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ACTION: INTRODUCED BY MR. SYNAR, ET AL.

SATELLITE HOME VIEWER ACT OF 1987

The SPEAKER pro tempore Under a previous order of the House, the gentleman from Oklahoma [Mr SYNAR] is recognized for 5 minutes

Mr SYNAR Mr Speaker, I am pleased today to join the chairman of the Subcommittee on Courts, Civil Liberties and the Administration of Justice, Mr KASTENMEIER, as well as Mr BOUCHER and Mr MOORHEAD, in introducing the Satellite Home Viewer Act of 1987

This legislation is necessary because as superstation signals are scrambled, current copyright law may prevent the sale of these signals to home dish owners

Superstation signals are relayed to cable systems, home dish owners, and other viewers by means of satellite common carriers Cable systems generally sell these signals to viewers as part of cable programming packages Cable viewers pay for the cable service and the cable systems pay a copyright fee for the use of the programming

In a similar manner, several distributors now package signals for sale to home dish owners However, it is questionable as to whether satellite carriers may sell scrambled signals to either distributors or directly to home viewers

The satellite carriers are exempt from copyright liability for the retransmission of broadcast signals as long as they exercise "no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission * * *" 17 U S C 111(a) (3)

The satellite carriers either now scramble or intend to scramble these distant signals in the near future They are concerned that many hotels, bars and cable systems, are not paying for the signals they receive In addition, they are concerned that home dish owners receive these signals at no cost

The Satellite Home Viewer Act of 1987 clarifies the ability of satellite common carriers to sell scrambled superstation signals to home dish owners The bill defines a superstation as any television broadcast signal retransmitted by a satellite common carrier

The bill creates a statutory license for the retransmission of superstation signals by common carriers, which acts to relieve the common carriers of copyright liability if they pay a statutory royalty fee to the Copyright Royalty Tribunal

The bill sets the statutory license fee at 12 cents, per signal, per month for each home dish subscriber This fee will be paid to the Copyright Royalty Tribunal, which will divide the money among those programmers whose work is included in the programs that are retransmitted by satellite carrier Any satellite carrier may negotiate a voluntary rate with the copyright owners This rate would supplant the statutory rate

The 12-cent royalty fee established by this bill expires on December 31, 1991 At that time, the rate will be replaced by either a voluntary rate, agreed to by the satellite carriers and the copyright owners, or a rate reached through binding arbitration The legislation establishes the procedure through which a fee is established by an arbitration panel

The Copyright Royalty Tribunal has the authority to reject the rate established by the arbitration panel if that rate is clearly inconsistent with the criteria established in the bill The Tribunal must then establish within 30 days an alternative royalty fee consistent with those criteria Any decision made by the Tribunal with respect to a determination made by the arbitration panel may be appealed to Federal court

The entire act expires on December 31, 1995 This sunset date will ensure that Congress considers within 7 years whether the home dish industry needs continued statutory copyright protection

This legislation is the result of extensive negotiations with the satellite carriers, copyright owners, home dish representatives and others It represents a good compromise of numerous competing interests

It is important that Congress act to provide some stability in this developing market and ensure the availability of superstation signals for home dish viewing This bill would accomplish those goals, and have the additional effect of promoting the packaging of signals and increasing competition, which would mean lower prices for home dish owners

THE SATELLITE HOME VIEWER ACT OF 1987

The SPEAKER pro tempore Under a previous order of the House, the gentleman from Wisconsin [Mr KASTENMEIER] is recognized for 5 minutes

Mr KASTENMEIER Mr Speaker, today I join with three respected Members of my subcommittee—Congressman MIKE SYNAR, Congressman RICK BOUCHER and Congressman CARLOS MOORHEAD—in introducing the "Satellite Home Viewer Copyright Act of 1987" This legislation amends the Copyright Act of 1976 to provide for the temporary licensing of the secondary transmission by satellite carriers of superstations for private viewing by earth station [TVRO] owners

In brief, the proposed legislation adds a new section 119 to the Copyright Act, creating a system by which scrambled superstation signals can be transmitted by common carriers, through distributors, to earth station owners The bill balances the rights of copyright owners, by ensuring payment for use of their property rights, with the rights of satellite dishowners, by assuring availability at reasonable rates of retransmitted television signals

The bill is novel in its approach It creates a statutory licensing system during a 4 year period with copyright royalty rates established at a flat fee of 12 cents a month per subscriber for each received superstation signal During a second 4 year period, rates are set by negotiation and binding arbitration After 8 years, the entire legislative package is terminated by a "sunset" provision The parties undoubtedly will report back to Congress on the success or failure of this two-phase plan In the meantime, an exciting new communication technology (satellite earth stations) will be allowed to develop and flourish—assuming, of course, that the parameters of the copyright law are respected The proposal will not only benefit copyright owners, distributors, and earth station manufacturers, it also will benefit rural America, where large numbers of farm families are inadequately served by broadcast stations licensed by the Federal Communications Commission

