any com-*
7 *mercial advertising or station announcement transmit-*
8 *ted by the primary transmitter during, or immediately*
9 *before or after, the transmission of such program, is in*
10 *any way willfully altered by the satellite carrier*
11 *through changes, deletions, or additions, or is combined*
12 *with programming from any other broadcast signal.*

13 *“(5) VIOLATION OF TERRITORIAL RESTRIC-*
14 *TIONS ON STATUTORY LICENSE FOR NETWORK STA-*
15 *TIONS.—*

16 *“(A) INDIVIDUAL VIOLATIONS.—The will-*
17 *ful or repeated secondary transmission by a satel-*
18 *lite carrier of a primary transmission made by a*
19 *network station and embodying a performance or*
20 *display of a work to a subscriber who does not*
21 *reside in an unserved household is actionable as*
22 *an act of infringement under section 501 and is*
23 *fully subject to the remedies provided by sections*
24 *502 through 506 and 509, except that—*

1 “(i) no damages shall be awarded for
2 such act of infringement if the satellite carri-
3 er took corrective action by promptly with-
4 drawing service from the ineligible subscrib-
5 er, and

6 “(ii) any statutory damages shall not
7 exceed \$5 for such subscriber for each month
8 during which the violation occurred.

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

17 “(i) if the pattern or practice has been
18 carried out on a substantially nationwide
19 basis, the court shall order a permanent in-
20 junction barring the secondary transmission
21 by the satellite carrier, for private home
22 viewing, of the primary transmissions of any
23 primary network station affiliated with the
24 same network, and the court may order stat-
25 utory damages of not to exceed \$250,000 for

1 each 6-month period during which the pat-
2 tern or practice was carried out, and

3 “(v) if the pattern or practice has been
4 carried out on a local or regional basis, the
5 court shall order a permanent injunction bar-
6 ring the secondary transmission, for private
7 home viewing in that locality or region, by
8 the satellite carrier of the primary transmis-
9 sions of any primary network station affli-
10 cated with the same network, and the court
11 may order statutory damages of not to exceed
12 \$250,000 for each 6-month period during
13 which the pattern or practice was carried
14 out.

15 “(C) *PREVIOUS SUBSCRIBERS EX-*
16 *CLUDED.*—Subparagraphs (A) and (B) do not
17 apply to secondary transmissions by a satellite
18 carrier to persons who subscribed to receive such
19 secondary transmissions from the satellite carrier
20 or a distributor before July 4, 1988.

21 “(6) *DISCRIMINATION BY A SATELLITE CARRI-*
22 *ER.*—Notwithstanding the provisions of paragraph (1),
23 the willful or repeated secondary transmission to the
24 public by a satellite carrier of a primary transmission
25 made by a superstation or a network station and em-

1 *bodying a performance or display of a work is action-*
 2 *able as an act of infringement under section 501, and*
 3 *is fully subject to the remedies provided by sections*
 4 *502 through 506 and 509, if the satellite carrier dis-*
 5 *criminates against a distributor in a manner which*
 6 *violates the Communications Act of 1934 or rules*
 7 *issued by the Federal Communications Commission*
 8 *with respect to discrimination.*

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

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

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

24 *“(A) a statement of account, covering the*
 25 *preceding 6-month period, specifying the names*

1 *and locations of all superstations and network sta-*
2 *tions whose signals were transmitted, at any time*
3 *during that period, to subscribers for private home*
4 *viewing as described in subsections (a)(1) and*
5 *(a)(2), the total number of subscribers that re-*
6 *ceived such transmissions, and such other data as*
7 *the Register of Copyrights may, after consultation*
8 *with the Copyright Royalty Tribunal, from time*
9 *to time prescribe by regulation, and*

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

12 *“(i) multiplying the total number of*
13 *subscribers receiving each secondary trans-*
14 *mission of a superstation during each calen-*
15 *dar month by 12 cents;*

16 *“(ii) multiplying the number of sub-*
17 *scribers receiving each secondary transmis-*
18 *sion of a network station during each calen-*
19 *dar month by 3 cents; and*

20 *“(iii) adding together the totals from*
21 *clauses (i) and (ii).*

22 *“(2) INVESTMENT OF FEES.—The Register of*
23 *Copyrights shall receive all fees deposited under this*
24 *section and, after deducting the reasonable costs in-*
25 *curring by the Copyright Office under this section*

1 *(other than the costs deducted under paragraph (1)),*
2 *shall deposit the balance in the Treasury of the United*
3 *States, in such manner as the Secretary of the Treas-*
4 *ury directs. All funds held by the Secretary of the*
5 *Treasury shall be invested in interest-bearing United*
6 *States securities for later distribution with interest by*
7 *the Copyright Royalty Tribunal as provided by this*
8 *title.*

9 “(3) *PERSONS TO WHOM FEES ARE DISTRIBUT-*
10 *ED.—The royalty fees deposited under paragraph (2)*
11 *shall, in accordance with the procedures provided by*
12 *paragraph (1), be distributed to those copyright owners*
13 *whose works were included in a secondary transmis-*
14 *sion for private home viewing made by a satellite carr-*
15 *er during the applicable 6-month accounting period*
16 *and who file a claim with the Copyright Royalty Tri-*
17 *bunal under paragraph (4).*

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

21 “(A) *FILING OF CLAIMS FOR FEES.—*

22 *During the month of July in each year, each*
23 *person claiming to be entitled to statutory license*
24 *fees for secondary transmissions for private home*
25 *viewing shall file a claim with the Copyright*

1 *Royalty Tribunal, in accordance with require-*
2 *ments that the Tribunal shall prescribe by regula-*
3 *tion. For purposes of this paragraph, any claim-*
4 *ants may agree among themselves as to the pro-*
5 *portionate division of statutory license fees among*
6 *them, may lump their claims together and file*
7 *them jointly or as a single claim, or may design-*
8 *ate a common agent to receive payment on their*
9 *behalf.*

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

24 “(C) *WITHHOLDING OF FEES DURING*
25 *CONTROVERSY.—During the pendency of any*

1 *proceeding under this subsection, the Copyright*
 2 *Royalty Tribunal shall withhold from distribution*
 3 *an amount sufficient to satisfy all claims with re-*
 4 *spect to which a controversy exists, but shall have*
 5 *discretion to proceed to distribute any amounts*
 6 *that are not in controversy.*

