A BILL

S. 1720

105TH CONGRESS

OCTOBER 1 (Legislative Day, September 29), 1998

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

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.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Copyright Compulsory

License Improvement Act”.
SEC. 2. SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.

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

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

§ 119. Limitations on exclusive rights: Secondary transmissions by satellite carriers;

and

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

"(a) Secondary Transmissions by Satellite Carriers for Private Home Viewing.—

"(1) Secondary transmissions of distant and local broadcast signals subject to statutory licensing.—Subject to the provisions of subsections (b) and (c) of this section and section 114(d), a secondary transmission of a primary transmission made by a television broadcast station licensed by the Federal Communications Commission or by the Public Broadcasting Service satellite feed and embodying a performance or display of a work shall be subject to statutory licensing under this section if—

"(A) the secondary transmission is permissible under the rules, regulations, and author-
izations of the Federal Communications Commission and is made by a satellite carrier to the
public for private home viewing; and

"(B) the carrier makes a direct or indirect
charge for each retransmission service to each
household receiving the secondary transmission
or to a distributor that has contracted with the
carrier for direct or indirect delivery of the sec-
ondary transmission to the public for private
home viewing:

"(2) Submission of subscriber lists to
television broadcast stations.—

"(A) Initial lists.—A satellite carrier
that makes secondary transmissions of a pri-
mary transmission of a television broadcast sta-
tion pursuant to paragraph (1) shall, within 90
days after commencing such secondary trans-
missions, submit to that television broadcast
station—

"(i) a list identifying all subscribers
within the designated market area of that
television broadcast station to whom the
satellite carrier has made such secondary
transmissions; and
"(ii) a list of all television broadcast stations whose primary transmissions have been transmitted by the satellite carrier to those subscribers during that 90-day period.

"(B) Subsequent lists.—After the submission of the lists under subparagraph (A), the satellite carrier shall, on the 15th day of each month, submit to each television broadcast station—

"(i) a list, which shall be dated, that identifies the name of any subscriber described in subparagraph (A) who has been added or dropped since the last submission under this paragraph; and

"(ii) a list of all television broadcast stations whose primary transmissions have been added or dropped by the satellite carrier since the last submission under this paragraph

"(C) Identifying Information.—(i) Each list of subscribers under this paragraph shall include the name of each subscriber, together with the subscriber's home address; which shall include the street address or rural
route as the case may be, city, county, State, and zip code and, if different from the subscriber’s home address; the location of the subscriber’s satellite receiving dish to which the secondary transmissions are made, identified by street address or rural route as the case may be, city, county, State, and zip code.

(ii) Each list of television broadcast stations under this paragraph shall include the station’s call letters and community of license.

(iii) Subscriber information submitted under this paragraph may be used only for purposes of monitoring compliance by the satellite carrier with this section.

(3) Penalties for noncompliance with accounting and royalty requirements. Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a television broadcast station licensed by the Federal Communications Commission or by the Public Broadcasting Service satellite feed 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, if the satellite
carrier has not deposited the statement of account
and royalties fees required by subsection (b), or has
failed to make the submissions to networks required
by paragraph (2).

"(4) PENALTIES FOR WILFUL ALTERATIONS
OF PROGRAMMING.—Notwithstanding the provisions
of paragraph (1), the secondary transmission to the
public by a satellite carrier of a primary trans-
mission made by a television broadcast station li-
censed by the Federal Communications Commission
or by the Public Broadcasting Service satellite feed
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
section 502 through 506 and sections 509 and 510;
if the content of the particular program in which the
performance or display is embodied, or any commer-
cial 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 com-
bined with programming from any other broadcast
signal.
"(5) Penalties for discrimination against distributor.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a television broadcast station licensed by the Federal Communications Commission or by the Public Broadcasting Service satellite feed and embodying the 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, if the satellite carrier unlawfully discriminates against a distributor.

"(6) License limited to secondary transmissions to households in the United States.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States."

SEC. 3. STATUTORY LICENSE FOR SATELLITE CARRIERS.

Section 119 of title 17, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) Statutory License for Secondary Transmissions for Private Home Viewing.—
1. **Deposit of Accounts and Fees with Register of Copyrights.**—A satellite carrier whose secondary 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—

2. "(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all television broadcast stations whose signals were retransmitted, and listing the Public Broadcasting Service satellite feed, if carried, at any time during that period, to subscribers for private home viewing, the total number of subscribers that received such retransmissions, and other such data as the Register of Copyrights may from time to time prescribe by regulation; and

3. "(B) a royalty fee for that 6-month period for each television broadcast station whose primary transmission was retransmitted beyond the local market of the station, and for the Public Broadcasting Service satellite feed, if carried, computed by multiplying the total number of subscribers receiving the secondary
transmission, and the number of subscribers receiving a secondary transmission of the Public Broadcasting Service satellite feed, during each calendar month by the rate in effect for television broadcast stations as determined under chapter 8 of this title and section 8(c) of the Copyright Compulsory License Improvement Act.

"(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 Copyright Royalty Adjudication Board as provided in this title. The Register may, four or more years after the close of any calendar year, close out the account for royalty payments made under this section for that calendar year (including payments made under this section as in effect before the effective date of the Copyright Com-
pulsory License Improvement Act), and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the calendar year in which the account is closed.

"(3) Persons to whom fees are distributed.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided in paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Board 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 for private home viewing shall file a claim with the Copyright Royalty Adjudication Board, in accordance with requirements that the Board 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 to-
gether 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 Adjudica-
tion Board shall determine whether there exists
a controversy concerning the distribution of roy-
alty fees. If the Board determines that no such
controversy exists, the Board shall, after de-
ducting reasonable administrative costs under
this paragraph, distribute such fees to the copy-
right owners entitled to receive them, or to their
designated agents. If the Board finds the exist-
ence of a controversy, the Board 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 Adjudication Board shall withhold from
distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy. The action of the Board to distribute royalty fees may precede the declaration of a controversy if all parties to the proceeding file a petition with the Board requesting such distribution, except that such amount may not exceed 50 percent of the amounts on hand at the time of the request.”;

SEC. 4. DEFINITIONS.

Section 119 of title 17, United States Code, is amended by striking subsection (d) and inserting the following:

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

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

“(2) 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 for private home viewing or indirectly through other program distribution entities.

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

“(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 or of the Public Broadcasting Service satellite feed.

