

TECHNICAL CORRECTIONS TO TITLE 17,  
 UNITED STATES CODE

MAY 10, 2005.—Committed to the Committee of the Whole House on the State of  
 the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,  
 submitted the following

R E P O R T

[To accompany H.R. 1037]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill  
 (H.R. 1037) to make technical corrections to title 17, United States  
 Code, having considered the same, reports favorably thereon with-  
 out amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1037, to make technical corrections to title 17, United  
 States Code, is intended to make technical corrections to the oper-  
 ation of the satellite distant signal compulsory copyright license  
 that was amended by the enactment of the Satellite Home Viewer  
 Extension and Reauthorization Act of 2004 (“SHVERA”), which

was included in the Consolidated Appropriations Act of 2005.<sup>1</sup> The satellite distant signal compulsory copyright license permits satellite carriers to retransmit to subscribers, subject to the terms of the statutory license, programming that originates on out of market over-the-air television broadcast stations.

#### BACKGROUND AND NEED FOR THE LEGISLATION

During the 108th Congress, the House Committee on the Judiciary reported H.R. 4518, the “Satellite Home Viewer Extension and Reauthorization Act of 2005,” (“SHVERA”) which, *inter alia*, provided for the extension of the statutory license for secondary transmissions under section 119 of title 17, United States Code.<sup>2</sup> After incorporating amendments to the Communications Act of 1934 with respect to such transmissions, which were contained in H.R. 4501, the “Satellite Home Viewer Extension and Reauthorization Act,” which was reported by the House Committee on Energy and Commerce, the House passed H.R. 4518 by a voice vote on October 6, 2004. The final version of this legislation was incorporated into H.R. 4818, the “Consolidated Appropriations Act of 2005,” which was enacted in November 2004.

Following the structure of H.R. 4518, the enacted legislation contained two titles. The first made amendments to the Copyright Act, which is contained in title 17, United States Code; and the second amended the Communications Act, which is contained in title 47, United States Code. These titles extend the satellite distant signal compulsory copyright license and the retransmission consent requirement, respectively. Together, the titles also function to modernize and improve the statutory and regulatory regime that governs such transmissions.

The technical amendments contained in H.R. 1037 relate directly to modifications of the Copyright Act. The proposed changes consist principally of non-controversial typographical, grammatical, stylistic and conforming changes, which are needed to eliminate unintended ambiguities in section 119 of title 17, United States Code. By correcting these provisions, the Committee believes that the interests of television viewers will be enhanced and that the prospect of expensive litigation involving affected stakeholders may be mitigated or eliminated.

#### HEARINGS

No hearings were held on H.R. 1037.

#### COMMITTEE CONSIDERATION

On March 3, 2005, the Subcommittee on Courts, the Internet and Intellectual Property met in open session and ordered favorably reported the bill, H.R. 1037, by a voice vote, a quorum being present. On March 9, 2005, the Committee met in open session and ordered favorably reported the bill, H.R. 1037, without amendment by a voice vote, a quorum being present.

<sup>1</sup>The “Satellite Home Viewer Extension and Reauthorization Act of 2004” was included as title IX of division J of “The Consolidated Appropriations Act of 2005” (Public Law No. 108–447).

<sup>2</sup>See H. Rep. No. 108–660, (2004), which accompanied H.R. 4518, the “Satellite Home Viewer Extension and Reauthorization Act of 2004.”

## VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the committee consideration of H.R. 1037.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1037, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 14, 2005.*

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1037, a bill to make technical corrections to title 17, United States Code.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Melissa E. Zimmerman, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.  
Ranking Member

*H.R. 1037—A bill to make technical corrections to Title 17, United States Code.*

H.R. 1037 would make technical corrections to current law relating to satellite retransmission of television broadcasting. CBO estimates that implementing the bill would have no effect on spending subject to appropriation. Enacting the bill would not affect direct spending or revenues.

H.R. 1037 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

The CBO staff contact for this estimate is Melissa E. Zimmerman, who can be reached at 226–2860. The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### PERFORMANCE GOALS AND OBJECTIVES

H.R. 1037 does not authorize funding. Therefore, clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives is inapplicable. Enactment of H.R. 1037 will help to eliminate unintended ambiguities that were contained in the final version of SHVERA. This will ensure that consumers, the affected stakeholders and the government officials charged with the responsibility for implementing and enforcing the provisions of SHVERA benefit from a more accurate and comprehensive statutory regime.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 8 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

##### SECTION 1. AMENDMENTS RELATING TO STATUTORY LICENSE FOR SATELLITE CARRIERS.

Section 1 includes principally typographical, grammatical, stylistic and conforming changes, which are needed to eliminate unintended ambiguities in section 119 of title 17, United States Code. This section of the Copyright Act specifies the terms and conditions that relate to the operation of the satellite distant signal compulsory copyright license, which is used by direct broadcast satellite (DBS) providers, such as DirecTV and EchoStar, to deliver out of market over-the-air broadcast television programs to eligible subscribers.

