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PROCEEDINGS AND DEBATES OF THE 100TH CONGRESS

HOUSE

BILL	DATE	PAGE(S)
H.R.2848	Oct 5, 1988 140-II	H9660-69

ACTION: AMENDED AND PASSED UNDER SUSPENSION OF THE RULES

Satellite home viewer copyright Passed H R 2848, amended, to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations and network stations for private home viewing, and to prevent piracy of satellite cable programming Agreed to amend the title,

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SATELLITE HOME VIEWER ACT OF 1988

Mr KASTENMEIER Mr Speaker, I move to suspend the rules and pass the bill (H R 2848) to amend title 17, United States Code, relating to copyrights, to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations for private viewing by earth station owners, as amended.

The Clerk read as follows

H.R 2848

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1 SHORT TITLE.

This Act may be cited as the "Satellite Home Viewer Act of 1988"

SEC 2. AMENDMENTS TO TITLE 17, UNITED STATES CODE

Title 17, United States Code, is amended as follows:

(1) Section 111 of title 17, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (3) by striking "or" at the end,

(ii) by redesignating paragraph (4) as paragraph (5), and

(iii) by inserting the following after paragraph (3)

'(4) the secondary transmission is made by a satellite carrier for private home viewing pursuant to a statutory license under section 119, or" and

(B) in subsection (d)(1)(A) by inserting before "Such statement" the following

"In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcase transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing pursuant to section 119 "

(2) Chapter 1 of title 17, United States Code, is amended by adding at the end the following new section

"§ 119 Limitations on exclusive rights Secondary transmissions of superstations and network stations for private home viewing

"(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS —

"(1) SUPERSTATIONS —Subject to the provisions of paragraphs (3), (4), and (6) of this subsection, secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if a secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household 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

"(2) NETWORK STATIONS —

"(A) IN GENERAL —Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection, secondary transmissions of programing contained in a primary transmision made by a network station and embodying a performance or display of a work 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, and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission

"(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS —The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households

"(C) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS —A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after the effective date of the Satellite Home Viewer Act of 1988, or 90 days after commencing such secondary transmissions, whichever is later, submit to the network that owns or is affiliated with the network station a list identifying (by street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmisions of that primary transmission Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by 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 satel-

lite 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 to be made places on file with the Register of Copyrights, on or after the effective date of the Satellite Home Viewer Act of 1988, 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 willfull or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringment under section 501, and is fully subject to the remedies provided by section 502 through 506 and 509, 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 primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringment under section 501, and is fully subject to the remedies provided by section 502 through 506 and section 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

"(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 does not reside in an unserved household is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by section 502 through 506 and 509, expect that—

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

"(ii) any statutory damages shall not exceed $5 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 do not reside in unserved households, 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 view ing of the primary transmissions of any primany network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6 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 $250,000 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 secondy transmission by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before the date of the enactment of the Satellite Home Viewer Act of 1988

"(6) DISCRIMINATION BY A SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful of repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation 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 and 509, 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

"(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING —

"(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS —A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal, prescribe by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal, from time to time prescribe by regulation, and

'(B) a royalty fee for that 6-month period, computed by—

"(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 12 cents,

"(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 3 cents, and

'(iii) adding together the totals computed under clauses (i) and (ii)

"(2) INVESTMENT OF FEES —The Register of Copyrights shall receive all fees 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 (4)), 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 Copyright Royalty Tribunal as provided by this title

"(3) PERSONS TO WHOM FEES ARE DISTRIBUTED —The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Tribunal under paragraph (4)

"(4) PROCEDURES FOR DISTRIBUTION —The royalty fees deposited under paragraph (2) 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 for private home viewing shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal 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 Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees If the Tribunal determines that no such controversy exists, the Tribunal shall, after deducing reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents If the Tribunal finds the existence of a controversy, the Tribunal 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 Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy

"(c) DETERMINATION OF ROYALTY FEES —

"(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES —The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective until December 31, 1992, unless a royalty fee is established under paragraph (2), (3), or (4) of this subsection 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)

"(2) FEE SET BY VOLUNTARY NEGOTIATION —

"(A) NOTICE OF INITIATION OF PROCEEDINGS —On or before July 1, 1991, the Copyright Royalty Tribunal 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 under subsection (b)(1)(B)

"(B) 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 voluntary 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 Tribunal shall do so, after requesting recommendations from the parties to the negotiation proceeding The parties to each negotiation proceeding shall bear the entire cost thereof

"(C) AGREEMENTS BINDING ON PARTIES, FILING OF AGREEMENTS —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

"(D) PERIOD AGREEMENT IS IN EFFECT —The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1994

"(3) FEE SET BY COMPULSORY ARBITRATION —

"(A) NOTICE OF INITIATION OF PROCEEDINGS —On or before December 31, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2) Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select.

"(B) SELECTION OF ARBITRATION PANEL.— Not later than 10 days after publication of the notice initiating an arbitration proceeding, and in accordance with procedures to be specified by the Copyright Royalty Tribunal, one arbitrator shall be selected from the published list by copyright owners who claim to be entitled to royalty fees under subsection (b)(4) and who are not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and one arbitrator shall be selected from the published list by satellite carriers and distributors who are not parties to such a voluntary agreement The two arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same list, who shall serve as chairperson of the arbitrators. If either group fail to agree upon the selection of an arbitrator, or if the arbitrators selected by such groups fail to agree upon the selection of a chairperson, the Copyright Royalty Tribunal shall promptly select the arbitrator or chairperson, respectively The arbitrators selected under this subparagraph shall constitute an Arbitration Panel

"(C) ARBITRATION PROCEEDING —The Arbitration Panel shall conduct an arbitration proceeding in accordance with such procedures as it may adopt The Panel shall act on the basis of a fully documented written record Any copyright owner who claims to be entitled to royalty fees under subsection (b)(4), any satellite carrier, and any distributor, who is not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), may submit relevant information and proposals to the Panel The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct

"(D) FACTORS FOR DETERMINING ROYALTY FEES —In determining royalty fees under this paragraph, the Arbitration Panel 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 roles 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, cost, risk, 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

"(E) REPORT TO COPYRIGHT ROYALTY TRIBUNAL —Not later than 60 days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in subparagraph (D)

"(F) ACTION BY COPYRIGHT ROYALTY TRIBUNAL —Within 60 days after receiving the report of the Arbitration Panel under subparagraph (E), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly inconsistent with the criteria set forth in subparagraph (D) If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order, consistent with the criteria set forth in subparagraph (D), setting the royalty fee under this paragraph The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence) The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying

"(G) PERIOD DURING WHICH DECISION OF PANEL OR ORDER OF TRIBUNAL EFFECTIVE —The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribunal in accordance with this paragraph, or established by any order issued under subparagraph (F), shall become effective on the date when the decision of the Tribunal is published in the Federal Register under subparagraph (F), and shall remain in effect until modified in accordance with paragraph (4), or until December 31, 1994

"(H) PERSONS SUBJECT TO ROYALTY FEE — The royalty fee adopted or ordered under subparagraph (F) shall be binding on all satellite carriers, distributors, or copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2)

"(4) JUDICIAL REVIEW —Any decision of the Copyright Royalty Tribunal under paragraph (3) with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register The pendency of an appeal under this paragraph shall not relieve satellite carriers of the obligation under subsection (b)(1) to deposit the statement of account and royalty fees specified in that subsection The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal and the statutory criteria set forth in paragraph (3)(D), that the Arbitration Panel or the Tribunal acted in an arbitrary manner If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B), and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with paragraph (3)

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

"(1) DISTRIBUTOR —The term 'distributor' means an entity which 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 for private home viewing or indirectly through other program distribution entities

"(2) NETWORK STATION —The term 'network station' has the meaning given that term in section 111(f) of this title, and includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station

"(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 which is operated by an individual in that household and which 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 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 proint-to-multipoint distriubition, 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

"(7) SECONDARY TRANSMISSION —The term 'secondary transmission' has the meaning given that term in section 111(f) of this title

"(8) SUBSCRIBER —The term 'subscriber' means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellie carrier or to a distributor

"(9) SUPERSTATION —The term 'superstation' means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier

"(10) UNSERVED HOUSEHOLD —The term 'unserved household', with respect to a particular television network, means a household that—

(A) 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 Communications Commission) of a primary network station affiliated with that network, and

'(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmission by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network

"(e) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC —No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner "

(3) Section 501 of title 17, United States Code, is amended by adding at the end the following

' (e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station "

(4) Section 801(b)(3) of title 17, United States Code, is amended by striking ' and 116" and inserting ", 116, and 119(b)"

(5) Section 804(d) of title 17, United States Code, is amended by striking "sections 111 or 116" and inserting "section 111, 116, or 119"

(6) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by adding at the end the following new item

'119 Limitations on exclusive rights Secondary transmissions of superstations and network stations for private home viewing "

SEC 3 SYNDICATED EXCLUSIVITY, REPORT ON DISCRIMINATION

Title VII of The Communications Act of 1934 (47 U S C 601 et seq) is amended by adding at the end of the following

"SYNDICATED EXCLUSIVITY

"SEC 712 (a) The Federal Communications Commission shall, within 120 days after the effective date of the Satellite Home Viewer Act of 1988, initiate a combined inquiry and rulemaking proceeding for the purpose of—

"(1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programing (as defined by the Commission) for private home viewing of secondary transmissions by satellite of broadcast station signals similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television, and

"(2) adopting such rules if the Commission considers the imposition of such rules to be feasible

"(b) In the event that the Commission adopts such rules, any willful and repeated secondary transmission made by a satellite carrier to the public of a primary transmission embodying the performance or display of a work which violates such Commission rules shall be subject to the remedies, sanctions, and penalties provided by title V and section 705 of this Act

"DISCRIMINATION

' SEC 713 The Federal Communications Commission shall, within 1 year after the effective date of the Satellite Home Viewer Act of 1988, prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on whether, and the extent to which, there exists discrimination described in section 119(a)(6) of title 17, United States Code "

SEC. 4 INQUIRY ON ENCRYPTION STANDARD

Section 705 of the Communications Act of 1934 (47 U S C 605) is amended by adding at the end thereof the following

"(f) Within 6 months after the date of enactment of the Satellite Home Viewer Act of 1988, the Federal Communications Commission shall initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing In conducting such inquiry, the Commission shall take into account—

"(1) consumer costs and benefits of any such standard, including consumer investment in equipment in operation,

"(2) incorporation of technological enhancements, indluding advanced television formats,

"(3) whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming;

"(4) the costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable systems and satellite master antenna television systems,

' (5) the effect of any such standard on competition in the manufacture of decryption equipment, and

' (6) the impact of the time delay associated with the Commission procedures necessary for establishment of such standards

"(g) If the Commission finds, based on the information gathered from the inquiry required by subsection (f), that a universal encryption standard is necessary and in the public interest, the Commission shall initiate a rulemaking to establish such a standard "

SEC 5 PIRACY OF SATELLITE CABLE PROGRAMMING

Section 705 of the Communications Act of 1934 (47 U S C 605) is amended—

(1) in subsection (c)—

(A) by striking "and" at the end of paragraph (4),

(B) by striking the period at the end of paragraph (5) and inserting ", and" , and

(C) by adding at the end the following

"(6) the term 'any person aggrieved' shall include any person with proprietary rights in the intercepted communication by wire or radio, including wholesale or retail distributors of satellite cable programming, and, in the case of a violation of paragraph (4) of subsection (d), shall also include any person engaged in the lawful manufacture, distribution, or sale of equipment necessary to authorize or receive satellite cable programming ",

