

2002—Subsec. (b)(1). Pub. L. 107-273 struck out “to it” after “proposals submitted” in second sentence.

1999—Subsec. (e). Pub. L. 106-44 struck out “(1)” before “Owners of” and struck out par. (2) which read as follows: “On January 3, 1980, the Register of Copyrights, after consulting with authors and other owners of copyright in nondramatic literary works and their representatives, and with public broadcasting entities and their representatives, shall submit to the Congress a report setting forth the extent to which voluntary licensing arrangements have been reached with respect to the use of nondramatic literary works by such broadcast stations. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.”

1993—Subsec. (b). Pub. L. 103-198, §4(1)(A), (B), struck out first two sentences which read as follows: “Not later than thirty days after the Copyright Royalty Tribunal has been constituted in accordance with section 802, the Chairman of the Tribunal shall cause notice to be published in the Federal Register of the initiation of proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by subsection (d) with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works during a period beginning as provided in clause (3) of this subsection and ending on December 31, 1982. Copyright owners and public broadcasting entities shall negotiate in good faith and cooperate fully with the Tribunal in an effort to reach reasonable and expeditious results.”, and in third sentence substituted “published nondramatic musical works and published pictorial, graphic, and sculptural works” for “works specified by this subsection”.

Subsec. (b)(1). Pub. L. 103-198, §4(1)(C), struck out “, within one hundred and twenty days after publication of the notice specified in this subsection,” after “broadcasting entity may” and substituted “Librarian of Congress” for “Copyright Royalty Tribunal” wherever appearing.

Subsec. (b)(2). Pub. L. 103-198, §4(1)(D), substituted “Librarian of Congress” for “Tribunal”.

Subsec. (b)(3). Pub. L. 103-198, §4(1)(E)(i), (iii), in second sentence, substituted “copyright arbitration royalty panel” for “Copyright Royalty Tribunal” and “paragraph (2)” for “clause (2) of this subsection”, and in last sentence, substituted “Librarian of Congress” for “Copyright Royalty Tribunal”.

Pub. L. 103-198, §4(1)(E)(i), substituted first sentence for former first sentence which read as follows: “Within six months, but not earlier than one hundred and twenty days, from the date of publication of the notice specified in this subsection the Copyright Royalty Tribunal shall make a determination and publish in the Federal Register a schedule of rates and terms which, subject to clause (2) of this subsection, shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether or not such copyright owners and public broadcasting entities have submitted proposals to the Tribunal.”

Subsec. (b)(4). Pub. L. 103-198, §4(1)(F), struck out par. (4) which read as follows: “With respect to the period beginning on the effective date of this title and ending on the date of publication of such rates and terms, this title shall not afford to owners of copyright or public broadcasting entities any greater or lesser rights with respect to the activities specified in subsection (d) as applied to works specified in this subsection than those afforded under the law in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.”

Subsec. (c). Pub. L. 103-198, §4(2), substituted “1997” for “1982” and “Librarian of Congress” for “Copyright Royalty Tribunal”.

Subsec. (d). Pub. L. 103-198, §4(3), in introductory provisions, struck out “to the transitional provisions of subsection (b)(4), and” after “Subject” and substituted “a copyright arbitration royalty panel” for “the Copyright Royalty Tribunal”, and in pars. (2) and (3), substituted “paragraph” for “clause” wherever appearing.

Subsec. (g). Pub. L. 103-198, §4(4), substituted “paragraph” for “clause”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-303 effective as if included in the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. 108-419, see section 6 of Pub. L. 109-303, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-419 effective 6 months after Nov. 30, 2004, subject to transition provisions, see section 6 of Pub. L. 108-419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

EFFECTIVE DATE

Section effective Oct. 19, 1976, see section 102 of Pub. L. 94-553, set out as a note preceding section 101 of this title.

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

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(1) SUPERSTATIONS.—Subject to the provisions of paragraphs (5), (6), and (8) of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a superstation shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing or for viewing in a commercial establishment, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for each retransmission service to each subscriber receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing or for viewing in a commercial establishment.

(2) NETWORK STATIONS.—

(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (5), (6), (7), and (8) of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a network station shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission.

(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—

(i) IN GENERAL.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions of the signals of no more than two network stations in a single day for each television network to persons who reside in unserved households. The limitation in this clause shall not apply to secondary transmissions under paragraph (3).

(ii) ACCURATE DETERMINATIONS OF ELIGIBILITY.—

(I) ACCURATE PREDICTIVE MODEL.—In determining presumptively whether a person resides in an unserved household under subsection (d)(10)(A), a court shall rely on the Individual Location Longley-Rice model set forth by the Federal Communications Commission in Docket No. 98–201, as that model may be amended by the Commission over time under section 339(c)(3) of the Communications Act of 1934 to increase the accuracy of that model.

(II) ACCURATE MEASUREMENTS.—For purposes of site measurements to determine whether a person resides in an unserved household under subsection (d)(10)(A), a court shall rely on section 339(c)(4) of the Communications Act of 1934.

(iii) C-BAND EXEMPTION TO UNSERVED HOUSEHOLDS.—

(I) IN GENERAL.—The limitations of clause (i) shall not apply to any secondary transmissions by C-band services of network stations that a subscriber to C-band service received before any termination of such secondary transmissions before October 31, 1999.

(II) DEFINITION.—In this clause the term “C-band service” means a service that is licensed by the Federal Communications Commission and operates in the Fixed Satellite Service under part 25 of title 47 of the Code of Federal Regulations.

(C) EXCEPTIONS.—

(i) STATES WITH SINGLE FULL-POWER NETWORK STATION.—In a State in which there is licensed by the Federal Communications Commission a single full-power station that was a network station on January 1, 1995, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the primary transmission of that station to any subscriber in a community that is located within that State and that is not within the first 50 television markets as listed in the regulations of the Commission as in effect on such date (47 CFR 76.51).

(ii) STATES WITH ALL NETWORK STATIONS AND SUPERSTATIONS IN SAME LOCAL MARKET.—In a State in which all network stations and superstations licensed by the Federal Communications Commission within that State as of January 1, 1995, are assigned to the same local market and that local market does not encompass all

counties of that State, the statutory license provided under subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the primary transmissions of such station to all subscribers in the State who reside in a local market that is within the first 50 major television markets as listed in the regulations of the Commission as in effect on such date (section 76.51 of title 47 of the Code of Federal Regulations).

(iii) ADDITIONAL STATIONS.—In the case of that State in which are located 4 counties that—

(I) on January 1, 2004, were in local markets principally comprised of counties in another State, and

(II) had a combined total of 41,340 television households, according to the U.S. Television Household Estimates by Nielsen Media Research for 2004,

the statutory license provided under subparagraph (A) shall apply to secondary transmissions by a satellite carrier to subscribers in any such county of the primary transmissions of any network station located in that State, if the satellite carrier was making such secondary transmissions to any subscribers in that county on January 1, 2004.

(iv) CERTAIN ADDITIONAL STATIONS.—If 2 adjacent counties in a single State are in a local market comprised principally of counties located in another State, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier to subscribers in those 2 counties of the primary transmissions of any network station located in the capital of the State in which such 2 counties are located, if—

(I) the 2 counties are located in a local market that is in the top 100 markets for the year 2003 according to Nielsen Media Research; and

(II) the total number of television households in the 2 counties combined did not exceed 10,000 for the year 2003 according to Nielsen Media Research.

(v) APPLICABILITY OF ROYALTY RATES.—The royalty rates under subsection (b)(1)(B) apply to the secondary transmissions to which the statutory license under subparagraph (A) applies under clauses (i), (ii), (iii), and (iv).

(D) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—

(i) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station—

(I) a list identifying (by name and address, including street or rural route number, city, State, and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that

primary transmission to subscribers in unserved households; and

(II) a separate list, aggregated by designated market area (as defined in section 122(j)) (by name and address, including street or rural route number, city, State, and zip code), which shall indicate those subscribers being served pursuant to paragraph (3), relating to significantly viewed stations.

