

Superseded by 99th H.R. 5572

I

99TH CONGRESS
2D SESSION

H. R. 5126

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 1986

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

A BILL

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

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

3 **SECTION 1 SHORT TITLE**

4 This Act may be cited as the "Satellite Home Viewer
5 Act of 1986"

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

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

8 (1) Section 111 is amended—

1 (A) in subsection (a)—

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

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

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

8 “(4) the secondary transmission is made for pri-
9 vate viewing pursuant to a compulsory license under
10 section 119, except that the provisions of this clause
11 extend only to the activities of a satellite carrier with
12 respect to secondary transmissions and do not exempt
13 from liability the activities of others with respect to
14 their own primary or secondary transmissions, or”, and

15 (B) in subsection (d)(2)(A) by inserting before
16 “Such statement” the following.

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

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

4 **“§ 119. Limitations on exclusive rights: Secondary trans-**
5 **missions of superstations for private viewing**

6 **“(a) SECONDARY TRANSMISSIONS BY SATELLITE**
7 **CARRIERS —**

8 “(1) Subject to the provisions of clauses (2), (3),
9 and (4) of this subsection, secondary transmissions of a
10 primary transmission made by a superstation and em-
11 bodying a performance or display of a work shall be
12 subject to compulsory licensing if the secondary trans-
13 mission is made by a satellite carrier to the public for
14 private viewing, and the carrier makes a direct charge
15 for such retransmission service from each subscriber re-
16 ceiving the secondary transmission or from a distribu-
17 tor that has contracted with the carrier for direct or
18 indirect delivery of the secondary transmission to the
19 public for private viewing

20 “(2) Notwithstanding the provisions of clause (1)
21 of this subsection, the willful or repeated secondary
22 transmission to the public by a satellite carrier of a pri-
23 mary transmission made by a superstation and embody-
24 ing a performance or display of a work is actionable as
25 an act of infringement under section 501, and is fully

1 subject to the remedies provided by sections 502
2 through 506 and 509, where the satellite carrier has
3 not recorded the notice specified by and deposited the
4 statement of account and royalty fee required by
5 subsection (b).

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

21 “(4) Notwithstanding the provisions of clause (1)
22 of this subsection, the willful or repeated secondary
23 transmission to the public by a satellite carrier of a pri-
24 mary transmission made by a superstation and embody-
25 ing a performance or display of a work is actionable as

1 an act of infringement under section 501, and is fully
2 subject to the remedies provided by sections 502
3 through 506 and 509, if the satellite carrier discrimi-
4 nates against any distributor in a manner which vio-
5 lates the Communications Act of 1934 or rules issued
6 by the Federal Communications Commission with
7 respect to discrimination

8 “(b) COMPULSORY LICENSE FOR SECONDARY TRANS-
9 MISSIONS FOR PRIVATE VIEWING —

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

15 “(A) a statement of account, covering the
16 preceding 6-month period, specifying the names
17 and locations of all superstations whose signals
18 were transmitted to subscribers for private view-
19 ing as described in subsection (a)(1), the total
20 number of subscribers that received such transmis-
21 sions, and such other data as the Register of
22 Copyrights may from time to time prescribe by
23 regulation, and

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

1 ers receiving the secondary transmission each cal-
2 endar month by 12 cents

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

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

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

1 “(A) During the month of July in each year,
2 each person claiming to be entitled to compulsory
3 license fees for secondary transmissions for private
4 viewing shall file a claim with the Register of
5 Copyrights, in accordance with requirements that
6 the Register shall prescribe by regulation. Not-
7 withstanding any provision of the antitrust laws,
8 for purposes of this clause any claimants may
9 agree among themselves as to the proportionate
10 division of compulsory licensing fees among them,
11 may lump their claims together and file them
12 jointly or as a single claim, or may designate a
13 common agent to receive payment on their behalf.

14 “(B) After the first day of August of each
15 year, the Register of Copyrights shall determine
16 whether there exists a controversy concerning the
17 distribution of royalty fees. If the Register deter-
18 mines that no such controversy exists, the Regis-
19 ter shall, after deducting reasonable administrative
20 costs under this clause, distribute such fees to the
21 copyright owners entitled to receive them, or to
22 their designated agents. If the Register finds the
23 existence of a controversy, the Register shall,
24 pursuant to chapter 7 of this title, conduct a pro-
25 ceeding to determine the distribution of royalty

1 fees In determining the distribution of royalty
2 fees, the Register shall take into account the roy-
3 alty distribution determinations of the Copyright
4 Royalty Tribunal pursuant to section 111

5 “(C) During the pendency of any proceeding
6 under this subsection, the Register of Copyrights
7 shall withhold from distribution an amount suffi-
8 cient to satisfy all claims with respect to which a
9 controversy exists, but shall have discretion to
10 proceed to distribute any amounts that are not in
11 contro[—]versy