Most of the changes merely insert proper cross-references, eliminate superfluous language, correct punctuation errors or conform the statute to editorial style/conventions used in the law of copyright. Therefore, this discussion is limited to an explanation of the technical and conforming changes in H.R. 1037, which are most likely to require elucidation.

H.R. 1037 contains two amendments to section 119(a)(2)(C) of title 17, United States Code, which are designed to give proper effect to provisions that are intended to exempt secondary transmissions of primary transmissions of programming from specific stations, in specific limited circumstances, from the unserved household limitation contained in section 119(a)(2)(A) of title 17, United States Code. In either case, such transmissions by satellite carriers are subject to the payment of statutory copyright royalties.

The first clarifies that the language of 119(a)(2)(C)(i) is intended to apply only in the case of a State in which there is licensed by the Federal Communications Commission a single commercial full-power station that was a network station on January 1, 1995.

The second clarifies that the exemption from the unserved household limitation contained in 119(a)(2)(C)(iii) may be applied only in the counties of a State, which otherwise meet the conditions described therein, where programming from a distant network station located in that State, was transmitted by either a cable system or a satellite carrier to subscribers in that county on January 1, 2004.

An amendment to section 119(a)(4)(E) is included to clarify that the “if local, restrict distant” provisions contained in subparagraphs (A), (B) and (C) were not intended to apply to satellite subscribers who receive a distant network signal that is significantly viewed, nor to subscribers who receive such a signal because they have a recreational vehicle (RV) or a commercial truck.

Finally, section 119(a)(4)(F) is amended to correct a typographical error. A subscriber may seek a waiver from a broadcaster of the “if local, restrict distant” provisions in subparagraphs (A) and (B), not (C) and (D). Subsection (A) applies to subscribers who receive distant network signals on a grandfathered basis, while subsection (B) applies to subscribers who otherwise lawfully receive distant network signals. In each of these categories, subscribers may be confronted with an election to drop their distant network affiliate upon the receipt of their local network affiliate via satellite. Since these subscribers were receiving a distant network signal prior to the enactment of SHVERA, it is appropriate to allow them to petition their local network affiliate for a waiver to continue the receipt of the distant network affiliate. Subsection (C) applies to persons who seek to subscribe to one or more distant network stations after the effective date of SHVERA and who, at the time they seek to subscribe, already have local affiliates of those network stations made available to them by their satellite carrier. In this instance, there are no settled subscriber expectations and the interests of localism and copyright exclusivity are best served by not “authorizing such a waiver process.” Similarly, with respect to subsection (D), it is also inappropriate to provide such a waiver mechanism under the Copyright Act.

In conclusion, the enactment of H.R. 1037, will help ensure the effective implementation of SHVERA and better effectuate the policies that motivated its enactment. In so doing, the interests of television viewers, content owners, broadcast stations and satellite carriers and distributors will be enhanced.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

#### SECTION 119 OF TITLE 17, UNITED STATES CODE

#### **§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing**

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(1) \* \* \*

(2) NETWORK STATIONS.—

(A) \* \* \*

(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—

(i) 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. The limitation in this clause shall not apply to secondary transmissions **under paragraph (3)** *authorized under paragraph (3)*.

\* \* \* \* \*

(C) EXCEPTIONS.—

(i) STATES WITH SINGLE *COMMERCIAL* FULL-POWER NETWORK STATION.—In a State in which there is licensed by the Federal Communications Commission a single *commercial* full-power station that was a network station on January 1, 1995, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the primary transmission of that station to any subscriber in a community that is located within that State and that is not within the first 50 television markets as listed in the regulations of the Commission as in effect on such date **[(47 CFR 76.51)]** *(section 76.51 of title 47, Code of Federal Regulations)*.

(ii) STATES WITH ALL NETWORK STATIONS AND SUPERSTATIONS IN SAME LOCAL MARKET.—In a State in which all network stations and superstations licensed by the Federal Communications Commission within that State as of January 1, 1995, are assigned to the same local market and that local market does not encompass all counties of that State, the statutory license provided under subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the primary transmissions of such station to all subscribers in the State who reside in a local market that is within the first 50 major television markets as listed in the regulations of the Commission as in effect on such date (section 76.51 of title **[47 of the Code]** 47, *Code of Federal Regulations*).

