§ 119. Limitations on exclusive rights: Secondary transmissions of distant television programming by satellite

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(1) NON-NETWORK STATIONS.—Subject to the provisions of paragraphs (3), (4), and (6) of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a non-network station shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing or for viewing in a commercial establishment, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for each retransmission service to each subscriber receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing or for viewing in a commercial establishment.

(2) NETWORK STATIONS.—

(A) IN GENERAL.—Subject to the provisions of subparagraph (B) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a network station shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of tele-
vision broadcast station signals, the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission, and the carrier provides local-into-local service to all DMAs. Failure to reach an agreement with a network station to retransmit the signals of the station shall not be construed to affect compliance with providing local-into-local service to all DMAs if the satellite carrier has the capability to retransmit such signals when an agreement is reached.

(B) Secondary Transmissions to Unserved Households.—
(1) In General.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions of the signals of no more than two network stations in a single day for each television network to persons who reside in unserved households.

(ii) Short Markets.—In the case of secondary transmissions to households located in short markets, subject to clause (i), the statutory license shall be further limited to secondary transmissions of only those primary transmissions of network stations that embody the programming of networks not offered on the primary stream or the multicast stream transmitted by any network station in that market.

(C) Submission of Subscriber Lists to Networks.—
(1) Initial Lists.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, not later than 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households.

(ii) Monthly Lists.—After the submission of the initial lists under clause (i), the satellite carrier shall, not later than the 15th of each month, submit to the network a list, aggregated by designated market area, identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) any persons who have been added or dropped as subscribers under clause (i) since the last submission under this subparagraph.

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

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

(3) Noncompliance with Reporting and Payment Requirements.—Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a non-network station or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

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

(5) Violation of Territorial Restrictions on Statutory License for Network Stations.—
(A) Individual Violations.—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who is not eligible to receive the transmission under this section is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506, except that:

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

(ii) any statutory damages shall not exceed $250 for such subscriber for each month during which the violation occurred.

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

(i) if the pattern or practice has been carried out on a substantially nationwide...
_basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $2,500,000 for each 3-month period during which the pattern or practice was carried out; and

(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $2,500,000 for each 6-month period during which the pattern or practice was carried out.

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

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

The court shall direct one half of any statutory damages ordered under clause (i)\(^1\) to be deposited with the Register of Copyrights for distribution to copyright owners pursuant to subsection (b). The Copyright Royalty Judges shall issue regulations establishing procedures for distributing such funds, on a proportional basis, to copyright owners whose works were included in the secondary transmissions that were the subject of the statutory damages.

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

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

(8) SERVICE TO RECREATIONAL VEHICLES AND COMMERCIAL TRUCKS.—

(A) EXEMPTION.—

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

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

(II) commercial trucks that qualify as commercial motor vehicles under regulations of the Secretary of Transportation under section 383.3 of title 49, Code of Federal Regulations.

(ii) LIMITATION.—Clause (i) shall apply only to a recreational vehicle or commercial truck if any satellite carrier that proposes to make a secondary transmission of a network station to the operator of such a recreational vehicle or commercial truck complies with the documentation requirements under subparagraphs (B) and (C). For purposes of this subparagraph, the terms "recreational vehicle" and "commercial truck" shall not include any fixed dwelling, whether a mobile home or otherwise.

(B) DOCUMENTATION REQUIREMENTS.—A recreational vehicle or commercial truck shall be deemed to be an unserved household beginning 30 days after the relevant satellite carrier provides to the network that owns or is affiliated with the network station that will be secondarily transmitted to the recreational vehicle or commercial truck the following documents:

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

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

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

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

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

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

(9) STATUTORY LICENSE CONTINGENT ON COMPLIANCE WITH FCC RULES AND REMEDIAL STEPS.—Notwithstanding any other provision of this section, the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission em-
bodily a performance or display of a work made by a broadcast station licensed by the Federal Communications Commission is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if, at the time of such transmission, the satellite carrier is not in compliance with the rules, regulations, and authorizations of the Federal Communications Commission concerning the carriage of television broadcast station signals.

(10) **RESTRIC TED TRANSMISSION OF OUT-OFFSTATE DISTANT NETWORK SIGNALS INTO CERTAIN MARKETS.**—

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

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

(b) **DEPOSIT OF STATEMENTS AND FEES; VERIFICATION PROCEDURES.—**

(1) **DEPOSITS WITH THE 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—

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

(B) a royalty fee payable to copyright owners pursuant to paragraph (4) for that 6-month period, computed by multiplying the total number of subscribers receiving each secondary transmission of a primary stream or multicast stream of each non-network station or network station during each calendar year month by the appropriate rate in effect under this subsection; and

(C) a filing fee, as determined by the Register of Copyrights pursuant to section 708(a).

(2) **VERIFICATION OF ACCOUNTS AND FEE PAYMENTS.**—The Register of Copyrights shall issue regulations to permit interested parties to verify and audit the statements of account and royalty fees submitted by satellite carriers under this subsection.