7 ***“(e) DETERMINATION OF ROYALTY FEES.—***

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

18 ***“(2) FEE SET BY VOLUNTARY NEGOTIATION—***

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

1 “(B) *NEGOTIATIONS.*—*Satellite carriers,*
2 *distributors, and copyright owners entitled to roy-*
3 *alty fees under this section shall negotiate in good*
4 *faith in an effort to reach a voluntary agreement*
5 *or voluntary agreements for the payment of roy-*
6 *alty fees. Any such satellite carriers, distributors,*
7 *and copyright owners may at any time negotiate*
8 *and agree to the royalty fee, and may designate*
9 *common agents to negotiate, agree to, or pay such*
10 *fees. If the parties fail to identify common agents,*
11 *the Copyright Royalty Tribunal shall do so, after*
12 *requesting recommendations from the parties to*
13 *the negotiation proceeding. The parties to each ne-*
14 *gotiation proceeding shall bear the entire cost*
15 *thereof.*

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

1 “(D) *PERIOD AGREEMENT IS IN*
2 *EFFECT.—The obligation to pay the royalty fees*
3 *established under a voluntary agreement which*
4 *has been filed with the Copyright Office in ac-*
5 *cordance with this paragraph shall become effec-*
6 *tive on the date specified in the agreement, and*
7 *shall remain in effect until December 31, 1994.*

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

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

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

1 “(C) *ARBITRATION PROCEEDING.*—*The Ar-*
2 *bitration Panel shall conduct an arbitration pro-*
3 *ceeding in accordance with such procedures as it*
4 *may adopt. The Panel shall act on the basis of a*
5 *fully documented written record. Any copyright*
6 *owner who claims to be entitled to royalty fees*
7 *under subsection (b)(4), any satellite carrier, and*
8 *any distributor, who is not party to a voluntary*
9 *agreement filed with the Copyright Office in ac-*
10 *cordance with paragraph (2), may submit relevant*
11 *information and proposals to the Panel. The par-*
12 *ties to the proceeding shall bear the entire cost*
13 *thereof in such manner and proportion as the*
14 *Panel shall direct.*

15 “(D) *FACTORS FOR DETERMINING ROYAL-*
16 *TY FEES.*—*In determining royalty fees under this*
17 *paragraph, the Arbitration Panel shall consider*
18 *the approximate average cost to a cable system for*
19 *the right to secondarily transmit to the public a*
20 *primary transmission made by a broadcast sta-*
21 *tion, the fee established under any voluntary*
22 *agreement filed with the Copyright Office in ac-*
23 *cordance with paragraph (2), and the last fee pro-*
24 *posed by the parties, before proceedings under this*
25 *paragraph, for the secondary transmission of su-*

1 *perstations or network stations for private home*
2 *viewing. The fee shall also be calculated to*
3 *achieve the following objectives:*

4 *“(i) To maximize the availability of*
5 *creative works to the public.*

6 *“(ii) To afford the copyright owner a*
7 *fair return for his or her creative work and*
8 *the copyright user a fair income under exist-*
9 *ing economic conditions.*

10 *“(iii) To reflect the relative roles of the*
11 *copyright owner and the copyright user in*
12 *the product made available to the public with*
13 *respect to relative creative contribution, tech-*
14 *nological contribution, capital investment,*
15 *cost, risk, and contribution to the opening of*
16 *new markets for creative expression and*
17 *media for their communication.*

18 *“(iv) To minimize any disruptive*
19 *impact on the structure of the industries in-*
20 *volved and on generally prevailing industry*
21 *practices.*

22 *“(E) REPORT TO COPYRIGHT ROYALTY*
23 *TRIBUNAL.—Not later than 60 days after pub-*
24 *lication of the notice initiating an arbitration pro-*
25 *ceeding, the Arbitration Panel shall report to the*

1 *Copyright Royalty Tribunal its determination*
2 *concerning the royalty fee. Such report shall be*
3 *accompanied by the written record, and shall set*
4 *forth the facts that the Panel found relevant to its*
5 *determination and the reasons why its determina-*
6 *tion is consistent with the criteria set forth in sub-*
7 *paragraph (D).*

8 “(F) *ACTION BY COPYRIGHT ROYALTY TRI-*
9 *BUNAL.—Within 60 days after receiving the*
10 *report of the Arbitration Panel under subpara-*
11 *graph (E), the Copyright Royalty Tribunal shall*
12 *adopt or reject the determination of the Panel.*
13 *The Tribunal shall adopt the determination of the*
14 *Panel unless the Tribunal finds that the determi-*
15 *nation is clearly inconsistent with the criteria set*
16 *forth in subparagraph (D). If the Tribunal rejects*
17 *the determination of the Panel, the Tribunal*
18 *shall, before the end of that 60-day period, and*
19 *after full examination of the record created in the*
20 *arbitration proceeding, issue an order, consistent*
21 *with the criteria set forth in subparagraph (D),*
22 *setting the royalty fee under this paragraph. The*
23 *Tribunal shall cause to be published in the Feder-*
24 *al Register the determination of the Panel, and*
25 *the decision of the Tribunal with respect to the de-*

1 *termination (including any order issued under the*
2 *preceding sentence). The Tribunal shall also pub-*
3 *lize such determination and decision in such*
4 *other manner as the Tribunal considers appropri-*
5 *ate. The Tribunal shall also make the report of*
6 *the Arbitration Panel and the accompanying*
7 *record available for public inspection and copying.*

8 “(G) *PERIOD DURING WHICH DECISION*
9 *OF PANEL OR ORDER OF TRIBUNAL EFFEC-*
10 *TIVE.—The obligation to pay the royalty fee es-*
11 *tablished under a determination of the Arbitration*
12 *Panel which is confirmed by the Copyright Roy-*
13 *alty Tribunal in accordance with this paragraph,*
14 *or established by any order issued under subpara-*
15 *graph (F), shall become effective on the date when*
16 *the decision of the Tribunal is published in the*
17 *Federal Register under subparagraph (F), and*
18 *shall remain in effect until modified in accord-*
19 *ance with paragraph (4), or until December 31,*
20 *1994.*

21 “(H) *PERSONS SUBJECT TO ROYALTY*
22 *FEE.—The royalty fee adopted or ordered under*
23 *subparagraph (F) shall be binding on all satellite*
24 *carriers, distributors, and copyright owners, who*

1 are not party to a voluntary agreement filed with
2 the Copyright Office under paragraph (2).

