

## Calendar No. 1131

100TH CONGRESS  
2D SESSION**H. R. 2848**

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 5 (legislative day, SEPTEMBER 26), 1988

Received

OCTOBER 7 (legislative day, OCTOBER 6), 1988

Read twice and ordered placed on the calendar

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**AN ACT**

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

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

3 **SECTION 1. SHORT TITLE**

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

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

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

1           (1) Section 111 of title 17, United States Code, is  
2 amended—

3           (A) in subsection (a)—

4                 (i) in paragraph (3) by striking “or” at  
5 the end,

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

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

10                 “(4) the secondary transmission is made by a sat-  
11 ellite carrier for private home viewing pursuant to a  
12 statutory license under section 119, or”; and

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

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

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

1 **“§ 119. Limitations on exclusive rights: Secondary trans-**  
2 **missions of superstations and network sta-**  
3 **tions for private home viewing’**

4 **“(a) SECONDARY TRANSMISSIONS BY SATELLITE**  
5 **CARRIERS.—**

6 **“(1) SUPERSTATIONS —**Subject to the provisions  
7 of paragraphs (3), (4), and (6) of this subsection, sec-  
8 ondary transmissions of a primary transmission made  
9 by a superstation and embodying a performance or dis-  
10 play of a work shall be subject to statutory licensing  
11 under this section if the secondary transmission is  
12 made by a satellite carrier to the public for private  
13 home viewing, and the carrier makes a direct or indi-  
14 rect charge for each retransmission service to each  
15 household receiving the secondary transmission or to a  
16 distributor that has contracted with the carrier for  
17 direct or indirect delivery of the secondary transmission  
18 to the public for private home viewing.

19 **“(2) NETWORK STATIONS —**

20 **“(A) IN GENERAL.—**Subject to the provi-  
21 sions of subparagraphs (B) and (C) of this para-  
22 graph and paragraphs (3), (4), (5), and (6) of this  
23 subsection, secondary transmissions of program-  
24 ming contained in a primary transmission made by  
25 a network station and embodying a performance  
26 or display of a work shall be subject to statutory

1           licensing under this section if the secondary trans-  
2           mission is made by a satellite carrier to the public  
3           for private home viewing, and the carrier makes a  
4           direct or indirect charge for such retransmission  
5           service to each subscriber receiving the secondary  
6           transmission

7           “(B) SECONDARY TRANSMISSIONS TO UN-  
8           SERVED HOUSEHOLDS.—The statutory license  
9           provided for in subparagraph (A) shall be limited  
10          to secondary transmissions to persons who reside  
11          in unserved households.

12          “(C) SUBMISSION OF SUBSCRIBER LISTS TO  
13          NETWORKS.—A satellite carrier that makes sec-  
14          ondary transmissions of a primary transmission  
15          made by a network station pursuant to subpara-  
16          graph (A) shall, 90 days after the effective date of  
17          the Satellite Home Viewer Act of 1988, or 90  
18          days after commencing such secondary transmis-  
19          sions, whichever is later, submit to the network  
20          that owns or is affiliated with the network station  
21          a list identifying (by street address, including  
22          county and zip code) all subscribers to which the  
23          satellite carrier currently makes secondary trans-  
24          missions of that primary transmission Thereafter,  
25          on the 15th of each month, the satellite carrier

1 shall submit to the network a list identifying (by  
2 street address, including county and zip code) any  
3 persons who have been added or dropped as such  
4 subscribers since the last submission under this  
5 subparagraph. Such subscriber information submit-  
6 ted by a satellite carrier may be used only for  
7 purposes of monitoring compliance by the satellite  
8 carrier with this subsection. The submission re-  
9 quirements of this subparagraph shall apply to a  
10 satellite carrier only if the network to whom the  
11 submissions are to be made places on file with the  
12 Register of Copyrights, on or after the effective  
13 date of the Satellite Home Viewer Act of 1988, a  
14 document identifying the name and address of the  
15 person to whom such submissions are to be made.  
16 The Register shall maintain for public inspection a  
17 file of all such documents.