12 “(c) DETERMINATION OF ROYALTY FEES —

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

23 “(2) FEE SET BY VOLUNTARY NEGOTIATION —

24 “(A) On or before July 1, 1989, the Register
25 shall cause notice to be published in the Federal

1 Register of the initiation of voluntary negotiation
2 proceedings for the purpose of determining the
3 royalty fee to be paid by satellite carriers under
4 subsection (b)(1)(B) of this section

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

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

1 ance with regulations that the Register shall
2 prescribe

3 “(D) The obligation to pay the royalty fees
4 established under a voluntary agreement which
5 has been filed with the Copyright Office in ac-
6 cordance with this clause shall become effective
7 on the date specified in the agreement, and shall
8 remain in effect until December 31, 1994

9 “(3) FEE SET BY COMPULSORY ARBITRATION —

10 “(A) On or before December 31, 1989, the
11 Register shall cause notice to be published in the
12 Federal Register of the initiation of arbitration
13 proceedings for the purpose of determining a rea-
14 sonable royalty fee to be paid under subsection
15 (b)(1)(B) of this section by satellite carriers who
16 are not parties to a voluntary agreement filed
17 with the Copyright Office in accordance with
18 clause (2) of this subsection. Such notice shall in-
19 clude the names and qualifications of potential ar-
20 bitrators chosen by the Register from a list of
21 available arbitrators obtained from the American
22 Arbitration Association or such similar organiza-
23 tion as the Register shall select

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

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

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

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

11 “(D) In determining royalty fees under this
12 clause, the Arbitration Panel shall consider the
13 approximate average cost to a cable system for
14 the right to secondarily transmit to the public a
15 primary transmission made by a broadcast station,
16 the fee established under any voluntary agreement
17 filed with the Copyright Office in accordance with
18 clause (3) of this subsection, and the last fee pro-
19 posed by the parties, before proceedings under
20 this clause, for the secondary transmission of su-
21 perstations for private viewing. The fee shall also
22 be calculated to achieve the following objectives:

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

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

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

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

17 “(E) Not later than sixty days after publica-
18 tion of the notice initiating an arbitration proceed-
19 ing, the Arbitration Panel shall report to the Reg-
20 ister its determination concerning the royalty fee
21 Such report shall be accompanied by the written
22 record, and shall set forth the facts that the Board
23 found relevant to its determination and the rea-
24 sons why its determination is consistent with the
25 criteria set forth in paragraph (D) of this clause

1 “(F) Within 60 days after receiving the
2 report of the Arbitration Panel under paragraph
3 (E) of this clause, the Register shall adopt or
4 reject the determination of the Panel. The Regis-
5 ter shall adopt the determination of the Panel
6 unless the Register finds that the determination is
7 clearly inconsistent with the criteria set forth in
8 paragraph (D) of this clause. If the Register re-
9 jects the determination of the Panel, the Register
10 shall, before the end of that 60-day period, issue
11 an order, consistent with the criteria set forth in
12 paragraph (D) of this clause, setting the royalty
13 fee under this clause. The Register shall cause to
14 be published in the Federal Register the determi-
15 nation of the Panel, and the Register’s decision
16 with respect to the determination (including any
17 order issued under the preceding sentence). The
18 Register shall also publicize such determination
19 and decision in such other manner as the Register
20 considers appropriate. The Register shall also
21 make the report of the Arbitration Panel and the
22 accompanying record available for public inspec-
23 tion and copying.

24 “(G) The obligation to pay the royalty fee
25 established under a determination of the Arbitra-

1 tion Panel which is confirmed by the Register in
2 accordance with this clause, or established by any
3 order issued under paragraph (F) of this clause,
4 shall become effective on the date when the Reg-
5 ister's decision is published in the Federal Regis-
6 ter under paragraph (F) of this clause, and shall
7 remain in effect until modified in accordance with
8 clause (4) of this subsection, or until December
9 31, 1994

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

16 “(4) JUDICIAL REVIEW —Any decision of the
17 Register under clause (3) of this subsection with re-
18 spect to a determination of an arbitration panel may be
19 appealed, by any aggrieved party who would be bound
20 by the determination, to the United States Court of
21 Appeals for the District of Columbia Circuit, within
22 thirty days after the publication of the decision in the
23 Federal Register The pendency of an appeal under
24 this clause shall not relieve satellite carriers of the ob-
25 ligation under subsection (b)(1) of this section to record

1 the notice, and deposit the statement of account and
2 royalty fees, specified in that subsection. The court
3 shall have jurisdiction to modify or vacate a decision of
4 the Register only if it finds, on the basis of the record
5 before the Register and the statutory criteria set forth
6 in clause (3)(D) of this subsection, that the Arbitration
7 Panel or the Register acted in an arbitrary manner. If
8 the court modifies the Register's decision, the court
9 shall have jurisdiction to enter its own determination
10 with respect to royalty fees, to order the repayment of
11 any excess fees deposited under subsection (b)(1)(B) of
12 this section, and to order the payment of any underpaid
13 fees, and the interest pertaining respectively thereto, in
14 accordance with its final judgment. The court may fur-
15 ther vacate the Register's decision and remand the
16 case for arbitration proceedings in accordance with
17 clause (3) of this subsection.