“(6) Public broadcasting service satellite feed.—The term ‘Public Broadcasting Service satellite feed’ means the national satellite feed distributed by the Public Broadcasting Service (other than the transmissions that may not be encrypted under section 705(c) of the Communicatio-
tions Act of 1934), consisting of educational and in-
formational programming intended for private home
viewing, to which the Public Broadcasting Service
holds national terrestrial broadcast rights.

``(7) 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,
Code of Federal Regulations (as in effect on Feb-
ruary 1, 1998), or the Direct Broadcast Satellite
Service under part 100 of title 47, Code of Federal
Regulations (as in effect on February 1, 1998), to
establish and operate a channel of communications
for point-to-multipoint distribution of television sta-
tion 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.

``(8) SECONDARY TRANSMISSION.—The term
‘secondary transmission’ means the further trans-
mitting of a primary transmission simultaneously
with the primary transmission.
“(9) Subscriber.—The term ‘subscriber’ means an individual who receives a secondary transmission service for private home viewing 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.

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

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

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

“(e) Exclusivity for This Section With Respect to Secondary Transmissions of Television Stations by Satellite to Members of the Public.—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 carriers for private home viewing of programming contained in a primary
transmission may be made without obtaining the consent of the copyright owner.’’.

SEC. 6. CONFORMING AMENDMENT.

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

‘‘119. Limitations on exclusive rights: Secondary transmissions by satellite carriers.’’

SEC. 7. COPYRIGHT ROYALTY ADJUDICATION BOARD.

(a) Establishment and Functions.—Chapter 8 of title 17, United States Code, is amended to read as follows:

‘‘CHAPTER 8—COPYRIGHT ROYALTY ADJUDICATION BOARD

§ 801. Copyright Royalty Adjudication Board: establishment

“There is hereby established within the Copyright Office the Copyright Royalty Adjudication Board (hereinafter referred to in this chapter as the ‘Board’).”
§ 802. Membership and qualifications of the Board

(a) Membership.—

(1) In general.—The Board shall consist of
1 full-time chief administrative copyright judge, and
such part-time administrative copyright judges as
the Librarian of Congress, upon the recommendation
of the Register of Copyrights, finds necessary to
conduct the business of the Board in a timely man-
er. At no time shall the number of authorized ad-
ministrative copyright judges be less than 3 or more
than 5.

(2) Part-time administrative copyright
judges.—Chapter 34 of title 5 shall not apply to a
part-time administrative copyright judge. For pur-
poses of this subsection the Librarian of Congress
shall promulgate regulations relating to part-time
employment of administrative copyright judges.

(b) Qualifications.—

(1) Chief administrative copyright
judge.—The chief administrative copyright judge
shall be an attorney with 10 or more years of legal
practice with demonstrated experience in administra-
tive hearings or court trials and demonstrated
knowledge of copyright law.

(2) Other administrative copyright
judges.—Each administrative copyright judge,
other than the chief administrative copyright judge, shall be an individual with expertise in the business and economics of industries affected by the actions taken by the Board to carry out its functions.

"(c) TERMS.—(1) The term of each administrative copyright judge (including the chief administrative copyright judge) shall be 5 years, except that, of the first administrative copyright judges appointed, the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall appoint all but one of them to lesser terms to establish a staggering of terms such that in any calendar year no more than one term is due to expire.

"(2) The term of each administrative copyright judge (including the chief administrative copyright judge) shall begin when the term of the predecessor of that member ends. An individual appointed to fill the vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is selected.

"(d) COMPENSATION.—The compensation of the administrative copyright judges shall be governed solely by the provisions of section 5376 of title 5 and such regulations as the Librarian of Congress may adopt that are not
inconsistent with that section. The compensation of the
administrative copyright judges shall not be subject to any
regulations adopted by the Office of Personnel Manage-
ment pursuant to its authority under section 5376(b)(1)
of title 5.

§ 803. Selection of administrative copyright judges

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

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

(b) EFFECT OF VACANCY.—In no event shall a va-
cancy in the Board impair the right of the remaining ad-
ministrative copyright judges to exercise all of the powers
of the Board.
§ 804. Independence of the Board

(a) In General.—The Board shall have independence in reaching its determinations concerning the adjustment of copyright royalty rates, the distribution of copyright royalties, the acceptance or rejection of royalty claims and rate adjustment petitions, and such rulemaking functions as are delegated to it under this title.

(b) Performance Appraisals.—Notwithstanding any other provision of law or any regulation of the Library of Congress, no administrative copyright judge shall receive an annual performance appraisal.

(c) Inconsistent Duties Barred.—No administrative copyright judge may be assigned duties inconsistent with his or her duties and responsibilities as an administrative copyright judge.

§ 805. Removal and sanction of administrative copyright judges

(a) Standards of Conduct.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt regulations regarding the standards of conduct, including financial conflict of interest and restrictions against ex parte communications, which shall govern the administrative copyright judges and the proceedings under this chapter.

(b) Removal or Sanction.—The Librarian of Congress, upon the recommendation of the Register of

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Copyrights, may remove or sanction an administrative copyright judge for violation of the standards of conduct adopted under subsection (a); misconduct, neglect of duty, or any disqualifying physical or mental disability. Any such removal or sanction may be made only after notice and opportunity for hearing, but the Librarian of Congress, upon the recommendation of the Register of Copyrights, may suspend the administrative copyright judge during the pendency of such hearing.

§ 806. Functions

Subject to the provisions of this chapter, the functions of the Board shall be—

(1) to make determinations concerning the adjustment of reasonable copyright royalty rates for—

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

(B) the making and distributing of phonorecords by means other than digital phonorecord delivery, as provided in section 115;

(C) secondary transmissions to the public by a satellite carrier of a primary transmission made by a television broadcast station and the Public Broadcasting Service satellite feed as provided in section 119; and
(D) each digital audio recording device imported into and distributed in the United States or manufactured and distributed into the United States as provided in section 1004;

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

(A) the public performance of a sound recording by means of a digital audio transmission as provided in section 114;

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

(C) the public performance of nondramatic musical works by means of coin-operated phonorecord players as provided in section 116;

and

(D) the use of nondramatic musical works and pictorial, graphic, and sculptural works by public broadcasting entities as provided in section 118;

(3) to accept or reject royalty claims filed under sections 111, 119, and 1007, on the basis of timeliness or the failure to establish the basis for a claim;
(4) to determine, in cases where controversy exists, the distribution of royalty fees deposited with the Register of Copyrights under sections 111, 119; and 1003;

(5) to determine the status of a digital audio recording device or a digital audio interface device under sections 1002 and 1003, as provided in section 1010; and

(6) to engage in such rulemaking as is expressly provided in sections 111, 114, 115, 118, and 119.