(ii) MONTHLY LISTS.—After the submission of the initial lists under clause (i), on the 15th of each month, the satellite carrier shall submit to the network—

(I) a list identifying (by name and address, including street or rural route number, city, State, and zip code) any persons who have been added or dropped as subscribers under clause (i)(I) since the last submission under clause (i); and

(II) a separate list, aggregated by designated market area (by name and street address, including street or rural route number, city, State, and zip code), identifying those subscribers whose service pursuant to paragraph (3), relating to significantly viewed stations, has been added or dropped.

(iii) USE OF SUBSCRIBER INFORMATION.—Subscriber information submitted by a satellite carrier under this subparagraph may be used only for purposes of monitoring compliance by the satellite carrier with this subsection.

(iv) APPLICABILITY.—The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to which the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

(3) SECONDARY TRANSMISSIONS OF SIGNIFICANTLY VIEWED SIGNALS.—

(A) IN GENERAL.—Notwithstanding the provisions of paragraph (2)(B), and subject to subparagraph (B) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the primary transmission of a network station or a superstation to a subscriber who resides outside the station's local market (as defined in section 122(j)) but within a community in which the signal has been determined by the Federal Communications Commission, to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community.

(B) LIMITATION.—Subparagraph (A) shall apply only to secondary transmissions of the primary transmissions of network stations and superstations to subscribers who receive secondary transmissions from a satellite

carrier pursuant to the statutory license under section 122.

(C) WAIVER.—

(i) IN GENERAL.—A subscriber who is denied the secondary transmission of the primary transmission of a network station under subparagraph (B) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 shall not constitute a waiver for purposes of this subparagraph.

(ii) SUNSET.—The authority under clause (i) to grant waivers shall terminate on December 31, 2008, and any such waiver in effect shall terminate on that date.

(4) STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.—

(A) RULES FOR SUBSCRIBERS TO ANALOG SIGNALS UNDER SUBSECTION (e).—

(i) FOR THOSE RECEIVING DISTANT ANALOG SIGNALS.—In the case of a subscriber of a satellite carrier who is eligible to receive the secondary transmission of the primary analog transmission of a network station solely by reason of subsection (e) (in this subparagraph referred to as a "distant analog signal"), and who, as of October 1, 2004, is receiving the distant analog signal of that network station, the following shall apply:

(I) In a case in which the satellite carrier makes available to the subscriber the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant analog signal of a station affiliated with the same television network—

(aa) if, within 60 days after receiving the notice of the satellite carrier under section 338(h)(1) of the Communications Act of 1934, the subscriber elects to retain the distant analog signal; but

(bb) only until such time as the subscriber elects to receive such local analog signal.

(II) Notwithstanding subclause (I), the statutory license under paragraph (2) shall not apply with respect to any sub-

scriber who is eligible to receive the distant analog signal of a television network station solely by reason of subsection (e), unless the satellite carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that—

(aa) identifies that subscriber by name and address (street or rural route number, city, State, and zip code) and specifies the distant analog signals received by the subscriber; and

(bb) states, to the best of the satellite carrier's knowledge and belief, after having made diligent and good faith inquiries, that the subscriber is eligible under subsection (e) to receive the distant analog signals.

(ii) **FOR THOSE NOT RECEIVING DISTANT ANALOG SIGNALS.**—In the case of any subscriber of a satellite carrier who is eligible to receive the distant analog signal of a network station solely by reason of subsection (e) and who did not receive a distant analog signal of a station affiliated with the same network on October 1, 2004, the statutory license under paragraph (2) shall not apply to secondary transmissions by that satellite carrier to that subscriber of the distant analog signal of a station affiliated with the same network.

(B) **RULES FOR OTHER SUBSCRIBERS.**—In the case of a subscriber of a satellite carrier who is eligible to receive the secondary transmission of the primary analog transmission of a network station under the statutory license under paragraph (2) (in this subparagraph referred to as a “distant analog signal”), other than subscribers to whom subparagraph (A) applies, the following shall apply:

(i) In a case in which the satellite carrier makes available to that subscriber, on January 1, 2005, the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant analog signal of a station affiliated with the same television network if the subscriber's satellite carrier, not later than March 1, 2005, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that identifies that subscriber by name and address (street or rural route number, city, State, and zip code) and specifies the distant analog signals received by the subscriber.

(ii) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the secondary transmission of the primary analog trans-

mission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier of the distant analog signal of a station affiliated with the same network to that subscriber if—

(I) that subscriber seeks to subscribe to such distant analog signal before the date on which such carrier commences to provide pursuant to the statutory license under section 122 the secondary transmissions of the primary analog transmission of stations from the local market of such local network station; and

(II) the satellite carrier, within 60 days after such date, submits to each television network a list that identifies each subscriber in that local market provided such an analog signal by name and address (street or rural route number, city, State, and zip code) and specifies the distant analog signals received by the subscriber.

(C) **FUTURE APPLICABILITY.**—The statutory license under paragraph (2) shall not apply to the secondary transmission by a satellite carrier of a primary analog transmission of a network station to a person who—

(i) is not a subscriber lawfully receiving such secondary transmission as of the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; and

(ii) at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, and such secondary transmission of such primary transmission can reach such person.

(D) **SPECIAL RULES FOR DISTANT DIGITAL SIGNALS.**—The statutory license under paragraph (2) shall apply to secondary transmissions by a satellite carrier to a subscriber of primary digital transmissions of network stations if such secondary transmissions to such subscriber are permitted under section 339(a)(2)(D) of the Communications Act of 1934, as in effect on the day after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, except that the reference to section 73.683(a) of title 47, Code of Federal Regulations, referred to in section 339(a)(2)(D)(i)(I) shall refer to such section as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

(E) **OTHER PROVISIONS NOT AFFECTED.**—This paragraph shall not affect the applicability of the statutory license to secondary transmissions under paragraph (3) or to unserved households included under paragraph (12).

(F) **WAIVER.**—A subscriber who is denied the secondary transmission of a network station under subparagraph (C) or (D) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 shall not constitute a waiver for purposes of this subparagraph.

(G) **AVAILABLE DEFINED.**—For purposes of this paragraph, a satellite carrier makes available a secondary transmission of the primary transmission of a local station to a subscriber or person if the satellite carrier offers that secondary transmission to other subscribers who reside in the same zip code as that subscriber or person.

(5) **NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.**—Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

(6) **WILLFUL ALTERATIONS.**—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a superstation or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

(7) **VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.**—

(A) **INDIVIDUAL VIOLATIONS.**—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a

performance or display of a work to a subscriber who is not eligible to receive the transmission under this section is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506, except that—

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

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

(B) **PATTERN OF VIOLATIONS.**—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who are not eligible to receive the transmission under this section, then in addition to the remedies set forth in subparagraph (A)—

(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed \$250,000 for each 6-month period during which the pattern or practice was carried out; and

(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed \$250,000 for each 6-month period during which the pattern or practice was carried out.

(C) **PREVIOUS SUBSCRIBERS EXCLUDED.**—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before November 16, 1988.

(D) **BURDEN OF PROOF.**—In any action brought under this paragraph, the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a network station is to a subscriber who is eligible to receive the secondary transmission under this section.

(E) **EXCEPTION.**—The secondary transmission by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a network station to subscribers who do not reside in unserved households shall not be an act of infringement if—

(i) the station on May 1, 1991, was retransmitted by a satellite carrier and was

not on that date owned or operated by or affiliated with a television network that offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States;

(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the statutory license of this section; and

(iii) the station is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States.

(8) **DISCRIMINATION BY A SATELLITE CARRIER.**—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a superstation or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if the satellite carrier unlawfully discriminates against a distributor.

(9) **GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.**—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States.

(10) **LOSER PAYS FOR SIGNAL INTENSITY MEASUREMENT; RECOVERY OF MEASUREMENT COSTS IN A CIVIL ACTION.**—In any civil action filed relating to the eligibility of subscribing households as unserved households—

(A) a network station challenging such eligibility shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the satellite carrier for any signal intensity measurement that is conducted by that carrier in response to a challenge by the network station and that establishes the household is an unserved household; and

(B) a satellite carrier shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the network station challenging such eligibility for any signal intensity measurement that is conducted by that station and that establishes the household is not an unserved household.