(2) in subsection (d)(1), by striking "$1,000" and inserting "$2,000",

(3) in paragraph (2) of subsection (d), by striking "$25,000" and all that follows through the end of that paragraph and inserting "$50,000 or imprisoned for not more than 2 years, or both, for the first such conviction and shall be fined not more than $100,000 or imprisoned for not more than 5 years, or both, for any subsequent conviction ",

(4) in subsection (d)(3)(A), by inserting "or paragraph (4) of subsection (d)" immediately after "subsection (a)",

(5) in subsection (d)(3)(B) by striking "may" the first time it appears,

(6) in subsection (d)(3)(B)(i), by inserting "may" immediately before "grant",

(7) in subsection (d)(3)(B)(ii), by inserting "may" immediately before "award",

(8) in subsection (d)(3)(B)(iii), by inserting "shall" immediately before "direct",

(9) in subsection (d)(3)(C)(i)(II)—

(A) by inserting "of subsection (a)" immediately after "violation",

(B) by striking "$250" and inserting "$1,000", and

(C) by inserting immediately before the period the following ", and for each violation of paragraph (4) of this subsection involved in the action and aggrieved party may recover statutory damages in a sum not less than $10,000, or more than $100,000, as the court considers just",

(10) in subsection (d)(3)(C)(ii), by striking "$50,000" and inserting "$100,000 for each violation of subsection (a)",

(11) in subsection (d)(3)(C)(iii), by striking "$100" and inserting "$250", and

(12) by striking paragraph (4) of subsection (d) and inserting the following

"(4) Any person who manufactures, assembles, modifies imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or is intended for any other activity prohibited by subsection (a), shall be fined not more than $500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation "

SEC. 6. EFFETIVE DATE.

This Act and the amendments made by this Act take effect on January 1, 1989, except that the authority of the Register of Copyrights to issue regulations pursuant to section 119(b)(1) of title 17, United States Code, as added by section 2 of this Act

takes effect on the date of the enactment of this Act

SEC 7 TERMINATION

This Act and the amendments made by this Act (other than the amendments made by section 5) cease to be effective on December 31, 1994

The SPEAKER pro tempore Is a second demanded?

Mr MOORHEAD. Mr Speaker, I demand a second.

The SPEAKER pro tempore Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr KASTENMEIER] will be recognized for 20 minutes and the gentleman from California [Mr MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr KASTENMEIER]

Mr KASTENMEIER Mr Speaker, I yield myself such time as I may consume

(Mr KASTENMEIER asked and was given permission to revise and extend his remarks)

Mr KASTENMEIER Mr Speaker, what to do about Earth stations—or as some people call them "satellite dishes" or TVRO's—retransmitted television signals and copyright is a relatively new issue for the Congress It was only about four decades ago that the science fiction writer, Arthur C Clarke, laid out the blueprint for the modern system of transmitting television signals by satellite It did not take long for Clarke's theory to become reality

Today, the number of Earth stations is rapidly approaching the 2 million mark. Dishes have become a permanent feature of the American countryside, costing only a small fraction of the price of 10 years ago

I first started working on the issue of Earth station and copyright almost 4 years ago when I realized that copyright law and telecommunications law were on a collision course My subcommittee—the Subcommittee on Courts, Civil Liberties and the Administration of Justice—held oversight hearings, inquiring into the subject of new communications technologies and their impact on intellectual property law

The purpose of our legal system is to serve the people in a clear and consistent fashion Our laws, especially our intellectual property laws, should be in the public interest Technological changes should be stimulated rather than thwarted. In addition, the creativity of authors should be promoted and rewarded

To fashion a bill and to bring it to the floor have required a team effort I would like to recognize the efforts of four subcommittee members who have worked long and hard on the legislation. They are Mr BOUCHER, Mr SYNAR, and the ranking minority member, Mr MOORHEAD Mr BRYANT has also been very constructive in resolving several issues All of these members are on the House Committee on Energy and Commerce, and once the bill was referred sequentially to that committee, were instrumental in crafting favorable amendments to the bill. I would like to thank the chairman of our sister Commerce Committee subcommittee, Mr MARKEY, as well as the chairman of the full Commerce Committee, Mr DINGELL

Let me now turn to a discussion of H.R 2848, the Satellite Home Viewer Copyright Act of 1988 At the outset, I will identify the specific copyright problem that is confronted in the bill Current copyright law is ambiguous on the question of whether common carriers may scramble and sell when they retransmit copyrighted signals to Earth station owners Admittedly, this view presents carriers with a difficult choice either do not scramble, raising the potential ire of cable television and program supplier interests, or scramble and to not sell to Earth station owners, losing a potential market The Register of Copyrights has stated that a combination of activities by carriers—the scrambling of signals, the licensing of descrambling devices and the subsequent sale of descrambled signals to Earth station households—probably falls outside of the copyright exemption granted by statute to passive carriers for the secondary transmissions of copyrighted works

H R 2848 is a compromise, which balances the rights of copyright proprietors with the interests of consumers, while paying careful heed so as not to conflict with provisions in copyright law pertaining to other distribution entities The goal of the bill is to stimulate communications, especially to unserved areas of the country, and to place rural households on a more or less equal footing with their urban counterparts Moreover, the bill takes affirmative steps to treat similarly the measure of copyright protection accorded to television programming distributed by national television networks and nonnetwork programming distributed by independent television stations It does this by asking the FCC, within 120 days of the effective date of the act, to determine the feasibility of imposing syndicated exclusivity rules for the dish industry similar to those recently ordered for cable television

In drafting the bill, we worked very hard with representatives of the Earth station industry, consumers, the motion picture industry, the cable television industry, the common carriers, the superstations, independent television and the three networks, and the rural electric cooperatives in order to arrive at a solution. As I previously stated, several Members have worked very constructively to improve the bill Mr. SYNAR and Mr BOUCHER deserve special mention. I am pleased to note that representatives of all the abovenamed groups have expressed support for the bill before us today