3 “(4) JUDICIAL REVIEW.—Any decision of the
4 Copyright Royalty Tribunal under paragraph (3) with
5 respect to a determination of the Arbitration Panel
6 may be appealed, by any aggrieved party who would be
7 bound by the determination, to the United States
8 Court of Appeals for the District of Columbia Circuit,
9 within thirty days after the publication of the decision
10 in the Federal Register. The pendency of an appeal
11 under this paragraph shall not relieve satellite carriers
12 of the obligation under subsection (b)(1) to deposit the
13 statement of account and royalty fees specified in that
14 subsection. The court shall have jurisdiction to modify
15 or vacate a decision of the Tribunal only if it finds, on
16 the basis of the record before the Tribunal and the stat-
17 utory criteria set forth in paragraph (3)(D), that the
18 Arbitration Panel or the Tribunal acted in an arbi-
19 trary manner. If the court modifies the decision of the
20 Tribunal, the court shall have jurisdiction to enter its
21 own determination with respect to royalty fees, to order
22 the repayment of any excess fees deposited under sub-
23 section (b)(1)(B), and to order the payment of any un-
24 derpaid fees, and the interest pertaining respectively
25 thereto, in accordance with its final judgment. The

1 court may further vacate the decision of the Tribunal
2 and remand the case for arbitration proceedings in ac-
3 cordance with paragraph (3).

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

5 “(1) DISTRIBUTOR.—The term ‘distributor’
6 means an entity which contracts to distribute second-
7 ary transmissions from a satellite carrier and, either
8 as a single channel or in a package with other pro-
9 gramming, provides the secondary transmission either
10 directly to individual subscribers for private home
11 viewing or indirectly through other program distribu-
12 tion entities.

13 “(2) NETWORK STATION.—The term ‘network
14 station’ has the meaning given that term in section
15 111(f) of this title, and includes any translator station
16 or terrestrial satellite station that rebroadcasts all or
17 substantially all of the programming broadcast by a
18 network station.

19 “(3) PRIMARY NETWORK STATION.—The term
20 ‘primary network station’ means a network station that
21 broadcasts or rebroadcasts the basic programming ser-
22 vice of a particular national network.

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

1 “(5) *PRIVATE HOME VIEWING.*—The term ‘private home viewing’ means the viewing, for private use
2 in a household by means of satellite reception equip-
3 ment which is operated by an individual in that house-
4 hold and which serves only such household, of a sec-
5 ondary transmission delivered by a satellite carrier of
6 a primary transmission of a television station licensed
7 by the Federal Communications Commission.
8

9 “(6) *SATELLITE CARRIER.*—The term ‘satellite
10 carrier’ means an entity that uses the facilities of a do-
11 mestic satellite service licensed by the Federal Commu-
12 nications Commission to establish and operate a chan-
13 nel of communications for point-to-multipoint distribu-
14 tion of television station signals, and that owns or
15 leases a capacity or service on a satellite in order to
16 provide such point-to-multipoint distribution, except to
17 the extent that such entity provides such distribution
18 pursuant to tariff under the Communications Act of
19 1934, other than for private home viewing.

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

23 “(8) *SUBSCRIBER.*—The term ‘subscriber’ means
24 an individual who receives a secondary transmission
25 service for private home viewing by means of a second-

1 *ary transmission from a satellite carrier and pays a*
2 *fee for the service, directly or indirectly, to the satellite*
3 *carrier or to a distributor.*

4 *“(9) SUPERSTATION.—The term ‘superstation’*
5 *means a television broadcast station, other than a net-*
6 *work station, licensed by the Federal Communications*
7 *Commission that is secondarily transmitted by a satel-*
8 *lite carrier.*

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

12 *“(A) cannot receive, through the use of a*
13 *conventional outdoor rooftop receiving antenna, an*
14 *over-the-air signal of grade B intensity (as de-*
15 *fined by the Federal Communications Commis-*
16 *sion) of a primary network station affiliated with*
17 *that network, and*

18 *“(B) has not, within 90 days before the date*
19 *on which that household subscribes, either initial-*
20 *ly or on renewal, to receive secondary transmis-*
21 *sions by a satellite carrier of a network station af-*
22 *filiated with that network, subscribed to a cable*
23 *system that provides the signal of a primary net-*
24 *work station affiliated with that network.*

1 “(c) *EXCLUSIVITY OF THIS SECTION WITH RE-*
2 *SPECT TO SECONDARY TRANSMISSIONS OF BROADCAST*
3 *STATIONS BY SATELLITE TO MEMBERS OF THE*
4 *PUBLIC.—No provision of section 111 of this title or any*
5 *other law (other than this section) shall be construed to con-*
6 *tain any authorization, exemption, or license through which*
7 *secondary transmissions by satellite carrier for private home*
8 *viewing of programming contained in a primary transmis-*
9 *sion made by a superstation or a network station may be*
10 *made without obtaining the consent of the copyright owner.”.*

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

13 “(c) *With respect to any secondary transmission that is*
14 *made by a satellite carrier of a primary transmission em-*
15 *bodying the performance or display of a work and is action-*
16 *able as an act of infringement under section 119(a)(5), a*
17 *network station holding a copyright or other license to trans-*
18 *mit or perform the same version of that work shall, for pur-*
19 *poses of subsection (b) of this section, be treated as a legal or*
20 *beneficial owner if such secondary transmission occurs*
21 *within the local service area of that station.”.*

22 (4) *Section 801(b)(3) of title 17, United States*
23 *Code, is amended by striking “and 116” and inserting*
24 *“, 116, and 119(b)”.*

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

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

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

7 **SEC. 3. SYNDICATED EXCLUSIVITY.**

8 *The Federal Communications Commission shall,*
 9 *within 120 days after the effective date of this Act, initiate a*
 10 *combined inquiry and rulemaking proceeding for the purpose*
 11 *of—*

12 (1) *determining the feasibility of imposing syndr-*
 13 *eated exclusivity rules with respect to the delivery of*
 14 *syndicated programming, as defined by the Commis-*
 15 *ion, for private viewing similar to the rules issued by*
 16 *the Commission with respect to syndicated exclusivity*
 17 *and cable television, and*

18 (2) *adopting such rules if the Commission consid-*
 19 *ers the imposition of such rules to be feasible.*

20 **SEC. 4. REPORT ON DISCRIMINATION.**

21 *The Federal Communications Commission shall,*
 22 *within 1 year after the effective date of this Act, prepare and*
 23 *submit to the Congress a report on whether, and the extent to*
 24 *which, there exists discrimination referred to in section*

1 *119(a)(6) of title 17, United States Code, as added by sec-*
 2 *tion 2 of this Act.*

3 **SEC. 5. EFFECTIVE DATE.**

4 *This Act and the amendments made by this Act take*
 5 *effect on January 1, 1989, except that the authority of the*
 6 *Register of Copyrights to issue regulations pursuant to sec-*
 7 *tion 119(b)(1) of title 17, United States Code, as added by*
 8 *section 2 of this Act, takes effect on the date of the enactment*
 9 *of this Act.*

10 **SEC. 6. TERMINATION.**

11 *This Act and the amendments made by this Act cease to*
 12 *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.”.