(11) **INABILITY TO CONDUCT MEASUREMENT.**—If a network station makes a reasonable attempt to conduct a site measurement of its signal at a subscriber's household and is denied access for the purpose of conducting the measurement, and is otherwise unable to conduct a measurement, the satellite carrier shall within 60 days notice thereof, terminate service of the station's network to that household.

(12) **SERVICE TO RECREATIONAL VEHICLES AND COMMERCIAL TRUCKS.**—

(A) **EXEMPTION.**—

(i) **IN GENERAL.**—For purposes of this subsection, and subject to clauses (ii) and (iii), the term “unserved household” shall include—

(I) recreational vehicles as defined in regulations of the Secretary of Housing and Urban Development under section 3282.8 of title 24 of the Code of Federal Regulations; and

(II) commercial trucks that qualify as commercial motor vehicles under regulations of the Secretary of Transportation under section 383.5 of title 49 of the Code of Federal Regulations.

(ii) **LIMITATION.**—Clause (i) shall apply only to a recreational vehicle or commercial truck if any satellite carrier that proposes to make a secondary transmission of a network station to the operator of such a recreational vehicle or commercial truck complies with the documentation requirements under subparagraphs (B) and (C).

(iii) **EXCLUSION.**—For purposes of this subparagraph, the terms “recreational vehicle” and “commercial truck” shall not include any fixed dwelling, whether a mobile home or otherwise.

(B) **DOCUMENTATION REQUIREMENTS.**—A recreational vehicle or commercial truck shall be deemed to be an unserved household beginning 10 days after the relevant satellite carrier provides to the network that owns or is affiliated with the network station that will be secondarily transmitted to the recreational vehicle or commercial truck the following documents:

(i) **DECLARATION.**—A signed declaration by the operator of the recreational vehicle or commercial truck that the satellite dish is permanently attached to the recreational vehicle or commercial truck, and will not be used to receive satellite programming at any fixed dwelling.

(ii) **REGISTRATION.**—In the case of a recreational vehicle, a copy of the current State vehicle registration for the recreational vehicle.

(iii) **REGISTRATION AND LICENSE.**—In the case of a commercial truck, a copy of—

(I) the current State vehicle registration for the truck; and

(II) a copy of a valid, current commercial driver's license, as defined in regulations of the Secretary of Transportation under section 383 of title 49 of the Code of Federal Regulations, issued to the operator.

(C) **UPDATED DOCUMENTATION REQUIREMENTS.**—If a satellite carrier wishes to continue to make secondary transmissions to a recreational vehicle or commercial truck for more than a 2-year period, that carrier shall provide each network, upon request, with updated documentation in the form described under subparagraph (B) during the 90 days before expiration of that 2-year period.

(13) **STATUTORY LICENSE CONTINGENT ON COMPLIANCE WITH FCC RULES AND REMEDIAL STEPS.**—Notwithstanding any other provision of this section, the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission embodying a performance or display of a work made by a

broadcast station licensed by the Federal Communications Commission is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if, at the time of such transmission, the satellite carrier is not in compliance with the rules, regulations, and authorizations of the Federal Communications Commission concerning the carriage of television broadcast station signals.

(14) **WAIVERS.**—A subscriber who is denied the secondary transmission of a signal of a network station under subsection (a)(2)(B) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station asserting that the secondary transmission is prohibited. The network station shall accept or reject a subscriber's request for a waiver within 30 days after receipt of the request. If a television network station fails to accept or reject a subscriber's request for a waiver within the 30-day period after receipt of the request, that station shall be deemed to agree to the waiver request and have filed such written waiver. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934, and that was in effect on such date of enactment, shall constitute a waiver for purposes of this paragraph.

(15) **CARRIAGE OF LOW POWER TELEVISION STATIONS.**—

(A) **IN GENERAL.**—Notwithstanding paragraph (2)(B), and subject to subparagraphs (B) through (F) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the primary transmission of a network station or a superstation that is licensed as a low power television station, to a subscriber who resides within the same local market.

(B) **GEOGRAPHIC LIMITATION.**—

(i) **NETWORK STATIONS.**—With respect to network stations, secondary transmissions provided for in subparagraph (A) shall be limited to secondary transmissions to subscribers who—

(I) reside in the same local market as the station originating the signal; and

(II) reside within 35 miles of the transmitter site of such station, except that in the case of such a station located in a standard metropolitan statistical area which has 1 of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), the number of miles shall be 20.

(ii) **SUPERSTATIONS.**—With respect to superstations, secondary transmissions provided for in subparagraph (A) shall be limited to secondary transmissions to subscribers who reside in the same local market as the station originating the signal.

(C) **NO APPLICABILITY TO REPEATERS AND TRANSLATORS.**—Secondary transmissions

provided for in subparagraph (A) shall not apply to any low power television station that retransmits the programs and signals of another television station for more than 2 hours each day.

(D) **ROYALTY FEES.**—Notwithstanding subsection (b)(1)(B), a satellite carrier whose secondary transmissions of the primary transmissions of a low power television station are subject to statutory licensing under this section shall have no royalty obligation for secondary transmissions to a subscriber who resides within 35 miles of the transmitter site of such station, except that in the case of such a station located in a standard metropolitan statistical area which has 1 of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), the number of miles shall be 20. Carriage of a superstation that is a low power television station within the station's local market, but outside of the 35-mile or 20-mile radius described in the preceding sentence, shall be subject to royalty payments under subsection (b)(1)(B).

(E) **LIMITATION TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.**—Secondary transmissions provided for in subparagraph (A) may be made only to subscribers who receive secondary transmissions of primary transmissions from that satellite carrier pursuant to the statutory license under section 122, and only in conformity with the requirements under 340(b) of the Communications Act of 1934, as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

(16) **RESTRICTED TRANSMISSION OF OUT-OF-STATE DISTANT NETWORK SIGNALS INTO CERTAIN MARKETS.**—

(A) **OUT-OF-STATE NETWORK AFFILIATES.**—Notwithstanding any other provision of this title, the statutory license in this subsection and subsection (b) shall not apply to any secondary transmission of the primary transmission of a network station located outside of the State of Alaska to any subscriber in that State to whom the secondary transmission of the primary transmission of a television station located in that State is made available by the satellite carrier pursuant to section 122.

(B) **EXCEPTION.**—The limitation in subparagraph (A) shall not apply to the secondary transmission of the primary transmission of a digital signal of a network station located outside of the State of Alaska if at the time that the secondary transmission is made, no television station licensed to a community in the State and affiliated with the same network makes primary transmissions of a digital signal.

(b) **STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.**—¹

(1) **DEPOSITS WITH THE REGISTER OF COPYRIGHTS.**—A satellite carrier whose secondary

¹So in original. Heading was not amended to conform to amendments by Pub. L. 108-447.

transmissions are subject to statutory licensing under subsection (a) shall, on a semi-annual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were retransmitted, at any time during that period, to subscribers as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such retransmissions, and such other data as the Register of Copyrights may from time to time prescribe by regulation; and

(B) a royalty fee for that 6-month period, computed by multiplying the total number of subscribers receiving each secondary transmission of each superstation or network station during each calendar month by the appropriate rate in effect under this section.

Notwithstanding the provisions of subparagraph (B), a satellite carrier whose secondary transmissions are subject to statutory licensing under paragraph (1) or (2) of subsection (a) shall have no royalty obligation for secondary transmissions to a subscriber under paragraph (3) of such subsection.

(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the Librarian of Congress as provided by this title.

(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Judges under paragraph (4).

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

(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions shall file a claim with the Copyright Royalty Judges, in accordance with requirements that the Copyright Royalty Judges shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Copyright Royalty Judges shall authorize the Librarian of Congress to proceed to distribute such fees to the copyright owners entitled to receive them, or to their designated agents, subject to the deduction of reasonable administrative costs under this section. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall have the discretion to authorize the Librarian of Congress to proceed to distribute any amounts that are not in controversy.

(c) ADJUSTMENT OF ROYALTY FEES.—

(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES FOR ANALOG SIGNALS.—

(A) INITIAL FEE.—The appropriate fee for purposes of determining the royalty fee under subsection (b)(1)(B) for the secondary transmission of the primary analog transmissions of network stations and superstations shall be the appropriate fee set forth in part 258 of title 37, Code of Federal Regulations, as in effect on July 1, 2004, as modified under this paragraph.

