

109TH CONGRESS
2D SESSION

S. 4067

To provide for secondary transmissions of distant network signals for private home viewing by certain satellite carriers.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2006

Mr. LEAHY (for himself, Mr. ALLARD, Mr. ROCKEFELLER, Mr. BYRD, Mr. INOUE, Mr. SALAZAR, Mr. ROBERTS, Ms. SNOWE, Mr. PRYOR, Mr. ENZI, Mrs. CLINTON, and Mr. ENSIGN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for secondary transmissions of distant network signals for private home viewing by certain satellite carriers.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Satellite Consumer
5 Protection Act of 2006”.

1 **SEC. 2. LIMITATIONS ON EXCLUSIVE RIGHTS: SECONDARY**
 2 **TRANSMISSIONS OF DISTANT NETWORK SIG-**
 3 **NALS FOR PRIVATE HOME VIEWING BY CER-**
 4 **TAIN SATELLITE CARRIERS.**

5 (a) IN GENERAL.—Chapter 1 of title 17, United
 6 States Code, is amended by inserting after section 119 the
 7 following:

8 **“§ 119A. Limitations on exclusive rights: secondary**
 9 **transmissions of distant network signals**
 10 **for private home viewing by certain sat-**
 11 **ellite carriers**

12 “(a) STATUTORY LICENSE GRANTED.—

13 “(1) IN GENERAL.—Notwithstanding any in-
 14 junction issued under section 119(a)(7)(B), a sat-
 15 ellite carrier found to have engaged in a pattern or
 16 practice of violations pursuant to section
 17 119(a)(7)(B) is granted a statutory license to pro-
 18 vide a secondary transmission of a performance or
 19 display of a work embodied in a primary trans-
 20 mission made by a network station in accordance
 21 with the provisions of this section.

22 “(2) SIGNIFICANTLY VIEWED SIGNALS.—Under
 23 the statutory license granted by paragraph (1), a
 24 satellite carrier may provide a secondary trans-
 25 mission of a primary transmission made by a net-

1 work station as provided in paragraph (2)(C) or (3)
2 of section 119(a).

3 “(3) DISTANT SIGNALS.—

4 “(A) IN GENERAL.—Under the statutory
5 license granted by paragraph (1), a satellite
6 carrier may provide a secondary transmission of
7 a performance or display of a work embodied in
8 a primary transmission made by a network sta-
9 tion, subject to the limitations of subparagraphs
10 (B) and (C), of not more than 1 network sta-
11 tion in a single day for each television network.

12 “(B) NON-LOCAL-INTO-LOCAL MARKETS.—

13 A satellite carrier may provide a secondary
14 transmission under subparagraph (A) in a local
15 market (as defined in section 122(j)) in which
16 a satellite carrier does not currently provide,
17 and has not ever provided, a transmission pur-
18 suant to a statutory license under section 122,
19 if the satellite carrier—

20 “(i) complies with the terms and con-
21 ditions for a statutory license under section
22 119; and

23 “(ii) certifies to the Copyright Office
24 within 30 days after the date of enactment
25 of the Satellite Consumer Protection Act of

1 2006, or before initiating service to a sub-
2 scriber under this section, whichever is
3 later, that all subscribers receiving sec-
4 ondary transmissions pursuant to a statu-
5 tory license under this section in that local
6 market reside in unserved households, as
7 determined under section 119(a)(2)(B)(ii);
8 and

9 “(iii) deposits, in addition to the de-
10 posits required by section 119(b)(1), a du-
11 plicate payment with the Register of Copy-
12 rights in the same amount for each net-
13 work station in the local market affiliated
14 with the same network as the network sta-
15 tion being imported.

16 “(C) SHORT MARKETS.—In a local market
17 (as defined in section 122(j)) in which a net-
18 work station (as defined in section 119(d)) af-
19 filiated with the ABC, CBS, NBC, or Fox tele-
20 vision network is not licensed by the Federal
21 Communications Commission, a satellite carrier
22 may provide secondary transmission under sub-
23 paragraph (A) of the primary signals of a net-
24 work station affiliated with that network, if the
25 satellite carrier—

1 “(i) complies with the terms and con-
 2 ditions for a statutory license under section
 3 119; and

4 “(ii) certifies to the Copyright Office
 5 within 30 days after the date of enactment
 6 of the Satellite Consumer Protection Act of
 7 2006, or before initiating service to a sub-
 8 scriber under this section, whichever is
 9 later, that all subscribers receiving sec-
 10 ondary transmissions pursuant to a statu-
 11 tory license under this section in that local
 12 market reside in unserved households, as
 13 determined under section 119(a)(2)(B)(ii).