13 **SECTION 1. SHORT TITLE.**

14 **This Act may be cited as the “Satellite Home**
 15 **Viewer Act of 1988”.**

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

17 **Title 17, United States Code, is amended as**
 18 **follows:**

19 **(1) Section 111 is amended—**

20 **(A) in subsection (a)—**

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

3 (ii) by redesignating paragraph
4 (4) as paragraph (5); and

5 (iii) by inserting the following
6 after paragraph (3):

7 “(4) the secondary transmission is made
8 by a satellite carrier for private home viewing
9 pursuant to a statutory license under section
10 119; or”; and

11 (B) in subsection (d)(1)(A) by insert-
12 ing before “Such statement” the follow-
13 ing:

14 “In determining the total number of sub-
15 scribers and the gross amounts paid to
16 the cable system for the basic service of
17 providing secondary transmissions of pri-
18 mary broadcast transmitters, the system
19 shall not include subscribers and
20 amounts collected from subscribers re-
21 ceiving secondary transmissions for pri-
22 vate home viewing pursuant to section
23 119.”.

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

4 “§ 119. Limitations on exclusive rights: Secondary trans-
5 missions of superstations and network sta-
6 tions for private home viewing

7 “(a) SECONDARY TRANSMISSIONS BY SATEL-
8 LITE CARRIERS.—

9 “(1) SUPERSTATIONS.—Subject to the pro-
10 visions of paragraphs (3), (4), and (6) of this
11 subsection, secondary transmissions of a pri-
12 mary transmission made by a superstation
13 and embodying a performance or display of a
14 work shall be subject to statutory licensing
15 under this section if the secondary transmis-
16 sion is made by a satellite carrier to the
17 public for private home viewing, and the car-
18 rier makes a direct or indirect charge for
19 each retransmission service to each house-
20 hold receiving the secondary transmission or
21 to a distributor that has contracted with the
22 carrier for direct or indirect delivery of the
23 secondary transmission to the public for pri-
24 vate home viewing.

25 “(2) NETWORK STATIONS.—

1 “(A) IN GENERAL.—Subject to the
2 provisions of subparagraphs (B) and (C)
3 of this paragraph and paragraphs (3), (4),
4 (5), and (6) of this subsection, secondary
5 transmissions of programming contained
6 in a primary transmission made by a net-
7 work station and embodying a perform-
8 ance or display of a work shall be subject
9 to statutory licensing under this section
10 if the secondary transmission is made by
11 a satellite carrier to the public for pri-
12 vate home viewing, and the carrier makes
13 a direct charge for such retransmission
14 service to each subscriber receiving the
15 secondary transmission.

16 “(B) SECONDARY TRANSMISSIONS TO
17 UNSERVED HOUSEHOLDS.—The statutory
18 license provided for in subparagraph (A)
19 shall be limited to secondary transmis-
20 sions to persons who reside in unserved
21 households.

22 “(C) NOTIFICATION TO NETWORKS.—A
23 satellite carrier that makes secondary
24 transmissions of a primary transmission
25 by a network station pursuant to sub-

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

1 places on file with the Register of Copy-
2 rights, on or after the effective date of
3 the Satellite Home Viewer Act of 1988, a
4 document identifying the name and ad-
5 dress of the person to whom such sub-
6 missions are to be made. The Register
7 shall maintain for public inspection a file
8 of all such documents.

9 “(3) NONCOMPLIANCE WITH REPORTING
10 AND PAYMENT REQUIREMENTS.—Notwith-
11 standing the provisions of paragraphs (1) and
12 (2), the willful or repeated secondary trans-
13 mission to the public by a satellite carrier of
14 a primary transmission made by a supersta-
15 tion or a network station and embodying a
16 performance or display of a work is action-
17 able as an act of infringement under section
18 501, and is fully subject to the remedies pro-
19 vided by sections 502 through 506 and 509,
20 where the satellite carrier has not deposited
21 the statement of account and royalty fee re-
22 quired by subsection (b), or has failed to
23 make the submissions to networks required
24 by paragraph (2)(C).

1 **“(4) WILLFUL ALTERATIONS.—**Notwith-
2 **standing the provisions of paragraphs (1) and**
3 **(2), the secondary transmission to the public**
4 **by a satellite carrier of a primary transmis-**
5 **sion made by a superstation or a network**
6 **station and embodying a performance or dis-**
7 **play of a work is actionable as an act of in-**
8 **fringement under section 501, and is fully**
9 **subject to the remedies provided by sections**
10 **502 through 506 and sections 509 and 510, if**
11 **the content of the particular program in**
12 **which the performance or display is em-**
13 **bodied, or any commercial advertising or sta-**
14 **tion announcement transmitted by the pri-**
15 **mary transmitter during, or immediately**
16 **before or after, the transmission of such pro-**
17 **gram, is in any way willfully altered by the**
18 **satellite carrier through changes, deletions,**
19 **or additions, or is combined with program-**
20 **ming from any other broadcast signal.**

21 **“(5) VIOLATION OF TERRITORIAL RESTRIC-**
22 **TIONS ON STATUTORY LICENSE FOR NETWORK**
23 **STATIONS.—**

24 **“(A) INDIVIDUAL VIOLATIONS.—The**
25 **willful or repeated secondary transmis-**

1 sion by a satellite carrier of a primary
2 transmission made by a network station
3 and embodying a performance or display
4 of a work to a subscriber who does not
5 reside in an unserved household is ac-
6 tionable as an act of infringement under
7 section 501 and is fully subject to the
8 remedies provided by sections 502
9 through 506 and 509, except that—

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

16 “(ii) any statutory damages shall
17 not exceed \$5 for such subscriber for
18 each month during which the viola-
19 tion occurred.

20 “(B) PATTERN OF VIOLATIONS.—If a
21 satellite carrier engages in a willful or re-
22 peated pattern or practice of delivering a
23 primary transmission made by a network
24 station and embodying a performance or
25 display of a work to subscribers who do

1 not reside in unserved households, then
2 in addition to the remedies set forth in
3 subparagraph (A)—

4 “(i) if the pattern or practice has
5 been carried out on a substantially
6 nationwide basis, the court shall
7 order a permanent injunction bar-
8 ring the secondary transmission by
9 the satellite carrier, for private home
10 viewing, of the primary transmis-
11 sions of any primary network station
12 affiliated with the same network, and
13 the court may order statutory dam-
14 ages of not to exceed \$250,000 for
15 each 6-month period during which
16 the pattern or practice was carried
17 out; and

18 “(ii) if the pattern or practice
19 has been carried out on a local or re-
20 gional basis, the court shall order a
21 permanent injunction barring the
22 secondary transmission, for private
23 home viewing in that locality or
24 region, by the satellite carrier of the
25 primary transmissions of any pri-

1 mary network station affiliated with
2 the same network, and the court may
3 order statutory damages of not to
4 exceed \$250,000 for each 6-month
5 period during which the pattern or
6 practice was carried out.