(B) FEE SET BY VOLUNTARY NEGOTIATION.—On or before January 2, 2005, the Librarian of Congress shall cause to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers for the secondary transmission of the primary analog transmissions of network stations and superstations under subsection (b)(1)(B).

(C) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or agreements for the payment of royalty fees. Any such satellite carriers, distributors and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Librarian of Congress shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the cost thereof.

(D) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS; PUBLIC NOTICE.—(i) Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that a² parties

²So in original. Probably should be "are".

thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

(ii)(I) Within 10 days after publication in the Federal Register of a notice of the initiation of voluntary negotiation proceedings, parties who have reached a voluntary agreement may request that the royalty fees in that agreement be applied to all satellite carriers, distributors, and copyright owners without convening an arbitration proceeding pursuant to subparagraph (E).

(II) Upon receiving a request under subclause (I), the Librarian of Congress shall immediately provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.

(III) The Librarian shall adopt the royalty fees from the voluntary agreement for all satellite carriers, distributors, and copyright owners without convening an arbitration proceeding unless a party with an intent to participate in the arbitration proceeding and a significant interest in the outcome of that proceeding objects under subclause (II).

(E) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until February 28, 2010, or in accordance with the terms of the agreement, whichever is later.

(F) FEE SET BY COMPULSORY ARBITRATION.—

(i) NOTICE OF INITIATION OF PROCEEDINGS.—On or before May 1, 2005, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining the royalty fee to be paid for the secondary transmission of primary analog transmission of network stations and superstations under subsection (b)(1)(B) by satellite carriers and distributors

(I) in the absence of a voluntary agreement filed in accordance with subparagraph (D) that establishes royalty fees to be paid by all satellite carriers and distributors; or

(II) if an objection to the fees from a voluntary agreement submitted for adoption by the Librarian of Congress to apply to all satellite carriers, distributors, and copyright owners is received under subparagraph (D) from a party with an intent to participate in the arbitration proceeding and a significant interest in the outcome of that proceeding.

Such arbitration proceeding shall be conducted under chapter 8 as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004.

(ii) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this sub-

paragraph, the copyright arbitration royalty panel appointed under chapter 8, as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004 shall establish fees for the secondary transmissions of the primary analog transmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions, except that the Librarian of Congress and any copyright arbitration royalty panel shall adjust those fees to account for the obligations of the parties under any applicable voluntary agreement filed with the Copyright Office pursuant to subparagraph (D). In determining the fair market value, the panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

(I) the competitive environment in which such programming is distributed, the cost of similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

(II) the economic impact of such fees on copyright owners and satellite carriers; and

(III) the impact on the continued availability of secondary transmissions to the public.

(iii) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

(I) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(f), as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004; or

(II) is established by the Librarian under section 802(f) as in effect on the day before such date of enactment shall be effective as of January 1, 2005.

(iv) PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee referred to in (iii) shall be binding on all satellite carriers, distributors and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under subparagraph (D).

(2) APPLICABILITY AND DETERMINATION OF ROYALTY FEES FOR DIGITAL SIGNALS.—The process and requirements for establishing the royalty fee payable under subsection (b)(1)(B) for the secondary transmission of the primary digital transmissions of network stations and superstations shall be the same as that set forth in paragraph (1) for the secondary transmission of the primary analog transmission of network stations and superstations, except that—

(A) the initial fee under paragraph (1)(A) shall be the rates set forth in section

298.3(b)(1) and (2) of title 37, Code of Federal Regulations, as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, reduced by 22.5 percent;

(B) the notice of initiation of arbitration proceedings required in paragraph (1)(F)(i) shall be published on or before December 31, 2005; and

(C) the royalty fees that are established for the secondary transmission of the primary digital transmission of network stations and superstations in accordance with to³ the procedures set forth in paragraph (1)(F)(iii) and are payable under subsection (b)(1)(B)—

(i) shall be reduced by 22.5 percent; and

(ii) shall be adjusted by the Librarian of Congress on January 1, 2007, and on January 1 of each year thereafter, to reflect any changes occurring during the preceding 12 months in the cost of living as determined by the most recent Consumer Price Index (for all consumers and items) published by the Secretary of Labor.

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

(1) DISTRIBUTOR.—The term “distributor” means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities in accordance with the provisions of this section.

(2) NETWORK STATION.—The term “network station” means—

(A) a television station licensed by the Federal Communications Commission, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

(B) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934);

except that the term does not include the signal of the Alaska Rural Communications Service, or any successor entity to that service.

(3) PRIMARY NETWORK STATION.—The term “primary network station” means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

(4) PRIMARY TRANSMISSION.—The term “primary transmission” has the meaning given that term in section 111(f) of this title.

(5) PRIVATE HOME VIEWING.—The term “private home viewing” means the viewing, for private use in a household by means of satellite reception equipment which is operated

by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

(6) SATELLITE CARRIER.—The term “satellite carrier” means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing pursuant to this section.

(7) SECONDARY TRANSMISSION.—The term “secondary transmission” has the meaning given that term in section 111(f) of this title.

(8) SUBSCRIBER.—The term “subscriber” means an individual or entity that receives a secondary transmission service by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor in accordance with the provisions of this section.

(9) SUPERSTATION.—The term “superstation” means a television station, other than a network station, licensed by the Federal Communications Commission, that is secondarily transmitted by a satellite carrier.

(10) UNSERVED HOUSEHOLD.—The term “unserved household”, with respect to a particular television network, means a household that—

(A) cannot receive, through the use of a conventional, stationary, outdoor rooftop receiving antenna, an over-the-air signal of a primary network station affiliated with that network of Grade B intensity as defined by the Federal Communications Commission under section 73.683(a) of title 47 of the Code of Federal Regulations, as in effect on January 1, 1999;

(B) is subject to a waiver that meets the standards of subsection (a)(14) whether or not the waiver was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004;

(C) is a subscriber to whom subsection (e) applies;

(D) is a subscriber to whom subsection (a)(12) applies; or

(E) is a subscriber to whom the exemption under subsection (a)(2)(B)(iii) applies.

(11) LOCAL MARKET.—The term “local market” has the meaning given such term under section 122(j), except that with respect to a low power television station, the term “local market” means the designated market area in which the station is located.

³So in original. The word “to” probably should not appear.

(12) **LOW POWER TELEVISION STATION.**—The term “low power television station” means a low power television⁴ as defined under section 74.701(f) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term “low power television station” includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.

(13) **COMMERCIAL ESTABLISHMENT.**—The term “commercial establishment”—

(A) means an establishment used for commercial purposes, such as a bar, restaurant, private office, fitness club, oil rig, retail store, bank or other financial institution, supermarket, automobile or boat dealership, or any other establishment with a common business area; and

(B) does not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as a hotel, dormitory, hospital, apartment, condominium, or prison.

(e) **MORATORIUM ON COPYRIGHT LIABILITY.**—Until February 28, 2010, a subscriber who does not receive a signal of Grade A intensity (as defined in the regulations of the Federal Communications Commission under section 73.683(a) of title 47 of the Code of Federal Regulations, as in effect on January 1, 1999, or predicted by the Federal Communications Commission using the Individual Location Longley-Rice methodology described by the Federal Communications Commission in Docket No. 98–201) of a local network television broadcast station shall remain eligible to receive signals of network stations affiliated with the same network, if that subscriber had satellite service of such network signal terminated after July 11, 1998, and before October 31, 1999, as required by this section, or received such service on October 31, 1999.

(f) **EXPEDITED CONSIDERATION BY JUSTICE DEPARTMENT OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS.**—

(1) **IN GENERAL.**—In a case in which no satellite carrier makes available, to subscribers located in a local market, as defined in section 122(j)(2), the secondary transmission into that market of a primary transmission of one or more television broadcast stations licensed by the Federal Communications Commission, and two or more satellite carriers request a business review letter in accordance with section 50.6 of title 28, Code of Federal Regulations (as in effect on July 7, 2004), in order to assess the legality under the antitrust laws of proposed business conduct to make or carry out an agreement to provide such secondary transmission into such local market, the appropriate official of the Department of Justice shall respond to the request no later than 90 days after the date on which the request is received.