(3) **INVESTMENT OF FEES.**—The Register of Copyrights shall receive all fees (including the filing fee specified in paragraph (1)(C)) 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 (5)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the Librarian of Congress as provided by this title.

(4) **PERSONS TO WHOM FEES ARE DISTRIBUTED.**—The royalty fees deposited under paragraph (3) shall, in accordance with the procedures provided by paragraph (5), be distributed to those copyright owners whose works were included in a secondary transmission made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Judges under paragraph (5).

(5) **PROCEDURES FOR DISTRIBUTION.**—The royalty fees deposited under paragraph (3) shall be distributed in accordance with the following procedures:

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

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

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

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

(A) INITIAL FEE.—The appropriate fee for purposes of determining the royalty fee under subsection (b)(1)(B) for the secondary transmission of the primary transmissions of network stations and non-network stations shall be the appropriate fee set forth in part 253 of title 37, Code of Federal Regulations, as in effect on July 1, 2009, as modified under this paragraph.

(B) FEE SET BY VOLUNTARY NEGOTIATION.—

On or before June 1, 2010, the Copyright Royalty Judges shall cause to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers for the secondary transmission of the primary transmissions of network stations and non-network stations under subsection (b)(1)(B).

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

(D) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS; PUBLIC NOTICE.—

(i) VOLUNTARY AGREEMENTS; FILING.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

(ii) PROCEDURE FOR ADOPTION OF FEES.—

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

(II) PUBLIC NOTICE OF FEES.—Upon receiving a request under subclause (I), the Copyright Royalty Judges shall immediately provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.

(III) ADOPTION OF FEES.—The Copyright Royalty Judges shall adopt the royalty fees from the voluntary agreement for all satellite carriers, distributors, and copyright owners without convening the proceeding under subparagraph (F) unless a party with an intent to participate in that proceeding and a significant interest in the outcome of that proceeding objects under subclause (II).

(E) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Royalty Judges in accordance with this paragraph shall become effective on the date specified in the agreement and shall remain in effect in accordance with the terms of the agreement until the subscriber for which the royalty is payable is no longer eligible to receive a secondary transmission pursuant to the license under this section.

(F) FEE SET BY COPYRIGHT ROYALTY JUDGES PROCEEDING.—

(i) NOTICE OF INITIATION OF THE PROCEEDING.—On or before September 1, 2010, the Copyright Royalty Judges shall cause notice to be published in the Federal Register of the initiation of a proceeding for the purpose of determining the royalty fees to be paid for the secondary transmission of the primary transmissions of network stations and non-network stations under subsection (b)(1)(B) by satellite carriers and distributors.

(ii) ADOPTION OF FEES.—

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

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

Such proceeding shall be conducted under chapter 8.

(ii) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this subparagraph, the Copyright Royalty Judges shall establish fees for the secondary transmissions of the primary transmissions of network stations and non-network stations that most clearly represent the fair market value of secondary transmissions, except that the Copyright Royalty Judges shall adjust royalty fees to account for the obligations of the parties under any applicable voluntary agreement filed with the Copyright Royalty Judges in accordance with subparagraph (D). In determining the fair market value, the Judges shall base their decision on economic, competitive, and programming information presented by the parties, including:

(I) the competitive environment in which such programming is distributed, the cost of similar signals in similar pri-
vate and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;
(II) the economic impact of such fees on copyright owners and satellite carriers; and
(III) the impact on the continued availability of secondary transmissions to the public.

(iii) Effective Date for Decision of Copyright Royalty Judges.—The obligation to pay the royalty fees established under a determination that is made by the Copyright Royalty Judges in a proceeding under this paragraph shall be effective as of January 1, 2010.

(Iv) Persons Subject to Royalty Fees.—The royalty fees referred to in clause (iii) shall be binding on all satellite carriers, distributors and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under subparagraph (D).

(2) Annual Royalty Fee Adjustment.—Effective January 1 of each year, the royalty fee payable under subsection (b)(1)(B) for the secondary transmission of the primary transmissions of network stations and non-network stations shall be adjusted by the Copyright Royalty Judges to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for all consumers and for all items) published by the Secretary of Labor before December 1 of the preceding year. Notification of the adjusted fees shall be published in the Federal Register at least 25 days before January 1.

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

(2) Network Station.—The term “network station” means—
(A) a television station licensed by the Federal Communications Commission, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States that offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or
(B) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934); except that the term does not include the signal of the Alaska Rural Communications Service, or any successor entity to that service.

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

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

(5) Private Home Viewing.—The term “private home viewing” means the viewing, for private use in a household by means of satellite reception equipment that is operated by an individual in that household and that serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

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

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

(8) Subscriber; Subscribe.—
(A) Subscriber.—The term “subscriber” means a person or entity that receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(B) Subscribe.—The term “subscribe” means to elect to become a subscriber.

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

(10) Unserverd Household.—The term “unserved household”, with respect to a particular television network, means a household that—
(A) is a subscriber to whom subsection (a)(8) applies; or
(B) is a subscriber located in a short market.