7 “(C) PREVIOUS SUBSCRIBERS EX-
8 CLUDED.—Subparagraphs (A) and (B) do
9 not apply to secondary transmissions by
10 a satellite carrier to persons who sub-
11 scribed to receive such secondary trans-
12 missions from the satellite carrier or a
13 distributor before July 7, 1988.

14 “(6) DISCRIMINATION BY A SATELLITE
15 CARRIER.—Notwithstanding the provisions of
16 paragraph (1), the willful or repeated second-
17 ary transmission to the public by a satellite
18 carrier of a primary transmission made by a
19 superstation or a network station and em-
20 bodying a performance or display of a work
21 is actionable as an act of infringement under
22 section 501, and is fully subject to the reme-
23 dies provided by sections 502 through 506 and
24 509, if the satellite carrier unlawfully dis-
25 criminate against a distributor.

1 “(7) GEOGRAPHIC LIMITATION ON SECOND-
2 ARY TRANSMISSIONS.—The statutory license
3 created by this section shall apply only to
4 secondary transmissions to households locat-
5 ed in the United States, or any of its territo-
6 ries, trust territories, or possessions.

7 “(b) STATUTORY LICENSE FOR SECONDARY
8 TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

9 “(1) DEPOSITS WITH THE REGISTER OF
10 COPYRIGHTS.—A satellite carrier whose sec-
11 ondary transmissions are subject to statutory
12 licensing under subsection (a) shall, on a
13 semiannual basis, deposit with the Register of
14 Copyrights, in accordance with requirements
15 that the Register shall, after consultation
16 with the Copyright Royalty Tribunal, pre-
17 scribe by regulation—

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

1 ers that received such transmissions, and
2 such other data as the Register of Copy-
3 rights may, after consultation with the
4 Copyright Royalty Tribunal, from time to
5 time prescribe by regulation; and

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

8 “(i) multiplying the total number
9 of subscribers receiving each second-
10 ary transmission of a superstation
11 during each calendar month by 12
12 cents;

13 “(ii) multiplying the number of
14 subscribers receiving each secondary
15 transmission of a network station
16 during each calendar month by 3
17 cents; and

18 “(iii) adding together the totals
19 from clauses (i) and (ii).

20 “(2) INVESTMENT OF FEES.—The Register
21 of Copyrights shall receive all fees deposited
22 under this section and, after deducting the
23 reasonable costs incurred by the Copyright
24 Office under this section (other than the
25 costs deducted under paragraph (4)), shall de-

1 posit the balance in the Treasury of the
2 United States, in such manner as the Secre-
3 tary of the Treasury directs. All funds held
4 by the Secretary of the Treasury shall be in-
5 vested in interest-bearing United States secu-
6 rities for later distribution with interest by
7 the Copyright Royalty Tribunal as provided
8 by this title.

9 “(3) PERSONS TO WHOM FEES ARE DIS-
10 TRIBUTED.—The royalty fees deposited under
11 paragraph (2) shall, in accordance with the
12 procedures provided by paragraph (4), be dis-
13 tributed to those copyright owners whose
14 works were included in a secondary transmis-
15 sion for private home viewing made by a sat-
16 ellite carrier during the applicable 6-month
17 accounting period and who file a claim with
18 the Copyright Royalty Tribunal under para-
19 graph (4).

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

24 “(A) FILING OF CLAIMS FOR FEES.—
25 During the month of July in each year,

1 each person claiming to be entitled to
2 statutory license fees for secondary
3 transmissions for private home viewing
4 shall file a claim with the Copyright Roy-
5 alty Tribunal, in accordance with re-
6 quirements that the Tribunal shall pre-
7 scribe by regulation. For purposes of this
8 paragraph, any claimants may agree
9 among themselves as to the proportion-
10 ate division of statutory license fees
11 among them, may lump their claims to-
12 gether and file them jointly or as a single
13 claim, or may designate a common agent
14 to receive payment on their behalf.

15 “(B) DETERMINATION OF CONTROVER-
16 SY; DISTRIBUTIONS.—After the first day of
17 August of each year, the Copyright Roy-
18 alty Tribunal shall determine whether
19 there exists a controversy concerning the
20 distribution of royalty fees. If the Tribu-
21 nal determines that no such controversy
22 exists, the Tribunal shall, after deducting
23 reasonable administrative costs under
24 this paragraph, distribute such fees to the
25 copyright owners entitled to receive

1 them, or to their designated agents. If the
2 Tribunal finds the existence of a contro-
3 versy, the Tribunal shall, pursuant to
4 chapter 8 of this title, conduct a proceed-
5 ing to determine the distribution of roy-
6 alty fees.

7 “(C) WITHHOLDING OF FEES DURING
8 CONTROVERSY.—During the pendency of
9 any proceeding under this subsection, the
10 Copyright Royalty Tribunal shall with-
11 hold from distribution an amount suffi-
12 cient to satisfy all claims with respect to
13 which a controversy exists, but shall have
14 discretion to proceed to distribute any
15 amounts that are not in controversy.

16 “(c) DETERMINATION OF ROYALTY FEES.—

17 “(1) APPLICABILITY AND DETERMINATION
18 OF ROYALTY FEES.—The rate of the royalty
19 fee payable under subsection (b)(1)(B) shall
20 be effective until December 31, 1992, unless a
21 royalty fee is established under paragraph
22 (2), (3), or (4) of this subsection. After that
23 date, the fee shall be determined either in ac-
24 cordance with the voluntary negotiation pro-
25 cedure specified in paragraph (2) or in ac-

1 cordance with the compulsory arbitration
2 procedure specified in paragraphs (3) and (4).

3 “(2) FEE SET BY VOLUNTARY NEGOTIA-
4 TION.—

5 “(A) NOTICE OF INITIATION OF PRO-
6 CEEDINGS.—On or before July 1, 1991, the
7 Copyright Royalty Tribunal shall cause
8 notice to be published in the Federal
9 Register of the initiation of voluntary ne-
10 gotiation proceedings for the purpose of
11 determining the royalty fee to be paid by
12 satellite carriers under subsection
13 (b)(1)(B).