§ 807. Factors for determining royalty fees

(a) For Cable Rates.—The rates applicable under section 111 shall be calculated solely in accordance with the following provisions:

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

(A) national monetary inflation or deflation; or

(B) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of October 19, 1976, except that—
"(i) if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted; and

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

The Board may consider all factors relating to the maintenance of such level of payments including, as an extenuating factor, whether the cable industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

"(2) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcasting signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to insure that the rates for the additional dis-
tant signal equivalents resulting from such carriage
are reasonable in light of the changes effected by the
amendment to such rules and regulations. In deter-
mining the reasonableness of rates proposed follow-
ing an amendment of Federal Communications Com-
mision rules and regulations, the Board shall con-
sider, among other factors, the economic impact on
copyright owners and users, except that no adjust-
ment in royalty rates shall be made under this para-
graph with respect to any distant signal equivalent
or fraction thereof represented by—

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

"(B) a television broadcast signal first car-
rried after April 15, 1976, pursuant to an indi-
vidual waiver of the rules and regulations of the
Federal Communications Commission, as such
rules and regulations were in effect on April 15,
1976.
(3) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sport program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

(4) The gross receipts limitations established by section 111(d)(1)(C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section, and the royalty rate specified therein shall not be subject to adjustment.

(b) For Rates Other Than Cable or Satellite Carriers.—The rates applicable under sections 114, 115, and 116 shall be calculated to achieve the following objectives:

(1) To maximize the availability of creative works to the public.
(2) 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.

(3) 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 communications.

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

(c) For Rates for Noncommercial Broadcasting.—The rates applicable under section 118 shall be calculated to achieve reasonable rates. In determining reasonable rates, the Board shall base its decision so as to—

(1) assure a fair return to copyright owners;

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

(3) encourage musical and artistic creation.

(d) Rates for Satellite Carriers.—The rates applicable under section 119 shall be calculated to represent most clearly the fair market value of secondary
transmissions. In determining the fair market value, the Board shall base its decision on economic, competitive, and programming information presented by the parties, including—

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

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

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

§808. Institution of proceedings

"(a) Petition Required To Institute Proceedings.—With respect to proceedings concerning the adjustment of royalty rates as provided in sections 111, 114, 115, 116, and 119, during the calendar years or under the circumstances specified in the schedule set forth in subsection (e), any owner or user of a copyrighted work whose royalty rates are to be established or adjusted by the Board may file a petition with the Board declaring that the petitioner requests an adjustment of the rate. The Board shall make a determination as to whether the petitioner has a significant interest in the royalty rate in
which an adjustment is requested. If the Board determines
that the petitioner has a significant interest, the Board
shall cause notice of this determination, with the reasons
therefor, to be published in the Federal Register, together
with the notice of commencement of proceedings under
this chapter. With respect to proceedings concerning the
adjustment of royalty rates under section 1004, any inter-
ested copyright party may petition the Board as provided
in that section.

``(b) Petition Not Required To Institute Pro-
ceedings.—With respect to proceedings concerning the
adjustment of royalty rates as provided in section 118 and
the distribution of royalties as provided in section 111,
119, and 1007, no petition is required to institute proceed-
ings. All proceedings concerning the adjustment of rates
under section 118 shall commence as provided in section
118(e) of this title. All proceedings concerning the dis-
tribution of royalties under section 111, 119, or 1007 shall
commence as provided in such sections and in subsection
(c)(8) of this section.

``(c) Schedule of Proceedings.—

``(1) Section 111 Proceedings.—In proceed-
ings concerning the adjustment of royalty rates as
provided in section 111, a petition described in sub-
section (a) may be filed during the year 2000 and
in each subsequent fifth calendar year, except that in the event that the rules and regulations of the Federal Communications Commission are amended with respect to distant signal importation, or to syndicated and sports program exclusivity, any owner or user of a copyrighted work subject to the royalty rates established or adjusted pursuant to section 114 may, within 12 months after such amendments take effect, file a petition with the Board to institute proceedings to insure that the rates are reasonable in light of the changes to such rules and regulations. Any such adjustments shall apply only to the affected television broadcast signals carried on those systems affected by the change. Any change in royalty rates made pursuant to this subsection may be reconsidered in the year 2000, and each fifth calendar year thereafter, as the case may be.

"(2) SECTION 114 PROCEEDINGS.—In proceedings concerning the adjustment of royalty rates and terms as provided in section 114, the Board shall proceed when and as provided by that section.

"(3) SECTION 115 PROCEEDINGS.—In proceedings concerning the adjustment of royalty rates and terms as provided in section 115, a petition described in subsection (a) may be filed in the year
2007 and in each subsequent tenth calendar year or
as prescribed in section 115(e)(3).

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

(B) If a negotiated license authorized by sec-
tion 116 is terminated or expires and is not replaced
by another such license agreement which provides
permission to use a quantity of musical works not
substantially smaller than the quantity of such
works performed on coin-operated phonorecord play-
ers during the 1-year period ending March 1, 1989;
the Board, upon petition filed under subsection (a)
within 1 year after such termination or expiration,
shall promptly establish an interim royalty rate or
rates for the public performance by means of a coin-
operated phonorecord player of nondramatic musical
works embodied in phonorecords which had been
subject to the terminated or expired negotiated li-
cense agreement. Such rate or rates shall be the
same as the last such rate or rates and shall remain
in force until the conclusion of the proceedings to
adjust the royalty rates applicable to such works, or
until superseded by a new negotiated license agree-
ment, as provided in section 116(b).

"(5) Section 118 Proceedings.—In proceed-
ings concerning the adjustment of royalty rates and
terms as provided in section 118, the Board shall
proceed when and as provided by that section.

"(6) Section 119 Proceedings.—In proceed-
ings concerning the adjustment of royalty rates gov-
erning secondary transmissions of as provided in
section 119, a petition described in subsection (a)
may be filed during the year 2001 and in each sub-
sequent fifth calendar year.

"(7) Proceedings Concerning Distribution
of Royalty Fees.—In proceedings concerning the
distribution of royalty fees under section 111, 119,
or 1007, the Board shall, upon a determination that
a controversy exists concerning such distribution,
cause to be published in the Federal Register notice
of commencement of proceedings under this chapter.

