

Calendar No. 670

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION  
**S. 1720**

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## **A BILL**

To amend title 17, United States Code, to reform the copyright law with respect to satellite re-transmissions of broadcast signals, and for other purposes.

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OCTOBER 1 (legislative day, SEPTEMBER 29), 1998  
Reported with an amendment

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## IN THE SENATE OF THE UNITED STATES

MARCH 5, 1998

Mr. HATCH (for himself, Mr. LEAHY, Mr. KOHL, and Mr. JEFFORDS), introduced the following bill; which was read twice and referred to the Committee on the Judiciary

OCTOBER 1 (legislative day, SEPTEMBER 29), 1998

Reported by Mr. HATCH, with an amendment

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

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## A BILL

To amend title 17, United States Code, to reform the copyright law with respect to satellite retransmissions of broadcast signals, 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 “Copyright Compulsory  
5 License Improvement Act”.

1 **SEC. 2. SECONDARY TRANSMISSIONS BY SATELLITE CAR-**  
 2 **RIERS.**

3 Section 119 of title 17, United States Code, is  
 4 amended—

5 (1) by amending the section heading to read as  
 6 follows:

7 **“§ 119. Limitations on exclusive rights: Secondary**  
 8 **transmissions by satellite carriers”;**

9 and

10 (2) by striking subsection (a) and inserting the  
 11 following:

12 **“(a) SECONDARY TRANSMISSIONS BY SATELLITE**  
 13 **CARRIERS FOR PRIVATE HOME VIEWING.—**

14 **“(1) SECONDARY TRANSMISSIONS OF DISTANT**  
 15 **AND LOCAL BROADCAST SIGNALS SUBJECT TO STAT-**  
 16 **UTORY LICENSING.—**Subject to the provisions of  
 17 subsections (b) and (c) of this section and section  
 18 114(d), a secondary transmission of a primary  
 19 transmission made by a television broadcast station  
 20 licensed by the Federal Communications Commission  
 21 or by the Public Broadcasting Service satellite feed  
 22 and embodying a performance or display of a work  
 23 shall be subject to statutory licensing under this sec-  
 24 tion if—

25 **“(A) the secondary transmission is permis-**  
 26 **sible under the rules, regulations, and author-**

1           izations of the Federal Communications Com-  
2           mission and is made by a satellite carrier to the  
3           public for private home viewing; and

4           “~~(B)~~ the carrier makes a direct or indirect  
5           charge for each retransmission service to each  
6           household receiving the secondary transmission  
7           or to a distributor that has contracted with the  
8           carrier for direct or indirect delivery of the sec-  
9           ondary transmission to the public for private  
10          home viewing.

11          “~~(2)~~ SUBMISSION OF SUBSCRIBER LISTS TO  
12          TELEVISION BROADCAST STATIONS.—

13           “~~(A)~~ INITIAL LISTS.—A satellite carrier  
14           that makes secondary transmissions of a pri-  
15           mary transmission of a television broadcast sta-  
16           tion pursuant to paragraph (1) shall, within 90  
17           days after commencing such secondary trans-  
18           missions, submit to that television broadcast  
19           station—

20           “~~(i)~~ a list identifying all subscribers  
21           within the designated market area of that  
22           television broadcast station to whom the  
23           satellite carrier has made such secondary  
24           transmissions; and

1           “(ii) a list of all television broadcast  
2           stations whose primary transmissions have  
3           been transmitted by the satellite carrier to  
4           those subscribers during that 90-day pe-  
5           riod.

6           “(B) SUBSEQUENT LISTS.—After the sub-  
7           mission of the lists under subparagraph (A),  
8           the satellite carrier shall, on the 15th day of  
9           each month, submit to each television broadcast  
10          station—

11           “(i) a list, which shall be dated, that  
12           identifies the name of any subscriber de-  
13           scribed in subparagraph (A) who has been  
14           added or dropped since the last submission  
15           under this paragraph; and

16           “(ii) a list of all television broadcast  
17           stations whose primary transmissions have  
18           been added or dropped by the satellite ear-  
19           rier since the last submission under this  
20           paragraph

21           “(C) IDENTIFYING INFORMATION.—(i)  
22           Each list of subscribers under this paragraph  
23           shall include the name of each subscriber, to-  
24           gether with the subscriber’s home address,  
25           which shall include the street address or rural

1 route as the case may be, city, county, State,  
2 and zip code and, if different from the subscrib-  
3 er's home address, the location of the subscrib-  
4 er's satellite receiving dish to which the second-  
5 ary transmissions are made, identified by street  
6 address or rural route as the case may be, city,  
7 county, State, and zip code.

8 “(ii) Each list of television broadcast sta-  
9 tions under this paragraph shall include the  
10 station's call letters and community of license.

11 “(iii) Subscriber information submitted  
12 under this paragraph may be used only for pur-  
13 poses of monitoring compliance by the satellite  
14 carrier with this section.

15 “(3) PENALTIES FOR NONCOMPLIANCE WITH  
16 ACCOUNTING AND ROYALTY REQUIREMENTS.—Not-  
17 withstanding the provisions of paragraph (1), the  
18 willful or repeated secondary transmission to the  
19 public by a satellite carrier of a primary trans-  
20 mission made by a television broadcast station li-  
21 censed by the Federal Communications Commission  
22 or by the Public Broadcasting Service satellite feed  
23 and embodying a performance or display of a work  
24 is actionable as an act of infringement under section  
25 501, and is fully subject to the remedies provided by

1 sections 502 through 506 and 509, if the satellite  
2 carrier has not deposited the statement of account  
3 and royalties fees required by subsection (b), or has  
4 failed to make the submissions to networks required  
5 by paragraph (2).

6 “(4) PENALTIES FOR WILLFUL ALTERATIONS  
7 OF PROGRAMMING.—Notwithstanding the provisions  
8 of paragraph (1), the secondary transmission to the  
9 public by a satellite carrier of a primary trans-  
10 mission made by a television broadcast station li-  
11 censed by the Federal Communications Commission  
12 or by the Public Broadcasting Service satellite feed  
13 and embodying a performance or display of a work  
14 is actionable as an act of infringement under section  
15 501, and is fully subject to the remedies provided by  
16 section 502 through 506 and sections 509 and 510,  
17 if the content of the particular program in which the  
18 performance or display is embodied, or any commer-  
19 cial advertising or station announcement transmitted  
20 by the primary transmitter during, or immediately  
21 before or after, the transmission of such program, is  
22 in any way willfully altered by the satellite carrier  
23 through changes, deletions, or additions, or is com-  
24 bined with programming from any other broadcast  
25 signal.

1           “(5) PENALTIES FOR DISCRIMINATION AGAINST  
 2           DISTRIBUTOR.—Notwithstanding the provisions of  
 3           paragraph (1), the willful or repeated secondary  
 4           transmission to the public by a satellite carrier of  
 5           a primary transmission made by a television broad-  
 6           cast station licensed by the Federal Communications  
 7           Commission or by the Public Broadcasting Service  
 8           satellite feed and embodying the performance or dis-  
 9           play of a work is actionable as an act of infringe-  
 10          ment under section 501, and is fully subject to the  
 11          remedies provided by sections 502 through 506 and  
 12          509, if the satellite carrier unlawfully discriminates  
 13          against a distributor.

14           “(6) LICENSE LIMITED TO SECONDARY TRANS-  
 15          MISSIONS TO HOUSEHOLDS IN THE UNITED  
 16          STATES.—The statutory license created by this sec-  
 17          tion shall apply only to secondary transmissions to  
 18          households located in the United States.”.

19 **SEC. 3. STATUTORY LICENSE FOR SATELLITE CARRIERS.**

20          Section 119 of title 17, United States Code, is  
 21          amended by striking subsection (b) and inserting the fol-  
 22          lowing:

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



1           “(1) DEPOSIT OF ACCOUNTS AND FEES WITH  
2 REGISTER OF COPYRIGHTS.—A satellite carrier  
3 whose secondary transmissions are subject to statu-  
4 tory licensing under subsection (a) shall, on a semi-  
5 annual basis, deposit with the Register of Copy-  
6 rights, in accordance with requirements that the  
7 Register shall prescribe by regulation—

8           “(A) a statement of account, covering the  
9 preceding 6-month period, specifying the names  
10 and locations of all television broadcast stations  
11 whose signals were retransmitted, and listing  
12 the Public Broadcasting Service satellite feed, if  
13 carried, at any time during that period, to sub-  
14 scribers for private home viewing, the total  
15 number of subscribers that received such re-  
16 transmissions, and other such data as the Reg-  
17 ister of Copyrights may from time to time pre-  
18 scribe by regulation; and

19           “(B) a royalty fee for that 6-month period  
20 for each television broadcast station whose pri-  
21 mary transmission was retransmitted beyond  
22 the local market of the station, and for the  
23 Public Broadcasting Service satellite feed, if  
24 carried, computed by multiplying the total num-  
25 ber of subscribers receiving the secondary

1 transmission, and the number of subscribers re-  
2 ceiving a secondary transmission of the Public  
3 Broadcasting Service satellite feed, during each  
4 calendar month by the rate in effect for tele-  
5 vision broadcast stations as determined under  
6 chapter 8 of this title and section 8(e) of the  
7 Copyright Compulsory License Improvement  
8 Act.

9 “(2) INVESTMENT OF FEES.—The Register of  
10 Copyrights shall receive all fees deposited under this  
11 section and, after deducting the reasonable costs in-  
12 curred by the Copyright Office under this section  
13 (other than the costs deducted under paragraph  
14 (4)), shall deposit the balance in the Treasury of the  
15 United States, in such manner as the Secretary of  
16 the Treasury directs. All funds held by the Secretary  
17 of the Treasury shall be invested in interest-bearing  
18 securities of the United States for later distribution  
19 with interest by the Copyright Royalty Adjudication  
20 Board as provided in this title. The Register may,  
21 four or more years after the close of any calendar  
22 year, close out the account for royalty payments  
23 made under this section for that calendar year (in-  
24 cluding payments made under this section as in ef-  
25 fect before the effective date of the Copyright Com-

1       pulsory License Improvement Act), and may treat  
 2       any funds remaining in such account and any subse-  
 3       quent deposits that would otherwise be attributable  
 4       to that calendar year as attributable to the calendar  
 5       year in which the account is closed.

6           ~~“(3) PERSONS TO WHOM FEES ARE DISTRIB-~~  
 7       ~~UTED.—~~The royalty fees deposited under paragraph  
 8       ~~(2)~~ shall, in accordance with the procedures provided  
 9       in paragraph ~~(4)~~, be distributed to those copyright  
 10      owners whose works were included in a secondary  
 11      transmission for private home viewing made by a  
 12      satellite carrier during the applicable 6-month ac-  
 13      counting period and who file a claim with the Board  
 14      under paragraph ~~(4)~~.

15           ~~“(4) PROCEDURES FOR DISTRIBUTION.—~~The  
 16      royalty fees deposited under paragraph ~~(2)~~ shall be  
 17      distributed in accordance with the following proce-  
 18      dures:

19           ~~“(A) FILING OF CLAIMS FOR FEES.—~~Dur-  
 20      ing the month of July in each year, each person  
 21      claiming to be entitled to statutory license fees  
 22      for secondary transmissions for private home  
 23      viewing shall file a claim with the Copyright  
 24      Royalty Adjudication Board, in accordance with  
 25      requirements that the Board shall prescribe by

1 regulation. For purposes of this paragraph, any  
2 claimants may agree among themselves as to  
3 the proportionate division of statutory license  
4 fees among them, may lump their claims to-  
5 gether and file them jointly or as a single claim,  
6 or may designate a common agent to receive  
7 payment on their behalf.