(iii) ADDITIONAL STATIONS.—In the case of that State in which are located 4 counties that—

(I) \* \* \*

\* \* \* \* \*

the statutory license provided under subparagraph (A) shall apply to secondary transmissions by a satellite carrier to subscribers in any such county of the primary transmissions of any network station located in that State, **[if the satellite carrier]** *if a satellite carrier or cable system* was making such secondary trans-

missions to any subscribers in that county on January 1, 2004.

(iv) CERTAIN ADDITIONAL STATIONS.—If 2 adjacent counties in a single State are in a local market comprised principally of counties located in another State, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier to subscribers in those 2 counties of the primary transmissions of any network station located in the capital of the State in which such 2 counties are located, if—

(I) \* \* \*

(II) the total number of television households in the 2 counties combined did not exceed 10,000 for the year 2003 according to *U.S. Television Household Estimates* by Nielsen Media Research.

\* \* \* \* \*

(3) SECONDARY TRANSMISSIONS OF SIGNIFICANTLY VIEWED SIGNALS.—

(A) IN GENERAL.—Notwithstanding the provisions of paragraph (2)(B), and subject to subparagraph (B) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the primary transmission of a network station or a superstation to a subscriber who resides outside the station's local market (as defined in section 122(j)) but within a community in which the signal has been determined by the Federal Communications Commission, to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community. *Commission to be significantly viewed, as defined in section 76.5 of title 47, Code of Federal Regulations, as in effect on April 15, 1976.*

\* \* \* \* \*

(C) WAIVER.—

(i) IN GENERAL.—A subscriber who is denied the secondary transmission of the primary transmission of a network station under subparagraph (B) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated *otherwise* 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 339(c)(2) of the Communications Act of 1934 shall not constitute a waiver for purposes of this subparagraph.

\* \* \* \* \*

(4) STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.—

(A) \* \* \*

\* \* \* \* \*

[(E) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the applicability of the statutory license to secondary transmissions under paragraph (3) or to unserved households included under paragraph (12).]

(E) OTHER PROVISIONS NOT AFFECTED.—*Subparagraphs (A), (B), and (C) shall not affect the applicability of the statutory license to secondary transmissions authorized under paragraphs (3) and (12).*

(F) WAIVER.—A subscriber who is denied the secondary transmission of a network station under subparagraph [(C) or (D)] (A) or (B) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated *otherwise* 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 339(c)(2) of the Communications Act of 1934 shall not constitute a waiver for purposes of this subparagraph.

\* \* \* \* \*

(14) WAIVERS.—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 network 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. If a television network station fails to accept or reject a subscriber's request for a waiver within the 30-day period 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 *otherwise* 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 339(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.

(15) CARRIAGE OF LOW POWER TELEVISION STATIONS.—



(A) IN GENERAL.—Notwithstanding paragraph (2)(B), and subject to subparagraphs (B) through (F) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the primary transmission of a network station or a superstation that is licensed as a low power television station[,] to a subscriber who resides within the same local market.

\* \* \* \* \*

(16) RESTRICTED TRANSMISSION OF OUT-OF-STATE DISTANT NETWORK SIGNALS INTO CERTAIN MARKETS.—

(A) \* \* \*

(B) EXCEPTION.—The limitation in subparagraph (A) shall not apply to 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.

(c) ADJUSTMENT OF ROYALTY FEES.—

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

(A) \* \* \*

(B) FEE SET BY VOLUNTARY NEGOTIATION.—On or before January 2, 2005, the Librarian of Congress shall cause *notice* 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 *and distributors* for the secondary transmission of the primary analog [transmission] *transmissions* of network stations and superstations 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] *distributors, and copyright* owners may at any time negotiate and agree to the royalty [fee] *fees*, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Librarian of Congress 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 negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that [a] *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)(I) 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 an arbitration proceeding pursuant to subparagraph **[(E)] (F)**.

\* \* \* \* \*

**(F) FEE SET BY COMPULSORY ARBITRATION.—**

(i) NOTICE OF INITIATION OF PROCEEDINGS.—On or before May 1, 2005, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining the **[(royalty fee to be paid for the secondary transmission of primary analog transmission of network stations and superstations under subsection (b)(1)(B) by satellite carriers and distributors)]** *royalty fees to be paid by satellite carriers and distributors for the secondary transmission of the primary analog transmissions of network stations and superstations under subsection (b)(1)(B)*

(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 Librarian of Congress 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 arbitration proceeding and a significant interest in the outcome of that proceeding.