(11) Local Market.—The term “local market” has the meaning given such term under section 122(j).

(12) Commercial Establishment.—The term “commercial establishment”—
(A) means an establishment used for commercial purposes, such as a bar, restaurant, private office, fitness club, oil rig, retail store, bank or other financial institution, supermarket, automobile or boat dealership, or any other establishment with a common business area; and
(B) does not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as a hotel, dormitory, hospital, apartment, condominium, or prison.

(13) **Multicast stream.**—The term “multicast stream” means a digital stream containing programming and program-related material affiliated with a television network, other than the primary stream.

(14) **Primary stream.**—The term “primary stream” means—

(A) the single digital stream of programming as to which a television broadcast station has the right to mandatory carriage with a satellite carrier under the rules of the Federal Communications Commission in effect on July 1, 2009; or

(B) if there is no stream described in subparagraph (A), then either—

(i) the single digital stream of programming associated with the network last transmitted by the station as an analog signal; or

(ii) if there is no stream described in clause (i), then the single digital stream of programming affiliated with the network that, as of July 1, 2009, had been offered by the television broadcast station for the longest period of time.

(15) **Local-into-local service to all DMAs.**—The term “local-into-local service to all DMAs” has the meaning given such term in subsection (f)(7).

(16) **Short market.**—The term “short market” means a local market in which programming of one or more of the four most widely viewed television networks nationwide is not offered on either the primary stream or multicast stream transmitted by any network station in that market or is temporarily or permanently unavailable as a result of an act of god or other force majeure event beyond the control of the carrier.

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

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

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

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

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

(f) **CERTAIN WAIVERS GRANTED TO PROVIDERS OF LOCAL-INTO-LOCAl SERVICE TO ALL DMAs.**

(1) **INJUNCTION WAIVER.**—A court that issued an injunction pursuant to section 501 before the date of the enactment of this subsection shall waive such injunction if the court recognizes the entity against which the injunction was issued as a qualified carrier.

(A) **In general.**—Upon a request made by a satellite carrier, a court that issued an injunction against such carrier under section (a)(5)(B) before the date of the enactment of this subsection shall waive such injunction if the court determines that the carrier was not providing local service pursuant to the license under section 122 as of December 31, 2009.

(B) **Expiration of temporary waiver.**—A temporary waiver of an injunction under subparagraph (A) shall expire after the end of the 120-day period beginning on the date such temporary waiver is issued unless extended for good cause by the court making the temporary waiver.

(C) **Failure to provide local-into-local service to all DMAs.**—

(I) **Failure to act reasonably and in good faith.**—If the court issuing a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to act reasonably or has failed to make a good faith effort to provide local-into-local service to all DMAs, such failure is actionable as an act of infringement under section 501 and the court may in its discretion impose the remedies provided for in sections 502 through 506 and subsection (a)(6)(B) of this section; and

(II) shall result in the termination of the waiver issued under subparagraph (A).

(II) **Failure to provide local-into-local service.**—If the court issuing a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to provide local-into-local service to all DMAs, but determines that the carrier acted reasonably and in good faith, the court may in its discretion impose financial penalties that reflect—

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2So in original. Probably should be capitalized.

3See References in Text note below.
(I) the degree of control the carrier had over the circumstances that resulted in the failure;
(II) the quality of the carrier’s efforts to remedy the failure; and
(III) the severity and duration of any service interruption.

(D) Single temporary waiver available.—An entity may only receive one temporary waiver under this paragraph.

(E) Short market defined.—For purposes of this paragraph, the term “short market” means a local market in which programming of one or more of the four most widely viewed television networks nationwide as measured on the date of the enactment of this subsection is not offered on the primary stream transmitted by any local television broadcast station.

(3) Establishment of qualified carrier recognition.—
(A) Statement of eligibility.—An entity seeking to be recognized as a qualified carrier under this subsection shall file a statement of eligibility with the court that imposed the injunction. A statement of eligibility must include—
(i) an affidavit that the entity is providing local-into-local service to all DMAs;
(ii) a motion for a waiver of the injunction;
(iii) a motion that the court appoint a special master to conduct the examination and provide a report to the court as set forth in subparagraph (B);
(iv) an agreement by the carrier to pay all expenses incurred by the special master under paragraph (4)(B)(i); and
(v) a certification issued pursuant to section 342(a) of Communications Act of 1934.

(B) Grant of recognition as a qualified carrier.—Upon receipt of a statement of eligibility, the court shall recognize the entity as a qualified carrier and issue the waiver under paragraph (1). Upon motion pursuant to subparagraph (A)(iii), the court shall appoint a special master to conduct the examination and provide a report to the court as provided in paragraph (4)(B).

(C) Voluntary termination.—At any time an entity recognized as a qualified carrier may file a statement of voluntary termination with the court certifying that it no longer wishes to be recognized as a qualified carrier. Upon receipt of such statement, the court shall reinstate the injunction waived under paragraph (1).