18 “(3) NONCOMPLIANCE WITH REPORTING AND  
19 PAYMENT REQUIREMENTS —Notwithstanding the pro-  
20 visions of paragraphs (1) and (2), the willful or repeat-  
21 ed secondary transmission to the public by a satellite  
22 carrier of a primary transmission made by a supersta-  
23 tion or a network station and embodying a performance  
24 or display of a work is actionable as an act of infringe-  
25 ment under section 501, and is fully subject to the

1 remedies provided by sections 502 through 506 and  
2 509, where the satellite carrier has not deposited the  
3 statement of account and royalty fee required by sub-  
4 section (b), or has failed to make the submissions to  
5 networks required by paragraph (2)(C).

6 “(4) **WILLFUL ALTERATIONS.**—Notwithstanding  
7 the provisions of paragraphs (1) and (2), the secondary  
8 transmission to the public by a satellite carrier of a pri-  
9 mary transmission made by a superstation or a net-  
10 work station and embodying a performance or display  
11 of a work is actionable as an act of infringement under  
12 section 501, and is fully subject to the remedies provid-  
13 ed by sections 502 through 506 and sections 509 and  
14 510, if the content of the particular program in which  
15 the performance or display is embodied, or any com-  
16 mercial advertising or station announcement transmit-  
17 ted by the primary transmitter during, or immediately  
18 before or after, the transmission of such program, is in  
19 any way willfully altered by the satellite carrier  
20 through changes, deletions, or additions, or is combined  
21 with programming from any other broadcast signal.

22 “(5) **VIOLATION OF TERRITORIAL RESTRICTIONS**  
23 **ON STATUTORY LICENSE FOR NETWORK STATIONS.**—

24 “(A) **INDIVIDUAL VIOLATIONS.**—The willful  
25 or repeated secondary transmission by a satellite

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

8 “(i) no damages shall be awarded for  
9 such act of infringement if the satellite carri-  
10 er took corrective action by promptly with-  
11 drawing service from the ineligible subscrib-  
12 er, and

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

16 “(B) PATTERN OF VIOLATIONS.—If a satel-  
17 lite carrier engages in a willful or repeated pat-  
18 tern or practice of delivering a primary transmis-  
19 sion made by a network station and embodying a  
20 performance or display of a work to subscribers  
21 who do not reside in unserved households, then in  
22 addition to the remedies set forth in subparagraph  
23 (A)—

24 “(i) if the pattern or practice has been  
25 carried out on a substantially nationwide

1 basis, the court shall order a permanent in-  
2 junction barring the secondary transmission  
3 by the satellite carrier, for private home  
4 viewing, of the primary transmissions of any  
5 primary network station affiliated with the  
6 same network, and the court may order stat-  
7 utory damages of not to exceed \$250,000 for  
8 each 6-month period during which the pat-  
9 tern or practice was carried out; and

10 “(ii) if the pattern or practice has been  
11 carried out on a local or regional basis, the  
12 court shall order a permanent injunction bar-  
13 ring the secondary transmission, for private  
14 home viewing in that locality or region, by  
15 the satellite carrier of the primary transmis-  
16 sions of any primary network station affili-  
17 ated with the same network, and the court  
18 may order statutory damages of not to  
19 exceed \$250,000 for each 6-month period  
20 during which the pattern or practice was  
21 carried out.

22 “(C) PREVIOUS SUBSCRIBERS EXCLUDED.—  
23 Subparagraphs (A) and (B) do not apply to sec-  
24 ondary transmissions by a satellite carrier to per-  
25 sons who subscribed to receive such secondary



1           transmissions from the satellite carrier or a dis-  
2           tributor before the date of the enactment of the  
3           Satellite Home Viewer Act of 1988.