§809. Conduct of proceedings

"(a) Board Proceedings.—The Board shall, for
the purposes of making its determinations in carrying out
the functions set forth in section 806, conduct proceedings subject to subchapter H of chapter 5 of title 5.

(b) Procedures. Subject to the approval of the Register of Copyrights, the Board, shall adopt regulations to govern the conduct of the proceedings of the Board. The regulations shall include, but not be limited to, provisions for—

1. public access to and inspection of the records of the Board pursuant to section 706;
2. the right of the public to attend the proceedings of the Board;
3. the procedures to apply when formal hearings are conducted; and
4. the procedures to apply and the basis upon which distribution or royalty controversies may be decided on the basis of written pleadings.

c) Participation of Copyright Office. During the conduct of proceedings, the Register of Copyrights may file formally with the Board the position of the Copyright Office on any matter before the Board. Such filings shall be served on all parties to the proceeding. The Board may accept or reject the position of the Copyright Office.

d) Majority Rule. The Board shall act in all procedural and substantive matters on the basis of majority rule.
"(e) Number of Presiding Judges.—The Board shall decide, in its discretion, whether 1 or 3 administrative copyright judges shall preside in a royalty distribution or rate adjustment proceeding. In no event shall the number of presiding administrative copyright judges be more than 3.

"(f) Participation of Parties.—Any copyright owner who has filed an acceptable claim claiming entitlement to the distribution of royalties, or any copyright owner or user who would be affected by a royalty rate to be established or adjusted by the Board, may submit relevant information and proposals to the Board in proceedings applicable to the interest of the copyright owner or user.

"(g) Time Limits for Initial Decision.—Proceedings under section 118 operate under the time limits established in that section. For all other proceedings, if 1 administrative copyright judge is presiding in a proceeding, the Board shall issue its initial decision to the parties to the proceeding and the Register of Copyrights within 6 months after the declaration of a controversy in the proceeding. If more than 1 administrative copyright judge is presiding in a proceeding, the Board shall issue its initial decision to the parties to the proceeding and the Register
of Copyrights within 1 year after the declaration of a controversy in the proceeding.

(h) Requirements for Initial Decisions.—The initial decision under subsection (g) shall include a statement of findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record. The initial decision shall take into account prior decisions of the Copyright Royalty Tribunal, prior decisions of copyright arbitration royalty panels, as adopted or modified by the Librarian of Congress, and the procedural and evidentiary rulings the Librarian of Congress made that were applicable to the proceedings of the copyright arbitration royalty panels. Notwithstanding any provision of section 603 or 604 of title 5, neither the initial decision nor the final decision is required to include a regulatory flexibility analysis.

(i) Petitions for Reconsideration and Final Agency Action.—Any party to the proceeding concerned or the Register of Copyrights may petition the Board to reconsider its initial decision in the proceeding. If there are no petitions for reconsideration, the initial decision becomes the final decision of the Board without further proceedings. If there are petitions for reconsideration, the Board shall issue a final decision to the parties to the proceeding and the Register of Copyrights which shall con-
stitute final agency action. The time period by which par-
ties to the proceeding or the Register of Copyrights may
file a petition for reconsideration and the time period by
which the Board shall render its final decision shall be
established by regulation by the Board, subject to the ap-
proval of the Register of Copyrights.

§ 810. Judicial review

(a) Appeals.—Within 1 week after the Board
issues a final decision under section 809, or, if there are
no petitions for reconsideration, within 1 week after the
time the initial decision of the Board under section 809
becomes the final decision, the Board shall cause to be
published in the Federal Register the decision of the rate
adjustment or the royalty distribution, as the case may
be. Any aggrieved party who would be bound by the final
decision may appeal the decision to the United States
Court of Appeals for the Federal Circuit within 30 days
after the publication of the decision in the Federal Reg-
ister. In any appeal to which the Board is a party, the
chief administrative copyright judge shall refer the con-
duct of the litigation in defense of the Board's decision
to the Department of Justice which shall have the author-
ity to represent the Board under section 516 of title 28.
If no appeal is brought within such 30-day period, the de-
cision of the Board is final, and the royalty fee or deter-
mination with respect to the distribution of fees, as the
case may be, shall take effect as set forth in the decision.
The pendency of an appeal under this subsection shall not
relieve persons who would be affected by the determina-
tions on appeal under section 111, 114, 115, 116, 118,
119, or 1003, of the obligation to deposit the statement
of account or to pay royalty fees specified in those sec-
tions.

``(b) Review Subject to Chapter 7 of Title

5.—The judicial review of the Board's final decision shall
be had, in accordance with chapter 7 of title 5, on the
basis of the record before the Board.

``§ 811. Administrative matters

``(a) Administrative Support.—The Library of
Congress, upon the recommendation of the Register of
Copyrights, shall provide the Board with the necessary ad-
ministrative services and personnel related to proceedings
under this title.

``(b) Authority To Publish in Federal Reg-

ister.—The actions of the Board which may be published
in the Federal Register by and under the authority of the
Board include—

``(1) actions of the Board required to be pub-
lished in the Federal Register under this title;
-aged actions of the Board required to be published in the Federal Register under regulations adopted by the Board upon the approval of the Register of Copyrights; and

"(2) regulations of the Board required to be published in the Federal Register to which the Board has been delegated the exclusive right to adopt.

"(e) COLLECTION AND USE OF FEES.—

"(1) DEDUCTION OF COSTS FROM FEES.—The Librarian of Congress and the Register of Copyrights may, to the extent not otherwise provided under this title, deduct from the royalty fees deposited or fees collected under this title the reasonable costs incurred by the Library of Congress and the Copyright Office under this chapter. Such deduction may be made before the fees are distributed to any copyright owner.

"(2) COLLECTION OF FEES.—The Register of Copyrights may impose and collect fees in advance to carry out the ratemaking proceedings. All fees received under this section shall be deposited by the Register of Copyrights in the Treasury of the United States and shall be credited to the appropriations for necessary expenses of the Copyright Office. Such
fees that are collected shall remain available until expended. The Register may refund any sum paid by mistake or in excess of the fee required under this section.

"(d) Positions Required for Administration of Compulsory Licensing.—Section 307 of the Legislative Branch Appropriations Act of 1994 shall not apply to the members of the Board, employee positions in the Board, or employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 114, 115, 116, 118, or 119 or chapter 10.