Such **[(arbitrary)]** *arbitration* proceeding shall be conducted under chapter 8 as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004.

(ii) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this subparagraph, the copyright arbitration royalty panel appointed under chapter 8, as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004 shall establish fees for the secondary transmissions of the primary analog transmission of network stations and superstations that most clearly represent the **[(fair market value of secondary transmissions)]** *fair market value of such secondary transmissions*, except that the Librarian of Congress and any copyright arbitration royalty panel shall adjust those fees to account for the obligations of the parties under any applicable voluntary agreement filed with the Copyright Office pursuant to subparagraph (D). In determining the fair market value, the panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

(I) \* \* \*

\* \* \* \* \*

(iii) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

(I) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(f), as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of [2004;] 2004, or

[(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.]

*(II) is made 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.*

(iv) PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee referred to in *clause* (iii) shall be binding on all satellite carriers, [distributors and copyright owners,] *distributors, and copyright owners* who are not party to a voluntary agreement filed with the Copyright Office under subparagraph (D).

(2) APPLICABILITY AND DETERMINATION OF ROYALTY FEES FOR DIGITAL SIGNALS.—The process and requirements for establishing the royalty fee payable under subsection (b)(1)(B) for the secondary transmission of the primary digital transmissions of network stations and superstations shall be the same as that set forth in paragraph (1) for the secondary transmission of the primary analog transmission of network stations and superstations, except that—

(A) the initial fee under paragraph (1)(A) shall be the rates set forth in [section 298.3(b)(1)] *section 258.3(b)(1)* and (2) of title 37, Code of Federal Regulations, as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, reduced by 22.5 percent;

\* \* \* \* \*

(C) the royalty fees that are established for the secondary transmission of the primary digital transmission of network stations and superstations in accordance with [to] the procedures set forth in paragraph (1)(F)(iii) and are payable under subsection (b)(1)(B)—

(i) \* \* \*

\* \* \* \* \*

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

(1) \* \* \*

\* \* \* \* \*

(12) LOW POWER TELEVISION STATION.—The term “low power television station” means a [low power television as de-

fined] *low power television station as defined* under section 74.701(f) 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 73.6001(a) of title 47, Code of Federal Regulations.

\* \* \* \* \*

MARKUP TRANSCRIPT  
**BUSINESS MEETING**  
**WEDNESDAY, MARCH 9, 2005**

HOUSE OF REPRESENTATIVES,  
 COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present comprised entirely of Members of the majority party. So rather than doing a ratification of minority Committee assignments, since there is no one here to make a motion to do that, we will now go to the next item on the agenda which is the adoption of S. 167, the “Family Entertainment and Copyright Act of 2005,” and the Chair recognizes the gentlemen from Texas, Mr. Smith, the Chairman of the Subcommittee on Courts, the Internet, and Intellectual Property for a motion.

Mr. SMITH. Mr. Chairman, I ask unanimous consent that we consider the following bills en bloc: S. 167, H.R. 683, H.R. 1036, H.R. 1037, H.R. 1038.

Chairman SENSENBRENNER. How about House Concurrent Resolution—

Mr. SMITH. It’s my understanding, Chairman, that needs to be considered separately.

Chairman SENSENBRENNER. Okay. Without objection, the 5 bills mentioned by the gentleman from Texas will be considered en bloc, and the Chair recognizes the gentleman from Texas to explain them.

Mr. SMITH. I’ll try to be brief, Mr. Chairman. The first bill, S. 167 really consists of three previous bills that this Committee has approved and that passed the House last year. The first one is the Family Movie Act, and I think Members will recall that that simply gives parents the right to determine what their children see when they rent or buy a movie video.

The second part of this particular bill is the Art Act which creates new penalties for those who camcord movies in public theaters and who willfully infringe copyright law by distributing copies of prereleased works, movies or otherwise.

The Trademark Dilution Revision Act of 2005 simply, basically protects trademarks in a better way and also makes sure that people cannot infringe trademarks as easily as they do now. It also does a good job of trying to keep us out of court to determine some of the ambiguities of that particular subject.

The two technical correction bills are just that, technical corrections of the Satellite Viewer, Home Viewer Movie Act, and the technical corrections, in addition to the satellite corrections are technical corrections of the CARP bill, which we approved last year and which passed the House.