4           “(6) DISCRIMINATION BY A SATELLITE CARRI-  
5           ER.—Notwithstanding the provisions of paragraph (1),  
6           the willful or repeated secondary transmission to the  
7           public by a satellite carrier of a primary transmission  
8           made by a superstation or a network station and em-  
9           bodying a performance or display of a work is action-  
10          able as an act of infringement under section 501, and  
11          is fully subject to the remedies provided by sections  
12          502 through 506 and 509, if the satellite carrier un-  
13          lawfully discriminates against a distributor

14          “(7) GEOGRAPHIC LIMITATION ON SECONDARY  
15          TRANSMISSIONS.—The statutory license created by  
16          this section shall apply only to secondary transmissions  
17          to households located in the United States

18          “(b) STATUTORY LICENSE FOR SECONDARY TRANS-  
19          MISSIONS FOR PRIVATE HOME VIEWING.—

20          “(1) DEPOSITS WITH THE REGISTER OF COPY-  
21          RIGHTS —A satellite carrier whose secondary trans-  
22          missions are subject to statutory licensing under sub-  
23          section (a) shall, on a semiannual basis, deposit with  
24          the Register of Copyrights, in accordance with require-  
25          ments that the Register shall, after consultation with

1 the Copyright Royalty Tribunal, prescribe by regula-  
2 tion—

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

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

16 “(i) multiplying the total number of sub-  
17 scribers receiving each secondary transmis-  
18 sion of a superstation during each calendar  
19 month by 12 cents;

20 “(ii) multiplying the number of subscrib-  
21 ers receiving each secondary transmission of  
22 a network station during each calendar  
23 month by 3 cents; and

24 “(iii) adding together the totals comput-  
25 ed under clauses (i) and (ii)

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

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

21           “(4) PROCEDURES FOR DISTRIBUTION.—The roy-  
22 alty fees deposited under paragraph (2) shall be distrib-  
23 uted in accordance with the following procedures

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

1 claiming to be entitled to statutory license fees for  
2 secondary transmissions for private home viewing  
3 shall file a claim with the Copyright Royalty Tri-  
4 bunal, in accordance with requirements that the  
5 Tribunal shall prescribe by regulation. For pur-  
6 poses of this paragraph, any claimants may agree  
7 among themselves as to the proportionate division  
8 of statutory license fees among them, may lump  
9 their claims together and file them jointly or as a  
10 single claim, or may designate a common agent to  
11 receive payment on their behalf

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

1           “(C) WITHHOLDING OF FEES DURING CON-  
 2           TROVERSY.—During the pendency of any pro-  
 3           ceeding under this subsection, the Copyright Roy-  
 4           alty Tribunal shall withhold from distribution an  
 5           amount sufficient to satisfy all claims with respect  
 6           to which a controversy exists, but shall have dis-  
 7           cretion to proceed to distribute any amounts that  
 8           are not in controversy

9           “(c) DETERMINATION OF ROYALTY FEES —

10           “(1) APPLICABILITY AND DETERMINATION OF  
 11           ROYALTY FEES —The rate of the royalty fee payable  
 12           under subsection (b)(1)(B) shall be effective until De-  
 13           cember 31, 1992, unless a royalty fee is established  
 14           under paragraph (2), (3), or (4) of this subsection After  
 15           that date, the fee shall be determined either in accord-  
 16           ance with the voluntary negotiation procedure specified  
 17           in paragraph (2) or in accordance with the compulsory  
 18           arbitration procedure specified in paragraphs (3) and  
 19           (4)

20           “(2) FEE SET BY VOLUNTARY NEGOTIATION —

21           “(A) NOTICE OF INITIATION OF PROCEED-  
 22           INGS.—On or before July 1, 1991, the Copyright  
 23           Royalty Tribunal shall cause notice to be pub-  
 24           lished in the Federal Register of the initiation of  
 25           voluntary negotiation proceedings for the purpose

1 of determining the royalty fee to be paid by satel-  
2 lite carriers under subsection (b)(1)(B)

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

18 “(C) AGREEMENTS BINDING ON PARTIES,  
19 FILING OF AGREEMENTS.—Voluntary agreements  
20 negotiated at any time in accordance with this  
21 paragraph shall be binding upon all satellite carri-  
22 ers, distributors, and copyright owners that are  
23 parties thereto. Copies of such agreements shall  
24 be filed with the Copyright Office within 30 days

1 after execution in accordance with regulations  
2 that the Register of Copyrights shall prescribe.