8 “(B) DETERMINATION OF CONTROVERSY;  
9 DISTRIBUTIONS.—After the first day of August  
10 of each year, the Copyright Royalty Adjudica-  
11 tion Board shall determine whether there exists  
12 a controversy concerning the distribution of roy-  
13 alty fees. If the Board determines that no such  
14 controversy exists, the Board shall, after de-  
15 ducting reasonable administrative costs under  
16 this paragraph, distribute such fees to the copy-  
17 right owners entitled to receive them, or to their  
18 designated agents. If the Board finds the exist-  
19 ence of a controversy, the Board shall, pursuant  
20 to chapter 8 of this title, conduct a proceeding  
21 to determine the distribution of royalty fees.

22 “(C) WITHHOLDING OF FEES DURING  
23 CONTROVERSY.—During the pendency of any  
24 proceeding under this subsection, the Copyright  
25 Royalty Adjudication Board shall withhold from

1 distribution an amount sufficient to satisfy all  
 2 claims with respect to which a controversy ex-  
 3 ists, but shall have discretion to proceed to dis-  
 4 tribute any amounts that are not in con-  
 5 troversy. The action of the Board to distribute  
 6 royalty fees may precede the declaration of a  
 7 controversy if all parties to the proceeding file  
 8 a petition with the Board requesting such dis-  
 9 tribution, except that such amount may not ex-  
 10 ceed 50 percent of the amounts on hand at the  
 11 time of the request.”.

12 **SEC. 4. DEFINITIONS.**

13 Section 119 of title 17, United States Code, is  
 14 amended by striking subsection (d) and inserting the fol-  
 15 lowing:

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

17 “(1) DESIGNATED MARKET AREA.—The term  
 18 ‘designated market area’ has the meaning given that  
 19 term in section 337(g) of the Communications Act  
 20 of 1934.

21 “(2) DISTRIBUTOR.—The term ‘distributor’  
 22 means an entity which contracts to distribute sec-  
 23 ondary transmissions from a satellite carrier and, ei-  
 24 ther as a single channel or in a package with other  
 25 programming, provides the secondary transmission

1 either directly to individual subscribers for private  
2 home viewing or indirectly through other program  
3 distribution entities.

4 “(3) LOCAL MARKET.—The ‘local market’ for a  
5 television broadcast station has the meaning given  
6 that term in section 337(g) of the Communications  
7 Act of 1934.

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

11 “(5) PRIVATE HOME VIEWING.—The term ‘pri-  
12 vate home viewing’ means the viewing, for private  
13 use in a household by means of satellite reception  
14 equipment which is operated by an individual in that  
15 household and which serves only such household, of  
16 a secondary transmission delivered by a satellite car-  
17 rier of a primary transmission of a television station  
18 licensed by the Federal Communications Commission  
19 or of the Public Broadcasting Service satellite feed.

20 “(6) PUBLIC BROADCASTING SERVICE SAT-  
21 ELLITE FEED.—The term ‘Public Broadcasting  
22 Service satellite feed’ means the national satellite  
23 feed distributed by the Public Broadcasting Service  
24 (other than the transmissions that may not be  
25 encrypted under section 705(c) of the Communica-

1 tions Act of 1934), consisting of educational and in-  
2 formational programming intended for private home  
3 viewing, to which the Public Broadcasting Service  
4 holds national terrestrial broadcast rights.

5 “(7) SATELLITE CARRIER.—The term ‘satellite  
6 carrier’ means an entity that uses the facilities of a  
7 satellite or satellite service licensed by the Federal  
8 Communications Commission, and operates in the  
9 Fixed-Satellite Service under part 25 of title 47,  
10 Code of Federal Regulations (as in effect on Feb-  
11 ruary 1, 1998), or the Direct Broadcast Satellite  
12 Service under part 100 of title 47, Code of Federal  
13 Regulations (as in effect on February 1, 1998), to  
14 establish and operate a channel of communications  
15 for point-to-multipoint distribution of television sta-  
16 tion signals, and that owns or leases a capacity or  
17 service on a satellite in order to provide such point-  
18 to-multipoint distribution, except to the extent that  
19 such entity provides such distribution pursuant to  
20 tariff under the Communications Act of 1934, other  
21 than for private home viewing.

22 “(8) SECONDARY TRANSMISSION.—The term  
23 ‘secondary transmission’ means the further trans-  
24 mitting of a primary transmission simultaneously  
25 with the primary transmission.

1           “(9) SUBSCRIBER.—The term ‘subscriber’  
 2 means an individual who receives a secondary trans-  
 3 mission service for private home viewing by means  
 4 of a secondary transmission from a satellite carrier  
 5 and pays a fee for the service, directly or indirectly,  
 6 to the satellite carrier or to a distributor.

7           “(10) TELEVISION BROADCAST STATION.—The  
 8 term ‘television broadcast station’ means an over-  
 9 the-air, commercial or noncommercial television  
 10 broadcast station licensed by the Federal Commu-  
 11 nications Commission under subpart E of part 73 of  
 12 title 47, Code of Federal Regulations.”.

13 **SEC. 5. EXCLUSIVITY OF SECTION 119 OF TITLE 17, UNITED**  
 14 **STATES CODE.**

15 Section 119 of title 17, United States Code, is  
 16 amended by adding at the end the following:

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



1 transmission may be made without obtaining the consent  
2 of the copyright owner.”.

3 **SEC. 6. CONFORMING AMENDMENT.**

4 The table of contents for chapter 1 of title 17, United  
5 States Code, is amended by striking the item relating to  
6 section 119 and inserting the following:

“119. Limitations on exclusive rights: Secondary transmissions by satellite car-  
riers.”.

7 **SEC. 7. COPYRIGHT ROYALTY ADJUDICATION BOARD.**

8 (a) **ESTABLISHMENT AND FUNCTIONS.**—Chapter 8  
9 of title 17, United States Code, is amended to read as  
10 follows:

11 **“CHAPTER 8—COPYRIGHT ROYALTY**  
12 **ADJUDICATION BOARD**

“Sec.

“801. Copyright Royalty Adjudication Board: establishment.

“802. Membership and qualifications of the Board.

“803. Selection of administrative copyright judges.

“804. Independence of the Board.

“805. Removal and sanction of administrative copyright judges.

“806. Functions.

“807. Factors for determining royalty fees.

“808. Institution of proceedings.

“809. Conduct of proceedings.

“810. Judicial review.

“811. Administrative matters.

“812. Rule of construction.

13 **“§ 801. Copyright Royalty Adjudication Board: estab-**  
14 **lishment**

15 “There is hereby established within the Copyright Of-  
16 fice the Copyright Royalty Adjudication Board (herein-  
17 after referred to in this chapter as the ‘Board’).

1 **“§ 802. Membership and qualifications of the Board**

2 “(a) MEMBERSHIP.—

3 “(1) IN GENERAL.—The Board shall consist of  
4 1 full-time chief administrative copyright judge, and  
5 such part-time administrative copyright judges as  
6 the Librarian of Congress, upon the recommendation  
7 of the Register of Copyrights, finds necessary to  
8 conduct the business of the Board in a timely man-  
9 ner. At no time shall the number of authorized ad-  
10 ministrative copyright judges be less than 3 or more  
11 than 5.

12 “(2) PART-TIME ADMINISTRATIVE COPYRIGHT  
13 JUDGES.—Chapter 34 of title 5 shall not apply to a  
14 part-time administrative copyright judge. For pur-  
15 poses of this subsection the Librarian of Congress  
16 shall promulgate regulations relating to part-time  
17 employment of administrative copyright judges.

18 “(b) QUALIFICATIONS.—

19 “(1) CHIEF ADMINISTRATIVE COPYRIGHT  
20 JUDGE.—The chief administrative copyright judge  
21 shall be an attorney with 10 or more years of legal  
22 practice with demonstrated experience in administra-  
23 tive hearings or court trials and demonstrated  
24 knowledge of copyright law.

25 “(2) OTHER ADMINISTRATIVE COPYRIGHT  
26 JUDGES.—Each administrative copyright judge,

1 other than the chief administrative copyright judge,  
2 shall be an individual with expertise in the business  
3 and economics of industries affected by the actions  
4 taken by the Board to carry out its functions.

5 “(c) TERMS.—(1) The term of each administrative  
6 copyright judge (including the chief administrative copy-  
7 right judge) shall be 5 years, except that, of the first ad-  
8 ministrative copyright judges appointed, the Librarian of  
9 Congress, upon the recommendation of the Register of  
10 Copyrights, shall appoint all but one of them to lesser  
11 terms to establish a staggering of terms such that in any  
12 calendar year no more than one term is due to expire.

13 “(2) The term of each administrative copyright judge  
14 (including the chief administrative copyright judge) shall  
15 begin when the term of the predecessor of that member  
16 ends. An individual appointed to fill the vacancy occurring  
17 before the expiration of the term for which the predecessor  
18 of that individual was appointed shall be appointed for the  
19 remainder of that term. When the term of office of a mem-  
20 ber ends, the member may continue to serve until a succes-  
21 sor is selected.

22 “(d) COMPENSATION.—The compensation of the ad-  
23 ministrative copyright judges shall be governed solely by  
24 the provisions of section 5376 of title 5 and such regula-  
25 tions as the Librarian of Congress may adopt that are not

1 inconsistent with that section. The compensation of the  
 2 administrative copyright judges shall not be subject to any  
 3 regulations adopted by the Office of Personnel Manage-  
 4 ment pursuant to its authority under section 5376(b)(1)  
 5 of title 5.

6 **“§ 803. Selection of administrative copyright judges**

7       “(a) SELECTION.—(1) The Librarian of Congress,  
 8 upon the recommendation of the Register of Copyrights,  
 9 shall select the administrative copyright judges (including  
 10 the chief administrative copyright judge) among individ-  
 11 uals found qualified under section 802(b) who meet the  
 12 financial conflict of interest under section 805(a). Not-  
 13 withstanding any other provision of law and at the discre-  
 14 tion of the Librarian, the Librarian shall determine the  
 15 method of selecting the members.

16       “(2) Administrative copyright judges previously se-  
 17 lected by the Librarian of Congress may be selected to  
 18 serve additional terms. There shall be no limit on the num-  
 19 ber of terms any individual may serve.

20       “(b) EFFECT OF VACANCY.—In no event shall a va-  
 21 cancy in the Board impair the right of the remaining ad-  
 22 ministrative copyright judges to exercise all of the powers  
 23 of the Board.

1 **“§ 804. Independence of the Board**

2       “(a) **IN GENERAL.**—The Board shall have independ-  
3 ence in reaching its determinations concerning the adjust-  
4 ment of copyright royalty rates, the distribution of copy-  
5 right royalties, the acceptance or rejection of royalty  
6 claims and rate adjustment petitions, and such rulemaking  
7 functions as are delegated to it under this title.

8       “(b) **PERFORMANCE APPRAISALS.**—Notwithstanding  
9 any other provision of law or any regulation of the Library  
10 of Congress, no administrative copyright judge shall re-  
11 ceive an annual performance appraisal.

12       “(c) **INCONSISTENT DUTIES BARRED.**—No adminis-  
13 trative copyright judge may be assigned duties inconsis-  
14 tent with his or her duties and responsibilities as a admin-  
15 istrative copyright judge.

16 **“§ 805. Removal and sanction of administrative copy-**  
17 **right judges**

18       “(a) **STANDARDS OF CONDUCT.**—The Librarian of  
19 Congress, upon the recommendation of the Register of  
20 Copyrights, shall adopt regulations regarding the stand-  
21 ards of conduct, including financial conflict of interest and  
22 restrictions against ex parte communications, which shall  
23 govern the administrative copyright judges and the pro-  
24 ceedings under this chapter.

25       “(b) **REMOVAL OR SANCTION.**—The Librarian of  
26 Congress, upon the recommendation of the Register of

1 Copyrights, may remove or sanction an administrative  
 2 copyright judge for violation of the standards of conduct  
 3 adopted under subsection (a), misconduct, neglect of duty,  
 4 or any disqualifying physical or mental disability. Any  
 5 such removal or sanction may be made only after notice  
 6 and opportunity for hearing, but the Librarian of Con-  
 7 gress, upon the recommendation of the Register of Copy-  
 8 rights, may suspend the administrative copyright judge  
 9 during the pendency of such hearing.