Make no mistake about it, this is a very good bill for American farm families, especially those who live is areas with rolling hills or mountains

In the Committee on the Judiciary, five major issue areas emerged, first, the network white area amendment, second, fairness in marketing; third, the exclusivity of television programming; fourth, the interim nature of the statutory license and its two phases, and fifth, the definition of satellite carrier The bill resolves all of these issues

First, the bill contains a network/white area provision which permits the retransmission of network programming by satellite carriers for private home viewing The mandatory statutory license is restricted to retransmissions to unserved areas The legislation sets forth a notification to network provision—about subscribership—and a penalty structure for retransmissions to persons who do not live in unserved areas

Second, the bill requires the Federal Communications Commission to report to the Congress on whether, and to what extent, price discriminations exists pursuant to the Communications Act of 1934 and the rules and regulations of the Commission Moreover, in order to promote fair marketing, the bill provides that copyright penalties can be imposed against carriers who unlawfully discriminate against distributors in the selling of retransmitted signals The word "discrimination" has the same meaning as that found in the Communications Act of 1934

Third, the bill contains an important provision regarding syndicated exclusivity As you know, syndicated exclusivity is one of rights that broadcasters purchase from copyright proprietors in exchange for the payment of monies The FCC recently ordered the imposition of syndex for the cable television industry The bill requires the Federal Communications Commission to, within 120 days after the effective date of the act, to initiate a combined inquiry and rulemaking proceeding for the purpose of First, determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming, as defined by the Commission, for private viewing similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television, and second, adopting such rules if the Commission considers the imposition of such to be feasible In the event that the FCC adopts rules imposing syndicated exclusivity for private home viewing, the bill further provides that violations of such rules shall be subject to remedies

Fourth, the term of the statutory license contemplated by H R 2848 is 6 years—a 4-year statutory license followed by a 2-year arbitrated license The act and all the amendments made by the act will cease to be effective on

December 31, 1994 The bill does not restrict retransmission technology to any particular band The interim nature of the statutory license will allow Congress to monitor new communications technologies.

Fifth, the bill contains a broaden definition of "satellite carrier" designed to cover newer carriers

The Copyright Office will play a key role in administering the Act. The Office will receive from satellite carriers reports of signal carriage and royalty fee calculations By regulation, the Register of Copyrights specifies the form and content of these reports, which are called "statements of account" The Copyright Office has the authority to require submission of any data or information reasonably necessary to assure fair, effective administration of the statutory license

Similar to its administration of the cable compulsory license, the Copyright Office will examine statements of account to detect errors in the reports filed by the satellite carriers and with respect to the calculation of the royalty payments. The Office will then correspond with the satellite carriers and require amended statements of account In addition to its specific authority to specify the content of the statements of account, the Office has general rulemaking authority to issue regulations interpreting the Copyright Act, including the statutory licensing provisions It is expected that the Office will exercise its rulemaking authority to establish procedures which allow copyright holders to request the Office to investigate, upon a proper showing, problems regarding statements of account. If satellite carriers fail to comply with the statutory and regulatory reporting requirements, and fail to pay the proper royalty, their willful or repeated secondary transmission of copyrighted works to the public becomes actionable as an infringement of copyright and subjects the carrier to potentially enormous damages, in the case of superstation programming

I would like to mention two very important changes to the bill that were added by the Committee on Energy and Commerce, to which the bill was sequentially referred after being reported by the Committee on the Judiciary The bill increases penalties for signal theft under section 705 of the Communications Act Further, the bill calls for a FCC study of encryption technology to detemine the appropriateness of standards

I support the Commerce Committee changes They are balanced, substantively sound and politically wise Overall, they improve the likelihood of enactment

I am confident that we have achieved a legislative success We have participated in an exciting legislative project, a project that brings a new technology within the mainstream of our copyright system The net result will be more communications to more individuals and more regions, especially to people and areas that are generally unserved today

I urge your support of this important legislation

Mr RODINO Mr Speaker, will the gentleman yield?

Mr KASTENMEIER I yield to the committee chairman

Mr RODINO Mr Speaker, I would like to put a question to the gentleman from Wisconsin [Mr KASTENMEIER], the chairman of the subcommittee, that deals with this legislation

Is it correct that the Congress does not intend that the section 119 statutory license should extend to anyone using a satellite or satellite service license by any foreign government to retransmit distant TV signals to Earth station owners? Eligibility for the license is expressly limited to satellite carriers who use the facilities of a satellite or satellite carrier licensed by the U S Federal Communications Commission Thus, the retransmission of U S broadcast station signals to U S Earth station owners by means of a Canadian, Mexican, or other foreign satellite would not come under the terms of the section 119 statutory license and could be a violation of the Copyright Act

□ 1645

Mr KASTENMEIER Mr Speaker, the gentleman has stated a correct proposition I am not certain that it is a violation of the Copyright Act, but the gentleman has stated the law correctly

Mr RODINO Well, I am just stating that it could be The question is whether or not it could go to litigation

Mr KASTENMEIER Mr Speaker, with that reservation, what the gentleman has stated is correct

Mr RODINO Mr Speaker, I thank the gentleman for that clarification

Mr MOORHEAD Mr Speaker, I yield myself such time as I may consume

Mr Speaker, I would like to commend our subcommittee chairman, the gentleman from Wisconsin [Mr KASTENMEIER], the gentleman from Oklahoma [Mr. SYNAR], the gentleman from Virginia [Mr BOUCHER], the gentleman from New Jersey [Mr MARKEY], who is the chairman of the Subcommittee on Telecommunications and Finance, and the gentleman from New Jersey [Mr RINALDO], who is our ranking Republican member of that committee, for the tremendous amount of work they did to make this legislation possible

I would also like to thank everyone responsible for working out the compromises that we had that brings this legislation here before the House