"(e) Budget.—In each annual request for appropriations, the Register of Copyrights shall identify the portion thereof intended for the support of the Board and a statement which shall include an assessment of the budgetary needs of the Board.

"(f) Annual Report.—The Board shall prepare an annual report of its work and accomplishments during each fiscal year, which the Register of Copyrights shall include in the annual report required under section 701(e).

§ 812. Rule of construction

"Nothing in this chapter shall be construed to affect the authority of the Register of Copyrights to establish regulations under sections 701 and 702."

(b) Technical and Conforming Amendments.—
(1) **Table of Chapters.**—The item relating to chapter 8 in the table of chapters for title 17, United States Code, is amended to read as follows: “Copyright Royalty Adjudication Board .......................... 801”.

(2) **Jurisdiction of Federal Circuit.**—Section 1295(a) of title 28, United States Code, is amended—

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

(B) in paragraph (14) by striking the period and inserting a semicolon and “and”; and

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

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

**Sec. 8. Transition Provisions.**

(a) **Transitional Procedures.**—During the period beginning on the date of the enactment of this Act and ending on the effective date of this Act, the Register of Copyrights shall adopt regulations to govern proceedings under chapter 8 of title 17, United States Code, as amended by section 7 of this Act. Such regulations shall remain in effect unless and until the Copyright Royalty Adjudication Board, upon the approval of the Register of Copyrights, adopts supplemental or superseding regula-
(b) Proceedings in Progress.—

(1) Copyright arbitration royalty panel proceedings.—Unless the Register of Copyrights, for good cause, finds otherwise, proceedings in which a copyright arbitration royalty panel has been convened by the Librarian of Congress under chapter 8 of title 17, United States Code, as in effect before the effective date of this Act, shall continue in effect and shall be governed under chapter 8 of such title, and applicable regulations, as in effect prior to such effective date, and proceedings in which a copyright arbitration royalty panel has not been convened by the Librarian of Congress under chapter 8 of title 17, United States Code, before the effective date of this Act shall be suspended and recommenced under the amendments made by section 7.

(2) Continued proceedings.—For those proceedings continued under paragraph (1), the functions of the Librarian of Congress and the Register of Copyrights relating to the report of the copyright arbitration royalty panel under title 17, United States Code, as in effect before the effective date of this Act, may, in the Librarian's discretion, upon the
recommendation of the Register of Copyrights, be
delegated to the Copyright Royalty Adjudication
Board, when constituted:

(3) APPEALS.—In any appeal of a decision of
the Librarian of Congress adopting or rejecting a
determination of a copyright arbitration royalty
panel which is pending in the United States Court
of Appeals for the District of Columbia Circuit on
or after the effective date of this Act, if such case
is remanded by the court, the Librarian of Congress
shall not reconvene the copyright arbitration royalty
panel which rendered the determination, but shall
direct the Copyright Royalty Adjudication Board,
when constituted, to conduct proceedings in accord-
ance with the directions of the court. If the case is
remanded by the court after the enactment date of
this Act but before the effective date of this Act, the
Librarian of Congress shall have the discretion to re-
convene the copyright arbitration royalty panel
which rendered the determination, or direct the
Copyright Royalty Adjudication Board when con-
stituted, to conduct proceedings in accordance with
the directions of the court.

(c) EFFECTIVENESS OF EXISTING RATES AND DIS-
TRIBUTIONS.—All royalty rates and all determinations
with respect to the proportionate division of compulsory license fees among copyright claimants, whether made by the Copyright Royalty Tribunal, copyright arbitration royalty panels, or by voluntary agreement, before the effective date of this Act, shall remain in effect until modified by voluntary agreement or pursuant to the amendments made by this Act.

(d) Transfer of Appropriations.—All unexpended balances of appropriations made by the Copyright Office for the support of the copyright arbitration royalty panels, as of the effective date of this Act, are transferred on such effective date to the support of the Copyright Royalty Arbitration Board for the purposes for which such appropriations were made except that, in the event that any copyright arbitration royalty panels continue to operate after the effective date of this Act, the Register of Copyrights shall retain such portions of the unexpended balances of appropriations as are necessary to support the continuing copyright arbitration royalty panels.


(a) Secondary Transmissions by Cable Systems.—Section 111(d) of title 17, United States Code, is amended—
(1) in paragraph (2) in the last sentence by striking “Librarian of Congress” and all that follows through the end of the sentence and inserting the following: “Copyright Royalty Adjudication Board as provided in this title. The Register of Copyrights may, 4 or more years after the close of any calendar year, close out the account for royalty payments made for that calendar year, and may treat any funds remaining the such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.”; and

(2) in paragraph (4)—

(A) in subparagraph (A)—

(i) by striking “Librarian of Congress” the first place it appears and inserting “Copyright Royalty Adjudication Board”; and

(ii) by striking “Librarian of Congress” the second place it appears and inserting “Board”; and

(B) in subparagraph (B)—

(i) by striking “Librarian of Congress shall, upon the recommendation of the Register of Copyrights” and inserting
“Copyright Royalty Adjudication Board shall’;

(ii) by striking “Librarian” each subsequent place it appears and inserting “Board”;

(iii) in the last sentence by striking “convene a copyright royalty arbitration panel” and inserting “conduct a proceeding”;

(C) in subparagraph (C)—

(i) by striking “Librarian of Congress” and inserting “Copyright Royalty Adjudication Board”;

(ii) by adding at the end the following: “The action of the Board to distribute royalty fees may precede the declaration of a controversy if all parties to the proceeding file a petition with the Board requesting such distribution, except that such amount may not exceed 50 percent of the amounts on hand at the time of the request.”

(b) Scope of Exclusive Rights in Sound Recordings.—Section 114(f) of title 17, United States Code, is amended—
(1) in paragraph (1)—

(A) by amending the first sentence to read as follows: "During the first week of January, 2000, the Copyright Royalty Adjudication Board shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining or adjusting reasonable terms and rates of royalty payments for the activities specified in subsection (d)(2) of this section;"; and

(B) in the third sentence by striking "Librarian of Congress" and inserting "Copyright Royalty Adjudication Board";

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

""(2) In the absence of license agreements negotiated under paragraph (1), during the 60-day period beginning 6 months after publication of the notice specified in paragraph (1), and upon the filing of a petition in accordance with section 808(a), the Copyright Royalty Adjudication Board shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms. In addition to the objectives set forth in section 807(a) in establishing or adjusting
such rates and terms, the Board may consider the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements negotiated as provided in paragraph (1). The Copyright Royalty Adjudication Board, upon the approval of the Register of Copyrights, shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by entities performing sound recordings.

