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

 SECTION 1. SHORT TITLE.

This Act may be cited as the “Satellite Home Viewers Improvements Act”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
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 deliv-
ery of the secondary transmission to the public.

“(b) REPORTING REQUIREMENTS.—

“(1) INITIAL LISTS.—A satellite carrier that
makes secondary transmissions of a primary trans-
mission made by a network station under subsection
(a) shall, within 90 days after commencing such sec-
ondary 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 trans-
missions of that primary transmission.

“(2) SUBSEQUENT LISTS.—After the list is sub-
mitted under paragraph (1), the satellite carrier
shall, on the 15th of each month, submit to the sta-
tion 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.—Sub-
scriber information submitted by a satellite carrier
under this subsection may be used only for the pur-
poses of monitoring compliance by the satellite car-
rrier 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 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.

“(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 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 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 provided 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 serv-
vice from the ineligible subscriber; and

“(B) any statutory damages shall not ex-
ceed $5 for such subscriber for each month dur-
ing 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 sta-
tion’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 sat-
ellite 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, ex-
emption, or license through which secondary transmissions
by satellite carriers of programming contained in a pri-
mary transmission made by a television broadcast station
may be made without obtaining the consent of the copy-
right owner.

“(j) Definitions.—In this section—

“(1) The term ‘distributor’ means an entity
which contracts to distribute secondary trans-
missions from a satellite carrier and, either as a sin-
gle channel or in a package with other programming,
provides the secondary transmission either directly
to individual subscribers or indirectly through other
program distribution entities.
“(2) The term ‘local market’ for a television broadcast station has the meaning given that term under rules, regulations, and authorizations of the Federal Communications Commission relating to carriage of television broadcast signals by satellite carriers.

“(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 nonecommercial 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.


SEC. 4. 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.

“(A) SUPERSTATION.—The rate of the royalty fee in effect on January 1, 1998 payable in each case under subsection (b)(1)(B)(i) shall be reduced by 30 percent.
“(B) NETWORK.—The rate of the royalty fee in effect on January 1, 1998 payable under subsection (b)(1)(B)(ii) 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 retransmitting 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. 5. DEFINITIONS.

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

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

SEC. 5. DEFINITIONS.

Section 119(d) of title 17, United States Code, is amended by striking paragraph (10) and inserting the following:

“(10) UNSERVED HOUSEHOLD.—The term ‘unserved household’, with respect to a particular television network, means a household that cannot receive, through the use of a conventional outdoor
rooftop receiving antenna, an over-the-air signal of
grade B intensity (as defined by the Federal Com-
munications Commission) of a primary network sta-
tion affiliated 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. 6. 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 in-
serting “(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 statu-
tory license created by this section shall be condi-
tioned 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. 7. 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. 8. EFFECTIVE DATE.**

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

TO AMEND TITLE 17, UNITED STATES CODE, TO REFORM THE COPYRIGHT LAW WITH RESPECT TO SATELLITE RE-TRANSMISSION OF BROADCAST SIGNALS, AND FOR OTHER PURPOSES.

MARCH 2, 1999

REPORTED WITH AMENDMENTS

S. 247

106TH CONGRESS