We started out last Congress to try and correct a problem that the common carriers and dish owners were having with the scrambled superstation signals The Copyright Act of 1976 did not address the status of a common carrier A court later ruled that since they did nothing more than transmit a signal they were passive and did not have to pay a copyright fee However, if a common carrier was to retain this copyright exemption it would not be able to scramble or unscramble signals nor could they negotiate package deals with the dish owners As pointed out by the gentleman from Wisconsin, H.R 2848 changes all of that

In order to devleop the broad base of support which this legislation enjoys a number of compromises were reached H R 2848, has the support of the common carriers, the dish owners, the dish manufacturers, the cable TV industry, and the Motion Picture Association of America

I urge my colleagues to vote favorably for the bill

Mr KASTENMEIER Mr Speaker, I yield 1 minute to a supporter of the bill, the gentleman from Virginia [Mr OLIN]

(Mr OLIN asked and was given permission to revise and extend his remarks)

Mr OLIN Mr Speaker, I thank the gentleman from Wisconsin for yielding this time to me

Mr Speaker, I rise in strong support of H R 2848, the Satellite Home Viewer Act of 1988 I am very glad to see that legislation to address the problems of home satellite dish owners has finally come to the House floor

This issue has been one of major interest to me for several years My congressional district, the Sixth District of Virginia, is rural and mountainous Many of my constituents face a problem faced by thousands of other rural Americans They live in areas where normal, over-the-air TV broadcasts are unavailable—they live too far from transmission sites or in areas where the signals are blocked by mountains These people are cut off from the information and entertainment programing offered by television

Technological advances, including the increased use of satellites to relay signals, offered a solution to this problem That solution was the home satellite dish In order to get programming, rural families purchased dish equipment, spending from $2,000 to as much as $5,000 With satellite dishes, families which had been cut off from television service were suddenly able to get a multitude of programing

But the program producers did not think this was such a good idea, in fact they thought it was theft They feared that they would lose their business if dish owners were allowed to get this programming free In order to prevent free access, the programmers encrypted, or scrambled, their signals

At first dish owners complained They had spent a lot of money for their satellite dishes, and they felt they should be entitled to receive the programming for free Gradually, dish

owners came to accept the fact that the programmers had a legal right to scramble, and that dish owners would have to pruchase programming

There is nothing wrong with encrypting signals in order to protect property rights, but it is important that home dish owners have the same ability to purchase such programing as cable customers do This is only fair Television and radio broadcasts have traditionally been available to all citizens, under a policy of free airways The creation of signals for special broadcasts to cable owners created a different situation The producers of these signals offset the costs of their business through rents paid by subscribers, unlike the commercial stations which obtain their profits from broad-based advertising It is proper that dish owners pay for these signals, but they should be able to purchase this programing easily, and at a reasonable price A policy which I call the "right to buy"

Last winter I tried to find a way to speed consideration of the satellite dish legislation currently in Congress As a cosponsor of both bills intended to address the problems of dish owners, I was dissatisfied that these measures were not moving through the legislative process with greater speed Both H R 1885, the Satellite Television Fair Marketing Act, and H R 2848, the Satellite Home Viewer Copyright Act, seemed to be stalled in committees

In order to focus attention on the problems faced by satellite dish owners, and the need for legislative action, I held two special orders on the House floor I was joined in these discussions by many of my colleagues who also saw the need for satellite dish legislation

Soon after the special orders, both bills began to receive increasing attention The Judiciary Committee reported the copyright bill, which is before us today This bill changes copyright law so that dish owners can legally purchase Superstation transmissions As a byproduct, this bill should lay a foundation that will encourage development of a market structure enhancing the availability of program packages for dish owners This should encourage competition

The Energy and Commerce Subcommittee on Telecommunications also reported H R 1885, the Fair Marketing Bill While the full committee did not consider H R 1885 The action of the subcommittee had a positive impact Soon after the subcommittee vote, the National Rural Telecommunications Cooperative [NRTC] signed packaging agreements with the programmers This is a step in the direction of increased access, a trend that I hope will continue and I am sure Congress will be monitoring

I'm glad to see that several of the issues that would have been addressed in H R 1885, were included in H R 2848 In particular, a provision was included in this bill calling for an inquiry into the need for universal encryption standards so that dish owner access will not be impeded

It is fitting that H R 2848 has been renamed the Satellite Home Viewer Act, because it has been expanded to more fully address the concerns of dish owners

I am very pleased that H R 2848 has finally come to the House floor This bill is badly needed to correct a growing problem, and to help bring the same television programing to rural residents as is already available to those in urban areas I urge my colleague to vote for H R 2848, I look forward to its passage and I hope that it will be given priority consideration in the Senate

Mr MOORHEAD Mr Speaker, I yield such time as he may consume to the ranking Republican member of the Telecommunications and Finance Subcommittee, the gentleman from New Jersey [Mr RINALDO]

(Mr RINALDO asked and was given permission to revise and extend his remarks)

Mr RINALDO Mr Speaker, I rise in support of this legislation

In the late 1970's, many rural residents did not have access to boradcast TV stations or cable systems So, they began to take advantage of the programming available on satellite Preserving the ability of home dish owners to view broadcast and cable programming, while ensuring that programmers receive compensation for it, has been one of the thorniest communications issues faced by Congress in this decade

We all know the problems that home dish owners have experienced in gaining access to broadcast and cable programming We considered the issues in the 1984 Cable Act The Energy and Commerce Committee has had these problems under constant scrutiny in a variety of bills to expand the marketing of cable channels to home dish owners We have labored long and hard to balance the interests of programmers and viewers with one goal in mind expanding the array of information and entertainment programs available to all Americans

The bill before the House tackles the complex problem of determining how broadcast TV signals could be distributed to home dish owners The issue boils down to how copyright holders could be compensated for the use of broadcast programming, and if cable's compulsory license could be used In the past, the answer was unclear But last month, a Federal court ruled that the cable compulsory license could not be used to distribute broadcast TV stations to dish owners As a result, this problem is ripe for resolution