(2) **DEFINITION.**—For purposes of this subsection, the term “antitrust laws”—

(A) has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in paragraph (1).

(Added Pub. L. 100–667, title II, §202(2), Nov. 16, 1988, 102 Stat. 3949; amended Pub. L. 103–198, §5, Dec. 17, 1993, 107 Stat. 2310; Pub. L. 103–369, §2, Oct. 18, 1994, 108 Stat. 3477; Pub. L. 104–39, §5(c), Nov. 1, 1995, 109 Stat. 348; Pub. L. 105–80, §§1, 12(a)(8), Nov. 13, 1997, 111 Stat. 1529, 1535; Pub. L. 106–44, §1(g)(4), Aug. 5, 1999, 113 Stat. 222; Pub. L. 106–113, div. B, §1000(a)(9) [title I, §§1004–1007, 1008(b), 1011(b)(2), (c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–527 to 1501A–531, 1501A–537, 1501A–543, 1501A–544; Pub. L. 107–273, div. C, title III, §§13209, 13210(1), (8), Nov. 2, 2002, 116 Stat. 1908, 1909; Pub. L. 108–419, §5(g), (h), Nov. 30, 2004, 118 Stat. 2367; Pub. L. 108–447, div. J, title IX [title I, §§101(b)–105, 107(a), 108, 111(a)], Dec. 8, 2004, 118 Stat. 3394–3408; Pub. L. 109–303, §4(e), (g), Oct. 6, 2006, 120 Stat. 1482, 1483; Pub. L. 110–403, title II, §209(a)(4), Oct. 13, 2008, 122 Stat. 4264; Pub. L. 111–118, div. B, §1003(a)(1), Dec. 19, 2009, 123 Stat. 3469.)

TERMINATION OF SECTION

For termination of section by section 1003(a)(2)(A) of Pub. L. 111–118, see Termination of Section note below.

REFERENCES IN TEXT

The date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, referred to in subssecs. (a)(3)(C)(i), (4)(A)(i)(II), (C)(i), (D), (F), (14), (15)(E), (c)(2)(A), and (d)(10)(B), is the date of the enactment of Pub. L. 108–447, which was approved Dec. 8, 2004.

The date of the enactment of the Copyright Royalty and Distribution Act of 2004, referred to in subsec. (c)(1)(F), probably means the date of the enactment of the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. 108–419, which was approved Nov. 30, 2004.

The Communications Act of 1934, referred to in subsec. (d)(6), is act June 19, 1934, ch. 652, 48 Stat. 1064, which is classified principally to chapter 5 (§151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. Sections 338 to 340 and 397 of the Act are classified to sections 338 to 340 and 397, respectively, of Title 47. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

AMENDMENTS

2009—Subsecs. (c)(1)(E), (e). Pub. L. 111–118 substituted “February 28, 2010” for “December 31, 2009”.

2008—Subsec. (a)(6). Pub. L. 110–403, §209(a)(4)(A), substituted “section 510” for “sections 509 and 510”.

Subsec. (a)(7)(A). Pub. L. 110–403, §209(a)(4)(B), struck out “and 509” after “506” in introductory provisions.

Subsec. (a)(8), (13). Pub. L. 110–403, §209(a)(4)(C), (D), struck out “and 509” after “506”.

2006—Subsec. (b)(4)(B). Pub. L. 109–303, §4(e)(1)(A), substituted second sentence for former second sentence which read as follows: “If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents.”

Subsec. (b)(4)(C). Pub. L. 109–303, §4(e)(1)(B), amended subpar. (C) generally. Prior to amendment, text of sub-

⁴ So in original. Probably should be followed by “station”.

par. (C) read as follows: “During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have the discretion to proceed to distribute any amounts that are not in controversy.”

Subsec. (c). Pub. L. 109-303, §4(g), deemed amendment by Pub. L. 108-419, §5(h), never to have been enacted. See 2004 Amendment note below.

Subsec. (c)(1)(F)(i). Pub. L. 109-303, §4(e)(2), substituted “arbitration” for “arbitrary” in concluding provisions.

2004—Subsec. (a)(1). Pub. L. 108-447, §107(a)(1), inserted “or for viewing in a commercial establishment” after “for private home viewing” in two places and substituted “subscriber” for “household”.

Pub. L. 108-447, §102(1), struck out “and pbs satellite feed” after “Superstations” in heading, substituted “paragraphs (5), (6), and (8)” for “paragraphs (3), (4), and (6)” and struck out “or by the Public Broadcasting Service satellite feed” after “primary transmission made by a superstation” in first sentence, and struck out at end “In the case of the Public Broadcasting Service satellite feed, the statutory license shall be effective until January 1, 2002.”

Subsec. (a)(2)(A). Pub. L. 108-447, §102(2)(A), substituted “paragraphs (5), (6), (7), and (8)” for “paragraphs (3), (4), (5), and (6)”.

Subsec. (a)(2)(B)(i). Pub. L. 108-447, §102(7), inserted at end “The limitation in this clause shall not apply to secondary transmissions under paragraph (3).”

Subsec. (a)(2)(C), (D). Pub. L. 108-447, §102(2)(B), added subpars. (C) and (D) and struck out heading and text of former subpar. (C). Text read as follows: “A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by name and street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.”

Subsec. (a)(3) to (6). Pub. L. 108-447, §§102(5), (6), 103(1), added pars. (3) and (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively. Former pars. (5) and (6) redesignated (7) and (8), respectively.

Subsec. (a)(7). Pub. L. 108-447, §102(5), redesignated par. (5) as (7). Former par. (7) redesignated (9).

Subsec. (a)(7)(A). Pub. L. 108-447, §103(6)(A), substituted “who is not eligible to receive the transmission under this section” for “who does not reside in an unserved household” in introductory provisions.

Subsec. (a)(7)(B). Pub. L. 108-447, §103(6)(B), substituted “who are not eligible to receive the transmission under this section” for “who do not reside in unserved households” in introductory provisions.

Subsec. (a)(7)(D). Pub. L. 108-447, §103(6)(C), substituted “is to a subscriber who is eligible to receive the secondary transmission under this section” for “is for private home viewing to an unserved household”.

Subsec. (a)(8). Pub. L. 108-447, §102(3), (5), redesignated par. (6) as (8) and struck out former par. (8) which related to transitional signal intensity measurement procedures.

Subsec. (a)(9) to (13). Pub. L. 108-447, §102(4), (5), redesignated pars. (7) and (9) to (12) as (9) and (10) to (13), respectively.

Subsec. (a)(14). Pub. L. 108-447, §103(2), added par. (14).

Subsec. (a)(15). Pub. L. 108-447, §104, added par. (15).

Subsec. (a)(16). Pub. L. 108-447, §111(a), added par. (16).

Subsec. (b)(1). Pub. L. 108-447, §103(4), inserted at end: “Notwithstanding the provisions of subparagraph (B), a satellite carrier whose secondary transmissions are subject to statutory licensing under paragraph (1) or (2) of subsection (a) shall have no royalty obligation for secondary transmissions to a subscriber under paragraph (3) of such subsection.”

Subsec. (b)(1)(A). Pub. L. 108-447, §107(a)(2), struck out “for private home viewing” after “to subscribers”.

Subsec. (b)(1)(B). Pub. L. 108-447, §103(3), added subpar. (B) and struck out former subpar. (B) which read as follows: “a royalty fee for that 6-month period, computed by—

“(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 17.5 cents per subscriber in the case of superstations that as retransmitted by the satellite carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined in section 258.2 of title 37, Code of Federal Regulations;

“(ii) multiplying the number of subscribers receiving each secondary transmission of a network station or the Public Broadcasting Service satellite feed during each calendar month by 6 cents; and

“(iii) adding together the totals computed under clauses (i) and (ii).”

Subsec. (b)(3). Pub. L. 108-447, §107(a)(2), struck out “for private home viewing” after “secondary transmission”.

Pub. L. 108-419, §5(g)(1), substituted “Copyright Royalty Judges” for “Librarian of Congress”.

Subsec. (b)(4)(A). Pub. L. 108-447, §107(a)(2), struck out “for private home viewing” after “secondary transmissions”.

Pub. L. 108-419, §5(g)(2)(A), substituted “Copyright Royalty Judges” for “Librarian of Congress” in two places.

