

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6402

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

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 6, 2006

Mr. MOLLOHAN (for himself and Mr. RAHALL) introduced the following bill;  
which was referred to the Committee on the Judiciary

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## A BILL

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

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

3       **SECTION 1. SHORT TITLE.**

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

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

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

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

12 “(a) STATUTORY LICENSE GRANTED.—

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

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

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

3 “(3) DISTANT SIGNALS.—

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

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

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

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

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

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

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

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

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

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

14 “(D) SHORT MARKET EXCEPTION.—

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

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

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

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

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

3 “(c) STATUTORY DAMAGES.—

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

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

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

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

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

1                   “(A) February 17, 2009; or

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

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

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

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

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