Our solution to this dilemma is the creation of a compulsory license similar to cable's It would exist for a total of 6 years, after which carriers would negotiate freely with the copyright holders for the right to distribute superstation programming Many believe establishing another compulsory license to be administered by the Federal Government is not a perfect solution to this problem Ideally, a compulsory license should be established only where there is compelling evidence that distributors lack the resources to negotiate for copyrights Otherwise, there is a risk that the copyright holder will not be compensated adequately for the use of his product However, the compulsory license contained in H R 2848 is a transitional measure It is designed to jump start a market that will be sufficiently mature in 6 years to prosper without it We should accept it on that basis—but not allow it to become a permanent substitute for free market mechanism

The basic purpose of the Satellite Home Viewer Copyright Act is to extend the reach of broadcast TV stations and programs to citizens who cannot receive them any other way Physical and economic limitations make it impossible to have television stations providing service everywhere in the United States The provisions of H R 2848 will make it possible for our citizens who live in rural areas to greatly expand their news and and entertainment sources to include the backbone of the broadcast TV system in the United States, the broadcast TV networks, as well as the popular superstations that provide a rich array of independent television productions and off-network series The fundamental purpose of the Communications Act is to ensure that the benefits of radio and television are available to all the people of this Nation This legislation clearly furthers that purpose in a manner that reasonably balances the rights of the copyright holders and the dish owners.

The Energy and Commerce Committee approved H R 2848 last week We adopted additional provisions designed to correct problems in the home dish programming market Specifically, we amended the bill to increase criminal penalties for the widespread problem of signal piracy Piracy threatens the entire market for satellite programming because broadcast and cable programmers will refuse to sell to home dish owners if they are being grossly undercompensated for the use of their programming This situation is precisely the opposite of what we intended when we permitted signal scrambling in the Cable Act. The subcommittee amendment gives law enforcement officials and aggrieved parties the tools to stop piracy once and for all

Finally, the subcommittee added a provision which directs the FCC to thoroughly investigate whether a standard method of scrambling is feasible or desirable This is a reasonable and necessary step in light of the problems with piracy

Some members of the Energy and Commerce Committee also serve on the Judiciary Committee They were instrumental in bringing this legislation before the House I particularly congratulate the gentleman from California [Mr MOORHEAD] who is an original cosponsor of the bill as well as the ranking minority member of the judiciary subcommittee with jurisdiction He and the other gentlemen who serve on both committees, particularly the gentleman from Oklahoma [Mr SYNAR] and the the gentleman from Virginia [Mr BOUCHER] should be commended for crafting consensus leg islation that solves a dilemma for the industry and for millions of home dish owners

Mr KASTENMEIER Mr Speaker, I yield 10 minutes to the distinguished chairman of the Telecommunications and Finance Subcommittee of the Committee on Energy and Commerce, the gentleman from Massachusetts [Mr MARKEY], who has made an enormous contribution to this bill

Mr Speaker, I ask unanimous consent that the gentleman from Massachusetts [Mr MARKEY] may yield time to other Members

The SPEAKER pro tempore (Mr GONZALEZ) Is there objection to the request of the gentleman from Wisconsin?

There was no objection

Mr MARKEY Mr Speaker, I yield myself 2 minutes

Mr Speaker, I thank the gentleman for yielding this time to me

Mr Speaker, I would like to begin by stating the obvious, which is that a bill of this complexity could not pass without a close working relationship between sister subcommittees, that is the Judiciary Committee and the Energy and Commerce Committee We have joint jurisdiction, but really for different purposes, and only in the melding of the two purposes do we produce a final result, and this is once again a tribute, I think, to the exemplary relationship that exists between the two subcommittees and has historically and once again I would like to compliment the gentleman from Wisconsin [Mr KASTENMEIER] for his leadership

Mr Speaker, I rise in strong support of H R 2848, the Satellite Home Viewer Act H R 2848 clarifies the legal status of satellite retransmission of broadcast television signals to home satellite dishowners The legislation would create an interim statutory license under the Copyright Act of 1976 for the secondary retransmission of superstations and television network stations for private home viewing

Passage of H.R 2848 is essential if we are to clarify the legal status of satellite carriers that provide broadcast television signals to the so-called white areas—areas that cannot receive over-the-air broadcast signals For several years, various distributors have marketed the signals of superstations or network stations to satellite dishowners in, principally, rural areas Recently, however, a ruling by a Federal court in Atlanta cast doubt on the continued ability of satellite retransmissions to home dishowners Specifically, the court held that the Copyright Act does not entitle satellite carriers to use the cable compulsory license to retransmit broadcast signals free from copyright liability

H R 2848 will clarify the copyright liability, it will work out the problems which have existed over the years, and I think result in a product which is to the benefit of all

Mr Speaker, I want to commend at this time, in addition to the gentleman from Wisconsin [Mr KASTENMEIER], my former ranking minority member, the gentleman from California [Mr MOORHEAD], who works with the gentleman from Wisconsin [Mr KASTENMEIER] in producing legislation out of their subcommittee in the Judiciary Committee The same working relationship I think that existed with me exists with the gentleman from Wisconsin [Mr KASTENMEIER], working with the gentleman from California [Mr MOORHEAD]

I would also like to commend the gentleman from New Jersey [Mr RINALDO], wo works with me in our subcommittee in trying to produce as best we can consensus legislation that can be supported by Democrats and Republicans

I would like to commend on our committee the gentleman from Louisiana [Mr TAUZIN], the gentleman from Oklahoma [Mr SYNAR], and the gentleman from Virginia [Mr BOUCHER] Those three were the musketeers wo pressed over the last several years for resolution of this issue and the product which we see here today is a tribute to what the gentleman from Louisiana [Mr TAUZIN] and the gentleman from Oklahoma [Mr SYNAR] and the gentleman from Virginia [Mr BOUCHER] have been telling us over the years was possible It is a tribute to their work, to the work of the gentleman from Kansas [Mr SLATTERY] and to the gentleman from MIchigan [Mr DINGELL], the full committee chairman, that we are here today