**“(3) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more entities performing sound recordings shall be given effect in lieu of any determination by the Copyright Royalty Adjudication Board:**

**“(4) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in paragraph (1) and the procedures specified in paragraph (2) shall be repeated, in accordance with regulations that the Copyright Royalty Adjudication Board, upon the approval of the Register of Copyrights, shall prescribe—**
“(A) no later than 30 days after a petition is filed by any copyright owners of sound recordings or any entities performing sound recordings affected by this section indicating that a new type of digital audio transmission service on which sound recordings are performed is or is about to become operational; and

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

(3) in paragraph (5)(A)(i) by striking “Librarian of Congress” and inserting “Copyright Royalty Adjudication Board, upon the approval of the Register of Copyrights,”.

(c) COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS.—Section 115(c)(3) of title 17, United States Code, is amended—

(1) in subparagraph (C)—

(A) by amending the first sentence to read as follows: “At the times established in subparagraph (F), the Copyright Royalty Adjudication Board shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified in
subparagraph (A) until the effective date of any
new terms and rates established pursuant to
this subparagraph or subparagraph (D) or (F),
or such other date (regarding digital phonorecord deliveries) as the parties may agree;”;

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

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

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

“(i) digital phonorecord deliveries where
the reproduction or distribution of a phonorecord is incidental to the transmission which
constitute the digital phonorecord delivery, and

“(ii) digital phonorecord deliveries in gen-
eral:
In addition to the objectives set forth in section 807(a), in establishing or adjusting rates and terms, the Board may consider rates and terms under voluntary license agreements negotiated as provided in subparagraphs (B) and (C). The Board, upon the approval of the Register of Copyrights, shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept and made available by persons making digital phonorecord deliveries."

(3) in subparagraph (E)(i) in the first sentence by striking "Librarian of Congress" and inserting "Copyright Royalty Adjudication Board"; and

(4) in subparagraph (F) by striking "Librarian of Congress" and inserting "Copyright Royalty Adjudication Board, upon the approval of the Register of Copyrights.""

(d) Negotiated Licenses for Public Performances by Means of Coin-Operated Phonograph Players.—Section 116 of title 17, United States Code, is amended—

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

""(2) RATE ADJUSTMENT PROCEEDING.—Parties not subject to such a negotiation may determine,
by a rate adjustment proceeding in accordance with
the provisions of chapter 8, the terms and rates and
the division of fees described in paragraph (1).”; and
(2) in subsection (e)—

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

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

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

(1) in subsection (b)—

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

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

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

(i) by striking “paragraph (2)” each
place it appears and inserting “paragraph
(1)”;}
(ii) by striking "Librarian of Congress" the first place it appears and inserting "Copyright Royalty Adjudication Board";

(iii) by striking "Librarian of Congress" the second and third places it appears and inserting "Board"; and

(iv) by striking "Librarian of Congress" the last place it appears and inserting "Board, upon the approval of the Register of Copyrights,";

(2) in subsection (e)—

(A) by striking "1997" and inserting "2002"; and

(B) by striking "Librarian of Congress" and inserting "Copyright Royalty Adjudication Board, upon the approval of the Register of Copyrights;"

(3) in subsection (d)—

(A) by striking "(b)(2)" and inserting "(b)(1)"; and

(B) by striking "a copyright arbitration royalty panel under subsection (b)(3)" and inserting "the Copyright Royalty Adjudication Board under subsection (b)(2)"; and
(4) in subsection (e), by striking paragraphs (1) and (2).

(f) Digital Audio Recording Devices and Media—

(1) Royalty Payments.—Section 1004(a)(3) of title 17, United States Code, is amended in the third sentence—

(A) by striking "the 6th year after the effective date of this chapter" and inserting "1998";

(B) by striking "Librarian of Congress" the first place it appears and inserting "Copyright Royalty Adjudication Board"; and

(C) by striking "Librarian of Congress" the second place it appears and inserting "Board".

(2) Entitlement to Royalty Payments.—Section 1006(c) of title 17, United States Code, is amended by striking "Librarian of Congress shall convene a copyright arbitration royalty panel which" and inserting "Copyright Royalty Adjudication Board".

(3) Procedures for Distributing Royalty Payments.—Section 1007 of title 17, United States Code, is amended—
(A) in subsection (a)(1)—

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

(ii) by striking “Librarian of Congress” the first place it appears and inserting “Copyright Royalty Adjudication Board”;

(iii) by striking “Librarian of Congress” the second place it appears and inserting “Board”;

(B) in subsection (b)—

(i) by amending the first sentence to read as follows: “After the first day of March of each year, the Copyright Royalty Adjudication Board shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c).”;

(ii) by striking “Librarian of Congress” each place it appears and inserting “Board”;

(C) in subsection (c)—

(i) by amending the first sentence to read as follows: “If the Copyright Royalty Adjudication Board finds the existence of a
controversy, the Board shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments.”;

(ii) by striking “Librarian of Congress” each place it appears and inserting “Board”; and

(iii) by striking “Librarian under this section” and inserting “Board under this section. The action of the Board to distribute royalty fees may precede the declaration of a controversy if all parties to the proceeding file a petition with the Board requesting such distribution, except that such amount may not exceed 50 percent of the amounts on hand at the time of the request.”.

(4) ADJUDICATION OF CERTAIN DISPUTES.—Section 1010 of title 17, United States Code, is amended—

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

“§ 1010. Adjudication of certain disputes”;
(i) in the subsection heading by striking “ARBITRATION” and inserting “ADJUDICATION”, and

(ii) by striking “mutually agree to binding arbitration for the purpose of determining” and inserting “petition the Copyright Royalty Adjudication Board to determine”;

(C) by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c), respectively;

(D) in subsection (b), as so redesignated, by striking “arbitration” each place it appears and inserting “adjudication”;

(E) by amending subsection (e), as so redesignated, to read as follows:

“(e) ADJUDICATION PROCEEDING.—The Copyright Royalty Adjudication Board shall conduct an adjudication proceeding with respect to the matter concerned, pursuant to chapter 8 of this title. The parties to the proceeding shall bear the entire costs thereof in such manner and proportion as the Board shall direct.”; and

(F) by striking subsections (e), (f), and (g).
SEC. 10. TECHNICAL AMENDMENTS.