3 “(D) PERIOD AGREEMENT IS IN EFFECT.—

4 The obligation to pay the royalty fees established  
5 under a voluntary agreement which has been filed  
6 with the Copyright Office in accordance with this  
7 paragraph shall become effective on the date spec-  
8 ified in the agreement, and shall remain in effect  
9 until December 31, 1994.

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

11 “(A) NOTICE OF INITIATION OF PROCEED-  
12 INGS.—On or before December 31, 1991, the  
13 Copyright Royalty Tribunal shall cause notice to  
14 be published in the Federal Register of the initi-  
15 ation of arbitration proceedings for the purpose of  
16 determining a reasonable royalty fee to be paid  
17 under subsection (b)(1)(B) by satellite carriers who  
18 are not parties to a voluntary agreement filed  
19 with the Copyright Office in accordance with  
20 paragraph (2). Such notice shall include the  
21 names and qualifications of potential arbitrators  
22 chosen by the Tribunal from a list of available ar-  
23 bitrators obtained from the American Arbitration  
24 Association or such similar organization as the  
25 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 arbitrator  
6                   shall be selected from the published list by copy-  
7                   right owners who claim to be entitled to royalty  
8                   fees under subsection (b)(4) and who are not party  
9                   to a voluntary agreement filed with the Copyright  
10                  Office in accordance with paragraph (2), and one  
11                  arbitrator shall be selected from the published list  
12                  by satellite carriers and distributors who are not  
13                  parties to such a voluntary agreement. The two  
14                  arbitrators so selected shall, within 10 days after  
15                  their selection, choose a third arbitrator from the  
16                  same list, who shall serve as chairperson of the  
17                  arbitrators. If either group fail to agree upon the  
18                  selection of an arbitrator, or if the arbitrators se-  
19                  lected by such groups fail to agree upon the selec-  
20                  tion of a chairperson, the Copyright Royalty Tri-  
21                  bunal shall promptly select the arbitrator or chair-  
22                  person, respectively. The arbitrators selected  
23                  under this subparagraph shall constitute an Arbi-  
24                  tration 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 ROYALTY  
16          FEES.—In determining royalty fees under this  
17          paragraph, the Arbitration Panel shall consider  
18          the approximate average cost to a cable system  
19          for the right to secondarily transmit to the public  
20          a 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  
25          this paragraph, for the secondary transmission of

1           superstations 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 cre-  
5                   ative 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,  
14                   technological contribution, capital invest-  
15                   ment, cost, risk, and contribution to the  
16                   opening of new markets for creative expres-  
17                   sion and media for their communication.

18                   “(iv) To minimize any disruptive impact  
19                   on the structure of the industries involved  
20                   and on generally prevailing industry prac-  
21                   tices.

22                   “(E) REPORT TO COPYRIGHT ROYALTY TRI-  
23                   BUNAL.—Not later than 60 days after publication  
24                   of the notice initiating an arbitration proceeding,  
25                   the Arbitration Panel shall report to the Copy-

1 right Royalty Tribunal its determination concern-  
2 ing the royalty fee Such report shall be accompa-  
3 nied by the written record, and shall set forth the  
4 facts that the Panel found relevant to its determi-  
5 nation and the reasons why its determination is  
6 consistent with the criteria set forth in subpara-  
7 graph (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 shall,  
18 before the end of that 60-day period, and after full  
19 examination of the record created in the arbitra-  
20 tion proceeding, issue an order, consistent with  
21 the criteria set forth in subparagraph (D), setting  
22 the royalty fee under this paragraph. The Tribu-  
23 nal shall cause to be published in the Federal  
24 Register the determination of the Panel, and the  
25 decision of the Tribunal with respect to the deter-

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

8 “(G) PERIOD DURING WHICH DECISION OF  
9 PANEL OR ORDER OF TRIBUNAL EFFECTIVE.—

10 The obligation to pay the royalty fee established  
11 under a determination of the Arbitration Panel  
12 which is confirmed by the Copyright Royalty Tri-  
13 bunal in accordance with this paragraph, or estab-  
14 lished by any order issued under subparagraph  
15 (F), shall become effective on the date when the  
16 decision of the Tribunal is published in the Feder-  
17 al Register under subparagraph (F), and shall  
18 remain in effect until modified in accordance with  
19 paragraph (4), or until December 31, 1994.