Subsec. (b)(4)(B), (C). Pub. L. 108-419, §5(g)(2)(B), reenacted headings without change and amended text generally, substituting provisions relating to duties of Copyright Royalty Judges concerning determination of royalty fee controversies and distribution of royalty fees for provisions relating to duties of Librarian of Congress relating to such determination and distribution.

Subsec. (c). Pub. L. 108-447, §103(5), amended heading and text of subsec. (c) generally. Prior to amendment, text related to adjustment, determination, arbitration, and reduction of royalty fees.

Pub. L. 108-419, §5(h), which directed amendment of subsec. (c) by substituting “Copyright Royalty Judges” for “Librarian of Congress” in par. (2)(B), “Copyright Royalty Judges shall prescribe as provided in section 803(b)(6)” for “Register of Copyrights shall prescribe” in par. (2)(C), “proceedings” for “arbitration proceedings” and for “arbitration proceeding” in par. (3)(A), “Copyright Royalty Judges” for “copyright arbitration royalty panel appointed under chapter 8” and “Copyright Royalty Judges shall base their determination” for “panel shall base its decision” in par. (3)(B), “determination under chapter 8” for “decision of arbitration panel or order of librarian” in heading of par. (3)(C), and “(i) is made by the Copyright Royalty Judges pursuant to this paragraph and becomes final, or” and “(ii) is made by the court on appeal under section 803(d)(3),” for cls. (i) and (ii), respectively, of par. (3)(C), was deemed never to have been enacted by Pub. L. 109-303, §4(g). See Removal of Inconsistent Provisions note below.

Subsec. (d)(1). Pub. L. 108-447, §107(a)(3), struck out “for private home viewing” after “individual subscrib-

ers” and inserted “in accordance with the provisions of this section” before the period at end.

Subsec. (d)(2)(A). Pub. L. 108-447, §105(1), substituted “a television station licensed by the Federal Communications Commission” for “a television broadcast station”.

Subsec. (d)(6). Pub. L. 108-447, §107(a)(4), inserted “pursuant to this section” before period at end.

Subsec. (d)(8). Pub. L. 108-447, §107(a)(5), substituted “or entity that” for “who”, struck out “for private home viewing” after “transmission service”, and inserted “in accordance with the provisions of this section” before period at end.

Subsec. (d)(9). Pub. L. 108-447, §105(2), amended heading and text of par. (9) generally. Prior to amendment, text read as follows: “The term ‘superstation’—

“(A) means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier; and

“(B) except for purposes of computing the royalty fee, includes the Public Broadcasting Service satellite feed.”

Subsec. (d)(10)(B). Pub. L. 108-447, §105(3)(A), substituted “that meets the standards of subsection (a)(14) whether or not the waiver was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004” for “granted under regulations established under section 339(c)(2) of the Communications Act of 1934”.

Subsec. (d)(10)(D). Pub. L. 108-447, §105(3)(B), substituted “(a)(12)” for “(a)(11)”.

Subsec. (d)(11) to (13). Pub. L. 108-447, §105(4), added pars. (11) to (13) and struck out former pars. (11) and (12) which read as follows:

“(11) LOCAL MARKET.—The term ‘local market’ has the meaning given such term under section 122(j).

“(12) PUBLIC BROADCASTING SERVICE SATELLITE FEED.—The term ‘Public Broadcasting Service satellite feed’ means the national satellite feed distributed and designated for purposes of this section by the Public Broadcasting Service consisting of educational and informational programming intended for private home viewing, to which the Public Broadcasting Service holds national terrestrial broadcast rights.”

Subsec. (e). Pub. L. 108-447, §101(b), substituted “December 31, 2009” for “December 31, 2004”.

Subsec. (f). Pub. L. 108-447, §108, added subsec. (f).
2002—Subsec. (a)(1). Pub. L. 107-273, §13209(3)(B), amended Pub. L. 106-113, §1000(a)(9) [title I, §1011(b)(2)(A)]. See 1999 Amendment note below.

Pub. L. 107-273, §13209(3)(A), amended Pub. L. 106-113, §1000(a)(9) [title I, §1006(a)]. See 1999 Amendment note below.

Subsec. (a)(2)(A). Pub. L. 107-273, §13209(1)(A), made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title I, §1007(2)]. See 1999 Amendment note below.

Subsec. (a)(6). Pub. L. 107-273, §13210(1), substituted “of a performance” for “of performance”.

Subsec. (a)(12). Pub. L. 107-273, §13209(1)(B), made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title I, §1007(3)]. See 1999 Amendment note below.

Subsec. (b)(1)(A). Pub. L. 107-273, §13210(8), substituted “retransmitted” for “transmitted” and “re-transmissions” for “transmissions”.

Subsec. (b)(1)(B)(ii). Pub. L. 107-273, §13209(2), made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title I, §1006(b)]. See 1999 Amendment note below.

1999—Subsec. (a)(1). Pub. L. 106-113, §1000(a)(9) [title I, §1011(b)(2)(A)], as amended by Pub. L. 107-273, §13209(3)(B), substituted “performance or display of a work embodied in a primary transmission made by a superstation or by the Public Broadcasting Service satellite feed” for “primary transmission made by a superstation and embodying a performance or display of a work”.

Pub. L. 106-113, §1000(a)(9) [title I, §1007(1)], inserted “with regard to secondary transmissions the satellite

carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals,” after “satellite carrier to the public for private home viewing.”

Pub. L. 106-113, §1000(a)(9) [title I, §1006(a)], as amended by Pub. L. 107-273, §13209(3)(A), in heading substituted “Superstations and pbs satellite feed” for “Superstations” and in text inserted “In the case of the Public Broadcasting Service satellite feed, the statutory license shall be effective until January 1, 2002.” at end. Pub. L. 107-273, §13209(3)(A)(ii), which repealed Pub. L. 106-113, §1000(a)(9) [title I, §1006(a)(2)], was executed by striking out “or by the Public Broadcasting Service satellite feed” which had been inserted by section 1006(a)(2) after “of a primary transmission made by a superstation”, to reflect the probable intent of Congress.

Subsec. (a)(2)(A). Pub. L. 106-113, §1000(a)(9) [title I, §1011(b)(2)(A)], substituted “a performance or display of a work embodied in a primary transmission made by a network station” for “programming contained in a primary transmission made by a network station and embodying a performance or display of a work”.

Pub. L. 106-113, §1000(a)(9) [title I, §1007(2)], as amended by Pub. L. 107-273, §13209(1)(A), inserted “with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals,” after “satellite carrier to the public for private home viewing.”

Subsec. (a)(2)(B). Pub. L. 106-113, §1000(a)(9) [title I, §1005(a)(2)], reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households.”

Subsec. (a)(2)(C). Pub. L. 106-113, §1000(a)(9) [title I, §1011(c)], struck out “currently” after “all subscribers to which the satellite carrier” in first sentence.

Subsec. (a)(4). Pub. L. 106-113, §1000(a)(9) [title I, §1011(b)(2)(C)], inserted “a performance or display of a work embodied in” after “by a satellite carrier of” and struck out “and embodying a performance or display of a work” after “network station”.

Subsec. (a)(5)(E). Pub. L. 106-113, §1000(a)(9) [title I, §1005(b)], added subpar. (E).

Subsec. (a)(6). Pub. L. 106-113, §1000(a)(9) [title I, §1011(b)(2)(D)], inserted “performance or display of a work embodied in” after “by a satellite carrier of” and struck out “and embodying a performance or display of a work” after “network station”.

Subsec. (a)(8)(C)(ii). Pub. L. 106-44 substituted “within the network station’s” for “within the network’s station” in first sentence.

Subsec. (a)(11). Pub. L. 106-113, §1000(a)(9) [title I, §1005(d)], added par. (11).

Subsec. (a)(12). Pub. L. 106-113, §1000(a)(9) [title I, §1007(3)], as amended by Pub. L. 107-273, §13209(1)(B), added par. (12).

Subsec. (b)(1)(B)(ii). Pub. L. 106-113, §1000(a)(9) [title I, §1006(b)], as amended by Pub. L. 107-273, §13209(2), inserted “or the Public Broadcasting Service satellite feed” after “network station”.