The legislation only addresses the issue of the retransmission of superstation signals by common carriers and the deliver of these signals—in a scrambled or encrypted state—to earth station owners A superstation may be any type of television broadcast station licensed by the Federal Communications Commission

With only two exceptions, the bill is the same as that favorably reported by the House Committee on the Judiciary by a roll call vote of 17 to 12 on September 25, 1986 That legislation (H R 5572) failed to be enacted, not on the merits, but due to lack of time in the 99th Congress

More specifically, the legislation is the outgrowth of hearings held during the 99th Congress by my subcommittee—the Subcommittee on Courts, Civil Liberties and the Administration of Justice, which has jurisdiction over copyright law—on Copyright Issues Arising from New Communications Technologies

Last Congress I wrote to the Register of Copyrights (Ralph Oman) asking that he analyze the application of the Copyright Act on scrambling and on the prospective sale or leasing of descrambling devices to satellite dishowners

The Copyright Act currently provides an exemption from liability for secondary transmissions of copyrighted works for "passive carriers" where the carrier "has no direct or indirect control over the content or selection of the primary transmission, or over the particular recipients of the secondary transmission * * *" Also, the carrier's activities with regard to the secondary transmission must "consist solely of providing wires, cables, or other communications channels for the use of others * * *"

In his response (dated March 17, 1986) to me, Mr Oman set forth his "preliminary judgment" that the sale or licensing of descrambling devices to satellite earth station owners by common carriers falls outside the purview of the copyright exemption granted passive carriers for secondary transmissions of copyrighted works, particularly when the carrier itself scrambles the signal.

"The exemption failing," Mr Oman concluded, "the resale carrier requires the consent of the copyright owner of the underlying programming"

Although the issues may sound legalistic and esoteric, they can be distilled to the following proposition under present copyright law, it is questionable whether common carriers can lease or sell descrambling devices and then sell scrambled superstation signals to earth station owners Since the combination of these functions is far more active than the passive function of providing wires, cables and other communications channels, the carriers could lose their unique status in the copyright law if they engaged in the described activities

At least one common carrier—Southern Satellite, which delivers WTBS—has already cogently presented this position to the Subcommittee on Telecommunications, Consumer Protection and Finance of the House Committee on Energy and Commerce

*** If Southern Satellite delivered WTBS to the backyard dish user there is no provision in the law for a copyright royalty payment to the copyright owner Although it could be argued that since Southern Satellite is a common carrier and since the TVRO dish owner uses the signal for purely private viewing there is no copyright liability However, that position runs directly contrary to the philosophy of § 111 of the Copyright Act and as a result we believe that it is a very tenuous position.

Last Congress, the chairman of the Subcommittee on Telecommunications brought this testimony to my attention, and the two subcommittees worked together to develop a legislative solution.

In drafting curative legislation, my subcommittee also worked closely with the three current common carriers (Southern Satellite, United Video and Eastern Microwave), with active superstations [WTBS] and with representatives of the movie industry and the earth station industry The subcommittee additionally consulted with interested parties in both the cable television and broadcasting industries Lastly, the Copyright Office has been of enormous assistance in the drafting process

It is my strong desire that the bill we have introduced today will continue to spark debate and will encourage all affected parties to work toward passage of a public law prior to the end of the 100th Congress

Admittedly, the proposed legislation reflects the same collision course of intellectual property law and technological change that was recently highlighted in an Office of Technology Assessment report on "Intellectual Property Rights in an Age of Electronics and Information" (1986) That report flashes a "yellow light", it sounds a note of caution to those who would rush headlong toward legislation The OTA report warns that the delineation of new rights in a changing technological environment is not an easy task. I believe that the "Satellite Home Viewer Copyright Act of 1987" does proceed with caution through the yellow light and an intersection of many interested parties It will garner a great deal of support but will not be without opposition

I look forward to receiving comments from all interested parties I would be especially interested in hearing views on the following issues One, the definition of superstation—which includes network affiliates and independent television stations and which grandfathers stations that were secondarily transmitted by a satellite carrier for nationwide distribution prior to June 1, 1987, two, the length of time for the licensing system to flourish and the flat fee/arbitration phases, three, the negotiation and binding arbitration provisions, four, the initial interface with the cable television compulsory license contained in section 111 of the Copyright Act, and five, the copyright ramifications of the scrambling of public television signals

I urge my colleagues to join with me, Congressman SYNAR, Congressman BOUCHER and Congressman MOORHEAD in considering these issues Members who desire to cosponsor or want further information, should address their inquiries to the Subcommittee on Courts, Civil Liberties and the Administration of Justice (X53926)

Thank you, in advance, for your interest in and support for the "Satellite Home Viewer Copyright Act of 1987"