(a) Clerical Amendment to Chapter 10 of Title 17, United States Code.—The item relating to section 1010 in the table of contents for chapter 10 of title 17, United States Code, is amended to read as follows:

``1010. Adjudication of certain disputes.''

(b) Clerical Amendment to Chapter 9 of Title 17, United States Code.—The item relating to section 903 in the table of contents for chapter 9 of title 17, United States Code, is amended to read as follows:

``903. Ownership, transfer, licensing, and recordation.''

(c) Clerical Amendment to Table of Chapters.—The item relating to chapter 6 in the table of chapters for title 17, United States Code, is amended to read as follows:

``6. Manufacturing Requirements and Importation .......... 601''.

SEC. 11. RETRANSMISSION CONSENT.

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

(1) by striking paragraphs (1) and (2) and inserting the following:

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

(A) with the express authority of the station;''
(B) pursuant to section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section; or

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

(2) The provisions of this subsection shall not apply to—

(A) retransmission of the signal of a non-commercial broadcasting station;

(B) retransmission of the signal of a superstation by a satellite carrier to subscribers for private home viewing if the originating station was a superstation on January 1, 1998;

(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna; if the household receiving the signal is located in an area in which such station may not assert its rights not to have its signal duplicated under the Commission's network nonduplication regulations; or

(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was ob-
tained from a satellite carrier and the originating station was a superstation on January 1, 1998.'';

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

"(C) Within 45 days after the effective date of the Copyright Compulsory License Improvement Act, the Commission shall commence a rulemaking proceeding to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent under this subsection, and such other regulations as are necessary to administer the limitation contained in paragraph (2). Such regulations shall establish election time periods that correspond with those regulations adopted under subparagraph (B). The rulemaking shall be completed within 180 days after the effective date of the Copyright Compulsory License Improvement Act.''; and

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

"(7) For purposes of this subsection:

"(A) The term ‘superstation’ means a television broadcast station, other than a network station, licensed by the Commission that is secondarily transmitted by a satellite carrier."
(B) The term ‘satellite carrier’ has the meaning given that term in section 119(d) of title 17, United States Code.”.

SEC. 12. MUST-CARRY FOR SATELLITE CARRIERS RE-TRANSMITTING TELEVISION BROADCAST SIGNALS.

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

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

“(a) CARRIAGE OBLIGATIONS.—Each satellite carrier providing direct to home service of a network station to subscribers located within the local market of such station shall offer to carry all television broadcast stations located within that local market, subject to section 325(b). Carriage of additional television broadcast stations within the local market shall be at the discretion of the satellite carrier, subject to section 325(b).

“(b) DUPLICATION NOT REQUIRED.—Notwithstanding subsection (a), a satellite carrier shall not be required to offer to carry the signal of any local television broadcast station that substantially duplicates the signal of another local television broadcast station which is secondarily transmitted by the satellite carrier, or to offer to carry
the signals of more that one local television broadcast station affiliated with a particular broadcast network (as the term is defined by regulation).

``(e) CHANNEL POSITIONING.—Each signal carried in fulfillment of the carriage obligations of a satellite carrier under this section shall be carried on the satellite carrier channel number on which the local television broadcast station is broadcast over the air, or on the channel on which it was broadcast on January 1, 1985, or on the channel it was broadcast on January 1, 1998, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the satellite carrier. Any dispute regarding the positioning of local television broadcast stations shall be resolved by the Commission.

``(d) COMPENSATION FOR CARRIAGE.—A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the principal headend of the satellite carrier.

``(e) REMEDIES.—
(1) Complaints by broadcast stations.— Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier is obligated to offer to carry the signal of such station or has otherwise failed to comply with the channel positioning or repositioning or other requirements of this section. The satellite carrier shall, within 30 days of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning or other requirements of this section. A local television broadcast station that is denied carriage or channel positioning or repositioning in accordance with this section by a satellite carrier may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.
(2) Opportunity to respond.—The Commission shall afford such satellite carrier and opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(3) Remedial actions; dismissal.—Within 120 days after the date a complaint is filed, the Commission shall determine whether the satellite carrier has met its obligations under this section. If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the satellite carrier has fully met the requirements of this section, it shall dismiss the complaint.

(f) Regulations by Commission.—Within 180 days after the effective date of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section.

(g) Definitions.—As used in this section:
“(1) Television broadcast station.—The term ‘television broadcast station’ means a full-power television broadcast station; and does not include a low-power or translator television broadcast station.

“(2) Local market.—The term ‘local market’ means the designated market area in which a station is located and—

“(A) for a commercial television broadcast station located in any of the 150 largest designated market areas, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market;

“(B) for a commercial television broadcast station that is located in a designated market area that is not one of the 150 largest, the local market includes, in addition to all commercial television broadcast stations licensed to a community within the same designated market area, any station that is significantly viewed, as such term is defined in section 76.54 of the Commission’s regulations (47 C.F.R. 76.54); and
“(c) for a noncommercial educational television broadcast station, the local market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.

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

SEC. 13. NETWORK NONDUPlication; SYNDICATED EXCLUSIVITY AND SPORTS BLACKOUT.

(a) Regulations.—

(1) IN GENERAL.—Within 45 days after the effective date of this Act, the Federal Communications Commission shall commence a rulemaking to establish regulations that apply network nonduplication protection, syndicated exclusivity protection, and sports blackout protection to the retransmission of broadcast signals by satellite carriers to subscribers for private home viewing. To the extent possible, such regulations shall, subject to paragraph (2), include the same level of protection accorded retransmissions of television broadcast signals by cable sys-
tems for network nonduplication (47 C.F.R. 76.92); syndicated exclusivity (47 C.F.R. 151), and sports blackout (47 C.F.R. 76.67).