10 **“§ 806. Functions**

11 “Subject to the provisions of this chapter, the func-  
 12 tions of the Board shall be—

13 “(1) to make determinations concerning the ad-  
 14 justment of reasonable copyright royalty rates for—

15 “(A) secondary transmissions to the public  
 16 by a cable system of a primary transmission as  
 17 provided in section 111;

18 “(B) the making and distributing of  
 19 phonorecords by means other than digital pho-  
 20 norecord delivery, as provided in section 115;

21 “(C) secondary transmissions to the public  
 22 by a satellite carrier of a primary transmission  
 23 made by a television broadcast station and the  
 24 Public Broadcasting Service satellite feed as  
 25 provided in section 119; and

1           “(D) each digital audio recording device  
2           imported into and distributed in the United  
3           States or manufactured and distributed into the  
4           United States as provided in section 1004;

5           “(2) to make determinations as to reasonable  
6           rates and terms of royalty payments for—

7           “(A) the public performance of a sound re-  
8           cording by means of a digital audio trans-  
9           mission as provided in section 114;

10           “(B) the making and distribution of  
11           phonorecords by means of a digital phonorecord  
12           delivery as provided in section 115;

13           “(C) the public performance of nondra-  
14           matic musical works by means of coin-operated  
15           phonorecord players as provided in section 116;  
16           and

17           “(D) the use of nondramatic musical works  
18           and pictorial, graphic, and sculptural works by  
19           public broadcasting entities as provided in sec-  
20           tion 118;

21           “(3) to accept or reject royalty claims filed  
22           under sections 111, 119, and 1007, on the basis of  
23           timeliness or the failure to establish the basis for a  
24           claim;

1           “(4) to determine, in cases where controversy  
2 exists, the distribution of royalty fees deposited with  
3 the Register of Copyrights under sections 111, 119,  
4 and 1003;

5           “(5) to determine the status of a digital audio  
6 recording device or a digital audio interface device  
7 under sections 1002 and 1003, as provided in sec-  
8 tion 1010; and

9           “(6) to engage in such rulemaking as is ex-  
10 pressly provided in sections 111, 114, 115, 118, and  
11 119.

12 **“§ 807. Factors for determining royalty fees**

13           “(a) FOR CABLE RATES.—The rates applicable  
14 under section 111 shall be calculated solely in accordance  
15 with the following provisions:

16           “(1) The rates established by section  
17 111(d)(1)(B) may be adjusted to reflect—

18                   “(A) national monetary inflation or defla-  
19 tion; or

20                   “(B) changes in the average rates charged  
21 cable subscribers for the basic service of provid-  
22 ing secondary transmissions to maintain the  
23 real constant dollar level of the royalty fee per  
24 subscriber which existed as of October 19,  
25 1976, except that—



1           “(i) if the average rates charged cable  
2           system subscribers for the basic service of  
3           providing secondary transmissions are  
4           changed so that the average rates exceed  
5           national monetary inflation, no change in  
6           the rates established by section  
7           111(d)(1)(B) shall be permitted; and

8           “(ii) no increase in the royalty fee  
9           shall be permitted based on any reduction  
10          in the average number of distant signal  
11          equivalents per subscriber.

12          The Board may consider all factors relating to the  
13          maintenance of such level of payments including, as  
14          an extenuating factor, whether the cable industry  
15          has been restrained by subscriber rate regulating au-  
16          thorities from increasing the rates for the basic serv-  
17          ice of providing secondary transmissions.

18          “(2) In the event that the rules and regulations  
19          of the Federal Communications Commission are  
20          amended at any time after April 15, 1976, to permit  
21          the carriage by cable systems of additional television  
22          broadcasting signals beyond the local service area of  
23          the primary transmitters of such signals, the royalty  
24          rates established by section 111(d)(1)(B) may be ad-  
25          justed to insure that the rates for the additional dis-

1 tant signal equivalents resulting from such carriage  
2 are reasonable in light of the changes effected by the  
3 amendment to such rules and regulations. In deter-  
4 mining the reasonableness of rates proposed follow-  
5 ing an amendment of Federal Communications Com-  
6 mission rules and regulations, the Board shall con-  
7 sider, among other factors, the economic impact on  
8 copyright owners and users, except that no adjust-  
9 ment in royalty rates shall be made under this para-  
10 graph with respect to any distant signal equivalent  
11 or fraction thereof represented by—

12 “(A) carriage of any signal permitted  
13 under the rules and regulations of the Federal  
14 Communications Commission in effect on April  
15 15, 1976, or the carriage of a signal of the  
16 same type (that is, independent, network, or  
17 noncommercial educational) substituted for  
18 such permitted signal, or

19 “(B) a television broadcast signal first car-  
20 ried after April 15 1976, pursuant to an indi-  
21 vidual waiver of the rules and regulations of the  
22 Federal Communications Commission, as such  
23 rules and regulations were in effect on April 15,  
24 1976.

1           “(3) In the event of any change in the rules  
2           and regulations of the Federal Communications  
3           Commission with respect to syndicated and sport  
4           program exclusivity after April 15, 1976, the rates  
5           established by section 111(d)(1)(B) may be adjusted  
6           to assure that such rates are reasonable in light of  
7           the changes to such rules and regulations, but any  
8           such adjustment shall apply only to the affected tele-  
9           vision broadcast signals carried on those systems af-  
10          fected by the change.

11           “(4) The gross receipts limitations established  
12          by section 111(d)(1)(C) and (D) shall be adjusted to  
13          reflect national monetary inflation or deflation or  
14          changes in the average rates charged cable system  
15          subscribers for the basic service of providing second-  
16          ary transmissions to maintain the real constant dol-  
17          lar value of the exemption provided by such section,  
18          and the royalty rate specified therein shall not be  
19          subject to adjustment.

20          “(b) FOR RATES OTHER THAN CABLE OR SAT-  
21          ELLITE CARRIERS.—The rates applicable under sections  
22          114, 115, and 116 shall be calculated to achieve the fol-  
23          lowing objectives:

24                 “(1) To maximize the availability of creative  
25                 works to the public.

1           “(2) To afford the copyright owner a fair re-  
 2           turn for his or her creative work and the copyright  
 3           user a fair income under existing economic condi-  
 4           tions.

5           “(3) To reflect the relative roles of the copy-  
 6           right owner and the copyright user in the product  
 7           made available to the public with respect to relative  
 8           creative contribution, technological contribution, cap-  
 9           ital investment, cost, risk, and contribution to the  
 10          opening of new markets for creative expression and  
 11          media for their communications.

12          “(4) To minimize any disruptive impact on the  
 13          structure of the industries involved and on generally  
 14          prevailing industry practices.

15          “~~(c) FOR RATES FOR NONCOMMERCIAL BROADCAST-~~  
 16          ~~ING.—~~The rates applicable under section 118 shall be cal-  
 17          culated to achieve reasonable rates. In determining rea-  
 18          sonable rates, the Board shall base its decision so as to—

19                 “(1) assure a fair return to copyright owners;

20                 “(2) encourage the growth and development of  
 21                 public broadcasting; and

22                 “(3) encourage musical and artistic creation.

23          “~~(d) RATES FOR SATELLITE CARRIERS.—~~The rates  
 24          applicable under section 119 shall be calculated to rep-  
 25          resent most clearly the fair market value of secondary

1 transmissions. In determining the fair market value, the  
 2 Board shall base its decision on economic, competitive,  
 3 and programming information presented by the parties,  
 4 including—

5           “(1) the competitive environment in which such  
 6 programming is distributed; the cost for similar sig-  
 7 nals in similar private and compulsory license mar-  
 8 ketplaces; and any special features and conditions of  
 9 the retransmission marketplace;

10           “(2) the economic impact of such fees on copy-  
 11 right owners and satellite carriers; and

12           “(3) the impact on the continued availability of  
 13 secondary transmissions to the public.

14 **“§ 808. Institution of proceedings**

15           “(a) PETITION REQUIRED TO INSTITUTE PROCEED-  
 16 INGS.—With respect to proceedings concerning the adjust-  
 17 ment of royalty rates as provided in sections 111, 114,  
 18 115, 116, and 119, during the calendar years or under  
 19 the circumstances specified in the schedule set forth in  
 20 subsection (c), any owner or user of a copyrighted work  
 21 whose royalty rates are to be established or adjusted by  
 22 the Board may file a petition with the Board declaring  
 23 that the petitioner requests an adjustment of the rate. The  
 24 Board shall make a determination as to whether the peti-  
 25 tioner has a significant interest in the royalty rate in

1 which an adjustment is requested. If the Board determines  
2 that the petitioner has a significant interest, the Board  
3 shall cause notice of this determination, with the reasons  
4 therefor, to be published in the Federal Register, together  
5 with the notice of commencement of proceedings under  
6 this chapter. With respect to proceedings concerning the  
7 adjustment of royalty rates under section 1004, any inter-  
8 ested copyright party may petition the Board as provided  
9 in that section.

10       “(b) PETITION NOT REQUIRED TO INSTITUTE PRO-  
11 CEEDINGS.—With respect to proceedings concerning the  
12 adjustment of royalty rates as provided in section 118 and  
13 the distribution of royalties as provided in section 111,  
14 119, and 1007, no petition is required to institute proceed-  
15 ings. All proceedings concerning the adjustment of rates  
16 under section 118 shall commence as provided in section  
17 118(e) of this title. All proceedings concerning the dis-  
18 tribution of royalties under section 111, 119, or 1007 shall  
19 commence as provided in such sections and in subsection  
20 (e)(8) of this section.

21       “(c) SCHEDULE OF PROCEEDINGS.—

22               “(1) SECTION 111 PROCEEDINGS.—In proceed-  
23 ings concerning the adjustment of royalty rates as  
24 provided in section 111, a petition described in sub-  
25 section (a) may be filed during the year 2000 and

1 in each subsequent fifth calendar year, except that  
2 in the event that the rules and regulations of the  
3 Federal Communications Commission are amended  
4 with respect to distant signal importation, or to syn-  
5 dicated and sports program exclusivity, any owner or  
6 user of a copyrighted work subject to the royalty  
7 rates established or adjusted pursuant to section  
8 111 may, within 12 months after such amendments  
9 take effect, file a petition with the Board to institute  
10 proceedings to insure that the rates are reasonable  
11 in light of the changes to such rules and regulations.  
12 Any such adjustments shall apply only to the af-  
13 fected television broadcast signals carried on those  
14 systems affected by the change. Any change in roy-  
15 alty rates made pursuant to this subsection may be  
16 reconsidered in the year 2000, and each fifth cal-  
17 endar year thereafter, as the case may be.

18 ~~“(2) SECTION 114 PROCEEDINGS.—In proceed-~~  
19 ~~ings concerning the adjustment of royalty rates and~~  
20 ~~terms as provided in section 114, the Board shall~~  
21 ~~proceed when and as provided by that section.~~

22 ~~“(3) SECTION 115 PROCEEDINGS.—In proceed-~~  
23 ~~ings concerning the adjustment of royalty rates and~~  
24 ~~terms as provided in section 115, a petition de-~~  
25 ~~scribed in subsection (a) may be filed in the year~~

1 2007 and in each subsequent tenth calendar year or  
2 as prescribed in section 115(e)(3).

3 “(4) SECTION 116 PROCEEDINGS.—(A) In pro-  
4 ceedings concerning the adjustment of royalty rates  
5 as provided in section 116, a petition described in  
6 subsection (a) may be filed at any time within 1  
7 year after negotiated licenses authorized by section  
8 116 are terminated or expire or are not replaced by  
9 subsequent agreements.