(D) Loss of recognition prevents future recognition.—No entity may be recognized as a qualified carrier if such entity had previously been recognized as a qualified carrier and subsequently lost such recognition or voluntarily terminated such recognition under subparagraph (C).

(4) Qualified carrier obligations and compliance.—
(A) Continuing obligations.—
(i) In general.—An entity recognized as a qualified carrier shall continue to provide local-into-local service to all DMAs.

(ii) Cooperation with compliance examination.—An entity recognized as a qualified carrier shall fully cooperate with the special master appointed by the court under paragraph (3)(B) in an examination set forth in subparagraph (B).

(B) Qualified carrier compliance examination.—
(i) Examination and report.—A special master appointed by the court under paragraph (3)(B) shall conduct an examination of, and file a report on, the qualified carrier’s compliance with the royalty payment and household eligibility requirements of the license under this section. The report shall address the qualified carrier’s conduct during the period beginning on the date on which the qualified carrier is recognized as such under paragraph (3)(B) and ending on April 30, 2012.

(ii) Records of qualified carrier.—Beginning on the date that is one year after the date on which the qualified carrier is recognized as such under paragraph (3)(B), but not later than December 1, 2011, the qualified carrier shall provide the special master with all records that the special master considers to be directly pertinent to the following requirements under this section:
(I) Proper calculation and payment of royalties under the statutory license under this section.

(II) Provision of service under this license to eligible subscribers only.

(III) Submission of report.—The special master shall file the report required by clause (i) not later than July 24, 2012, with the court referred to in paragraph (1) that issued the injunction, and the court shall transmit a copy of the report to the Register of Copyrights, the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate.

(iv) Evidence of infringement.—The special master shall include in the report a statement of whether the examination by the special master indicated that there is substantial evidence that a copyright holder could bring a successful action under this section against the qualified carrier for infringement.

(v) Subsequent examination.—If the special master’s report includes a statement that its examination indicated the existence of substantial evidence that a copyright holder could bring a successful action under this section against the qualified carrier for infringement, the special master shall, not later than 6 months after the report under clause (i) is filed, initiate another examination of the qualified carrier’s compliance with the royalty payment and household eligibility requirements of the license under this section since the last report was filed under clause (iii). The special master shall file a report
on the results of the examination conducted under this clause with the court referred to in paragraph (1) that issued the injunction, and the court shall transmit a copy to the Register of Copyrights, the Committees on the Judiciary and on Energy and Commerce of the House of Representatives, and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate. The report shall include a statement described in clause (iv).

(vi) COMPLIANCE.—Upon motion filed by an aggrieved copyright owner, the court recognizing an entity as a qualified carrier shall terminate such designation upon finding that the entity has failed to cooperate with an examination required by this subparagraph.

(vii) OVERSIGHT.—During the period of time that the special master is conducting an examination under this subparagraph, the Comptroller General shall monitor the degree to which the entity seeking to be recognized or recognized as a qualified carrier under paragraph (3) is complying with the special master's examination. The qualified carrier shall make available to the Comptroller General all records and individuals that the Comptroller General considers necessary to meet the Comptroller General's obligations under this clause. The Comptroller General shall report the results of the monitoring required by this clause to the Comptroller General, the Committees on the Judiciary and on Energy and Commerce of the House of Representatives and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate at intervals of not less than six months during such period.

(C) AFFIRMATION.—A qualified carrier shall file an affidavit with the district court and the Register of Copyrights 30 months after such status was granted stating that, to the best of the affiant's knowledge, it is in compliance with the requirements for a qualified carrier. The qualified carrier shall attach to its affidavit copies of all reports or orders issued by the court, the special master, and the Comptroller General.

(D) COMPLIANCE DETERMINATION.—Upon the motion of an aggrieved television broadcast station, the court recognizing an entity as a qualified carrier may make a determination of whether the entity is providing local-into-local service to all DMAs.

(E) PLEADING REQUIREMENT.—In any motion brought under subparagraph (D), the party making such motion shall specify one or more designated market areas (as such term is defined in section 122(j)(2)(C)) for which the failure to provide service is being alleged, and, for each such designated market area, shall plead with particularity the circumstances of the alleged failure.

(F) BURDEN OF PROOF.—In any proceeding to make a determination under subparagraph (D), and with respect to a designated market area for which failure to provide service is alleged, the entity recognized as a qualified carrier shall have the burden of proving that the entity provided local-into-local service with a good quality satellite signal to at least 90 percent of the households in such designated market area (based on the most recent census data released by the United States Census Bureau) at the time and place alleged.

(5) FAILURE TO PROVIDE SERVICE.—

(A) PENALTIES.—If the court recognizing an entity as a qualified carrier finds that such entity has willfully failed to provide local-into-local service to all DMAs, such finding shall result in the loss of recognition of the entity as a qualified carrier and the termination of the waiver provided under paragraph (1), and the court may, in its discretion—

(i) treat such failure as an act of infringement under section 501, and subject such infringement to the remedies provided for in sections 502 through 506 and subsection (a)(6)(B) of this section; and

(ii) impose a fine of not less than $250,000 and not more than $5,000,000.