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

(A) against a satellite carrier throughout such local market if that satellite carrier retransmits to subscribers for private home viewing in such local market the signal of another television broadcast station located within such local market; or

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

(3) LOCAL MARKET DEFINED. The term "local market" has the meaning provided in section 337(g) of the Communications Act of 1934, as added by section 12 of this Act.
(b) Deferred Applicability of Amendments to Section 119 of Title 17, United States Code.—

Notwithstanding the amendments to section 119 of title 17, United States Code, made by this Act, until the regulations regarding network nonduplication protection are established under subsection (a), the statutory license under subsection (a) of such section 119 for secondary transmissions of primary transmissions of programming contained in a primary transmission made by a network station (as defined in section 119(d) of title 17, United States Code, as in effect on the day before the effective date of this Act) shall be limited to secondary transmissions to persons who reside in unserved households (as defined in section 119(d) of title 17, United States Code, as in effect on the day before the effective date of this Act).

SEC. 14. EFFECTIVE DATE.

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

SECTION 1. SHORT TITLE.

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

S 1720 RS
SEC. 2. LIMITATIONS ON EXCLUSIVE RIGHTS; SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS WITHIN LOCAL MARKETS.

(a) In General.—Chapter 1 of title 17, United States Code, is amended by adding after section 121 the following new section:

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

“(a) Secondary Transmissions of Television Broadcast Stations by Satellite Carriers.—A secondary transmission of a primary transmission of a television broadcast station into the station’s local market shall be subject to statutory licensing under this section if—

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

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

“(3) the satellite carrier makes a direct or indirect charge for the secondary transmission to—

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

“(B) a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission to the public.
“(b) Reporting Requirements.—

“(1) Initial lists.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station under subsection (a) shall, within 90 days after commencing such secondary transmissions, submit to that station a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission.

“(2) Subsequent lists.—After the list is submitted under paragraph (1), the satellite carrier shall, on the 15th of each month, submit to the station a list identifying (by name and street address, including county and zip code) any subscribers who have been added or dropped as subscribers since the last submission under this subsection.

“(3) Use of subscriber information.—Subscriber information submitted by a satellite carrier under this subsection may be used only for the purposes of monitoring compliance by the satellite carrier with this section.

“(4) Requirements of stations.—The submission requirements of this subsection shall apply to a satellite carrier only if the station to whom the sub-
missions 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.

“(c) NO ROYALTY FEE REQUIRED.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall have no royalty obligation for such secondary transmissions.

“(d) NONCOMPLIANCE WITH REPORTING REQUIREMENTS.—Notwithstanding subsection (a), the willful or repeated secondary transmission to the public by a satellite carrier of a television broadcast 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 under sections 502 through 506 and 509, if the satellite carrier has not complied with the reporting requirements of subsection (b).

“(e) WILLFUL ALTERATIONS.—Notwithstanding subsection (a), the secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission made by that television broadcast 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 pro-
vided by sections 502 through 506 and sections 509 and 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.

“(f) Violation of Territorial Restrictions on Statutory License for Television Broadcast Stations.—

“(1) Individual Violations.—The willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a television broadcast station and embodying a performance or display of a work to a subscriber who does not reside in that station’s local market, and is not subject to statutory licensing under section 119, 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, except that—

“(A) 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

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

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

“(A) 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 of the primary transmissions of that television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network), and the court may order statutory damages not exceeding $250,000 for each 6-
month period during which the pattern or practice was carried out; and

“(B) if the pattern or practice has been carried out on a local or regional basis with respect to more than one television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network), the court shall order a permanent injunction barring the secondary transmission in that locality or region by the satellite carrier of the primary transmissions of any television broadcast station, and the court may order statutory damages not exceeding $250,000 for each 6-month period during which the pattern or practice was carried out.

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

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

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

“(j) DEFINITIONS.—In this section—

“(1) 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 dis-
tribution entities.

“(2) The term ‘local market’ for a television
broadcast station has the meaning given that term in
section 337(h)(2) of the Communications Act of 1934.
“(3) The terms ‘network station’, ‘satellite carrier’ and ‘secondary transmission’ have the meaning given such terms under section 119(d).

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

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

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

The table of sections for chapter 1 of title 17, United States Code, is amended by adding after the item relating to section 121 the following:

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

SEC. 3. EXTENSION OF EFFECT OF AMENDMENTS TO SECTION 119 OF TITLE 17, UNITED STATES CODE.


S 1720 RS
SEC. 4. TRANSITION.

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

“(E) TRANSITION.—Notwithstanding subparagraphs (A) and (B), a satellite carrier shall not be required to terminate service of a network station to a subscriber until February 28, 1999.”.

SEC. 5. COMPUTATION OF ROYALTY FEES FOR SATELLITE CARRIERS.

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

“(4) REDUCTION.—

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

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

“(5) PUBLIC BROADCASTING SERVICE AS AGENT.—For purposes of section 802, with respect to royalty fees paid by satellite carriers for retransmit-
ting the Public Broadcasting Service satellite feed, the
Public Broadcasting Service shall be the agent for all
public television copyright claimants and all Public
Broadcasting Service member stations.”.

SEC. 6. DEFINITIONS.

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

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

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

(2) by adding at the end the following:

“(12) LOCAL NETWORK STATION.—The term
‘local network station’ means a network station that
is secondarily transmitted to subscribers who reside
within the local market in which the network station
is located.”.
SEC. 7. PUBLIC BROADCASTING SERVICE SATELLITE FEED.

(a) Secondary Transmissions.—Section 119(a)(1) of title 17, United States Code, is amended—

(1) by striking the paragraph heading and inserting “(1) SUPERSTATIONS AND PBS SATELLITE FEED.—”;

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

(3) by adding at the end the following: “In the case of the Public Broadcasting Service satellite feed, subsequent to January 1, 2001, or the date on which local retransmissions of broadcast signals are offered to the public, whichever is earlier, the statutory license created by this section shall be conditioned on the Public Broadcasting Service certifying to the Copyright Office on an annual basis that its membership supports the secondary transmission of the Public Broadcasting Service satellite feed, and providing notice to the satellite carrier of such certification.”.

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

“(12) PUBLIC BROADCASTING SERVICE SATELLITE FEED.—The term ‘Public Broadcasting Service satellite feed’ means the national satellite feed distributed 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.”.

SEC. 8. APPLICATION OF FEDERAL COMMUNICATIONS COMMISSION REGULATIONS.

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

(1) in paragraph (1), by inserting “is permissible under the rules, regulations, and authorizations of the Federal Communications Commission,” after “satellite carrier to the public for private home viewing,”; and

(2) in paragraph (2), by inserting “is permissible under the rules, regulations, and authorizations of the Federal Communications Commission,” after “satellite carrier to the public for private home viewing,”.

SEC. 9. EFFECTIVE DATE.

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