10 “(B) If a negotiated license authorized by sec-  
11 tion 116 is terminated or expires and is not replaced  
12 by another such license agreement which provides  
13 permission to use a quantity of musical works not  
14 substantially smaller than the quantity of such  
15 works performed on coin-operated phonorecord play-  
16 ers during the 1-year period ending March 1, 1989,  
17 the Board, upon petition filed under subsection (a)  
18 within 1 year after such termination or expiration,  
19 shall promptly establish an interim royalty rate or  
20 rates for the public performance by means of a coin-  
21 operated phonorecord player of nondramatic musical  
22 works embodied in phonorecords which had been  
23 subject to the terminated or expired negotiated li-  
24 cense agreement. Such rate or rates shall be the  
25 same as the last such rate or rates and shall remain



1 in force until the conclusion of the proceedings to  
 2 adjust the royalty rates applicable to such works, or  
 3 until superseded by a new negotiated license agree-  
 4 ment, as provided in section 116(b).

5 ~~“(5) SECTION 118 PROCEEDINGS.—In proceed-~~  
 6 ~~ings concerning the adjustment of royalty rates and~~  
 7 ~~terms as provided in section 118, the Board shall~~  
 8 ~~proceed when and as provided by that section.~~

9 ~~“(6) SECTION 119 PROCEEDINGS.—In proceed-~~  
 10 ~~ings concerning the adjustment of royalty rates gov-~~  
 11 ~~erning secondary transmissions of as provided in~~  
 12 ~~section 119, a petition described in subsection (a)~~  
 13 ~~may be filed during the year 2001 and in each sub-~~  
 14 ~~sequent fifth calendar year.~~

15 ~~“(7) PROCEEDINGS CONCERNING DISTRIBUTION~~  
 16 ~~OF ROYALTY FEES.—In proceedings concerning the~~  
 17 ~~distribution of royalty fees under section 111, 119,~~  
 18 ~~or 1007, the Board shall, upon a determination that~~  
 19 ~~a controversy exists concerning such distribution,~~  
 20 ~~cause to be published in the Federal Register notice~~  
 21 ~~of commencement of proceedings under this chapter.~~

22 **“§ 809. Conduct of proceedings**

23 ~~“(a) BOARD PROCEEDINGS.—The Board shall, for~~  
 24 ~~the purposes of making its determinations in carrying out~~

1 the functions set forth in section 806, conduct proceedings  
2 subject to subchapter II of chapter 5 of title 5.

3       “(b) PROCEDURES.—Subject to the approval of the  
4 Register of Copyrights, the Board, shall adopt regulations  
5 to govern the conduct of the proceedings of the Board.  
6 The regulations shall include, but not be limited to, provi-  
7 sions for—

8           “(1) public access to and inspection of the  
9 records of the Board pursuant to section 706;

10          “(2) the right of the public to attend the pro-  
11 ceedings of the Board;

12          “(3) the procedures to apply when formal hear-  
13 ings are conducted; and

14          “(4) the procedures to apply and the basis upon  
15 which distribution or royalty controversies may be  
16 decided on the basis of written pleadings.

17       “(c) PARTICIPATION OF COPYRIGHT OFFICE.—Dur-  
18 ing the conduct of proceedings, the Register of Copyrights  
19 may file formally with the Board the position of the Copy-  
20 right Office on any matter before the Board. Such filings  
21 shall be served on all parties to the proceeding. The Board  
22 may accept or reject the position of the Copyright Office.

23       “(d) MAJORITY RULE.—The Board shall act in all  
24 procedural and substantive matters on the basis of major-  
25 ity rule.

1       “(e) NUMBER OF PRESIDING JUDGES.—The Board  
2 shall decide, in its discretion, whether 1 or 3 administra-  
3 tive copyright judges shall preside in a royalty distribution  
4 or rate adjustment proceeding. In no event shall the num-  
5 ber of presiding administrative copyright judges be more  
6 than 3.

7       “(f) PARTICIPATION OF PARTIES.—Any copyright  
8 owner who has filed an acceptable claim claiming entitle-  
9 ment to the distribution of royalties, or any copyright  
10 owner or user who would be affected by a royalty rate to  
11 be established or adjusted by the Board, may submit rel-  
12 evant information and proposals to the Board in proceed-  
13 ings applicable to the interest of the copyright owner or  
14 user.

15       “(g) TIME LIMITS FOR INITIAL DECISION.—Proceed-  
16 ings under section 118 operate under the time limits es-  
17 tablished in that section. For all other proceedings, if 1  
18 administrative copyright judge is presiding in a proceed-  
19 ing, the Board shall issue its initial decision to the parties  
20 to the proceeding and the Register of Copyrights within  
21 6 months after the declaration of a controversy in the pro-  
22 ceeding. If more than 1 administrative copyright judge is  
23 presiding in a proceeding, the Board shall issue its initial  
24 decision to the parties to the proceeding and the Register

1 of Copyrights within 1 year after the declaration of a con-  
2 troversy in the proceeding.

3       “(h) REQUIREMENTS FOR INITIAL DECISIONS.—The  
4 initial decision under subsection (g) shall include a state-  
5 ment of findings and conclusions and the reasons or basis  
6 therefor, on all the material issues of fact, law, or discre-  
7 tion presented on the record. The initial decision shall take  
8 into account prior decisions of the Copyright Royalty Tri-  
9 bunal, prior decisions of copyright arbitration royalty pan-  
10 els, as adopted or modified by the Librarian of Congress,  
11 and the procedural and evidentiary rulings the Librarian  
12 of Congress made that were applicable to the proceedings  
13 of the copyright arbitration royalty panels. Notwithstand-  
14 ing any provision of section 603 or 604 of title 5, neither  
15 the initial decision nor the final decision is required to in-  
16 clude a regulatory flexibility analysis.

17       “(i) PETITIONS FOR RECONSIDERATION AND FINAL  
18 AGENCY ACTION.—Any party to the proceeding concerned  
19 or the Register of Copyrights may petition the Board to  
20 reconsider its initial decision in the proceeding. If there  
21 are no petitions for reconsideration, the initial decision be-  
22 comes the final decision of the Board without further pro-  
23 ceedings. If there are petitions for reconsideration, the  
24 Board shall issue a final decision to the parties to the pro-  
25 ceeding and the Register of Copyrights which shall con-

1 stitute final agency action. The time period by which par-  
2 ties to the proceeding or the Register of Copyrights may  
3 file a petition for reconsideration and the time period by  
4 which the Board shall render its final decision shall be  
5 established by regulation by the Board, subject to the ap-  
6 proval of the Register of Copyrights.

7 **“§ 810. Judicial review**

8       “(a) APPEALS.—Within 1 week after the Board  
9 issues a final decision under section 809, or, if there are  
10 no petitions for reconsideration, within 1 week after the  
11 time the initial decision of the Board under section 809  
12 becomes the final decision, the Board shall cause to be  
13 published in the Federal Register the decision of the rate  
14 adjustment or the royalty distribution, as the case may  
15 be. Any aggrieved party who would be bound by the final  
16 decision may appeal the decision to the United States  
17 Court of Appeals for the Federal Circuit within 30 days  
18 after the publication of the decision in the Federal Reg-  
19 ister. In any appeal to which the Board is a party, the  
20 chief administrative copyright judge shall refer the con-  
21 duct of the litigation in defense of the Board’s decision  
22 to the Department of Justice which shall have the author-  
23 ity to represent the Board under section 516 of title 28.  
24 If no appeal is brought within such 30-day period, the de-  
25 cision of the Board is final, and the royalty fee or deter-

1 mination with respect to the distribution of fees, as the  
 2 ease may be, shall take effect as set forth in the decision.  
 3 The pendency of an appeal under this subsection shall not  
 4 relieve persons who would be affected by the determina-  
 5 tions on appeal under section 111, 114, 115, 116, 118,  
 6 119, or 1003, of the obligation to deposit the statement  
 7 of account or to pay royalty fees specified in those sec-  
 8 tions.

9       “(b) REVIEW SUBJECT TO CHAPTER 7 OF TITLE  
 10 5.—The judicial review of the Board’s final decision shall  
 11 be had, in accordance with chapter 7 of title 5, on the  
 12 basis of the record before the Board.

13 **“§ 811. Administrative matters**

14       “(a) ADMINISTRATIVE SUPPORT.—The Library of  
 15 Congress, upon the recommendation of the Register of  
 16 Copyrights, shall provide the Board with the necessary ad-  
 17 ministrative services and personnel related to proceedings  
 18 under this title.

19       “(b) AUTHORITY TO PUBLISH IN FEDERAL REG-  
 20 ISTER.—The actions of the Board which may be published  
 21 in the Federal Register by and under the authority of the  
 22 Board include—

23               “(1) actions of the Board required to be pub-  
 24 lished in the Federal Register under this title;

1           “(2) actions of the Board required to be pub-  
2           lished in the Federal Register under regulations  
3           adopted by the Board upon the approval of the Reg-  
4           ister of Copyrights; and

5           “(3) regulations of the Board required to be  
6           published in the Federal Register to which the  
7           Board has been delegated the exclusive right to  
8           adopt.

9           “(c) COLLECTION AND USE OF FEES.—

10           “(1) DEDUCTION OF COSTS FROM FEES.—The  
11           Librarian of Congress and the Register of Copy-  
12           rights may, to the extent not otherwise provided  
13           under this title, deduct from the royalty fees depos-  
14           ited or fees collected under this title the reasonable  
15           costs incurred by the Library of Congress and the  
16           Copyright Office under this chapter. Such deduction  
17           may be made before the fees are distributed to any  
18           copyright owner.

19           “(2) COLLECTION OF FEES.—The Register of  
20           Copyrights may impose and collect fees in advance  
21           to carry out the ratemaking proceedings. All fees re-  
22           ceived under this section shall be deposited by the  
23           Register of Copyrights in the Treasury of the United  
24           States and shall be credited to the appropriations for  
25           necessary expenses of the Copyright Office. Such

1 fees that are collected shall remain available until  
 2 expended. The Register may refund any sum paid by  
 3 mistake or in excess of the fee required under this  
 4 section.

5 “(d) POSITIONS REQUIRED FOR ADMINISTRATION OF  
 6 COMPULSORY LICENSING.—Section 307 of the Legislative  
 7 Branch Appropriations Act of 1994 shall not apply to the  
 8 members of the Board, employee positions in the Board,  
 9 or employee positions in the Library of Congress that are  
 10 required to be filled in order to carry out section 111, 114,  
 11 115, 116, 118, or 119 or chapter 10.

12 “(e) BUDGET.—In each annual request for appro-  
 13 priations, the Register of Copyrights shall identify the por-  
 14 tion thereof intended for the support of the Board and  
 15 a statement which shall include an assessment of the  
 16 budgetary needs of the Board.

17 “(f) ANNUAL REPORT.—The Board shall prepare an  
 18 annual report of its work and accomplishments during  
 19 each fiscal year, which the Register of Copyrights shall  
 20 include in the annual report required under section 701(e).

21 **“§ 812. Rule of construction**

22 “Nothing in this chapter shall be construed to affect  
 23 the authority of the Register of Copyrights to establish  
 24 regulations under sections 701 and 702.”.

25 (b) TECHNICAL AND CONFORMING AMENDMENTS.—



1           (1) TABLE OF CHAPTERS.—The item relating  
2           to chapter 8 in the table of chapters for title 17,  
3           United States Code, is amended to read as follows:

**“8. Copyright Royalty Adjudication Board ..... 801”.**

4           (2) JURISDICTION OF FEDERAL CIRCUIT.—Sec-  
5           tion 1295(a) of title 28, United States Code, is  
6           amended—

7                   (A) in paragraph (13) by striking “and”  
8                   after the semicolon;

9                   (B) in paragraph (14) by striking the pe-  
10                  riod and inserting a semicolon and “and ”; and

11                  (C) by adding at the end the following new  
12                  paragraph:

13                  “(15) of an appeal from a final decision of the  
14                  Copyright Royalty Adjudication Board under sec-  
15                  tions 809(i) and 810 of title 17.”.

16 **SEC. 8. TRANSITION PROVISIONS.**

17           (a) TRANSITIONAL PROCEDURES.—During the pe-  
18           riod beginning on the date of the enactment of this Act  
19           and ending on the effective date of this Act, the Register  
20           of Copyrights shall adopt regulations to govern proceed-  
21           ings under chapter 8 of title 17, United States Code, as  
22           amended by section 7 of this Act. Such regulations shall  
23           remain in effect unless and until the Copyright Royalty  
24           Adjudication Board, upon the approval of the Register of  
25           Copyrights, adopts supplemental or superseding regula-

1 tions pursuant to section 809(b) of title 17, United States  
2 Code.