The last bill in the en bloc package, Mr. Chairman, is your bill, the Multidistrict Litigation Restoration Act of 2005, and I will yield to you to make any comments on that.

And that would be the quick summary of the five bills en bloc. [The bill, H.R. 1037, follows:]

109TH CONGRESS  
1ST SESSION

# H. R. 1037

To make technical corrections to title 17, United States Code.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2005

Mr. SMITH of Texas (for himself and Mr. BERMAN) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To make technical corrections to title 17, United States Code.

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. AMENDMENTS RELATING TO STATUTORY LI-**  
4 **CENSE FOR SATELLITE CARRIERS.**

5 Section 119 of title 17, United States Code, is  
6 amended as follows:

7 (1) Subsection (a)(2)(C) is amended—

8 (A) in clause (i)—

9 (i) in the heading, by inserting “COM-  
10 MERCIAL” after “SINGLE”;

1 (ii) by inserting “commercial” after  
2 “a single”; and

3 (iii) by striking “(47 CFR 76.51)”  
4 and inserting “(section 76.51 of title 47,  
5 Code of Federal Regulations)”;

6 (B) in clause (ii), by striking “47 of the  
7 Code” and inserting “47, Code”;

8 (C) in clause (iii), by striking “if the sat-  
9 ellite carrier” and inserting “if a satellite car-  
10 rier or cable system”; and

11 (D) in clause (iv)(II), by inserting “U.S.  
12 Television Household Estimates by” after “ac-  
13 cording to”.

14 (2) Subsection (a)(2)(B)(i) is amended in the  
15 last sentence by striking “under paragraph (3)” and  
16 inserting “authorized under paragraph (3)”.

17 (3) Subsection (a)(3) is amended—

18 (A) in subparagraph (A), by striking  
19 “Commission, to be” and all that follows  
20 through the end and inserting “Commission to  
21 be significantly viewed, as defined in section  
22 76.5 of title 47, Code of Federal Regulations,  
23 as in effect on April 15, 1976.”; and

1 (B) in subparagraph (C)(i) in the last sen-  
2 tence, by inserting “otherwise” after “specifi-  
3 cally stated”.

4 (4) Subsection (a)(4)(E) is amended to read as  
5 follows:

6 “(E) OTHER PROVISIONS NOT AF-  
7 FECTED.—Subparagraphs (A), (B), and (C)  
8 shall not affect the applicability of the statutory  
9 license to secondary transmissions authorized  
10 under paragraphs (3) and (12).”.

11 (5) Subsection (a)(4)(F) is amended—

12 (A) in the first sentence, by striking “(C)  
13 or (D)” and inserting “(A) or (B)”; and

14 (B) in the last sentence, by inserting “oth-  
15 erwise” after “specifically stated”.

16 (6) Subsection (a)(14) is amended in the last  
17 sentence, by inserting “otherwise” after “specifically  
18 stated”.

19 (7) Subsection (c)(1) is amended—

20 (A) in subparagraph (B)—

21 (i) by inserting “notice” after “shall  
22 cause”;

23 (ii) by inserting “and distributors”  
24 after “paid by satellite carriers”; and



1 (iii) by striking “analog transmission”  
2 and inserting “analog transmissions”;

3 (B) in subparagraph (C) in the second  
4 sentence—

5 (i) by striking “distributors and copy-  
6 right” and inserting “distributors, and  
7 copyright”; and

8 (ii) by striking “royalty fee” and in-  
9 serting “royalty fees”;

10 (C) in subparagraph (D)—

11 (i) in clause (i), by striking “that a  
12 parties thereto” and inserting “that are  
13 parties thereto”; and

14 (ii) in clause (ii)(I), by striking “sub-  
15 paragraph (E)” and inserting “subpara-  
16 graph (F)”; and

17 (D) in subparagraph (F)—

18 (i) in clause (i)—

19 (I) by striking “royalty fee” and  
20 all that follows through “distributors”  
21 and inserting “royalty fees to be paid  
22 by satellite carriers and distributors  
23 for the secondary transmission of the  
24 primary analog transmissions of net-

1 work stations and superstations under  
2 subsection (b)(1)(B)”; and

3 (II) in the last sentence, by strik-  
4 ing “arbitrary” and inserting “arbi-  
5 tration”;

6 (ii) in clause (ii), by striking “fair  
7 market value of secondary transmissions”  
8 and inserting “fair market value of such  
9 secondary transmissions”;

10 (iii) in clause (iii)—

11 (I) in subclause (I), by striking  
12 “2004;” and inserting “2004;”; and

13 (II) by striking all that follows  
14 subclause (I) and inserting the fol-  
15 lowing:

16 “(II) is made by the Librarian  
17 under section 802(f) as in effect on  
18 the day before such date of enact-  
19 ment,

20 shall be effective as of January 1, 2005.”;

21 and

22 (iv) in clause (iv)—

23 (I) by striking “(iii)” and insert-  
24 ing “clause (iii)”; and

1 (II) by striking “distributors and  
2 copyright owners,” and inserting “dis-  
3 tributors, and copyright owners”.