(B) EXCEPTION FOR NONWILLFUL VIOLATION.—If the court determines that the failure to provide local-into-local service to all DMAs is nonwillful, the court may in its discretion impose financial penalties for noncompliance that reflect—

(i) the degree of control the entity had over the circumstances that resulted in the failure;

(ii) the quality of the entity's efforts to remedy the failure and restore service; and

(iii) the severity and duration of any service interruption.

(6) PENALTIES FOR VIOLATIONS OF LICENSE.—A court that finds, under subsection (a)(6)(A), that an entity recognized as a qualified carrier has willfully made a secondary transmission of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who is not eligible to receive the transmission under this section shall reinstate the injunction waived under paragraph (1), and the court may order statutory damages of not more than $2,500,000.

(7) LOCAL-INTO-LOCAL SERVICE TO ALL DMAS DEFINED.—For purposes of this subsection:

(A) IN GENERAL.—An entity provides “local-into-local service to all DMAs” if the entity provides local service in all designated market areas (as such term is defined in section 122(j)(2)(C)) pursuant to the license under section 122, except for designated market areas where the entity is temporarily or permanently unable to provide local service as a result of an act of god or other force majeure event beyond the control of the entity.

(B) HOUSEHOLD COVERAGE.—For purposes of subparagraph (A), an entity that makes available local-into-local service with a good quality satellite signal to at least 90 percent of the households in a designated market area based on the most recent census data released by the United States Census Bureau shall be considered to be providing local service to such designated market area.
(C) GOOD QUALITY SATELLITE SIGNAL DEFINED.—The term “good quality satellite signal” has the meaning given such term under section 342(e)(2) of Communications Act of 1934.


Editorial Notes

REFERENCES IN TEXT

The Communications Act of 1934, referred to in subsec. (d)(6), is act June 19, 1934, ch. 652, 48 Stat. 1064, which is classified principally to section 307 of Title 47, Telecommunications, Sections 338, 339, 342, and 397 of the Act are classified to sections 338, 339, 342, and 397, respectively, of Title 47. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

The date of the enactment of this subsection, referred to in subsec. (f)(1), (2)(A), (E), is the date of enactment of Pub. L. 113–175, which shall be deemed to refer to Pub. L. 113–175, 124 Stat. 3181, 124 Stat. 3181, 124 Stat. 3181, 124 Stat. 3181, 124 Stat. 3181, 124 Stat. 3181, and is otherwise extended to the full extent permitted by law. A subscriber who is denied the secondary transmission of a signal of a network station under subsection (a)(2)(B) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the

AMENDMENTS

2019—Subsec. (a)(1). Pub. L. 116–94, §1102(a)(1)(A)(i), substituted “paragraphs (3), (4), and (6)” for “paragraphs (4), (5), and (7)”. Subsec. (a)(2)(A). Pub. L. 116–94, §1102(a)(1)(A)(i), (c)(1)(A)(i), substituted “paragraphs (3), (4), (5), and (6)” for “paragraphs (4), (5), and (7)” and “signals,” for “signals,” and “and the carrier provides local-into-local service to all DMAs” after “receiving the secondary transmission”, and inserted at end “Failure to reach an agreement with a network station to retransmit the signals of the station shall not be construed to affect compliance with providing local-into-local service to all DMAs if the satellite carrier has the capability to retransmit such signals when an agreement is reached.”


Subsec. (a)(3). Pub. L. 116–94, §1102(a)(1)(B), (C), redesignated par. (4) as (3) and struck out former par. (3) which related to statutory license where retransmissions into local market available.

Subsec. (a)(4). Pub. L. 116–94, §1102(a)(1)(C), redesignated pars. (5) and (6) as (4) and (5), respectively.

work station asserting that the secondary transmission is prohibited. The network station shall accept or reject a subscriber's request for a waiver within 30 days after receipt of the request, that station shall be deemed to agree to the waiver request and have filed such written waiver. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 338(c)(2) of the Communications Act of 1934, and that was in effect on such date of enactment, shall constitute a waiver for purposes of this paragraph.


Subsc. (c)(1)(E). Pub. L. 116–94, § 1102(a)(2), substituted “in the agreement and shall remain in effect in accordance with the terms of the agreement until the subscriber for which the royalty is payable is no longer eligible to receive a secondary transmission pursuant to the license under this section,” for “in the agreement, and shall remain in effect until December 31, 2019, or in accordance with the terms of the agreement, whichever is later.”

Subsc. (d)(10). Pub. L. 116–94, § 1102(a)(3)(A), redesignated subpar. (D) as (A) and substituted “subsection (a)(6)” for “subsection (a)(11),” added subpar. (B), and struck out former subparas. (A) (to (C) and (E) which read as follows:

“(A) cannot receive, through the use of an antenna, an over-the-air signal containing the primary stream, or, on or after the qualifying date, the multicast stream, originating in that household’s local market and affiliated with that network of—

“(i) if the signal originates as an analog signal, Grade B intensity as defined by the Federal Communications Commission in section 73.683(a) of title 47, Code of Federal Regulations, as in effect on January 1, 1999; or

“(ii) if the signal originates as a digital signal, intensity defined in the values for the digital television noise-limited service contour, as defined in regulations issued by the Federal Communications Commission (section 73.622(e) of title 47, Code of Federal Regulations), as may be amended from time to time;”

“(B) is subject to a waiver that meets the standards of subsection (a)(13), whether or not the waiver was granted before the date of the enactment of the Satellite Home Viewer Extension and Localism Act of 2010.