3 (b) PROCEEDINGS IN PROGRESS.—

4 (1) COPYRIGHT ARBITRATION ROYALTY PANEL  
5 PROCEEDINGS.—Unless the Register of Copyrights,  
6 for good cause, finds otherwise, proceedings in which  
7 a copyright arbitration royalty panel has been con-  
8 vened by the Librarian of Congress under chapter 8  
9 of title 17, United States Code, as in effect before  
10 the effective date of this Act, shall continue in effect  
11 and shall be governed under chapter 8 of such title,  
12 and applicable regulations, as in effect prior to such  
13 effective date, and proceedings in which a copyright  
14 arbitration royalty panel has not been convened by  
15 the Librarian of Congress under chapter 8 of title  
16 17, United States Code, before the effective date of  
17 this Act shall be suspended and recommenced under  
18 the amendments made by section 7.

19 (2) CONTINUED PROCEEDINGS.—For those pro-  
20 ceedings continued under paragraph (1), the func-  
21 tions of the Librarian of Congress and the Register  
22 of Copyrights relating to the report of the copyright  
23 arbitration royalty panel under title 17, United  
24 States Code, as in effect before the effective date of  
25 this Act, may, in the Librarian's discretion, upon the

1 recommendation of the Register of Copyrights, be  
2 delegated to the Copyright Royalty Adjudication  
3 Board, when constituted.

4 (3) APPEALS.—In any appeal of a decision of  
5 the Librarian of Congress adopting or rejecting a  
6 determination of a copyright arbitration royalty  
7 panel which is pending in the United States Court  
8 of Appeals for the District of Columbia Circuit on  
9 or after the effective date of this Act, if such case  
10 is remanded by the court, the Librarian of Congress  
11 shall not reconvene the copyright arbitration royalty  
12 panel which rendered the determination, but shall  
13 direct the Copyright Royalty Adjudication Board,  
14 when constituted, to conduct proceedings in accord-  
15 ance with the directions of the court. If the case is  
16 remanded by the court after the enactment date of  
17 this Act but before the effective date of this Act, the  
18 Librarian of Congress shall have the discretion to re-  
19 convene the copyright arbitration royalty panel  
20 which rendered the determination, or direct the  
21 Copyright Royalty Adjudication Board when con-  
22 stituted, to conduct proceedings in accordance with  
23 the directions of the court.

24 (c) EFFECTIVENESS OF EXISTING RATES AND DIS-  
25 TRIBUTIONS.—All royalty rates and all determinations

1 with respect to the proportionate division of compulsory  
2 license fees among copyright claimants, whether made by  
3 the Copyright Royalty Tribunal, copyright arbitration roy-  
4 alty panels, or by voluntary agreement, before the effective  
5 date of this Act, shall remain in effect until modified by  
6 voluntary agreement or pursuant to the amendments  
7 made by this Act.

8 (d) TRANSFER OF APPROPRIATIONS.—All unex-  
9 pended balances of appropriations made by the Copyright  
10 Office for the support of the copyright arbitration royalty  
11 panels, as of the effective date of this Act, are transferred  
12 on such effective date to the support of the Copyright Roy-  
13 alty Arbitration Board for the purposes for which such  
14 appropriations were made except that, in the event that  
15 any copyright arbitration royalty panels continue to oper-  
16 ate after the effective date of this Act, the Register of  
17 Copyrights shall retain such portions of the unexpended  
18 balances of appropriations as are necessary to support the  
19 continuing copyright arbitration royalty panels.

20 **SEC. 9. AMENDMENTS TO OTHER PROVISIONS OF TITLE 17,**

21 **UNITED STATES CODE.**

22 (a) SECONDARY TRANSMISSIONS BY CABLE SYS-  
23 TEMS.—Section 111(d) of title 17, United States Code,  
24 is amended—

1           (1) in paragraph (2) in the last sentence by  
2 striking “Librarian of Congress” and all that follows  
3 through the end of the sentence and inserting the  
4 following: “Copyright Royalty Adjudication Board as  
5 provided in this title. The Register of Copyrights  
6 may, 4 or more years after the close of any calendar  
7 year, close out the account for royalty payments  
8 made for that calendar year, and may treat any  
9 funds remaining the such account and any subse-  
10 quent deposits that would otherwise be attributable  
11 to that calendar year as attributable to the succeed-  
12 ing calendar year.”; and

13           (2) in paragraph (4)—

14           (A) in subparagraph (A)—

15           (i) by striking “Librarian of Con-  
16 gress” the first place it appears and insert-  
17 ing “Copyright Royalty Adjudication  
18 Board”; and

19           (ii) by striking “Librarian of Con-  
20 gress” the second place it appears and in-  
21 serting “Board”;

22           (B) in subparagraph (B)—

23           (i) by striking “Librarian of Congress  
24 shall, upon the recommendation of the  
25 Register of Copyrights” and inserting

1 “Copyright Royalty Adjudication Board  
2 shall”;

3 (ii) by striking “Librarian” each sub-  
4 sequent place it appears and inserting  
5 “Board”; and

6 (iii) in the last sentence by striking  
7 “convene a copyright royalty arbitration  
8 panel” and inserting “conduct a proceed-  
9 ing”; and

10 (C) in subparagraph (C)—

11 (i) by striking “Librarian of Con-  
12 gress” and inserting “Copyright Royalty  
13 Adjudication Board”; and

14 (ii) by adding at the end the follow-  
15 ing: “The action of the Board to distribute  
16 royalty fees may precede the declaration of  
17 a controversy if all parties to the proceed-  
18 ing file a petition with the Board request-  
19 ing such distribution, except that such  
20 amount may not exceed 50 percent of the  
21 amounts on hand at the time of the re-  
22 quest.”.

23 (b) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RE-  
24 CORDINGS.—Section 114(f) of title 17, United States  
25 Code, is amended—

1           (1) in paragraph (1)—

2                   (A) by amending the first sentence to read  
3 as follows: “During the first week of January,  
4 2000, the Copyright Royalty Adjudication  
5 Board shall cause notice to be published in the  
6 Federal Register of the initiation of voluntary  
7 negotiation proceedings for the purpose of de-  
8 termining or adjusting reasonable terms and  
9 rates of royalty payments for the activities spec-  
10 ified in subsection (d)(2) of this section.”; and

11                   (B) in the third sentence by striking “Li-  
12 brarian of Congress” and inserting “Copyright  
13 Royalty Adjudication Board”;

14           (2) by striking paragraphs (2), (3), and (4) and  
15 inserting the following:

16                   “(2) In the absence of license agreements nego-  
17 tiated under paragraph (1), during the 60-day pe-  
18 riod beginning 6 months after publication of the no-  
19 tice specified in paragraph (1), and upon the filing  
20 of a petition in accordance with section 808(a), the  
21 Copyright Royalty Adjudication Board shall, pursu-  
22 ant to chapter 8, conduct a proceeding to determine  
23 and publish in the Federal Register a schedule of  
24 rates and terms. In addition to the objectives set  
25 forth in section 807(a) in establishing or adjusting

1 such rates and terms, the Board may consider the  
2 rates and terms for comparable types of digital  
3 audio transmission services and comparable cir-  
4 cumstances under voluntary license agreements ne-  
5 gotiated as provided in paragraph (1). The Copy-  
6 right Royalty Adjudication Board, upon the approval  
7 of the Register of Copyrights, shall also establish re-  
8 quirements by which copyright owners may receive  
9 reasonable notice of the use of their sound record-  
10 ings under this section, and under which records of  
11 such use shall be kept and made available by entities  
12 performing sound recordings.

13       “(3) License agreements voluntarily negotiated  
14 at any time between 1 or more copyright owners of  
15 sound recordings and 1 or more entities performing  
16 sound recordings shall be given effect in lieu of any  
17 determination by the Copyright Royalty Adjudica-  
18 tion Board.

19       “(4) Publication of a notice of the initiation of  
20 voluntary negotiation proceedings as specified in  
21 paragraph (1) and the procedures specified in para-  
22 graph (2) shall be repeated, in accordance with regu-  
23 lations that the Copyright Royalty Adjudication  
24 Board, upon the approval of the Register of Copy-  
25 rights, shall prescribe—



1           “(A) no later than 30 days after a petition  
2 is filed by any copyright owners of sound re-  
3 cordings or any entities performing sound re-  
4 cordings affected by this section indicating that  
5 a new type of digital audio transmission service  
6 on which sound recordings are performed is or  
7 is about to become operational; and

8           “(B) during the first week of January  
9 2005 and at 5-year intervals thereafter.”; and

10          (3) in paragraph (5)(A)(i) by striking “Librar-  
11 ian of Congress” and inserting “Copyright Royalty  
12 Adjudication Board, upon the approval of the Reg-  
13 ister of Copyrights.”.

14          (e) COMPULSORY LICENSE FOR MAKING AND DIS-  
15 TRIBUTING PHONORECORDS.—Section 115(e)(3) of title  
16 17, United States Code, is amended—

17          (1) in subparagraph (C)—

18               (A) by amending the first sentence to read  
19 as follows: “At the times established in sub-  
20 paragraph (F), the Copyright Royalty Adjudica-  
21 tion Board shall cause notice to be published in  
22 the Federal Register of the initiation of vol-  
23 untary negotiation proceedings for the purpose  
24 of determining reasonable terms and rates of  
25 royalty payments for the activities specified in

1           subparagraph (A) until the effective date of any  
2           new terms and rates established pursuant to  
3           this subparagraph or subparagraph (D) or (F),  
4           or such other date (regarding digital phono-  
5           record deliveries) as the parties may agree.”;

6           (B) in the third sentence by striking “Li-  
7           brarian of Congress” and inserting “Copyright  
8           Royalty Adjudication Board”;

9           (2) by amending subparagraph (D) to read as  
10          follows:

11           “(D) In the absence of license agreements nego-  
12          tiated under subparagraphs (B) and (C), upon the  
13          filing of a petition in accordance with section 808(a),  
14          the Copyright Royalty Adjudication Board shall,  
15          pursuant to chapter 8, conduct a proceeding to de-  
16          termine and publish in the Federal Register a sched-  
17          ule of rates and terms. Such rates and terms shall  
18          distinguish between—

19           “(i) digital phonorecord deliveries where  
20          the reproduction or distribution of a phono-  
21          record is incidental to the transmission which  
22          constitute the digital phonorecord delivery, and

23           “(ii) digital phonorecord deliveries in gen-  
24          eral.

1 In addition to the objectives set forth in section 807(a),  
 2 in establishing or adjusting rates and terms, the Board  
 3 may consider rates and terms under voluntary license  
 4 agreements negotiated as provided in subparagraphs (B)  
 5 and (C). The Board, upon the approval of the Register  
 6 of Copyrights, shall also establish requirements by which  
 7 copyright owners may receive reasonable notice of the use  
 8 of their works under this section, and under which records  
 9 of such use shall be kept and made available by persons  
 10 making digital phonorecord deliveries.”;

11           (3) in subparagraph (E)(i) in the first sentence  
 12           by striking “Librarian of Congress” and inserting  
 13           “Copyright Royalty Adjudication Board”; and

14           (4) in subparagraph (F) by striking “Librarian  
 15           of Congress” and inserting “ Copyright Royalty Ad-  
 16           judication Board, upon the approval of the Register  
 17           of Copyrights,”.