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

19 (1) ANTITRUST LAWS —The term ‘antitrust
20 laws’ has the meaning given that term in subsection (a)
21 of the first section of the Clayton Act (15 U S C
22 12(a))

23 “(2) DISTRIBUTOR —The term ‘distributor’
24 means an entity which contracts for satellite secondary
25 transmissions from a carrier and, either as a single

1 channel or in a package with other programming, pro-
2 vides the satellite secondary transmission either direct-
3 ly to the individual subscribers for private viewing or
4 indirectly through other program distribution entities

5 “(3) PRIMARY TRANSMISSION —The term ‘pri-
6 mary transmission’ has the meaning given that term in
7 section 111(f) of this title

8 “(4) PRIVATE VIEWING —The term ‘private
9 viewing’ means the viewing, for private use in an indi-
10 vidual’s dwelling unit by means of equipment which is
11 operated by or for such individual, of a secondary
12 transmission delivered by satellite of a primary trans-
13 mission of a television broadcast station licensed by the
14 Federal Communications Commission

15 “(5) SATELLITE CARRIER —The term ‘satellite
16 carrier’ means a common carrier that owns or leases a
17 transponder on a satellite in order to provide the point-
18 to-multipoint relay of television station signals to nu-
19 merous receive-only earth stations

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

23 “(7) SUBSCRIBER —The term ‘subscriber’ means
24 an individual who receives a secondary transmission
25 service for private viewing by means of a satellite

1 transmission in accordance with this section and pays a
2 fee for the service, directly or indirectly, to the satellite
3 carrier or to a distributor. In the case of a building
4 with more than one dwelling unit, each dwelling unit
5 which receives secondary transmission service for pri-
6 vate viewing by means of a satellite transmission shall
7 be considered to be a subscriber, whether or not a sep-
8 arate fee for such service is required for each unit by a
9 satellite carrier or distributor.

10 “(8) SUPERSTATION —The term ‘superstation’
11 means a television broadcast station licensed by the
12 Federal Communications Commission that is secondari-
13 ly transmitted by a satellite carrier for nationwide
14 distribution.”

15 (3) Chapter 7 of title 17, United States Code, is
16 amended by adding at the end the following new
17 section:

18 **“§ 711. Institution and conclusion of royalty distribution**
19 **proceedings**

20 “(a) With respect to proceedings under section 119(b)(4)
21 concerning the distribution of royalty fees, the Register of
22 Copyrights shall, upon determination that a controversy
23 exists concerning such distribution, cause to be published in
24 the Federal Register notice of commencement of proceedings
25 under this chapter. Following publication of such notice, the

1 Register shall initiate proceedings without delay to determine
2 the distribution of any amount of royalty fees in controversy
3 The Register shall render a final decision in any such pro-
4 ceeding within one year from the date of publication of such
5 notice

6 “(b) The Register of Copyrights shall adopt regulations
7 governing the procedure to be followed in such proceedings
8 Except as otherwise provided in this chapter, such regula-
9 tions shall be subject to the provisions of subchapter II of
10 chapter 5 and chapter 7 of title 5

11 “(c) Every final determination of the Register of Copy-
12 rights under this section shall be published in the Federal
13 Register It shall state in detail the criteria that the Register
14 determined to be applicable to the particular proceeding, the
15 facts found to be relevant to the determination in that pro-
16 ceeding, and the specific reasons for the determination ”

17 (4) The table of sections for chapter 1 of title 17, United
18 States Code, is amended by adding at the end the following
19 new item

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

20 (5) The table of sections for chapter 7 of title 17, United
21 States Code, is amended by adding at the end the following
22 new item

“711 Institution and conclusion of royalty distribution proceedings ”

1 **SEC 3. EFFECTIVE DATE**

2 This Act and the amendments made by this Act take
3 effect on January 1, 1987, except that the authority of the
4 Register of Copyrights to set rates pursuant to the amend-
5 ments made by this Act takes effect upon the date of the
6 enactment of this Act

7 **SEC 4 TERMINATION**

8 This Act and the amendments made by this Act cease to
9 be effective on December 31, 1994

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