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

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

Subsc. (d)(13). Pub. L. 116–94, § 1102(a)(3)(B)–(D), redesignated pars. (14) and (15) as (13) and (14), respectively, added paras. (15) and (16), and struck out former par. (13) which defined the term “qualifying date” for purposes of former subsec. (d)(10)(A).

Subsc. (e). Pub. L. 116–94, § 1102(a)(4), (6), redesignated subsec. (f) as (e) and struck out former subsec. (e). Prior to amendment, text of subsec. (e) read as follows: “Until December 31, 2019, a subscriber who does not receive a signal of Grade A intensity as defined in the regulations of the Federal Communications Commission under section 73.683(a) of title 47, Code of Federal Regulations, as in effect on January 1, 1999, or predicted by the Federal Communications Commission using the Individual Location Longley-Rice methodology described by the Federal Communications Commission in Docket No. 98-201) of a local network television broadcast station shall remain eligible to receive services of network stations affiliated with the same network, if that subscriber had satellite service of such network signal terminated after July 11, 1998, and before October 31, 1999, as required by this section, or received such service on October 31, 1999.

Subsc. (f). Pub. L. 116–94, § 1102(a)(6), (c)(1)(B), redesignated subsec. (g) as (f) and substituted “subsection (a)(5)(B)” for “subsection (a)(7)(B)” in pars. (1) and (2)(A).

Former subsc. (f) redesignated (e).

Subsc. (g). Pub. L. 116–94, § 1102(a)(6), redesignated subsec. (g) as (f).

Subsc. (g)(7)(A). Pub. L. 116–94, § 1102(a)(5), inserted “except for designated market areas where the entity is temporarily or permanently unable to provide local service as a result of an act of god or other force majeure event beyond the control of the entity” after “section 122.”


Text read as follows: “This section shall cease to be effective on December 31, 2019.”


2010—Pub. L. 111–175, § 102(a)(1), substituted “distant television programming by satellite” for “superstations and network stations for private home viewing” in section catchline.

Subsc. (a). Pub. L. 111–175, § 102(b)(1)(B), (C), redesignated pars. (4) to (14) and (16) as (3) to (13) and (14), respectively, and struck out former pars. (3) and (15) which related to secondary transmissions of significantly viewed signals and carriage of low power television stations, respectively.

Subsc. (a)(1). Pub. L. 111–175, § 102(b)(1)(A)(i), substituted “(4), (5), and (7)” for “(5), (6), and (8)”.

Pub. L. 111–175, § 102(g)(2), which directed amendment of section by substituting “non-network stations” for “superstations” wherever appearing in headings, was executed by substituting “NON-NETWORK STATIONS” in par. (1) heading, to reflect the probable intent of Congress.

Pub. L. 111–175, § 102(g)(1), substituted “non-network station” for “superstation.”


Subsc. (a)(2)(C). Pub. L. 111–175, § 102(h)(1)(A), redesignated subpar. (D) as (C) and struck out former subpar. (C), which related to exceptions.

Subsc. (a)(2)(D)(i). Subsec. (a)(2)(D)(i). Pub. L. 111–175, § 102(h)(2)(A)(1)(III), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which related to initial lists and monthly lists, respectively.


Subsc. (a)(3)(B), (C). Pub. L. 111–175, § 102(i)(2)(B), added subpars. (B) and (C) and struck out former subpars. (B) and (C) which related to rules for other subscribers and future applicability, respectively.

Subsc. (a)(3)(D). Pub. L. 111–175, § 102(i)(2)(B), redesignated subpar. (B) as (D) and struck out former subpar. (D) which related to special rules for distant digital signals.

Subsc. (a)(3)(E). Pub. L. 111–175, § 102(i)(2)(C), (D), redesignated subpar. (E) as (D) and substituted “(B)” for “(C)” and “(D)” for “(C) or (D)”.

Former subsc. (E) redesignated (D).
Subsec. (a)(3)(A), Pub. L. 111–175, § 102(e)(1)(E)(ii)(I), specified in paragraph (1)(C))'' after ''shall receive all
paragraph (5) for paragraph (1) or (2) of
substituted ''non-network stations'' for ''superstations''.