18           (d) ~~NEGOTIATED LICENSES FOR PUBLIC PERFORM-~~  
 19 ~~ANCES BY MEANS OF COIN-OPERATED PHONORECORD~~  
 20 ~~PLAYERS.~~—Section 116 of title 17, United States Code,  
 21 is amended—

22           (1) by amending subsection (b)(2) to read as  
 23           follows:

24           “(2) ~~RATE ADJUSTMENT PROCEEDING.~~—Par-  
 25           ties not subject to such a negotiation may determine,

1 by a rate adjustment proceeding in accordance with  
 2 the provisions of chapter 8, the terms and rates and  
 3 the division of fees described in paragraph (1).”; and

4 (2) in subsection (c)—

5 (A) in the subsection heading by  
 6 striking “COPYRIGHT ROYALTY ARBITRA-  
 7 TION PANEL” and inserting “COPYRIGHT  
 8 ROYALTY ADJUDICATION BOARD”; and

9 (B) by striking “a copyright arbitration  
 10 royalty panel and inserting “the Copyright Roy-  
 11 alty Adjudication Board”.

12 (c) USE OF CERTAIN WORKS IN CONNECTION WITH  
 13 NONCOMMERCIAL BROADCASTING.—Section 118 of title  
 14 17, United States Code, is amended—

15 (1) in subsection (b)—

16 (A) by striking paragraph (1) and redesign-  
 17 ating paragraphs (2) and (3) as paragraphs  
 18 (1) and (2), respectively;

19 (B) in paragraph (1), as so redesignated,  
 20 by striking “Librarian of Congress” and insert-  
 21 ing “Copyright Royalty Adjudication Board”;

22 (C) in paragraph (2), as so redesignated—

23 (i) by striking “paragraph (2)” each  
 24 place it appears and inserting “paragraph  
 25 (1)”;

1                   (ii) by striking “Librarian of Con-  
2                   gress” the first place it appears and insert-  
3                   ing “Copyright Royalty Adjudication  
4                   Board”;

5                   (iii) by striking “Librarian of Con-  
6                   gress” the second and third places it ap-  
7                   pears and inserting “Board”; and

8                   (iv) by striking “Librarian of Con-  
9                   gress” the last place it appears and insert-  
10                  ing “Board, upon the approval of the Reg-  
11                  ister of Copyrights,”;

12                 (2) in subsection (c)—

13                   (A) by striking “1997” and inserting  
14                   “2002”; and

15                   (B) by striking “Librarian of Congress”  
16                   and inserting “Copyright Royalty Adjudication  
17                   Board, upon the approval of the Register of  
18                   Copyrights,”;

19                 (3) in subsection (d)—

20                   (A) by striking “(b)(2)” and inserting  
21                   “(b)(1)”; and

22                   (B) by striking “a copyright arbitration  
23                   royalty panel under subsection (b)(3)” and in-  
24                   serting “the Copyright Royalty Adjudication  
25                   Board under subsection (b)(2)”; and

1           (4) in subsection (c), by striking paragraphs (1)  
2           and (2).

3           (f) ~~DIGITAL AUDIO RECORDING DEVICES AND~~  
4 ~~MEDIA.—~~

5           (1) ~~ROYALTY PAYMENTS.—~~Section 1004(a)(3)  
6           of title 17, United States Code, is amended in the  
7           third sentence—

8                   (A) by striking “the 6th year after the ef-  
9                   fective date of this chapter” and inserting  
10                   “1998”,

11                   (B) by striking “Librarian of Congress”  
12                   the first place it appears and inserting “Copy-  
13                   right Royalty Adjudication Board”; and

14                   (C) by striking “Librarian of Congress”  
15                   the second place it appears and inserting  
16                   “Board”.

17           (2) ~~ENTITLEMENT TO ROYALTY PAYMENTS.—~~  
18           Section 1006(c) of title 17, United States Code, is  
19           amended by striking “Librarian of Congress shall  
20           convene a copyright arbitration royalty panel which”  
21           and inserting “Copyright Royalty Adjudication  
22           Board”.

23           (3) ~~PROCEDURES FOR DISTRIBUTING ROYALTY~~  
24           ~~PAYMENTS.—~~Section 1007 of title 17, United States  
25           Code, is amended—

1 (A) in subsection (a)(1)—

2 (i) by striking “after the calendar  
3 year in which this chapter takes effect”;

4 (ii) by striking “Librarian of Con-  
5 gress” the first place it appears and insert-  
6 ing “Copyright Royalty Adjudication  
7 Board”; and

8 (iii) by striking “Librarian of Con-  
9 gress” the second place it appears and in-  
10 sserting “Board”;

11 (B) in subsection (b)—

12 (i) by amending the first sentence to  
13 read as follows: “After the first day of  
14 March of each year, the Copyright Royalty  
15 Adjudication Board shall determine wheth-  
16 er there exists a controversy concerning  
17 the distribution of royalty payments under  
18 section 1006(e).”; and

19 (ii) by striking “Librarian of Con-  
20 gress” each place it appears and inserting  
21 “Board”; and

22 (C) in subsection (c)—

23 (i) by amending the first sentence to  
24 read as follows: “If the Copyright Royalty  
25 Adjudication Board finds the existence of a

1 controversy, the Board shall, pursuant to  
 2 chapter 8 of this title, conduct a proceed-  
 3 ing to determine the distribution of royalty  
 4 payments.”;

5 (ii) by striking “Librarian of Con-  
 6 gress” each place it appears and inserting  
 7 “Board”; and

8 (iii) by striking “Librarian under this  
 9 section” and inserting “Board under this  
 10 section. The action of the Board to distrib-  
 11 ute royalty fees may precede the declara-  
 12 tion of a controversy if all parties to the  
 13 proceeding file a petition with the Board  
 14 requesting such distribution, except that  
 15 such amount may not exceed 50 percent of  
 16 the amounts on hand at the time of the re-  
 17 quest.”.

18 ~~(4) ADJUDICATION OF CERTAIN DIS-~~  
 19 ~~PUTES.—~~Section 1010 of title 17, United  
 20 States Code, is amended—

21 (A) by amending the section heading  
 22 to read as follows:

23 **“§ 1010. Adjudication of certain disputes”;**

24 (B) in subsection (a)—



1 (i) in the subsection heading by  
 2 striking “ARBITRATION” and inserting  
 3 “ADJUDICATION”; and

4 (ii) by striking “mutually agree  
 5 to binding arbitration for the purpose  
 6 of determining” and inserting “peti-  
 7 tion the Copyright Royalty Adjudica-  
 8 tion Board to determine”;

9 (C) by striking subsection (b) and re-  
 10 designating subsections (c) and (d) as sub-  
 11 sections (b) and (c), respectively;

12 (D) in subsection (b), as so redesign-  
 13 ated, by striking “arbitration” each place  
 14 it appears and inserting “adjudication”;

15 (E) by amending subsection (c), as so  
 16 redesignated, to read as follows:

17 “(c) ADJUDICATION PROCEEDING.—The Copyright  
 18 Royalty Adjudication Board shall conduct an adjudication  
 19 proceeding with respect to the matter concerned, pursuant  
 20 to chapter 8 of this title. The parties to the proceeding  
 21 shall bear the entire costs thereof in such manner and pro-  
 22 portion as the Board shall direct.”; and

23 (F) by striking subsections (c), (f),  
 24 and (g).

1 **SEC. 10. TECHNICAL AMENDMENTS.**

2 (a) CLERICAL AMENDMENT TO CHAPTER 10 OF  
 3 TITLE 17, UNITED STATES CODE.—The item relating to  
 4 section 1010 in the table of contents for chapter 10 of  
 5 title 17, United States Code, is amended to read as fol-  
 6 lows:

“1010. Adjudication of certain disputes.”

7 (b) CLERICAL AMENDMENT TO CHAPTER 9 OF TITLE  
 8 17, UNITED STATES CODE.—The item relating to section  
 9 903 in the table of contents for chapter 9 of title 17,  
 10 United States Code, is amended to read as follows:

“903. Ownership, transfer, licensing, and recordation.”

11 (c) CLERICAL AMENDMENT TO TABLE OF CHAP-  
 12 TERS.—The item relating to chapter 6 in the table of  
 13 chapters for title 17, United States Code, is amended to  
 14 read as follows:

**“6. Manufacturing Requirements and Importation ..... 601”.**

15 **SEC. 11. RETRANSMISSION CONSENT.**

16 Section 325(b) of the Communications Act of 1934  
 17 (47 U.S.C. 325(b)) is amended—

18 (1) by striking paragraphs (1) and (2) and in-  
 19 serting the following:

20 “(b)(1) No cable system or other multichannel video  
 21 programming distributor shall retransmit the signal of a  
 22 broadcasting station, or any part thereof, except—

23 “(A) with the express authority of the station;

1           ~~“(B) pursuant to section 614, in the case of a~~  
2           ~~station electing, in accordance with this subsection,~~  
3           ~~to assert the right to carriage under such section; or~~

4           ~~“(C) pursuant to section 337, in the case of a~~  
5           ~~station electing, in accordance with this subsection,~~  
6           ~~to assert the right to carriage under such section.~~

7           ~~“(2) The provisions of this subsection shall not apply~~  
8           ~~to—~~

9           ~~“(A) retransmission of the signal of a non-~~  
10           ~~commercial broadcasting station;~~

11           ~~“(B) retransmission of the signal of a supersta-~~  
12           ~~tion by a satellite carrier to subscribers for private~~  
13           ~~home viewing if the originating station was a super-~~  
14           ~~station on January 1, 1998;~~

15           ~~“(C) retransmission of the signal of a broad-~~  
16           ~~casting station that is owned or operated by, or af-~~  
17           ~~iliated with, a broadcasting network directly to a~~  
18           ~~home satellite antenna, if the household receiving~~  
19           ~~the signal is located in an area in which such station~~  
20           ~~may not assert its rights not to have its signal dupli-~~  
21           ~~cated under the Commission’s network nonduplica-~~  
22           ~~tion regulations; or~~

23           ~~“(D) retransmission by a cable operator or~~  
24           ~~other multichannel video programming distributor of~~  
25           ~~the signal of a superstation if such signal was ob-~~

1       tained from a satellite carrier and the originating  
2       station was a superstation on January 1, 1998.”;

3           (2) by adding at the end of paragraph (3) the  
4       following new subparagraph:

5       “(C) Within 45 days after the effective date of the  
6       Copyright Compulsory License Improvement Act, the  
7       Commission shall commence a rulemaking proceeding to  
8       revise the regulations governing the exercise by television  
9       broadcast stations of the right to grant retransmission  
10      consent under this subsection, and such other regulations  
11      as are necessary to administer the limitation contained in  
12      paragraph (2). Such regulations shall establish election  
13      time periods that correspond with those regulations adopt-  
14      ed under subparagraph (B). The rulemaking shall be com-  
15      pleted within 180 days after the effective date of the Copy-  
16      right Compulsory License Improvement Act.”; and

17           (3) by adding at the end the following new  
18      paragraph:

19      “(7) For purposes of this subsection:

20           “(A) The term ‘superstation’ means a television  
21      broadcast station, other than a network station, li-  
22      censed by the Commission that is secondarily trans-  
23      mitted by a satellite carrier.

1           “(B) The term ‘satellite carrier’ has the mean-  
2           ing given that term in section 119(d) of title 17,  
3           United States Code.”.

4 **SEC. 12. MUST-CARRY FOR SATELLITE CARRIERS RE-**  
5 **TRANSMITTING TELEVISION BROADCAST SIG-**  
6 **NALS.**

7           Title III of the Communications Act of 1934 is  
8 amended by inserting after section 336 the following new  
9 section:

10 **“SEC. 337. CARRIAGE OF LOCAL TELEVISION SIGNALS BY**  
11 **SATELLITE CARRIERS.**

12           “(a) CARRIAGE OBLIGATIONS.—Each satellite carrier  
13 providing direct to home service of a network station to  
14 subscribers located within the local market of such station  
15 shall offer to carry all television broadcast stations located  
16 within that local market, subject to section 325(b). Car-  
17 riage of additional television broadcast stations within the  
18 local market shall be at the discretion of the satellite car-  
19 rier, subject to section 325(b).

