

106TH CONGRESS
1ST SESSION

H. R. 768

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1999

Mr. COBLE (for himself and Mr. CANNON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Copyright Compulsory
5 License Improvement Act”.

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

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

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

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

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

18 “(2) the satellite carrier is in compliance with
19 the rules, regulations, or authorizations of the Fed-
20 eral Communications Commission governing the car-
21 riage of television broadcast station signals; and

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

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

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

4 “(b) REPORTING REQUIREMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(j) DEFINITIONS.—In this section—

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

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

7 “(3) NETWORK STATION; SATELLITE CARRIER;
8 SECONDARY TRANSMISSION.—The terms ‘network
9 station’, ‘satellite carrier’ and ‘secondary trans-
10 mission’ have the meanings given such terms under
11 section 119(d).”.

12 “(4) SUBSCRIBER.—The term ‘subscriber’
13 means an entity that receives a secondary trans-
14 mission service by means of a secondary trans-
15 mission from a satellite and pays a fee for the serv-
16 ice, directly or indirectly, to the satellite carrier or
17 to a distributor.

18 “(5) TELEVISION BROADCAST STATION.—The
19 term ‘television broadcast station’ means an over-
20 the-air, commercial or noncommercial television
21 broadcast station licensed by the Federal Commu-
22 nications Commission under subpart E of part 73 of
23 title 47, Code of Federal Regulations.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
25 The table of sections for chapter 1 of title 17, United

1 States Code, is amended by adding after the item relating
 2 to section 121 the following:

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

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

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

9 **SEC. 4. COMPUTATION OF ROYALTY FEES FOR SATELLITE**
 10 **CARRIERS.**

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

14 “(4) REDUCTION.—

15 “(A) SUPERSTATION.—The rate of the
 16 royalty fee in effect on January 1, 1998, pay-
 17 able in each case under subsection (b)(1)(B)(i)
 18 shall be reduced by 30 percent.

19 “(B) NETWORK.—The rate of the royalty
 20 fee in effect on January 1, 1998, payable under
 21 subsection (b)(1)(B)(ii) shall be reduced by 45
 22 percent.

23 “(5) PUBLIC BROADCASTING SERVICE AS
 24 AGENT.—For purposes of section 802, with respect

1 to royalty fees paid by satellite carriers for re-
2 transmitting the Public Broadcasting Service sat-
3 ellite feed, the Public Broadcasting Service shall be
4 the agent for all public television copyright claimants
5 and all Public Broadcasting Service member sta-
6 tions.”.

7 **SEC. 5. DEFINITIONS.**

8 Section 119(d) of title 17, United States Code, is
9 amended by striking paragraph (10) and inserting the fol-
10 lowing:

11 “(10) UNSERVED HOUSEHOLD.—The term
12 ‘unserved household’, with respect to a particular
13 television network, means a household that cannot
14 receive, through the use of a conventional outdoor
15 rooftop receiving antenna, an over-the-air signal of
16 grade B intensity (as defined by the Federal Com-
17 munications Commission) of a primary network sta-
18 tion affiliated with that network.”.

19 **SEC. 6. PUBLIC BROADCASTING SERVICE SATELLITE FEED.**

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

22 (1) by striking the paragraph heading and in-
23 sserting “(1) SUPERSTATIONS AND PBS SATELLITE
24 FEED.—”;

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

3 (3) by adding at the end the following: “In the
4 case of the Public Broadcasting Service satellite
5 feed, subsequent to January 1, 2001, or the date on
6 which local retransmissions of broadcast signals are
7 offered to the public, whichever is earlier, the statu-
8 tory license created by this section shall be condi-
9 tioned on the Public Broadcasting Service certifying
10 to the Copyright Office on an annual basis that its
11 membership supports the secondary transmission of
12 the Public Broadcasting Service satellite feed, and
13 providing notice to the satellite carrier of such cer-
14 tification.”.

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

18 “(12) PUBLIC BROADCASTING SERVICE SAT-
19 ELLITE FEED.—The term ‘Public Broadcasting
20 Service satellite feed’ means the national satellite
21 feed distributed by the Public Broadcasting Service
22 consisting of educational and informational program-
23 ming intended for private home viewing, to which
24 the Public Broadcasting Service holds national ter-
25 restrial broadcast rights.”.

1 **SEC. 7. NOTICE TO SUBSCRIBERS.**

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

4 “(D) NOTICE TO SUBSCRIBERS.—A sat-
5 ellite carrier that makes secondary trans-
6 missions of a primary transmission made by a
7 network station pursuant to subparagraph (A)
8 shall, prior to providing service of broadcast
9 signals under this title to a subscriber, provide
10 the subscriber with a written statement describ-
11 ing and quoting the network territorial restric-
12 tions of subparagraph (B) of this paragraph
13 and describing and quoting the related provi-
14 sions of paragraphs (5), (9), and (10). Such
15 statement shall describe the circumstances
16 under which a subscriber may not be eligible for
17 satellite service of a particular network station.
18 With respect to subscribers currently receiving
19 broadcast signals under this title, the satellite
20 carrier shall provide the written statement de-
21 scribed in this subparagraph to such subscrib-
22 ers no later than 60 days after the enactment
23 of this subparagraph.”.

1 **SEC. 8. APPLICATION OF FEDERAL COMMUNICATIONS**
2 **COMMISSION REGULATIONS.**

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

5 (1) in paragraph (1), by inserting “ the satellite
6 carrier is in compliance with the rules, regulations,
7 or authorizations of the Federal Communications
8 Commission governing the carriage of television
9 broadcast station signals,” after “satellite carrier to
10 the public for private home viewing,”; and

11 (2) in paragraph (2), by inserting “ the satellite
12 carrier is in compliance with the rules, regulations,
13 or authorizations of the Federal Communications
14 Commission governing the carriage of television
15 broadcast station signals,” after “satellite carrier to
16 the public for private home viewing,”.

17 **SEC. 9. EFFECTIVE DATE.**

18 This Act and the amendments made by this Act shall
19 take effect on January 1, 2000, except that the amend-
20 ments made by section 4 shall take effect on July 1, 1999.

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