Subsec. (a)(2)(B), Pub. L. 111–175, § 102(e)(1)(B)(ii), substituted $2,500,000 for each 3-month
paragraph (2), and substituted ''paragraph (5)'' for ''paragraph
Subsec. (a)(3)(D)(ii), Pub. L. 111–175, § 102(e)(1)(E)(ii)(III), inserted heading and substituted
upon receiving a request under subparagraph (I), the Copyright Royalty Judges” for “Upon receiving a request under subparagraph (I), the Librarian of Congress”; and
stated “‘a proceeding under subparagraph (F)’” for “‘an arbitration proceeding pursuant to subparagraph (E)’”.
“(II) is established by the Librarian under section 802(f) as in effect on the day before such date of enactment shall be effective as of January 1, 2005.”

Subsec. (c)(1)(F)(iv). Pub. L. 111–175, § 102(e)(1)(V), substituted “fees” for “fee” in heading and substituted “fees referred to in clause (iii)” for “fee referred to in (II)” in text.

Subsec. (d)(2). Pub. L. 111–175, § 102(e)(2), amended par. (2) generally. Prior to amendment, par. (2) related to applicability and determination of royalty fees for digital signals.

Subsec. (d)(1). Pub. L. 111–175, § 102(f)(6), substituted “that contracts” for “which contracts”.

Subsec. (d)(3)(A). Pub. L. 111–175, § 102(f)(6), substituted “the offer” for “which offer”.

Subsec. (d)(5). Pub. L. 111–175, § 102(f)(6), substituted “that is operated” for “that serves” and “which serves”.


Subsec. (d)(8). Pub. L. 111–175, § 102(f)(1), amended par. (8) generally. Prior to amendment, text read as follows: “The term ‘subscriber’ means an individual or entity that receives a secondary transmission service by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor in accordance with the provisions of this section.”

Subsec. (d)(9). Pub. L. 111–175, § 102(g)(1), which directed amendment of section by substituting “non-network station” for “superstation” wherever appearing in headings, was executed by substituting “NON-NETWORK STATION” for “SUPERSTATION” in par. (9) heading, to reflect the probable intent of Congress.

Pub. L. 111–175, § 102(g)(1), substituted “non-network station” for “superstation”.

Subsec. (d)(10)(A). Pub. L. 111–175, § 102(b)(1)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: “cannot receive, through the use of a conventional, stationary, outdoor rooftop receiving antenna, an over-the-air signal of a primary network station affiliated with that network of Grade B intensity as defined by the Federal Communications Commission under section 73.68(a) of title 47 of the Code of Federal Regulations, as in effect on January 1, 1999.”


Subsec. (d)(11). Pub. L. 111–175, § 102(f)(2), amended par. (11) generally. Prior to amendment, text read as follows: “The term ‘local market’ has the meaning given such term under section 122(c), except that with respect to a low power television station, the term ‘local market’ means the designated market area in which the station is located.”

Subsec. (d)(12), (15). Pub. L. 111–175, § 102(f)(3), redesignated pars. (13) and (14) as (12) and (13), respectively, and struck out former par. (12). Text read as follows: “The term ‘low power television station’ means a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term ‘low power television station’ includes a low power television station that has been accorded primary status as a Class A television licensee under section 74.701(f) of title 47, Code of Federal Regulations.”


Subsec. (g). Pub. L. 111–175, § 105, added subsec. (g).


Subsec. (a)(8), (13). Pub. L. 110–403, § 206(a)(4)(C), (D), struck out “and 509” after “506”.

Subsec. (b)(4)(B). Pub. L. 110–303, § 4(e)(1)(A), substituted second sentence for former second sentence which read as follows: If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents.

Subsec. (b)(4)(C). Pub. L. 110–303, § 4(e)(1)(B), amended subpar. (C) generally. Prior to amendment, text of subpar. (C) read as follows: “During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have the discretion to proceed to distribute any amounts that are not in controversy.”

Subsec. (c). Pub. L. 110–303, § 4(g), deemed amendment by Pub. L. 108–419, § 5(b), never to have been enacted. See 2004 Amendment note below.


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

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

Subsec. (a)(1)(A). Pub. L. 108–447, § 102(2)(A), substituted “paragraphs (5), (6), (7), and (8)” for “paragraphs (3), (4), (5), and (6)”.


Subsec. (a)(2)(C), (D). Pub. L. 108–447, § 102(2)(3), added subpars. (C) and (D) and struck out heading and text of former subpar. (C). Text read as follows: “A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name and street address, including county and zip code) all subscribers to whom the satellite carrier makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by name and street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the
satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are made places a 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 of all such documents.

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


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


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

Subsec. (a)(7)(B). Pub. L. 108–447, §103(6)(B), substituted “is to a subscriber who is eligible to receive the secondary transmission under this section” for “is for private home viewing after “individual subscribers” and inserted “in accordance with the provisions of this section” before the period at end.

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

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


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


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

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

‘‘(iii) adding together the totals computed under clauses (i) and (ii).’’


Pub. L. 108–419, §5(g)(1), substituted ‘‘Copyright Royalty Judges’’ for ‘‘Librarian of Congress’’.


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

Subsec. (d)(1). Pub. L. 108–447, §107(a)(3), struck out ‘‘for private home viewing’’ after ‘‘individual subscribers’’ and inserted ‘‘in accordance with the provisions of this section’’ before the period at end.