14 “(B) NEGOTIATIONS.—Satellite carri-
15 ers, distributors, and copyright owners
16 entitled to royalty fees under this section
17 shall negotiate in good faith in an effort
18 to reach a voluntary agreement or volun-
19 tary agreements for the payment of roy-
20 alty fees. Any such satellite carriers, dis-
21 tributors, and copyright owners may at
22 any time negotiate and agree to the roy-
23 alty fee, and may designate common
24 agents to negotiate, agree to, or pay such
25 fees. If the parties fail to identify

1 common agents, the Copyright Royalty
2 Tribunal shall do so, after requesting rec-
3 ommendations from the parties to the ne-
4 gotiation proceeding. The parties to each
5 negotiation proceeding shall bear the
6 entire cost thereof.

7 “(C) AGREEMENTS BINDING ON PAR-
8 TIES; FILING OF AGREEMENTS.—Voluntary
9 agreements negotiated at any time in ac-
10 cordance with this paragraph shall be
11 binding upon all satellite carriers, dis-
12 tributors, and copyright owners that are
13 parties thereto. Copies of such agree-
14 ments shall be filed with the Copyright
15 Office within 30 days after execution in
16 accordance with regulations that the
17 Register of Copyrights shall prescribe.

18 “(D) PERIOD AGREEMENT IS IN
19 EFFECT.—The obligation to pay the royal-
20 ty fees established under a voluntary
21 agreement which has been filed with the
22 Copyright Office in accordance with this
23 paragraph shall become effective on the
24 date specified in the agreement, and shall
25 remain in effect until December 31, 1994.

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

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

21 **“(B) SELECTION OF ARBITRATION**
22 **PANEL.—Not later than 10 days after pub-**
23 **lication of the notice initiating an arbi-**
24 **tration proceeding, and in accordance**
25 **with procedures to be specified by the**

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

1 **“(C) ARBITRATION PROCEEDING.—**

2 **The Arbitration Panel shall conduct an**
3 **arbitration proceeding in accordance**
4 **with such procedures as it may adopt.**
5 **The Panel shall act on the basis of a**
6 **fully documented written record. Any**
7 **copyright owner who claims to be enti-**
8 **tled to royalty fees under subsection**
9 **(b)(4), any satellite carrier, and any dis-**
10 **tributor, who is not party to a voluntary**
11 **agreement filed with the Copyright Office**
12 **in accordance with paragraph (2), may**
13 **submit relevant information and propos-**
14 **als to the Panel. The parties to the pro-**
15 **ceeding shall bear the entire cost thereof**
16 **in such manner and proportion as the**
17 **Panel shall direct.**

18 **“(D) FACTORS FOR DETERMINING**
19 **ROYALTY FEES.—In determining royalty**
20 **fees under this paragraph, the Arbitra-**
21 **tion Panel shall consider the approxi-**
22 **mate average cost to a cable system for**
23 **the right to secondarily transmit to the**
24 **public a primary transmission made by a**
25 **broadcast station, the fee established**

1 under any voluntary agreement filed
2 with the Copyright Office in accordance
3 with paragraph (2), and the last fee pro-
4 posed by the parties, before proceedings
5 under this paragraph, for the secondary
6 transmission of superstations or network
7 stations for private home viewing. The
8 fee shall also be calculated to achieve the
9 following objectives:

10 “(i) To maximize the availability
11 of creative works to the public.

12 “(ii) To afford the copyright
13 owner a fair return for his or her
14 creative work and the copyright user
15 a fair income under existing econom-
16 ic conditions.

17 “(iii) To reflect the relative roles
18 of the copyright owner and the copy-
19 right user in the product made avail-
20 able to the public with respect to rel-
21 ative creative contribution, techno-
22 logical contribution, capital invest-
23 ment, cost, risk, and contribution to
24 the opening of new markets for cre-

1 **ative expression and media for their**
2 **communication.**

3 **“(iv) To minimize any disruptive**
4 **impact on the structure of the indus-**
5 **tries involved and on generally pre-**
6 **vailing industry practices.**

7 **“(E) REPORT TO COPYRIGHT ROYALTY**
8 **TRIBUNAL.—Not later than 60 days after**
9 **publication of the notice initiating an ar-**
10 **bitration proceeding, the Arbitration**
11 **Panel shall report to the Copyright Roy-**
12 **alty Tribunal its determination concern-**
13 **ing the royalty fee. Such report shall be**
14 **accompanied by the written record, and**
15 **shall set forth the facts that the Panel**
16 **found relevant to its determination and**
17 **the reasons why its determination is con-**
18 **sistent with the criteria set forth in sub-**
19 **paragraph (D).**

20 **“(F) ACTION BY COPYRIGHT ROYALTY**
21 **TRIBUNAL.—Within 60 days after receiv-**
22 **ing the report of the Arbitration Panel**
23 **under subparagraph (E), the Copyright**
24 **Royalty Tribunal shall adopt or reject**
25 **the determination of the Panel. The Tri-**

1 bunal shall adopt the determination of
2 the Panel unless the Tribunal finds that
3 the determination is clearly inconsistent
4 with the criteria set forth in subpara-
5 graph (D). If the Tribunal rejects the de-
6 termination of the Panel, the Tribunal
7 shall, before the end of that 60-day
8 period, and after full examination of the
9 record created in the arbitration proceed-
10 ing, issue an order, consistent with the
11 criteria set forth in subparagraph (D),
12 setting the royalty fee under this para-
13 graph. The Tribunal shall cause to be
14 published in the Federal Register the de-
15 termination of the Panel, and the deci-
16 sion of the Tribunal with respect to the
17 determination (including any order
18 issued under the preceding sentence). The
19 Tribunal shall also publicize such deter-
20 mination and decision in such other
21 manner as the Tribunal considers appro-
22 priate. The Tribunal shall also make the
23 report of the Arbitration Panel and the
24 accompanying record available for public
25 inspection and copying.

1 “(G) PERIOD DURING WHICH DECI-
2 SION OF PANEL OR ORDER OF TRIBUNAL
3 EFFECTIVE.—The obligation to pay the
4 royalty fee established under a determi-
5 nation of the Arbitration Panel which is
6 confirmed by the Copyright Royalty Tri-
7 bunal in accordance with this paragraph,
8 or established by any order issued under
9 subparagraph (F), shall become effective
10 on the date when the decision of the Tri-
11 bunal is published in the Federal Regis-
12 ter under subparagraph (F), and shall
13 remain in effect until modified in accord-
14 ance with paragraph (4), or until Decem-
15 ber 31, 1994.