4 (8) Subsection (c)(2) is amended—

5 (A) in subparagraph (A), by striking “sec-  
6 tion 298.3(b)(1)” and inserting “section  
7 258.3(b)(1)”; and

8 (B) in subparagraph (C), by striking “ac-  
9 cordance with to” and inserting “accordance  
10 with”.

11 (9) Subsection (a)(15)(A) is amended by strik-  
12 ing the comma after “television station”.

13 (10) Subsection (a)(16)(B) is amended by in-  
14 serting a comma after “Alaska if”.

15 (11) Subsection (d)(12) is amended by striking  
16 “low power television as defined” and inserting “low  
17 power television station as defined”.

○

Chairman SENSENBRENNER. The Chair passes on this.

Without objection, all Members may place opening statements in the record on each of the bills being considered en bloc at this time. Hearing no objection, so ordered.

[The prepared statement of Mr. Berman follows:]

PREPARED STATEMENT OF THE HONORABLE HOWARD L. BERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND RANKING MEMBER, SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY

I want to commend the Chairman of the Subcommittee for working so closely with me in putting together this bill.

One of the Subcommittee's major accomplishments last Congress was to pass the Satellite Home Viewer Extension and Reauthorization Act of 2004, which reauthorized for five years the compulsory license by satellite carriers to transmit copyrighted programming to their customers.

While passage of SHVERA was a major accomplishment, its many revisions—several made with little time in the final hours of the lame duck session—were not always perfectly drafted. Therefore, we introduce the technical corrections bill before us today.

HR 1037, the Technical Corrections to the Satellite Home Viewer Extension and Reauthorization Act of 2004, will correct the drafting errors contained in SHVERA. It corrects spelling and punctuation errors, harmonizes cross-references and paragraph numbering, or conforms the bill to the preferred editorial style in copyright law.

I want to thank the Copyright Office and Sandy Strokoff with the Office of Legislative Counsel for their assistance in noting many of the errors and then their help in drafting this bill.

I urge my colleagues to support this bill.

Chairman SENSENBRENNER. Are there any amendments to any of the bills?

[No response.]

Chairman SENSENBRENNER. There being no amendments, without objection, the previous question is ordered on reporting the bills favorably and the vote on reporting these bills favorably will be taken when a reporting quorum is present.

Without objection the order for the previous question is vitiated. There is a Subcommittee amendment on H.R. 683, the Dilution Bill. Without objection, the Subcommittee amendment is agreed to. Hearing none, so ordered.

And now without objection, the previous question is ordered on reporting the bills favorably with H.R. 683 being reported favorably as amended. And the vote will be taken at the time that a reporting quorum appears.

[Intervening business.]

Chairman SENSENBRENNER. If there are no further amendments, without objection, the previous question is ordered favorably reporting Senate 167.

We are still one short of a reporting quorum. I would ask the Members present to be patient, and as soon as we round up—here we go. They have been rounded up. [Laughter.]

The previous question has been ordered on reporting favorably the following bills: Senate 167, H.R. 683, H.R. 1036, H.R. 1037 and H.R. 1038. So many as are in favor of reporting these bills favorably will say aye.

Opposed, no?

The ayes appear to have it. The ayes have it, and the bills are reported favorably.

Without objection, those bills which were amended here, meaning H.R. 683, will be reported favorably to the House in the form of a

single amendment in the nature of a substitute, incorporating the amendments adopted here today. That unanimous consent request also includes Senate 167 as amended.

Is there any objection?

[Intervening business.]

Chairman SENSENBRENNER. Okay. Without objection, all Members will be given 2 days as provided by House rules, in which to submit additional dissenting supplemental or minority views, and without objection the staff is directed to make any technical and conforming changes.

Chairman SENSENBRENNER. There being no further business to come before the Committee, the Committee stands adjourned.

[Intervening business.]

[Whereupon, at 10:17 a.m., the Committee was adjourned.]