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

1           “(4) JUDICIAL REVIEW.—Any decision of the  
2 Copyright Royalty Tribunal under paragraph (3) with  
3 respect to a determination of the Arbitration Panel  
4 may be appealed, by any aggrieved party who would  
5 be bound by the determination, to the United States  
6 Court of Appeals for the District of Columbia Circuit,  
7 within 30 days after the publication of the decision in  
8 the Federal Register. The pendency of an appeal under  
9 this paragraph shall not relieve satellite carriers of the  
10 obligation under subsection (b)(1) to deposit the state-  
11 ment of account and royalty fees specified in that sub-  
12 section. The court shall have jurisdiction to modify or  
13 vacate a decision of the Tribunal only if it finds, on the  
14 basis of the record before the Tribunal and the statuto-  
15 ry criteria set forth in paragraph (3)(D), that the Arbi-  
16 tration Panel or the Tribunal acted in an arbitrary  
17 manner. If the court modifies the decision of the Tribu-  
18 nal, the court shall have jurisdiction to enter its own  
19 determination with respect to royalty fees, to order the  
20 repayment of any excess fees deposited under subsec-  
21 tion (b)(1)(B), and to order the payment of any under-  
22 paid fees, and the interest pertaining respectively  
23 thereto, in accordance with its final judgment. The  
24 court may further vacate the decision of the Tribunal

1 and remand the case for arbitration proceedings in ac-  
2 cordance with paragraph (3).

3 “(d) DEFINITIONS —As used in this section—

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

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

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

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

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

9           “(6) SATELLITE CARRIER.—The term ‘satellite  
10      carrier’ means an entity that uses the facilities of a sat-  
11      ellite or satellite service licensed by the Federal Com-  
12      munications Commission, to establish and operate a  
13      channel of communications for point-to-multipoint dis-  
14      tribution 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 sec-

1       ondary 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,  
14      an 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 initially  
20      or on renewal, to receive secondary transmissions  
21      by a satellite carrier of a network station affiliated  
22      with that network, subscribed to a cable system  
23      that provides the signal of a primary network sta-  
24      tion affiliated with that network.



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

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

13           “(e) With respect to any secondary transmission that is  
14 made by a satellite carrier of a primary transmission embody-  
15 ing the performance or display of a work and is actionable as  
16 an act of infringement under section 119(a)(5), a network sta-  
17 tion holding a copyright or other license to transmit or per-  
18 form the same version of that work shall, for purposes of  
19 subsection (b) of this section, be treated as a legal or benefi-  
20 cial owner if such secondary transmission occurs within the  
21 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 Code,  
 2 is amended by striking “sections 111 or 116” and in-  
 3 serting “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, REPORT ON DISCRIMINA-**  
 8 **TION.**

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

12 “SYNDICATED EXCLUSIVITY

13 “SEC 712. (a) The Federal Communications Commis-  
 14 sion shall, within 120 days after the effective date of the  
 15 Satellite Home Viewer Act of 1988, initiate a combined in-  
 16 quiry and rulemaking proceeding for the purpose of—

17 “(1) determining the feasibility of imposing syndi-  
 18 cated exclusivity rules with respect to the delivery of  
 19 syndicated programming (as defined by the Commis-  
 20 sion) for private home viewing of secondary transmis-  
 21 sions by satellite of broadcast station signals similar to  
 22 the rules issued by the Commission with respect to  
 23 syndicated exclusivity and cable television, and



1 tion of satellite cable programming intended for private view-  
2 ing. In conducting such inquiry, the Commission shall take  
3 into account—

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

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

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

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

16 “(5) the effect of any such standard on competi-  
17 tion in the manufacture of decryption equipment, and

18 “(6) the impact of the time delay associated with  
19 the Commission procedures necessary for establishment  
20 of such standards.