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

23 “(4) JUDICIAL REVIEW.—Any decision of
24 the Copyright Royalty Tribunal under para-
25 graph (3) with respect to a determination of

1 the Arbitration Panel may be appealed, by
2 any aggrieved party who would be bound by
3 the determination, to the United States Court
4 of Appeals for the District of Columbia Cir-
5 cuit, within 30 days after the publication of
6 the decision in the Federal Register. The
7 pendency of an appeal under this paragraph
8 shall not relieve satellite carriers of the obli-
9 gation under subsection (b)(1) to deposit the
10 statement of account and royalty fees speci-
11 fied in that subsection. The court shall have
12 jurisdiction to modify or vacate a decision of
13 the Tribunal only if it finds, on the basis of
14 the record before the Tribunal and the statu-
15 tory criteria set forth in paragraph (3)(D),
16 that the Arbitration Panel or the Tribunal
17 acted in an arbitrary manner. If the court
18 modifies the decision of the Tribunal, the
19 court shall have jurisdiction to enter its own
20 determination with respect to royalty fees, to
21 order the repayment of any excess fees depos-
22 ited under subsection (b)(1)(B), and to order
23 the payment of any underpaid fees, and the
24 interest pertaining respectively thereto, in ac-
25 cordance with its final judgment. The court

1 may further vacate the decision of the Tribu-
2 nal and remand the case for arbitration pro-
3 ceedings in accordance with paragraph (3).

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

5 “(1) DISTRIBUTOR.—The term ‘distributor’
6 means an entity which contracts to distribute
7 secondary transmissions from a satellite car-
8 rier and, either as a single channel or in a
9 package with other programming, provides
10 the secondary transmission either directly to
11 individual subscribers for private home view-
12 ing or indirectly through other program dis-
13 tribution entities.

14 “(2) NETWORK STATION.—The term ‘net-
15 work station’ has the meaning given that
16 term in section 111(f) of this title, and in-
17 cludes any translator station or terrestrial
18 satellite station that rebroadcasts all or sub-
19 stantially all of the programming broadcast
20 by a network station.

21 “(3) PRIMARY NETWORK STATION.—The
22 term ‘primary network station’ means a net-
23 work station that broadcasts or rebroadcasts
24 the basic programming service of a particular
25 national network.

1 **“(4) PRIMARY TRANSMISSION.—**The term
2 **‘primary transmission’** has the meaning given
3 that term in section 111(f) of this title.

4 **“(5) PRIVATE HOME VIEWING.—**The term
5 **‘private home viewing’** means the viewing, for
6 private use in a household by means of satel-
7 lite reception equipment which is operated by
8 an individual in that household and which
9 serves only such household, of a secondary
10 transmission delivered by a satellite carrier
11 of a primary transmission of a television sta-
12 tion licensed by the Federal Communications
13 Commission.

14 **“(6) SATELLITE CARRIER.—**The term ‘sat-
15 ellite carrier’ means an entity that uses the
16 facilities of a satellite or satellite service li-
17 censed by the Federal Communications Com-
18 mission, to establish and operate a channel of
19 communications for point-to-multipoint dis-
20 tribution of television station signals, and
21 that owns or leases a capacity or service on a
22 satellite in order to provide such point-to-
23 multipoint distribution, except to the extent
24 that such entity provides such distribution
25 pursuant to tariff under the Communications

1 Act of 1934, other than for private home
2 viewing.

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

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

14 “(9) SUPERSTATION.—The term ‘supersta-
15 tion’ means a television broadcast station,
16 other than a network station, licensed by the
17 Federal Communications Commission that is
18 secondarily transmitted by a satellite carrier.

19 “(10) UNSERVED HOUSEHOLD.—The term
20 ‘unserved household’, with respect to a par-
21 ticular television network, means a house-
22 hold that—

23 “(A) cannot receive, through the use
24 of a conventional outdoor rooftop receiv-
25 ing antenna, an over-the-air signal of

1 **grade B intensity (as defined by the Fed-**
2 **eral Communications Commission) of a**
3 **primary network station affiliated with**
4 **that network, and**

5 **“(B) has not, within 90 days before**
6 **the date on which that household sub-**
7 **scribes, either initially or on renewal, to**
8 **receive secondary transmissions by a sat-**
9 **ellite carrier of a network station affili-**
10 **ated with that network, subscribed to a**
11 **cable system that provides the signal of a**
12 **primary network station affiliated with**
13 **that network.**

14 **“(e) EXCLUSIVITY OF THIS SECTION WITH RE-**
15 **SPECT TO SECONDARY TRANSMISSIONS OF BROAD-**
16 **CAST STATIONS BY SATELLITE TO MEMBERS OF THE**
17 **PUBLIC.—No provision of section 111 of this title**
18 **or any other law (other than this section) shall be**
19 **construed to contain any authorization, exemp-**
20 **tion, or license through which secondary trans-**
21 **missions by satellite carrier for private home**
22 **viewing of programming contained in a primary**
23 **transmission made by a superstation or a network**
24 **station may be made without obtaining the con-**
25 **sent of the copyright owner.”.**

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

4 “(e) With respect to any secondary transmis-
5 sion that is made by a satellite carrier of a pri-
6 mary transmission embodying the performance or
7 display of a work and is actionable as an act of
8 infringement under section 119(a)(5), a network
9 station holding a copyright or other license to
10 transmit or perform the same version of that work
11 shall, for purposes of subsection (b) of this sec-
12 tion, be treated as a legal or beneficial owner if
13 such secondary transmission occurs within the
14 local service area of that station.”.

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

18 (5) Section 804(d) of title 17, United
19 States Code, is amended by striking “sections
20 111 or 116” and inserting “section 111, 116, or
21 119”.

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

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

1 **SEC. 3. SYNDICATED EXCLUSIVITY; REPORT ON DISCRIMINA-**
2 **TION.**

3 **Title VII of The Communications Act of 1934**
4 **(47 U.S.C. 601 et seq.) is amended by adding at the**
5 **end the following:**

6 **"SYNDICATED EXCLUSIVITY**

7 **"SEC. 712. (a) The Federal Communications**
8 **Commission shall, within 120 days after the effec-**
9 **tive date of the Satellite Home Viewer Act of 1988,**
10 **initiate a combined inquiry and rulemaking pro-**
11 **ceeding for the purpose of—**

12 **"(1) determining the feasibility of impos-**
13 **ing syndicated exclusivity rules with respect**
14 **to the delivery of syndicated programming**
15 **(as defined by the Commission) for private**
16 **viewing (as defined in section 705 of this Act)**
17 **similar to the rules issued by the Commission**
18 **with respect to syndicated exclusivity and**
19 **cable television; and**

20 **"(2) adopting such rules if the Commis-**
21 **sion considers the imposition of such rules to**
22 **be feasible.**

23 **"(b) In the event that the Commission adopts**
24 **such rules, any willful and repeated secondary**

1 transmission made by a satellite carrier to the
2 public of a primary transmission embodying the
3 performance or display of a work which violates
4 such Commission rules shall be subject to the rem-
5 edies, sanctions, and penalties provided by title V
6 and section 705 of this Act.