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

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

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

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

Subsec. (d)(10)(B). Pub. L. 108–447, §105(3)(A), substituted ‘‘that meets the standards of subsection (a)(14) whether or not the waiver was granted before the date of the enactment of the Satellite Home View Extension and Reauthorization Act of 1998’’ for ‘‘granted under regulations established under section 339(c)(2) of the Communications Act of 1934’’.


Subsec. (d)(11) to (13). Pub. L. 108–447, §105(4), added pars. (11) to (13) and struck out former pars. (11) and (12) which read as follows: ‘‘(11) LOCAL MARKET.—The term ‘local market’ has the meaning given such term under section 122(1).’’


The term ‘Public Broadcasting Services satellite feed’ means the national satellite feed distributed and designated for purposes of this section by the Public Broadcasting Service consisting of educational and informational programming intended for private home viewing, to which the Public Broadcasting Service holds national terrestrial broadcast rights.”


carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast signals, as follows: "The term 'local market' means the area encompassed within a network station's predicted Grade B contour as that contour is defined by the Federal Communications Commission.'"

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

Subsec. (d)(9). Pub. L. 106–113, §1000(a)(9) [title I, §1006(c)(1)], reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ‘The term ‘local market’ means the area encompassed within a network station’s predicted Grade B contour as that contour is defined by the Federal Communications Commission.’”

Subsec. (b)(12). Pub. L. 107–273, §13209(3)(B), substituted "or by the Public Broadcasting Service satellite feed" after “network station or by the Public Broadcasting Service.”

Subsec. (a)(12). Pub. L. 107–273, §13209(2), struck out "or by the Public Broadcasting Service satellite feed" after "network station or by the Public Broadcasting Service.”

Subsec. (a)(10). Pub. L. 107–273, §13209(1)(B), added par. (10) and struck out heading and text of former par. (10). Text read as follows: ‘The term ‘unserved household’, with respect to a particular television network, means a household that—

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

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


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


Subsec. (c)(1). Pub. L. 103–369, §2(4)(A), as amended by Pub. L. 105–80, §1(1), substituted ‘‘17.5 cents per subscriber in the case of superstations that are retransmitted by the satellite carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined in section 258.2 of title 37, Code of Federal Regulations’’ for ‘‘12 cents’’.


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


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

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

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

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

(iii) To reflect the relative value 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, costs, risks, and contribution to the opening of new markets for creative expression and media for their communication.

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

(v) To reflect the relative value 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, costs, risks, and contribution to the opening of new markets for creative expression and media for their communication.’’
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Tribunal within 60 days after receiving the report by the Panel, and redesignated subpars. (G) and (H) as (C) and (D), respectively.

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

Statutory Notes and Related Subsidiaries

Effective Date of 2010 Amendment
Amendment by Pub. L. 111–175 effective Feb. 27, 2010, see section 307(a) of Pub. L. 111–175, set out as a note under section 111 of this title.

Effective Date of 2006 Amendment

Effective Date of 2004 Amendment

Effective Date of 1999 Amendment

Effective Date of 1997 Amendment
Amendment by Pub. L. 105–80 effective 6 months after Nov. 9, 1997, with respect to civil actions relating to the Copyright Royalty Tribunal within 60 days after receiving the report by the Panel, and redesignated subpars. (G) and (H) as (C) and (D), respectively.

Statutory Notes and Related Subsidiaries

Effective and Termination Dates of 1994 Amendment

Effective Date
Pub. L. 100–667, title II, §206, Nov. 16, 1988, 102 Stat. 3960, provided that: "This title and the amendments made by this title [enacting this section and sections 612 and 613 of Title 47, Telecommunications, amending sections 111, 501, 801, and 894 of this title and section 605 of Title 47, and enacting provisions set out as notes under this section and section 111 of this title] shall take effect on July 1, 1994.''

Termination of Section

Previously Covered Subscribers Under the STELA Reauthorization Act of 2014

"(1) IN GENERAL.—A subscriber of a satellite carrier who receives the secondary transmission of a network station, 'network station', and 'local-into-local service to all DMAs.'
§ 121. Limitations on exclusive rights: Reproduction for blind or other people with disabilities

(a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for an authorized entity to reproduce or to distribute in the United States copies or phonorecords of a previously published literary work or of a previously published musical work that has been fixed in the form of text or notation if such copies or phonorecords are reproduced or distributed in accessible formats exclusively for use by eligible persons.

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

(A) not be reproduced or distributed in the United States in a format other than an accessible format exclusively for use by eligible persons;

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

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

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

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

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

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

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

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

(1) “accessible format” means an alternative manner or form that gives an eligible person access to the work when the copy or phonorecord in the accessible format is used exclusively by the eligible person to permit him or her to have access as feasibly and comfortably as a person without such disability as described in paragraph (3);

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

(3) “eligible person” means an individual who, regardless of any other disability—

(A) is blind;

(B) has a visual impairment or perceptual or reading disability that cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

(C) is otherwise unable, through physical disability, to hold or manipulate a book or