21 “(g) If the Commission finds, based on the information  
22 gathered from the inquiry required by subsection (f), that a  
23 universal encryption standard is necessary and in the public  
24 interest, the Commission shall initiate a rulemaking to estab-  
25 lish such a standard.”.

## 1 SEC 5 PIRACY OF SATELLITE CABLE PROGRAMMING.

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

4 (1) in subsection (c)—

5 (A) by striking “and” at the end of para-  
6 graph (4),

7 (B) by striking the period at the end of para-  
8 graph (5) and inserting “; and”; and

9 (C) by adding at the end the following:

10 “(6) the term ‘any person aggrieved’ shall include  
11 any person with proprietary rights in the intercepted  
12 communication by wire or radio, including wholesale or  
13 retail distributors of satellite cable programming, and,  
14 in the case of a violation of paragraph (4) of subsection  
15 (d), shall also include any person engaged in the lawful  
16 manufacture, distribution, or sale of equipment neces-  
17 sary to authorize or receive satellite cable program-  
18 ming.”,

19 (2) in subsection (d)(1), by striking “\$1,000” and  
20 inserting “\$2,000”,

21 (3) in paragraph (2) of subsection (d), by striking  
22 “\$25,000” and all that follows through the end of that  
23 paragraph and inserting “\$50,000 or imprisoned for  
24 not more than 2 years, or both, for the first such con-  
25 viction and shall be fined not more than \$100,000 or

1 imprisoned for not more than 5 years, or both, for any  
2 subsequent conviction.”,

3 (4) in subsection (d)(3)(A), by inserting “or para-  
4 graph (4) of subsection (d)” immediately after “subsec-  
5 tion (a)”,

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

8 (6) in subsection (d)(3)(B)(i), by inserting “may”  
9 immediately before “grant”,

10 (7) in subsection (d)(3)(B)(ii), by inserting “may”  
11 immediately before “award”;

12 (8) in subsection (d)(3)(B)(iii), by inserting “shall”  
13 immediately before “direct”;

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

15 (A) by inserting “of subsection (a)” immedi-  
16 ately after “violation”;

17 (B) by striking “\$250” and inserting  
18 “\$1,000”; and

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

1           (10) in subsection (d)(3)(C)(ii), by striking  
2           “\$50,000” and inserting “\$100,000 for each violation  
3           of subsection (a)”;

4           (11) in subsection (d)(3)(C)(iii), by striking “\$100”  
5           and inserting “\$250”, and

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

8           “(4) Any person who manufactures, assembles, modifies,  
9 imports, exports, sells, or distributes any electronic, mechani-  
10 cal, or other device or equipment, knowing or having reason  
11 to know that the device or equipment is primarily of assist-  
12 ance in the unauthorized decryption of satellite cable pro-  
13 gramming, or is intended for any other activity prohibited by  
14 subsection (a), shall be fined not more than \$500,000 for  
15 each violation, or imprisoned for not more than 5 years for  
16 each violation, or both. For purposes of all penalties and rem-  
17 edies established for violations of this paragraph, the prohibit-  
18 ed activity established herein as it applies to each such device  
19 shall be deemed a separate violation ”

20 **SEC. 6. EFFECTIVE DATE**

21           This Act and the amendments made by this Act take  
22 effect on January 1, 1989, except that the authority of the  
23 Register of Copyrights to issue regulations pursuant to sec-  
24 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 enact-  
2 ment of this Act.

3 **SEC 7. TERMINATION**

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

      Passed the House of Representatives October 5, 1988.

Attest.

DONNALD K ANDERSON,

*Clerk*



Calendar No. 1131

100TH CONGRESS  
2D SESSION

**H. R. 2848**

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**AN ACT**

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

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OCTOBER 7 (legislative day, OCTOBER 6), 1988

*Read twice and ordered placed on the calendar*