

106TH CONGRESS
1ST SESSION

S. 247

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

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

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

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 “Satellite Home Viewers
5 Improvements 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
5 States Code, is amended by adding after section 121 the
6 following 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
14 shall be subject to statutory licensing under this section
15 if—

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

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

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

23 “(A) each subscriber receiving the second-
24 ary transmission; or

1 “(B) a distributor that has contracted with
2 the satellite carrier for direct or indirect deliv-
3 ery of the secondary transmission to the public.

4 “(b) REPORTING REQUIREMENTS.—

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

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

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

1 “(4) REQUIREMENTS OF STATIONS.—The sub-
2 mission requirements of this subsection shall apply
3 to a satellite carrier only if the station to whom the
4 submissions are to be made places on file with the
5 Register of Copyrights a document identifying the
6 name and address of the person to whom such sub-
7 missions are to be made. The Register shall main-
8 tain for public inspection a file of all such docu-
9 ments.

10 “(c) NO ROYALTY FEE REQUIRED.—A satellite car-
11 rier whose secondary transmissions are subject to statu-
12 tory licensing under subsection (a) shall have no royalty
13 obligation for such secondary transmissions.

14 “(d) NONCOMPLIANCE WITH REPORTING REQUIRE-
15 MENTS.—Notwithstanding subsection (a), the willful or
16 repeated secondary transmission to the public by a sat-
17 ellite carrier into the local market of a television broadcast
18 station of a primary transmission made by that television
19 broadcast station and embodying a performance or display
20 of a work is actionable as an act of infringement under
21 section 501, and is fully subject to the remedies provided
22 under sections 502 through 506 and 509, if the satellite
23 carrier has not complied with the reporting requirements
24 of subsection (b).

1 “(e) WILLFUL ALTERATIONS.—Notwithstanding
2 subsection (a), the secondary transmission to the public
3 by a satellite carrier into the local market of a television
4 broadcast station of a primary transmission made by that
5 television broadcast station and embodying a performance
6 or display of a work is actionable as an act of infringement
7 under section 501, and is fully subject to the remedies pro-
8 vided by sections 502 through 506 and sections 509 and
9 510, if the content of the particular program in which the
10 performance or display is embodied, or any commercial ad-
11 vertising or station announcement transmitted by the pri-
12 mary transmitter during, or immediately before or after,
13 the transmission of such program, is in any way willfully
14 altered by the satellite carrier through changes, deletions,
15 or additions, or is combined with programming from any
16 other broadcast signal.

17 “(f) VIOLATION OF TERRITORIAL RESTRICTIONS ON
18 STATUTORY LICENSE FOR TELEVISION BROADCAST STA-
19 TIONS.—

20 “(1) INDIVIDUAL VIOLATIONS.—The willful or
21 repeated secondary transmission to the public by a
22 satellite carrier of a primary transmission made by
23 a television broadcast station and embodying a per-
24 formance or display of a work to a subscriber who
25 does not reside in that station’s local market, and is

1 not subject to statutory licensing under section 119,
2 is actionable as an act of infringement under section
3 501 and is fully subject to the remedies provided by
4 sections 502 through 506 and 509, except that—

5 “(A) no damages shall be awarded for such
6 act of infringement if the satellite carrier took
7 corrective action by promptly withdrawing serv-
8 ice from the ineligible subscriber; and

9 “(B) any statutory damages shall not ex-
10 ceed \$5 for such subscriber for each month dur-
11 ing which the violation occurred.

12 “(2) PATTERN OF VIOLATIONS.—If a satellite
13 carrier engages in a willful or repeated pattern or
14 practice of secondarily transmitting to the public a
15 primary transmission made by a television broadcast
16 station and embodying a performance or display of
17 a work to subscribers who do not reside in that sta-
18 tion’s local market, and are not subject to statutory
19 licensing under section 119, then in addition to the
20 remedies under paragraph (1)—

21 “(A) if the pattern or practice has been
22 carried out on a substantially nationwide basis,
23 the court shall order a permanent injunction
24 barring the secondary transmission by the sat-
25 ellite carrier of the primary transmissions of

1 that television broadcast station (and if such
2 television broadcast station is a network sta-
3 tion, all other television broadcast stations af-
4 filiated with such network), and the court may
5 order statutory damages not exceeding
6 \$250,000 for each 6-month period during which
7 the pattern or practice was carried out; and

8 “(B) if the pattern or practice has been
9 carried out on a local or regional basis with re-
10 spect to more than one television broadcast sta-
11 tion (and if such television broadcast station is
12 a network station, all other television broadcast
13 stations affiliated with such network), the court
14 shall order a permanent injunction barring the
15 secondary transmission in that locality or re-
16 gion by the satellite carrier of the primary
17 transmissions of any television broadcast sta-
18 tion, and the court may order statutory dam-
19 ages not exceeding \$250,000 for each 6-month
20 period during which the pattern or practice was
21 carried out.

22 “(g) BURDEN OF PROOF.—In any action brought
23 under subsection (d), (e), or (f), the satellite carrier shall
24 have the burden of proving that its secondary transmission
25 of a primary transmission by a television broadcast station

1 is made only to subscribers located within that station's
2 local market.