20           “(b) DUPLICATION NOT REQUIRED.—Notwithstand-  
21 ing subsection (a), a satellite carrier shall not be required  
22 to offer to carry the signal of any local television broadcast  
23 station that substantially duplicates the signal of another  
24 local television broadcast station which is secondarily  
25 transmitted by the satellite carrier, or to offer to carry

1 the signals of more than one local television broadcast sta-  
2 tion affiliated with a particular broadcast network (as the  
3 term is defined by regulation).

4       “(c) CHANNEL POSITIONING.—Each signal carried in  
5 fulfillment of the carriage obligations of a satellite carrier  
6 under this section shall be carried on the satellite carrier  
7 channel number on which the local television broadcast  
8 station is broadcast over the air, or on the channel on  
9 which it was broadcast on January 1, 1985, or on the  
10 channel it was broadcast on January 1, 1998, at the elec-  
11 tion of the station, or on such other channel number as  
12 is mutually agreed upon by the station and the satellite  
13 carrier. Any dispute regarding the positioning of local tele-  
14 vision broadcast stations shall be resolved by the Commis-  
15 sion.

16       “(d) COMPENSATION FOR CARRIAGE.—A satellite  
17 carrier shall not accept or request monetary payment or  
18 other valuable consideration in exchange either for ear-  
19 riage of local television broadcast stations in fulfillment  
20 of the requirements of this section or for channel position-  
21 ing rights provided to such stations under this section, ex-  
22 cept that any such station may be required to bear the  
23 costs associated with delivering a good quality signal to  
24 the principal headend of the satellite carrier.

25       “(e) REMEDIES.—

## 1           “(1) COMPLAINTS BY BROADCAST STATIONS.—

2           Whenever a local television broadcast station believes  
3           that a satellite carrier has failed to meet its obliga-  
4           tions under this section, such station shall notify the  
5           carrier, in writing, of the alleged failure and identify  
6           its reasons for believing that the satellite carrier is  
7           obligated to offer to carry the signal of such station  
8           or has otherwise failed to comply with the channel  
9           positioning or repositioning or other requirements of  
10          this section. The satellite carrier shall, within 30  
11          days of such written notification, respond in writing  
12          to such notification and either commence to carry  
13          the signal of such station in accordance with the  
14          terms requested or state its reasons for believing  
15          that it is not obligated to carry such signal or is in  
16          compliance with the channel positioning and repositi-  
17          oning or other requirements of this section. A local  
18          television broadcast station that is denied carriage or  
19          channel positioning or repositioning in accordance  
20          with this section by a satellite carrier may obtain re-  
21          view of such denial by filing a complaint with the  
22          Commission. Such complaint shall allege the manner  
23          in which such satellite carrier has failed to meet its  
24          obligations and the basis for such allegations.

1           “(2) OPPORTUNITY TO RESPOND.—The Com-  
2 mission shall afford such satellite carrier and oppor-  
3 tunity to present data and arguments to establish  
4 that there has been no failure to meet its obligations  
5 under this section.

6           “(3) REMEDIAL ACTIONS; DISMISSAL.—Within  
7 120 days after the date a complaint is filed, the  
8 Commission shall determine whether the satellite  
9 carrier has met its obligations under this section. If  
10 the Commission determines that the satellite carrier  
11 has failed to meet such obligations, the Commission  
12 shall order the satellite carrier to reposition the com-  
13 plaining station or, in the case of an obligation to  
14 carry a station, to commence carriage of the station  
15 and to continue such carriage for at least 12  
16 months. If the Commission determines that the sat-  
17 ellite carrier has fully met the requirements of this  
18 section, it shall dismiss the complaint.

19           “(f) REGULATIONS BY COMMISSION.—Within 180  
20 days after the effective date of this section, the Commis-  
21 sion shall, following a rulemaking proceeding, issue regula-  
22 tions implementing the requirements imposed by this sec-  
23 tion.

24           “(g) DEFINITIONS.—As used in this section:



1           “(1) TELEVISION BROADCAST STATION.—The  
2 term ‘television broadcast station’ means a full-  
3 power television broadcast station, and does not in-  
4 clude a low-power or translator television broadcast  
5 station.

6           “(2) LOCAL MARKET.—The term ‘local market’  
7 means the designated market area in which a station  
8 is located and—

9           “(A) for a commercial television broadcast  
10 station located in any of the 150 largest des-  
11 ignated market areas, all commercial television  
12 broadcast stations licensed to a community  
13 within the same designated market area are  
14 within the same local market;

15           “(B) for a commercial television broadcast  
16 station that is located in a designated market  
17 area that is not one of the 150 largest, the local  
18 market includes, in addition to all commercial  
19 television broadcast stations licensed to a com-  
20 munity within the same designated market  
21 area, any station that is significantly viewed, as  
22 such term is defined in section 76.54 of the  
23 Commission’s regulations (47 C.F.R. 76.54);  
24 and

1           “(C) for a noncommercial educational tele-  
 2 vision broadcast station; the local market in-  
 3 cludes any station that is licensed to a commu-  
 4 nity within the same designated market area as  
 5 the noncommercial educational television broad-  
 6 east station.

7           “(3) DESIGNATED MARKET AREA.—The term  
 8 ‘designated market area’ means a designated market  
 9 area, as determined by the Nielsen Media Research  
 10 and published in the DMA Market and Demographic  
 11 Report.”.

12 **SEC. 13. NETWORK NONDUPLICATION; SYNDICATED EXCLU-**  
 13 **SIVITY AND SPORTS BLACKOUT.**

14 (a) REGULATIONS.—

15           (1) IN GENERAL.—Within 45 days after the ef-  
 16 fective date of this Act, the Federal Communications  
 17 Commission shall commence a rulemaking to estab-  
 18 lish regulations that apply network nonduplication  
 19 protection, syndicated exclusivity protection, and  
 20 sports blackout protection to the retransmission of  
 21 broadcast signals by satellite carriers to subscribers  
 22 for private home viewing. To the extent possible,  
 23 such regulations shall, subject to paragraph (2), in-  
 24 clude the same level of protection accorded retrans-  
 25 missions of television broadcast signals by cable sys-

1       tems for network nonduplication (47 C.F.R. 76.92),  
2       syndicated exclusivity (47 C.F.R. 151), and sports  
3       blackout (47 C.F.R. 76.67).

4           (2) NETWORK NONDUPLICATION.—The network  
5       nonduplication regulations required under paragraph  
6       (1) shall allow a television broadcast station in any  
7       local market to assert nonduplication rights—

8           (A) against a satellite carrier throughout  
9       such local market if that satellite carrier re-  
10      transmits to subscribers for private home view-  
11      ing in such local market the signal of another  
12      television broadcast station located within such  
13      local market; or

14          (B) against all satellite carriers within the  
15      zone in which the television broadcast station  
16      may be received over-the-air, using conventional  
17      consumer television receiving equipment, as de-  
18      termined under regulations prescribed by the  
19      Federal Communications Commission, but such  
20      zone shall not extend beyond such local market  
21      of such station.

22          (3) LOCAL MARKET DEFINED.—The term “local  
23      market” has the meaning provided in section 337(g)  
24      of the Communications Act of 1934, as added by  
25      section 12 of this Act.

1           (b) DEFERRED APPLICABILITY OF AMENDMENTS TO  
2 SECTION 119 OF TITLE 17, UNITED STATES CODE.—  
3 Notwithstanding the amendments to section 119 of title  
4 17, United States Code, made by this Act, until the regu-  
5 lations regarding network nonduplication protection are  
6 established under subsection (a), the statutory license  
7 under subsection (a) of such section 119 for secondary  
8 transmissions of primary transmissions of programming  
9 contained in a primary transmission made by a network  
10 station (as defined in section 119(d) of title 17, United  
11 States Code, as in effect on the day before the effective  
12 date of this Act) shall be limited to secondary trans-  
13 missions to persons who reside in unserved households (as  
14 defined in section 119(d) of title 17, United States Code,  
15 as in effect on the day before the effective date of this  
16 Act).

17 **SEC. 14. EFFECTIVE DATE.**

18           This Act and the amendments made by this Act shall  
19 take effect on January 1, 1999.

20 **SECTION 1. SHORT TITLE.**

21           *This Act may be cited as the “Copyright Compulsory*  
22 *License Improvement Act”.*

1 **SEC. 2. LIMITATIONS ON EXCLUSIVE RIGHTS; SECONDARY**  
 2 **TRANSMISSIONS BY SATELLITE CARRIERS**  
 3 **WITHIN LOCAL MARKETS.**

4 (a) *IN GENERAL.*—Chapter 1 of title 17, United States  
 5 Code, is amended by adding after section 121 the following  
 6 new section:

7 **“§ 122. Limitations on exclusive rights; secondary**  
 8 **transmissions by satellite carriers within**  
 9 **local markets**

10 *“(a) SECONDARY TRANSMISSIONS OF TELEVISION*  
 11 *BROADCAST STATIONS BY SATELLITE CARRIERS.*—A sec-  
 12 *ondary transmission of a primary transmission of a tele-*  
 13 *vision broadcast station into the station’s local market shall*  
 14 *be subject to statutory licensing under this section if—*

15 *“(1) the secondary transmission is made by a*  
 16 *satellite carrier to the public;*

17 *“(2) the secondary transmission is permissible*  
 18 *under the rules, regulations, or authorizations of the*  
 19 *Federal Communications Commission; and*

20 *“(3) the satellite carrier makes a direct or indi-*  
 21 *rect charge for the secondary transmission to—*

22 *“(A) each subscriber receiving the secondary*  
 23 *transmission; or*

24 *“(B) a distributor that has contracted with*  
 25 *the satellite carrier for direct or indirect delivery*  
 26 *of the secondary transmission to the public.*

1       “(b) *REPORTING REQUIREMENTS.*—

2               “(1) *INITIAL LISTS.*—A satellite carrier that  
3       *makes secondary transmissions of a primary trans-*  
4       *mission made by a network station under subsection*  
5       *(a) shall, within 90 days after commencing such sec-*  
6       *ondary transmissions, submit to that station a list*  
7       *identifying (by name and street address, including*  
8       *county and zip code) all subscribers to which the sat-*  
9       *ellite carrier currently makes secondary transmissions*  
10       *of that primary transmission.*

11               “(2) *SUBSEQUENT LISTS.*—After the list is sub-  
12       *mitted under paragraph (1), the satellite carrier*  
13       *shall, on the 15th of each month, submit to the station*  
14       *a list identifying (by name and street address, includ-*  
15       *ing county and zip code) any subscribers who have*  
16       *been added or dropped as subscribers since the last*  
17       *submission under this subsection.*

18               “(3) *USE OF SUBSCRIBER INFORMATION.*—Sub-  
19       *scriber information submitted by a satellite carrier*  
20       *under this subsection may be used only for the pur-*  
21       *poses of monitoring compliance by the satellite carrier*  
22       *with this section.*

23               “(4) *REQUIREMENTS OF STATIONS.*—The sub-  
24       *mission requirements of this subsection shall apply to*  
25       *a satellite carrier only if the station to whom the sub-*

1       missions are to be made places on file with the Reg-  
2       ister of Copyrights a document identifying the name  
3       and address of the person to whom such submissions  
4       are to be made. The Register shall maintain for pub-  
5       lic inspection a file of all such documents.

6       “(c) *NO ROYALTY FEE REQUIRED.*—A satellite carrier  
7       whose secondary transmissions are subject to statutory li-  
8       censing under subsection (a) shall have no royalty obliga-  
9       tion for such secondary transmissions.

10       “(d) *NONCOMPLIANCE WITH REPORTING REQUIRE-*  
11       *MENTS.*—Notwithstanding subsection (a), the willful or re-  
12       peated secondary transmission to the public by a satellite  
13       carrier of a television broadcast station and embodying a  
14       performance or display of a work is actionable as an act  
15       of infringement under section 501, and is fully subject to  
16       the remedies provided under sections 502 through 506 and  
17       509, if the satellite carrier has not complied with the report-  
18       ing requirements of subsection (b).