7 **“DISCRIMINATION**

8 **“SEC. 713. The Federal Communications Com-**
9 **mission shall, within 1 year after the effective date**
10 **of the Satellite Home Viewer Act of 1988, prepare**
11 **and submit to the Committee on Commerce, Sci-**
12 **ence, and Transportation of the Senate and the**
13 **Committee on Energy and Commerce of the House**
14 **of Representatives a report on whether, and the**
15 **extent to which, there exists discrimination de-**
16 **scribed in section 119(a)(6) of title 17, United**
17 **States Code.”.**

18 **SEC. 4. INQUIRY ON ENCRYPTION STANDARD.**

19 **Section 705 of the Communications Act of**
20 **1934 (47 U.S.C. 605) is amended by adding at the**
21 **end thereof the following:**

22 **“(f) Within 6 months after the date of enact-**
23 **ment of the Satellite Home Viewer Act of 1988, the**
24 **Federal Communications Commission shall initi-**
25 **ate an inquiry concerning the need for a universal**
26 **encryption standard that permits decryption of**

1 satellite cable programming intended for private
2 viewing. In conducting such inquiry, the Commis-
3 sion shall take into account—

4 “(1) consumer costs and benefits of any
5 such standard, including consumer invest-
6 ment in equipment in operation;

7 “(2) incorporation of technological en-
8 hancements, including advanced television
9 formats;

10 “(3) whether any such standard would ef-
11 fectively prevent present and future unau-
12 thorized decryption of satellite cable pro-
13 gramming;

14 “(4) the costs and benefits of any such
15 standard on other authorized users of en-
16 crypted satellite cable programming, includ-
17 ing cable systems and satellite master anten-
18 na television systems;

19 “(5) the effect of any such standard on
20 competition in the manufacture of decryption
21 equipment; and

22 “(6) the impact of the time delay associ-
23 ated with the Commission procedures neces-
24 sary for establishment of such standards.

1 “(g) If the Commission finds, based on the in-
2 formation gathered from the inquiry required by
3 subsection (f), that a universal encryption stand-
4 ard is necessary and in the public interest, the
5 Commission shall initiate a rulemaking to estab-
6 lish such a standard.”.

7 SEC 5. PIRACY OF SATELLITE CABLE PROGRAMMING.

8 Section 705 of the Communications Act of
9 1934 (47 U.S.C. 605) is amended—

10 (1) in subsection (c)—

11 (A) by striking “and” at the end of
12 paragraph (4);

13 (B) by striking the period at the end
14 of paragraph (5) and inserting “; and”;
15 and

16 (C) by adding at the end the follow-
17 ing:

18 “(6) the term ‘any person aggrieved’ shall
19 include any person with proprietary rights in
20 the intercepted communication by wire or
21 radio including wholesale or retail distribu-
22 tors of satellite cable programming, and, in
23 the case of a violation of paragraph (4) of
24 subsection (d), shall also include any person
25 engaged in the lawful manufacture, distribu-

1 tion, or sale of equipment necessary to au-
2 thorize or receive satellite cable program-
3 ming.”;

4 (2) in subsection (d)(1), by striking
5 “\$1,000” and inserting “\$2,000”;

6 (3) in paragraph (2) of subsection (d), by
7 striking “\$25,000” and all that follows
8 through the end of that paragraph and insert-
9 ing “\$50,000 or imprisoned for not more than
10 2 years, or both, for the first such conviction
11 and shall be fined not more than \$100,000 or
12 imprisoned for not more than 5 years, or
13 both, for any subsequent conviction.”;

14 (4) in subsection (d)(3)(A), by inserting
15 “or paragraph (4) of subsection (d)” immedi-
16 ately after “subsection (a)”;

17 (5) in subsection (d)(3)(B) by striking
18 “may” the first time it appears;

19 (6) in subsection (d)(3)(B)(i), by inserting
20 “may” immediately before “grant”;

21 (7) in subsection (d)(3)(B)(ii), by insert-
22 ing “may” immediately before “award”;

23 (8) in subsection (d)(3)(B)(iii), by insert-
24 ing “shall” immediately before “direct”;

25 (9) in subsection (d)(3)(C)(i)(II)—

1 (A) by inserting “of subsection (a)”
2 immediately after “violation”;

3 (B) by striking “\$250” and inserting
4 “\$1,000”; and

5 (C) by inserting immediately before
6 the period the following: “, and for each
7 violation of paragraph (4) of this subsec-
8 tion involved in the action an aggrieved
9 party may recover statutory damages in
10 a sum not less than \$10,000, or more than
11 \$100,000, as the court considers just”;

12 (10) in subsection (d)(3)(C)(ii), by strik-
13 ing “\$50,000” and inserting “\$100,000 for each
14 violation of subsection (a)”;

15 (11) in subsection (d)(3)(C)(iii), by strik-
16 ing “\$100” and inserting “\$250”; and

17 (12) by striking paragraph (4) of subsec-
18 tion (d) and inserting the following:

19 “(4) Any person who manufactures, assem-
20 bles, modifies, imports, exports, sells, or distrib-
21 utes any electronic, mechanical, or other device or
22 equipment, knowing or having reason to know
23 that the device or equipment is primarily of assist-
24 ance in the unauthorized decryption of satellite
25 cable programming, or is intended for any other

1 activity prohibited by subsection (a), shall be fined
2 not more than \$500,000 for each violation, or im-
3 prisoned for not more than 5 years for each viola-
4 tion, or both. For purposes of all penalties and
5 remedies established for violations of this para-
6 graph, the prohibited activity established herein as
7 it applies to each such device shall be deemed a
8 separate violation.”.

9 SEC. 6. EFFECTIVE DATE.

10 This Act and the amendments made by this
11 Act take effect on January 1, 1989, except that the
12 authority of the Register of Copyrights to issue
13 regulations pursuant to section 119(b)(1) of title
14 17, United States Code, as added by section 2 of
15 this Act, takes effect on the date of the enactment
16 of this Act.

17 SEC. 7. TERMINATION.

18 This Act and the amendments made by this
19 Act (other than the amendments made by section
20 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.”.

Union Calendar No. 598

100TH CONGRESS
2^D SESSION

H. R. 2848

[Report No. 100-887, Parts I and II]

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

SEPTEMBER 29, 1988

Reported with amendments