3 “(h) GEOGRAPHIC LIMITATIONS ON SECONDARY
4 TRANSMISSIONS.—The statutory license created by this
5 section shall apply to secondary transmissions to locations
6 in the United States, and any commonwealth, territory,
7 or possession of the United States.

8 “(i) EXCLUSIVITY WITH RESPECT TO SECONDARY
9 TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE
10 TO MEMBERS OF THE PUBLIC.—No provision of section
11 111 or any other law (other than this section and section
12 119) shall be construed to contain any authorization, ex-
13 emption, or license through which secondary transmissions
14 by satellite carriers of programming contained in a pri-
15 mary transmission made by a television broadcast station
16 may be made without obtaining the consent of the copy-
17 right owner.

18 “(j) DEFINITIONS.—In this section—

19 “(1) The term ‘distributor’ means an entity
20 which contracts to distribute secondary trans-
21 missions from a satellite carrier and, either as a sin-
22 gle channel or in a package with other programming,
23 provides the secondary transmission either directly
24 to individual subscribers or indirectly through other
25 program distribution entities.

1 “(2) The term ‘local market’ for a television
2 broadcast station has the meaning given that term
3 under rules, regulations, and authorizations of the
4 Federal Communications Commission relating to
5 carriage of television broadcast signals by satellite
6 carriers.

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

10 “(4) The term ‘subscriber’ means an entity that
11 receives a secondary transmission service by means
12 of a secondary transmission from a satellite and
13 pays a fee for the service, directly or indirectly, to
14 the satellite carrier or to a distributor.

15 “(5) The term ‘television broadcast station’
16 means an over-the-air, commercial or noncommercial
17 television broadcast station licensed by the Federal
18 Communications Commission under subpart E of
19 part 73 of title 47, Code of Federal Regulations.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
21 The table of sections for chapter 1 of title 17, United
22 States Code, is amended by adding after the item relating
23 to section 121 the following:

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

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

3 Section 4(a) of the Satellite Home Viewer Act of
 4 1994 (17 U.S.C. 119 note; Public Law 103–369; 108
 5 Stat. 3481) is amended by striking “December 31, 1999”
 6 and inserting “December 31, 2004”.

7 **SEC. 4. COMPUTATION OF ROYALTY FEES FOR SATELLITE**
 8 **CARRIERS.**

9 Section 119(e) of title 17, United States Code, is
 10 amended by adding at the end the following new para-
 11 graph:

12 “(4) REDUCTION.—

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

18 “(B) NETWORK.—The rate of the royalty
 19 fee payable under subsection (b)(1)(B)(ii) as
 20 adjusted by a royalty fee established under
 21 paragraph (2) or (3) of this subsection shall be
 22 reduced by 45 percent.

23 “(5) PUBLIC BROADCASTING SERVICE AS
 24 AGENT.—For purposes of section 802, with respect
 25 to royalty fees paid by satellite carriers for re-
 26 transmitting the Public Broadcasting Service sat-

1 elite feed, the Public Broadcasting Service shall be
2 the agent for all public television copyright claimants
3 and all Public Broadcasting Service member sta-
4 tions.”.

5 **SEC. 5. DEFINITIONS.**

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

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

10 “(10) UNSERVED HOUSEHOLD.—The term
11 ‘unserved household’, with respect to a particular
12 television network, means a household that cannot
13 receive, through the use of a conventional outdoor
14 rooftop receiving antenna, an over-the-air signal of
15 grade B intensity (as defined by the Federal Com-
16 munications Commission) of a primary network sta-
17 tion affiliated 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. 6. 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 sserting “(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
11 feed, subsequent to January 1, 2001, or the date on
12 which local retransmissions of broadcast signals are
13 offered to the public, whichever is earlier, the statu-
14 tory license created by this section shall be condi-
15 tioned on the Public Broadcasting Service certifying
16 to the Copyright Office on an annual basis that its
17 membership supports the secondary transmission of
18 the Public Broadcasting Service satellite feed, and
19 providing notice to the satellite carrier of such cer-
20 tification.”.

21 (b) **DEFINITION.**—Section 119(d) of title 17, United
22 States Code, is amended by adding at the end the follow-
23 ing:

24 “(12) **PUBLIC BROADCASTING SERVICE SAT-**
25 **ELLITE FEED.**—The term ‘Public Broadcasting
26 Service satellite feed’ means the national satellite

1 feed distributed by the Public Broadcasting Service
2 consisting of educational and informational program-
3 ming intended for private home viewing, to which
4 the Public Broadcasting Service holds national ter-
5 restrial broadcast rights.”.

6 **SEC. 7. APPLICATION OF FEDERAL COMMUNICATIONS**
7 **COMMISSION REGULATIONS.**

8 Section 119(a) of title 17, United States Code, is
9 amended—

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

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

20 **SEC. 8. EFFECTIVE DATE.**

21 This Act and the amendments made by this Act shall
22 take effect on January 1, 1999, except the amendments
23 made by section 4 shall take effect on July 1, 1999.

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