Mr MOORHEAD Mr Speaker, I have no further requests for time

Mr KASTENMEIER Mr Speaker, I would encourage the gentleman from Massachusetts to yield what time he has left, because I have no further requests for time

Mr MARKEY Mr Speaker, I yield 2 minutes to the author of the legislation in our committee, the gentleman from Louisiana [Mr TAUZIN]

Mr TAUZIN Mr Speaker, there are compliments galore that could go around today, and many of them have already been expressed. I would join in those sentiments, because indeed it took the work and the encouragement of a great many leaders in both the majority and the minority side to bring this legislation forward, but I think it is important to make a couple points, first, that it is sort of significant that this legislation is moving in the House this week, the week we have seen a successful return of our shuttle from space

We have in fact reopened the future in space for America with that enormously successful shuttle launch and return This bill opens up space again for Americans in the telecommunications era

This bill, in effect, says to satellite dishowners around America that indeed you will be protected in your right to receive television signals, that you will be protected in your right to receive network commercial signals that are scheduled to be scrambled like so many other signals, that you will be protected in your right to receive long distance signals that have become a part of the daily diet in television viewing around America, and that indeed you will begin to see improvements in your ability to buy for fair prices packages of programs that have become so important to satellite dishowners around America

This good compromise is indeed a great step forward and a real opening of the skies for America, for it does create some new possibilities

It is not the entire answer We do not yet have antidiscrimination in program packaging and sales passed before this Congress We may need yet to revisit that issue, but there is at least one third-party packager out there because of the efforts so many of you made and joined with us today

Finally, this bill in fact begins protection against pirates and against the scandalous abuses of the technology of scrambling and descrambling

Mr MARKEY Mr Speaker, I yield 2 minutes to the gentleman from Kansas [Mr SLATTERY]

Mr SLATTERY Mr Speaker, I thank the gentleman for yielding this time to me

Mr Speaker, I rise in support of H.R 2848, the Satellite Home Viewer Copyright Act of 1988 This legislation will increase television viewing choices for many rural Americans whose only link to the airways is a home satellite dish The bill requires satellite firms that retransmit copyrighted programming to pay royalties to owners of the programs Copyright owners have questioned the legality of scrambling superstation transmissions Enactment of this measure will remove this legal uncertainty and ensure that superstation programming will continue to be made available to home satellite dish viewers

The Energy and Commerce Committee has added two important provisions to H R 2848 Penalties for piracy of scrambled programming are increased We also call upon the FCC to initiate an inquiry concerning the need for a universal encryption standard Dishowners who have already paid $400 for a descrambler should not have to empty their wallets again be-

cause current scrambling technology has been compromised

I commend the Telecommunications Subcommittee chairman, the gentleman from Massachusetts [Mr MARKEY], for his interest in this measure, which is so important to rural Americans Rural Americans are also grateful to Representative BILLY TAUZIN, who has consistently taken the lead in fighting for the interests of home satellite dishowners

□ 1700

Mr MARKEY Mr Speaker, I yield myself such time as I may consume

Mr Speaker, that concludes the speakers from our committee who wish to be recognized. The gentleman from Virginia [Mr BOUCHER] and the gentleman from Oklahoma [Mr SYNAR] would have wanted to have been here This bill is as much a product of their work on both committees as it is any of the rest who have spoken It took a cooperative effort, but I think the product is something which is going to make it possible for us to put this issue largely behind us after years of debate and indecision in terms of how it would be resolved I think now people have some predictability with regard to the future in this area

We will continue to monitor it, but for the time being I think that the job has been done The gentleman from Louisiana [Mr TAUZIN], the gentleman from Virginia [Mr BOUCHER], the gentleman from Oklahoma [Mr SYNAR], the gentleman from Kansas [Mr SLATTERY], on our committee have done the job

Once again, I want to compliment the chairman of the Committee on the Judiciary, the gentleman from New Jersey [Mr RODINO], and our full committee chairman, the gentleman from Michigan [Mr DINGELL], who make it possible in creating an atmosphere that the gentleman from Wisconsin [Mr KASTENMEIER] and I and our committees can work together to produce legislation in an amicable and, I think, productive fashion

Mr Speaker, I yield back the balance of my time

Mr KASTENMEIER Mr Speaker, I yield myself 2 minutes

Mr Speaker, first of all, I would like to again congratulate the Committee on Energy and Commerce and the gentleman from Massachusetts on the very constructive work on this bill that the Committee on Energy and Commerce and the Telecommunications Subcommittee have done and acknowledge the additional language offered by the gentleman from Louisiana [Mr TAUZIN] to the bill It is a very constructive contribution

Mr Speaker, the gentleman from Virginia [Mr BOUCHER], if he were here, was to have asked me to engage in a short colloquy Mr BOUCHER would have observed that the committee report states that satellite carriers which transmitted network signals to the public prior to April 1, 1988, will be able to distribute network programming to those who do not reside in unserved households, if those subscribers contracted for the service prior to the effective date of the act, without liability under some conditions, and that is correct He also would go on to ask me what conditions does that report language address, and I would have replied to him, and replied for the record, that between the date of enactment and the effective date of this legislation, January 1, 1989, the current satellite carriers and related distributors will be required to change operations, computer systems, and advertising in order to comply with this law The report clarifies that service throughout the license period to customers who subscribed to receive satellite network programming during the operations transition will not be considered to be either willful or repeated violations of the law, to satisfy the question of the gentleman from Virginia [Mr BOUCHER]

Mr Speaker, I yield to the gentleman from Massachusetts [Mr MARKEY]

Mr MARKEY Mr Speaker, I thank the gentleman for yielding

I would like to, as well, note the work of the staffs on this issue, the gentleman's staff, Mr Remington, and our staffs, Mr Leach, Mr MacCarthy, Mr Salemme, and Mr Irving, along with the minority staff have all worked hard, and I know it is not a pay raise, but it is some recognition of the work which they have put in to make this

Mr MOORHEAD Mr Speaker, will the gentleman yield?