19       “(e) *WILLFUL ALTERATIONS.*—Notwithstanding sub-  
20       section (a), the secondary transmission to the public by a  
21       satellite carrier into the local market of a television broad-  
22       cast station of a primary transmission made by that tele-  
23       vision broadcast station and embodying a performance or  
24       display of a work is actionable as an act of infringement  
25       under section 501, and is fully subject to the remedies pro-

1 *vided by sections 502 through 506 and sections 509 and*  
 2 *510, if the content of the particular program in which the*  
 3 *performance or display is embodied, or any commercial ad-*  
 4 *vertising or station announcement transmitted by the pri-*  
 5 *mary transmitter during, or immediately before or after,*  
 6 *the transmission of such program, is in any way willfully*  
 7 *altered by the satellite carrier through changes, deletions,*  
 8 *or additions, or is combined with programming from any*  
 9 *other broadcast signal.*

10       “(f) *VIOLATION OF TERRITORIAL RESTRICTIONS ON*  
 11 *STATUTORY LICENSE FOR TELEVISION BROADCAST STA-*  
 12 *TIONS.—*

13               “(1) *INDIVIDUAL VIOLATIONS.—The willful or re-*  
 14 *peated secondary transmission to the public by a sat-*  
 15 *ellite carrier of a primary transmission made by a*  
 16 *television broadcast station and embodying a per-*  
 17 *formance or display of a work to a subscriber who*  
 18 *does not reside in that station’s local market, and is*  
 19 *not subject to statutory licensing under section 119,*  
 20 *is actionable as an act of infringement under section*  
 21 *501 and is fully subject to the remedies provided by*  
 22 *sections 502 through 506 and 509, except that—*

23                       “(A) *no damages shall be awarded for such*  
 24 *act of infringement if the satellite carrier took*



1           *corrective action by promptly withdrawing serv-*  
2           *ice from the ineligible subscriber; and*

3           “(B) *any statutory damages shall not exceed*  
4           *\$5 for such subscriber for each month during*  
5           *which the violation occurred.*

6           “(2) *PATTERN OF VIOLATIONS.—If a satellite*  
7           *carrier engages in a willful or repeated pattern or*  
8           *practice of secondarily transmitting to the public a*  
9           *primary transmission made by a television broadcast*  
10           *station and embodying a performance or display of a*  
11           *work to subscribers who do not reside in that station’s*  
12           *local market, and are not subject to statutory licens-*  
13           *ing under section 119, then in addition to the rem-*  
14           *edies under paragraph (1)—*

15           “(A) *if the pattern or practice has been car-*  
16           *ried out on a substantially nationwide basis, the*  
17           *court shall order a permanent injunction barring*  
18           *the secondary transmission by the satellite car-*  
19           *rier of the primary transmissions of that tele-*  
20           *vision broadcast station (and if such television*  
21           *broadcast station is a network station, all other*  
22           *television broadcast stations affiliated with such*  
23           *network), and the court may order statutory*  
24           *damages not exceeding \$250,000 for each 6-*

1           *month period during which the pattern or prac-*  
2           *tice was carried out; and*

3           “(B) *if the pattern or practice has been car-*  
4           *ried out on a local or regional basis with respect*  
5           *to more than one television broadcast station*  
6           *(and if such television broadcast station is a net-*  
7           *work station, all other television broadcast sta-*  
8           *tions affiliated with such network), the court*  
9           *shall order a permanent injunction barring the*  
10           *secondary transmission in that locality or region*  
11           *by the satellite carrier of the primary trans-*  
12           *missions of any television broadcast station, and*  
13           *the court may order statutory damages not ex-*  
14           *ceeding \$250,000 for each 6-month period during*  
15           *which the pattern or practice was carried out.*

16           “(g) *BURDEN OF PROOF.*—*In any action brought*  
17           *under subsection (d), (e), or (f), the satellite carrier shall*  
18           *have the burden of proving that its secondary transmission*  
19           *of a primary transmission by a television broadcast station*  
20           *is made only to subscribers located within that station’s*  
21           *local market.*

22           “(h) *GEOGRAPHIC LIMITATIONS ON SECONDARY*  
23           *TRANSMISSIONS.*—*The statutory license created by this sec-*  
24           *tion shall apply to secondary transmissions to locations in*

1 *the United States, and any commonwealth, territory, or*  
2 *possession of the United States.*

3       “(i) *EXCLUSIVITY WITH RESPECT TO SECONDARY*  
4 *TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE*  
5 *TO MEMBERS OF THE PUBLIC.*—No provision of section 111  
6 *or any other law (other than this section and section 119)*  
7 *shall be construed to contain any authorization, exemption,*  
8 *or license through which secondary transmissions by sat-*  
9 *ellite carriers of programming contained in a primary*  
10 *transmission made by a television broadcast station may*  
11 *be made without obtaining the consent of the copyright*  
12 *owner.*

13       “(j) *DEFINITIONS.*—In this section—

14               “(1) *The term ‘distributor’ means an entity*  
15 *which contracts to distribute secondary transmissions*  
16 *from a satellite carrier and, either as a single channel*  
17 *or in a package with other programming, provides the*  
18 *secondary transmission either directly to individual*  
19 *subscribers or indirectly through other program dis-*  
20 *tribution entities.*

21               “(2) *The term ‘local market’ for a television*  
22 *broadcast station has the meaning given that term in*  
23 *section 337(h)(2) of the Communications Act of 1934.*

1           “(3) *The terms ‘network station’, ‘satellite car-*  
 2           *rier’ and ‘secondary transmission’ have the meaning*  
 3           *given such terms under section 119(d).’.*”

4           “(4) *The term ‘subscriber’ means an entity that*  
 5           *receives a secondary transmission service by means of*  
 6           *a secondary transmission from a satellite and pays a*  
 7           *fee for the service, directly or indirectly, to the sat-*  
 8           *ellite carrier or to a distributor.*”

9           “(5) *The term ‘television broadcast station’*  
 10           *means an over-the-air, commercial or noncommercial*  
 11           *television broadcast station licensed by the Federal*  
 12           *Communications Commission under subpart E of*  
 13           *part 73 of title 47, Code of Federal Regulations.’.*”

14           (b) *TECHNICAL AND CONFORMING AMENDMENTS.—*  
 15           *The table of sections for chapter 1 of title 17, United States*  
 16           *Code, is amended by adding after the item relating to sec-*  
 17           *tion 121 the following:*

*“122. Limitations on exclusive rights; secondary transmissions by satellite car-*  
*riers within local market.”.*

18           **SEC. 3. EXTENSION OF EFFECT OF AMENDMENTS TO SEC-**  
 19           **TION 119 OF TITLE 17, UNITED STATES CODE.**

20           *Section 4(a) of the Satellite Home Viewer Act of 1994*  
 21           *(17 U.S.C. 119 note; Public Law 103–369; 108 Stat. 3481)*  
 22           *is amended by striking “December 31, 1999” and inserting*  
 23           *“December 31, 2003”.*

1 **SEC. 4. TRANSITION.**

2 *Section 119(a)(5) of title 17, United States Code, is*  
 3 *amended by adding at the end the following:*

4 *“(E) TRANSITION.—Notwithstanding sub-*  
 5 *paragraphs (A) and (B), a satellite carrier shall*  
 6 *not be required to terminate service of a network*  
 7 *station to a subscriber until February 28,*  
 8 *1999.”.*

9 **SEC. 5. COMPUTATION OF ROYALTY FEES FOR SATELLITE**  
 10 **CARRIERS.**

11 *Section 119(c) of title 17, United States Code, is*  
 12 *amended by adding at the end the following new paragraph:*

13 *“(4) REDUCTION.—*

14 *“(A) SUPERSTATION.—The rate of the roy-*  
 15 *alty fee payable in each case under subsection*  
 16 *(b)(1)(B)(i) as adjusted by a royalty fee estab-*  
 17 *lished under paragraph (2) or (3) of this sub-*  
 18 *section shall be reduced by 30 percent.*

19 *“(B) NETWORK.—The rate of the royalty fee*  
 20 *payable under subsection (b)(1)(B)(ii) as ad-*  
 21 *justed by a royalty fee established under para-*  
 22 *graph (2) or (3) of this subsection shall be re-*  
 23 *duced by 45 percent.*

24 *“(5) PUBLIC BROADCASTING SERVICE AS*  
 25 *AGENT.—For purposes of section 802, with respect to*  
 26 *royalty fees paid by satellite carriers for retransmit-*

1        *ting the Public Broadcasting Service satellite feed, the*  
2        *Public Broadcasting Service shall be the agent for all*  
3        *public television copyright claimants and all Public*  
4        *Broadcasting Service member stations.”.*

5        **SEC. 6. DEFINITIONS.**

6        *Section 119(d) of title 17, United States Code, is*  
7        *amended—*

8                *(1) by striking paragraph (10) and inserting the*  
9        *following:*

10                *“(10) UNSERVED HOUSEHOLD.—The term*  
11        *‘unserved household’, with respect to a particular tele-*  
12        *vision network, means a household that cannot re-*  
13        *ceive, through the use of a conventional outdoor roof-*  
14        *top receiving antenna, an over-the-air signal of grade*  
15        *B intensity (as defined by the Federal Communica-*  
16        *tions Commission) of a primary network station af-*  
17        *filiated with that network.”; and*

18                *(2) by adding at the end the following:*

19                *“(12) LOCAL NETWORK STATION.—The term*  
20        *‘local network station’ means a network station that*  
21        *is secondarily transmitted to subscribers who reside*  
22        *within the local market in which the network station*  
23        *is located.”.*

1 **SEC. 7. PUBLIC BROADCASTING SERVICE SATELLITE FEED.**

2 (a) *SECONDARY TRANSMISSIONS.*—Section 119(a)(1)  
3 of title 17, United States Code, is amended—

4 (1) by striking the paragraph heading and in-  
5 serting “(1) *SUPERSTATIONS AND PBS SATELLITE*  
6 *FEED.*—”;

7 (2) by inserting “or by the Public Broadcasting  
8 Service satellite feed” after “superstation”; and

9 (3) by adding at the end the following: “In the  
10 case of the Public Broadcasting Service satellite feed,  
11 subsequent to January 1, 2001, or the date on which  
12 local retransmissions of broadcast signals are offered  
13 to the public, whichever is earlier, the statutory li-  
14 cense created by this section shall be conditioned on  
15 the Public Broadcasting Service certifying to the  
16 Copyright Office on an annual basis that its member-  
17 ship supports the secondary transmission of the Pub-  
18 lic Broadcasting Service satellite feed, and providing  
19 notice to the satellite carrier of such certification.”.

20 (b) *DEFINITION.*—Section 119(d) of title 17, United  
21 States Code, is amended by adding at the end the following:

22 “(12) *PUBLIC BROADCASTING SERVICE SAT-*  
23 *ELLITE FEED.*—The term ‘Public Broadcasting Serv-  
24 ice satellite feed’ means the national satellite feed dis-  
25 tributed by the Public Broadcasting Service consist-  
26 ing of educational and informational programming

1       *intended for private home viewing, to which the Pub-*  
2       *lic Broadcasting Service holds national terrestrial*  
3       *broadcast rights.”.*

4       **SEC. 8. APPLICATION OF FEDERAL COMMUNICATIONS COM-**  
5   **MISSION REGULATIONS.**

6       *Section 119(a) of title 17, United States Code, is*  
7       *amended—*

8                     (1) *in paragraph (1), by inserting “is permis-*  
9                     *sible under the rules, regulations, and authorizations*  
10                    *of the Federal Communications Commission,” after*  
11                    *“satellite carrier to the public for private home view-*  
12                    *ing,”; and*

13                    (2) *in paragraph (2), by inserting “is permis-*  
14                    *sible under the rules, regulations, and authorizations*  
15                    *of the Federal Communications Commission,” after*  
16                    *“satellite carrier to the public for private home view-*  
17                    *ing.”.*

18       **SEC. 9. EFFECTIVE DATE.**

19       *This Act and the amendments made by this Act shall*  
20       *take effect on January 1, 1999, except section 4 shall take*  
21       *effect on the date of enactment of this Act.*