14 “(D) SHORT MARKET EXCEPTION.—

15 “(i) IN GENERAL.—Notwithstanding
 16 subparagraph (C), a satellite carrier may
 17 not provide secondary transmission of the
 18 primary signals of a network station under
 19 that subparagraph if secondary trans-
 20 mission of those signals could be provided
 21 under paragraph (2).

22 “(ii) DISCONTINUANCE OF SEC-
 23 ONDARY TRANSMISSION WHEN PRIMARY
 24 SIGNAL BECOMES AVAILABLE.—Notwith-
 25 standing subparagraph (C), a satellite car-

1 rier that has been providing secondary
2 transmission of the primary signals of a
3 network station under subparagraph (C) in
4 a local market may not provide such sec-
5 ondary transmission in that local market
6 more than 30 days after the date on which
7 a network station affiliated with the same
8 network begins to broadcast or rebroadcast
9 the basic programming service of that net-
10 work in that local market and could be
11 carried pursuant to a license under section
12 122.

13 “(b) DISTRIBUTION OF DUPLICATE DEPOSIT
14 AMOUNTS.—The Copyright Royalty Judges shall author-
15 ize the Librarian of Congress to distribute semiannually
16 amounts received by the Register of Copyrights as depos-
17 its under subsection (a)(3)(B)(iii), after deducting the rea-
18 sonable costs incurred by the Copyright Office and the
19 Copyright Royalty Judges under this section, in accord-
20 ance with a process that the Copyright Royalty Judges
21 may prescribe by regulation, to a network station (as de-
22 fined in section 119(d)(2)) affiliated with the network
23 whose signals are being carried under this section to a
24 community within the local market (as defined in section

1 122(j)) in which such signals are being provided under
 2 this section.

3 “(c) STATUTORY DAMAGES.—

4 “(1) IN GENERAL.—The violation by a satellite
 5 carrier of subsection (a) is actionable as an act of
 6 infringement under section 501 and is subject to
 7 statutory damages equal to \$100 per month multi-
 8 plied by the number of subscribers with respect to
 9 which the violation was committed for each month
 10 during which the violation was committed (treating
 11 each month of a continuing violation as a separate
 12 violation).

13 “(2) PETITION.—A petition for statutory dam-
 14 ages may be made to the Copyright Royalty Judges,
 15 pursuant to such rules as may be prescribed by the
 16 Copyright Royalty Judges by regulation. In any pro-
 17 ceeding under this section, the satellite carrier shall
 18 have the burden of proving that its secondary trans-
 19 mission of a primary transmission by a network sta-
 20 tion is to a subscriber who is eligible to receive the
 21 secondary transmission under this section.

22 “(3) ESCROW.—As a condition of using the
 23 statutory license under subsection (a), a satellite
 24 carrier must deposit the sum of \$20,000,000 in es-
 25 crow with the Copyright Office. The Copyright Of-

1 fice shall deposit the escrow funds in an account in
2 the Treasury of the United States, in such manner
3 as the Secretary of the Treasury directs, and in-
4 vested in interest-bearing securities of the United
5 States with any interest from such investment to be
6 credited to the account. The Copyright Royalty
7 Judges shall have exclusive jurisdiction to determine
8 liability for and entitlement to the statutory dam-
9 ages owed to the petitioning party in accordance
10 with a process to be prescribed by regulation and
11 they shall authorize the Librarian of Congress to
12 distribute funds from the escrow account to satisfy
13 this determination. After all petitions under this sec-
14 tion against a satellite carrier have been resolved,
15 any amount remaining in the satellite carrier’s es-
16 crow account after February 17, 2009, after deduct-
17 ing the reasonable costs incurred by the Copyright
18 Office and the Copyright Royalty Judges under this
19 section, shall be returned to the satellite carrier.

20 “(4) JUDICIAL REVIEW.—A satellite carrier
21 may seek judicial review of all determinations of the
22 Copyright Royalty Judges on a consolidated basis in
23 a single petition of appeal to the United States
24 Court of Appeals for the District of Columbia Cir-
25 cuit within 30 days after the later of—

1 “(A) February 17, 2009; or

2 “(B) the date on which all amounts in the
3 escrow account have been distributed or re-
4 turned.

5 “(d) SUNSET.—This section shall not apply after
6 February 17, 2009.”.

7 (b) CONFORMING AMENDMENT.—The chapter anal-
8 ysis for chapter 1 of title 17, United States Code, is
9 amended by inserting after the item relating to section
10 119 the following:

“119A. Limitations on exclusive rights: secondary transmissions of distant net-
work signals for private home viewing by certain satellite car-
riers.”.

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