Mr KASTENMEIER I am happy to yield to the gentleman from California.

Mr MOORHEAD Mr Speaker, the amendment that is being offered has been cleared with the minority, and it is acceptable to us

Mr KASTENMEIER Mr Speaker, that is an additional contribution

Mr Speaker, I am also including for the RECORD a letter from the Register of Copyrights dated September 30, 1988

THE REGISTER OF COPYRIGHTS
OF THE UNITED STATES OF AMERICA,
September 30, 1988

Hon ROBERT W KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Washington, DC

DEAR CHAIRMAN KASTENMEIER I welcome this opportunity to express Copyright Office support for H R 2848, the Satellite Home Viewer Copyright Act of 1988, as reported by the House Committee on the Judiciary on August 18, 1988, and as amended by the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce on September 23, 1988 This bill would create a temporary statutory license for satellite carriers that retransmit the signals of superstations and network stations for private home viewing by earth station owners

H R 2848 assures that copyright owners receive adequate compensation for public performance of their works by satellite carriers and also assures reasonable access to the programming for the benefit of home earth station owners The Copyright Office supports the public policy objectives of the bill Copyright law should grant authors and copyright claimants rights that assure compensation in order to encourage creation and dissemination of works The bill reflects balanced copyright policies satellite carriers pay royalties for their use of copyrighted programming, home dish owners gain access to such programming Without new copyright legislation, scrambling of signals may impede access The bill most importantly encourages the development of voluntary licensing structures

The bill, as reported by the House Committee on Energy and Commerce, would amend the Communications Act of 1934 to require that the Federal Communications Commission investigate whether use of a universal encryption standard should be required of satellite carriers, and to impose various remedies under the Communications Act upon individuals who intercept satellite cable programming in violation of that Act, or who knowingly manufacture or distribute equipment designed to assist such unauthorized interception of programming The Copyright Office has no objection to the amendments to H R 2848 reported by the Committee on Energy and Commerce

The Copyright Office concludes that passage of the bill would serve the public interest and resolve an important copyright policy issue the copyright liability of satellite carriers

Sincerely,

RALPH OMAN,
Register of Copyrights

Mr FISH, I would like to commend the subcommittee for all of the hard work that they have put into H R 2848 It is a popular piece of legislation and it enjoys a broad base of support Whenever you've got the networks, broadcasters, cable TV and the motion picture industry, all supporting the same piece of legislation you had better quickly process it before the position of these organizations change

As my friend from California has pointed out, the Judiciary Committee passed similar legislation last Congress but because of the lateness of the session, it was not taken to the House floor The problems that the 2 million dish owners are going to have when all the superstations finish scrambling their signals are very real and it's important that we try and do something before the problem becomes acute

This is important legislation and I hope we can persuade the other body to move on it as soon as possible and I urge a favorable vote for the passage of H R 2848

Mr ROTH Mr Speaker, I rise in strong support of H R 2848, the Satellite Home Viewer Copyright Act. This legislation will provide for the temporary licensing of the secondary transmission by satellite carriers of superstations for private viewing by earth station owners In essence, this licensing process will allow satellite carriers to bring network programming to satellite dish owners

As my colleagues know, television programming in rural areas is often limited This bill ensures that rural homes with satellite dishes will continue to have access to the TV network and independent superstation signals These signals are being scrambled more and

more frequently It is time to clarify the copyright laws that regulate descrambling devices

This bill establishes a clear balance between the rights of copyright owners and the rights of satellite dish owners by assuring program availability at reasonable rates

I have been in regular contact with satellite dish owners from my district in northeast Wisconsin It is on their behalf that I rise to support this legislation We must take definitive action to see that this problem is resolved

Thus, I urge my colleagues to support this bill It is a significant step forward for rural programming throughout the country Please join me in supporting the Satellite Home Viewer Copyright Act.

Mr NICHOLS Mr Speaker, I rise today in support of H R 2848, the Satellite Home Viewer Copyright Act of 1988, which is now being considered under suspension It is my opinion that this important legislation which clarifies the legal status of satellite television carriers will clear the way for home satellite dish owners who live in the remote and rural parts of my district to gain access to the broadcast and cable stations which are now not available to them

For sometime now I have supported the efforts this body has made to provide home satellite dish owner with the same viewing choices that many of us enjoy on cable television Although many of my constituents would welcome the convenience and affordability cable provides, that option is not available to them because they live in areas where it would be too costly or too difficult to string the wires necessary to hook them up

Finally, Mr Speaker, I want to congratulate my colleague, the Honorable BILLY TAUZIN of the Third District of Louisiana and author of H R 2848, for seeing that this legislation made it to the floor of this House today I support his amendments to this bill which hopefully will address the problem of signal piracy and the need for a universal decoding system

Is my opinion that the Federal Communications Commission needs to initiate an inquiry concerning the establishment of a single descrambling standard That way illegal access to the signals may be stopped and law-abiding home satellite dish owners will be able to watch broadcast and cable stations without making obsolete the equipment in which they have already invested

Mr KASTENMEIER Mr Speaker, I have no further requests for time, and I yield back the balance of my time

Mr MOORHEAD Mr Speaker, I have no further requests for time, and I yield back the balance of my time

The SPEAKER pro tempore (Mr GONZALEZ) The question is on the motion offered by the gentleman from Wisconsin [Mr KASTENMEIER] that the House suspend the rules and pass the bill, H R 2848, as amended

The question was taken, and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed

The title of the bill was amended so as to read "A bill to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations and network stations for private home viewing, to prevent piracy of satellite cable programming, and for other purposes "

A motion to reconsider was laid on the table