Subsec. (c)(4), (5). Pub. L. 106-113, §1000(a)(9) [title I, §1004], added pars. (4) and (5).

Subsec. (d)(2). Pub. L. 106-113, §1000(a)(9) [title I, §1008(b)], substituted a semicolon for the period at end of subpar. (B) and inserted concluding provisions.

Subsec. (d)(9). Pub. L. 106-113, §1000(a)(9) [title I, §1006(c)(1)], reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘superstation’ means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.”

Subsec. (d)(10). Pub. L. 106-113, §1000(a)(9) [title I, §1005(a)(1)], added par. (10) and struck out heading and

text of former par. (10). Text read as follows: “The term ‘unserved household’, with respect to a particular television network, means a household that—

“(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

“(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.”

Subsec. (d)(11). Pub. L. 106-113, §1000(a)(9) [title I, §1005(e)], reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘local market’ means the area encompassed within a network station’s predicted Grade B contour as that contour is defined by the Federal Communications Commission.”

Subsec. (d)(12). Pub. L. 106-113, §1000(a)(9) [title I, §1006(c)(2)], added par. (12).

Subsec. (e). Pub. L. 106-113, §1000(a)(9) [title I, §1005(c)], amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: “No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner.”

1997—Subsec. (a)(5)(C). Pub. L. 105-80, §1(3), amended Pub. L. 103-369, §2(5)(A). See 1994 Amendment note below.

Subsec. (b)(1)(B)(i). Pub. L. 105-80, §1(1), amended Pub. L. 103-369, §2(3)(A). See 1994 Amendment note below.

Subsec. (c)(1). Pub. L. 105-80, §12(a)(8), which directed substitution of “unless” for “until unless” before “a royalty fee”, could not be executed because “until” did not appear subsequent to amendment by Pub. L. 103-369, §2(4)(A), as amended by Pub. L. 105-80, §1(2). See 1994 Amendment note below.

Pub. L. 105-80, §1(2), amended Pub. L. 103-369, §2(4)(A). See 1994 Amendment note below.

Subsec. (c)(2)(A), (D), (3)(A)–(C). Pub. L. 105-80, §1(2), amended Pub. L. 103-369, §2(4). See 1994 Amendment notes below.

1995—Subsec. (a)(1), (2)(A). Pub. L. 104-39 inserted “and section 114(d)” after “of this subsection”.

1994—Subsec. (a)(2)(C). Pub. L. 103-369, §2(1), struck out “90 days after the effective date of the Satellite Home Viewer Act of 1988, or” before “90 days after commencing”, “whichever is later,” before “submit to the network that owns”, and “, on or after the effective date of the Satellite Home Viewer Act of 1988,” after “Register of Copyrights”, and inserted “name and” after “identifying (by)” in two places.

Subsec. (a)(5)(C). Pub. L. 103-369, §2(5)(A), as amended by Pub. L. 105-80, §1(3), substituted “November 16, 1988” for “the date of the enactment of the Satellite Home Viewer Act of 1988”.

Subsec. (a)(5)(D). Pub. L. 103-369, §2(2), added subpar. (D).

Subsec. (a)(8) to (10). Pub. L. 103-369, §2(5)(B), added pars. (8) to (10).

Subsec. (b)(1)(B)(i). Pub. L. 103-369, §2(3)(A), as amended by Pub. L. 105-80, §1(1), substituted “17.5 cents per subscriber in the case of superstations that as retransmitted by the satellite carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined in section 258.2 of title 37, Code of Federal Regulations” for “12 cents”.

Subsec. (b)(1)(B)(ii). Pub. L. 103-369, §2(3)(B), substituted “6 cents” for “3 cents”.

Subsec. (c)(1). Pub. L. 103-369, §2(4)(A), as amended by Pub. L. 105-80, §1(2), struck out “until December 31, 1992,” before “unless a royalty fee”, substituted “paragraph (2) or (3) of this subsection” for “paragraph (2), (3), or (4) of this subsection”, and struck out at end “After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or in accordance with the compulsory arbitration procedure specified in paragraphs (3) and (4).”

Subsec. (c)(2)(A). Pub. L. 103-369, §2(4)(B)(i), as amended by Pub. L. 105-80, §1(2), substituted “July 1, 1996” for “July 1, 1991”.

Subsec. (c)(2)(D). Pub. L. 103-369, §2(4)(B)(ii), as amended by Pub. L. 105-80, §1(2), substituted “December 31, 1999, or in accordance with the terms of the agreement, whichever is later” for “December 31, 1994”.

Subsec. (c)(3)(A). Pub. L. 103-369, §2(4)(C)(i), as amended by Pub. L. 105-80, §1(2), substituted “January 1, 1997” for “December 31, 1991”.

Subsec. (c)(3)(B). Pub. L. 103-369, §2(4)(C)(ii), as amended by Pub. L. 105-80, §1(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

“(B) FACTORS FOR DETERMINING ROYALTY FEES.—In determining royalty fees under this paragraph, the copyright arbitration royalty panel appointed under chapter 8 shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing. The fee shall also be calculated to achieve the following objectives:

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

“(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

“(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

“(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.”

Subsec. (c)(3)(C). Pub. L. 103-369, §2(4)(C)(iii), as amended by Pub. L. 105-80, §1(2), inserted before period at end “or July 1, 1997, whichever is later”.

Subsec. (d)(2). Pub. L. 103-369, §2(6)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

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

Subsec. (d)(6). Pub. L. 103-369, §2(6)(B), inserted “and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations” after “Federal Communications Commission”.

Subsec. (d)(11). Pub. L. 103-369, §2(6)(C), added par. (11).

1993—Subsec. (b)(1). Pub. L. 103-198, §5(1)(A), struck out “, after consultation with the Copyright Royalty Tribunal,” in introductory provisions after “Register shall” and in subpar. (A) after “Copyrights may”.

Subsec. (b)(2), (3). Pub. L. 103-198, §5(1)(B), (C), substituted “Librarian of Congress” for “Copyright Royalty Tribunal”.

Subsec. (b)(4). Pub. L. 103-198, §5(1)(D), in subpar. (A), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” after “claim with the” and for “Tribunal” after “requirements that the”, in subpar. (B), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” before “shall determine” and for “Tribunal” wherever else appearing, and substituted “convene a copyright arbitration royalty panel” for “conduct a proceeding”, and in subpar. (C), substituted “Librarian of Congress” for “Copyright Royalty Tribunal”.

Subsec. (c). Pub. L. 103-198, §5(2)(A), substituted “Adjudgment” for “Determination” in heading.

Subsec. (c)(2). Pub. L. 103-198, §5(2)(B), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” in subpars. (A) and (B).

Subsec. (c)(3)(A). Pub. L. 103-198, §5(2)(C)(i), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” and substituted last sentence for former last sentence which read as follows: “Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select.”

Subsec. (c)(3)(B). Pub. L. 103-198, §5(2)(C)(ii), (iii), redesignated subpar. (D) as (B), substituted “copyright arbitration royalty panel appointed under chapter 8” for “Arbitration Panel” in introductory provisions, and struck out former subpar. (B) which provided for the selection of an Arbitration Panel.

Subsec. (c)(3)(C). Pub. L. 103-198, §5(2)(C)(ii), (v), redesignated subpar. (G) as (C), amended subpar. generally, substituting provisions relating to period during which decision of arbitration panel or order of Librarian of Congress becomes effective for provisions relating to period during which decision of Arbitration Panel or order of Copyright Royalty Tribunal became effective, and struck out former subpar. (C) which related to proceedings in arbitration.

Subsec. (c)(3)(D). Pub. L. 103-198, §5(2)(C)(vi), redesignated subpar. (H) as (D) and substituted “referred to in subparagraph (C)” for “adopted or ordered under subparagraph (F)”. Former subpar. (D) redesignated (B).

Subsec. (c)(3)(E) to (H). Pub. L. 103-198, §5(2)(C)(iv)-(vi)(I), struck out subpar. (E) which required the Arbitration Panel to report to the Copyright Royalty Tribunal not later than 60 days after publication of notice initiating an arbitration proceeding, struck out subpar. (F) which required action by the Tribunal within 60 days after receiving the report by the Panel, and redesignated subpars. (G) and (H) as (C) and (D), respectively.

Subsec. (c)(4). Pub. L. 103-198, §5(2)(D), struck out par. (4) which established procedures for judicial review of decisions of the Copyright Royalty Tribunal.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-303 effective as if included in the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. 108-419, see section 6 of Pub. L. 109-303, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-419 effective 6 months after Nov. 30, 2004, subject to transition provisions, see section 6 of Pub. L. 108-419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title I, §§1004, 1006] of Pub. L. 106-113 effective July 1, 1999, and amendment by section 1000(a)(9) [title I, §§1005, 1007, 1008(b), 1011(b)(2), (c)] of Pub. L. 106-113 effective Nov. 29, 1999, see section 1000(a)(9) [title I, §1012] of Pub. L. 106-113, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 13 of Pub. L. 105-80 provided that:

“(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this Act [amending this section, sections 101, 104A, 108 to 110, 114 to 116, 303, 304, 405, 407, 411, 504, 509, 601, 708, 801 to 803, 909, 910, 1006, and 1007 of this title, and section 2319 of Title 18, Crimes and Criminal Procedure, and amending provisions set out as a note under section 914 of this title] shall take effect on the date of the enactment of this Act [Nov. 13, 1997].

“(b) SATELLITE HOME VIEWER ACT.—The amendments made by section 1 [amending this section] shall be effective as if enacted as part of the Satellite Home Viewer Act of 1994 (Public Law 103-369).

“(c) TECHNICAL AMENDMENT.—The amendment made by section 12(b)(1) [amending provisions set out as a note under section 914 of this title] shall be effective as if enacted on November 9, 1987.”

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104-39, set out as a note under section 101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Section 6 of Pub. L. 103-369 provided that:

“(a) IN GENERAL.—Except as provided in subsections (b) and (d), this Act [amending this section and section 111 of this title, enacting provisions set out as notes under this section and section 101 of this title, and repealing provisions set out as a note under this section] and the amendments made by this Act take effect on the date of the enactment of this Act [Oct. 18, 1994].

“(b) BURDEN OF PROOF PROVISIONS.—The provisions of section 119(a)(5)(D) of title 17, United States Code (as added by section 2(2) of this Act) relating to the burden of proof of satellite carriers, shall take effect on January 1, 1997, with respect to civil actions relating to the eligibility of subscribers who subscribed to service as an unserved household before the date of the enactment of this Act.

“(c) TRANSITIONAL SIGNAL INTENSITY MEASUREMENT PROCEDURES.—The provisions of section 119(a)(8) of title 17, United States Code (as added by section 2(5) of this Act), relating to transitional signal intensity measurements, shall cease to be effective on December 31, 1996.

“(d) LOCAL SERVICE AREA OF A PRIMARY TRANSMITTER.—The amendment made by section 3(b) [amending section 111 of this title], relating to the definition of the local service area of a primary transmitter, shall take effect on July 1, 1994.”

EFFECTIVE DATE

Section 206 of title II of Pub. L. 100-667 provided that: “This title and the amendments made by this title [enacting this section and sections 612 and 613 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending sections 111, 501, 801, and 804 of this title and section 605 of Title 47, and enacting provisions set out as notes under this section and section 101 of this title] take effect on January 1, 1989, except that the authority of the Register of Copyrights to issue regulations pursuant to section 119(b)(1) of title 17, United States Code, as added by section 202 of this Act, takes effect on the date of the enactment of this Act [Nov. 16, 1988].”

Section 207 of title II of Pub. L. 100-667 provided that this title and the amendments made by this title (other than the amendments made by section 205 [amending section 605 of Title 47]) cease to be effective on Dec. 31, 1994, prior to repeal by Pub. L. 103-369, §4(b), Oct. 18, 1994, 108 Stat. 3481.

TERMINATION OF SECTION

Pub. L. 111-118, div. B, §1003(a)(2)(A), Dec. 19, 2009, 123 Stat. 3469, provided that: “Section 119 of title 17, United States Code, as amended by paragraph (1), shall cease to be effective on February 28, 2010.”

Pub. L. 103-369, §4(a), Oct. 18, 1994, 108 Stat. 3481, as amended by Pub. L. 106-113, div. B, §1000(a)(9) [title I, §1003], Nov. 29, 1999, 113 Stat. 1536, 1501A-527; Pub. L. 108-447, div. J, title IX [title I, §101(a)], Dec. 8, 2004, 118 Stat. 3394, which provided that this section would cease to be effective on Dec. 31, 2009, was repealed by Pub. L. 111-118, div. B, §1003(a)(2)(B), Dec. 19, 2009, 123 Stat. 3469.

REMOVAL OF INCONSISTENT PROVISIONS

Pub. L. 109-303, §4(g), Oct. 6, 2006, 120 Stat. 1483, provided that: “The amendments contained in subsection (h) of section 5 of the Copyright Royalty and Distribution Reform Act of 2004 [Pub. L. 108-419, amending this section] shall be deemed never to have been enacted.”

EFFECT ON CERTAIN PROCEEDINGS

Pub. L. 108-447, div. J, title IX [title I, §106], Dec. 8, 2004, 118 Stat. 3406, provided that: “Nothing in this title [see Short Title of 2004 Amendment note set out under section 101 of this title] shall modify any remedy imposed on a party that is required by the judgment of a court in any action that was brought before May 1, 2004, against that party for a violation of section 119 of title 17, United States Code.”

APPLICABILITY OF 1994 AMENDMENT

Section 5 of Pub. L. 103-369 provided that: “The amendments made by this section apply only to section 119 of title 17, United States Code.”

§ 120. Scope of exclusive rights in architectural works

(a) PICTORIAL REPRESENTATIONS PERMITTED.—The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

(b) ALTERATIONS TO AND DESTRUCTION OF BUILDINGS.—Notwithstanding the provisions of section 106(2), the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destruction of such building.

(Added Pub. L. 101-650, title VII, §704(a), Dec. 1, 1990, 104 Stat. 5133.)

EFFECTIVE DATE

Section applicable to any architectural work created on or after Dec. 1, 1990, and any architectural work, that, on Dec. 1, 1990, is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under this title terminates on Dec. 31, 2002, unless the work is constructed by that date, see section 706 of Pub. L. 101-650, set out as an Effective Date of 1990 Amendment note under section 101 of this title.

§ 121. Limitations on exclusive rights: Reproduction for blind or other people with disabilities

(a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for an authorized entity to reproduce or to distribute copies or phonorecords of a previously published, nondramatic literary work if such copies or phonorecords are reproduced or distributed in specialized formats exclusively for use by blind or other persons with disabilities.

(b)(1) Copies or phonorecords to which this section applies shall—

(A) not be reproduced or distributed in a format other than a specialized format exclusively for use by blind or other persons with disabilities;

(B) bear a notice that any further reproduction or distribution in a format other than a specialized format is an infringement; and

(C) include a copyright notice identifying the copyright owner and the date of the original publication.

(2) The provisions of this subsection shall not apply to standardized, secure, or norm-referenced tests and related testing material, or to computer programs, except the portions thereof that are in conventional human language (including descriptions of pictorial works) and displayed to users in the ordinary course of using the computer programs.

(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a publisher of print instructional materials for use in elementary or secondary schools to create and distribute to the National Instructional Materials Access Center copies of the electronic files described in sections 612(a)(23)(C), 613(a)(6), and section 674(e) of the Individuals with Disabilities Education Act that contain the contents of print instructional materials using the National Instructional Material Accessibility Standard (as defined in section 674(e)(3) of that Act), if—

(1) the inclusion of the contents of such print instructional materials is required by any State educational agency or local educational agency;

(2) the publisher had the right to publish such print instructional materials in print formats; and

(3) such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats.

(d) For purposes of this section, the term—

(1) “authorized entity” means a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities;

(2) “blind or other persons with disabilities” means individuals who are eligible or who may qualify in accordance with the Act entitled “An Act to provide books for the adult blind”, approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats;

(3) “print instructional materials” has the meaning given under section 674(e)(3)(C) of the Individuals with Disabilities Education Act; and

(4) “specialized formats” means—

(A) braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities; and

(B) with respect to print instructional materials, includes large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities.