

What is STELAR?

STELAR: The Satellite Television Extension and Localism Act Reauthorization—allows satellite companies to deliver distant television stations into homes, instead of the local broadcast stations that provide critical news and weather updates.

CONGRESS IS CURRENTLY DEBATING WHETHER TO **LET THE LAW EXPIRE** OR **EXTEND IT**.



AN OUTDATED LAW FOR 30 YEAR OLD TECHNOLOGY

Congress first passed the legislation in 1988, when the technology to deliver local broadcast stations via satellite in every community didn't exist and satellite companies were fledgling operations. Today they are billion-dollar companies—with millions of customers—and technology has advanced considerably. DISH delivers local broadcast stations in every community across the country.



RURAL COMMUNITIES NEGLECTED

Because of STELAR, DirecTV customers aren't so lucky; **viewers in twelve rural communities are denied their local TV stations as a profit-padding mechanism for the satellite giant.** In fact, in most of these neglected markets, DirecTV is importing TV channels from New York, L.A. or another faraway big city.



MISSING VITAL INFORMATION

When a deadly blizzard slams Helena, Montana or historic floods hit Victoria, Texas, DirecTV customers in these regions are **left without the critical information local broadcasters provide.**

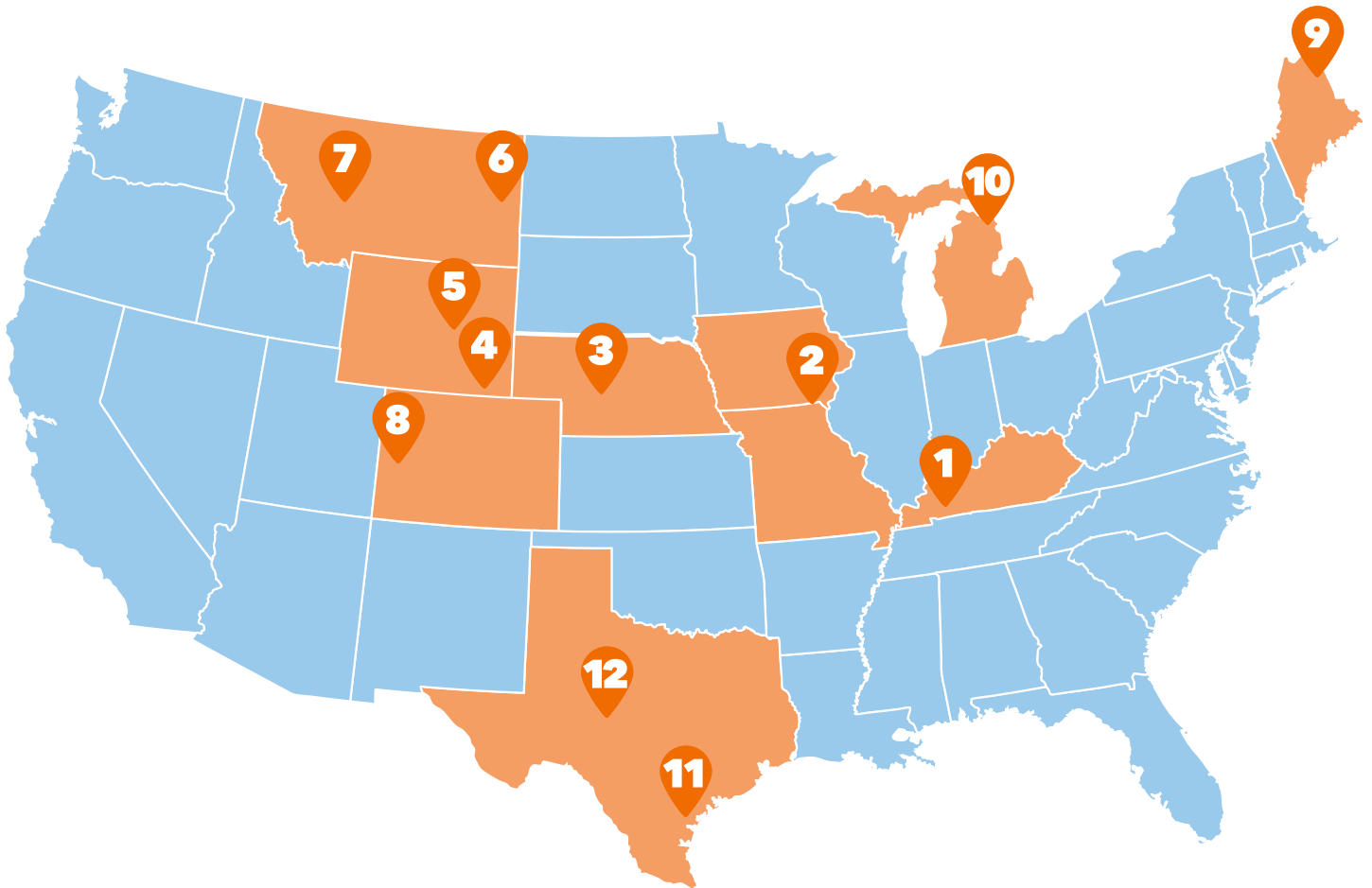


STELAR SHOULD EXPIRE

The only thing standing in the way of these twelve communities receiving their local stations from DirecTV is STELAR. It's time to let these provisions expire and **ensure that all Americans have access to the most accurate and timely source of community news, weather and emergency information**—their local TV broadcasters.

Who is harmed by STELAR?

- | | | |
|---------------------------------|-----------------------|---------------------|
| 1. Bowling Green, KY | 5. Casper, WY | 9. Presque Isle, ME |
| 2. Ottumwa, IA / Kirksville, MO | 6. Glendive, MT | 10. Alpena, MI |
| 3. North Platte, NE | 7. Helena, MT | 11. Victoria, TX |
| 4. Cheyenne, WY | 8. Grand Junction, CO | 12. San Angelo, TX |



DID YOU KNOW?

In most of these neglected markets, **DirectTV is importing TV channels from New York, L.A. or another faraway big city**, rather than showing local TV stations.

STELAR's Impact on Viewers



► How Many Total Subscribers are Impacted by STELAR and Where are They Located?

- The U.S. Copyright Office recently reported that the number of distant signal recipients under the Satellite Television Extension and Localism Act Reauthorization (STELAR) has “plummeted,” and broadcasters estimate that less than 500,000 subscribers nationwide – or less than 0.5 percent of households – are receiving distant ABC, CBS, NBC or FOX signals under STELAR.
 - Only the satellite companies know exactly who is receiving broadcast stations under STELAR and where these viewers are located. When asked by members of Congress for this information, the satellite companies have refused to provide any meaningful data.
 - A significant number of these subscribers are located in the dozen “neglected markets” where AT&T/DirectTV abuses STELAR by intentionally choosing to import an out-of-market station instead of carrying a local broadcast channel.
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► Will Viewers Who are Currently Served With Out-Of-Market Stations Under STELAR'S Distant Signal License Lose Access to Broadcast Television if the Law Sunsets?

- There is no reason that viewers should lose access to broadcast television signals if the satellite companies commit to providing local channels to all of their viewers. In the 99.5 percent of markets where local broadcast channels are available for all of the major networks, STELAR's expiration would incentivize satellite companies to offer the superior, local broadcast channels that benefit viewers.
 - If a circumstance arises where the satellite company is unwilling or unable to negotiate for carriage of a local broadcast signal, negotiation for carriage of the distant signal they offer today will remain an option.
 - Mobile subscribers such as RVs and truckers would be better served by local broadcast stations where access to local broadcast news and weather during an emergency situation is particularly critical.
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► If the Technology Exists for the Satellite Industry to Provide “Local Into Local” in Every Market, Why do They Continue to Provide Distant Signals?

- STELAR's below-market copyright royalty provides a financial incentive to AT&T/DirectTV and DISH to import out-of-market stations at a below-market, government-set rate rather than carry local channels. This amounts to a \$50 million per year subsidy for the \$200 billion-plus AT&T/DirectTV conglomerate. Unfortunately, this incentivizes carriage of out-of-market stations to viewers who would be better served by their local broadcaster.

(CONTINUED) STELAR's Impact on Viewers



► Isn't it Safer Just to Reauthorize STELAR?

- Extending this legislation by another five years - or even another five days - means local viewers who are being neglected by the satellite companies will continue to be harmed. There is no consumer-based policy rationale for reauthorizing STELAR's distant signal license, which undermines the benefits of the locally-focused broadcast system.
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► Do Broadcasters Oppose a "Good Faith" Obligation for Retransmission Consent Negotiations?

- Broadcasters are always committed to negotiating in good faith, since successful carriage negotiations are necessary for broadcasters to reach viewers. In the nearly 20 years since Congress passed these provisions, the Federal Communications Commission has found a violation of the requirement on only one occasion, by a pay-TV provider.
 - While well-intended, the expiring good faith requirements have provided no quantifiable benefit because all parties have every incentive to reach a deal and serve viewers. To the contrary, this requirement may encourage parties to posture for government regulators rather than negotiate.
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► I am Concerned About the Impact That Retransmission Consent Impasses are Having on my Constituents. Wouldn't Modifications to the Current Retransmission Consent Rules Benefit Viewers by Eliminating Blackouts?

- There is no such thing as a "blackout" of broadcast TV programming. Broadcast programming is always available to viewers on multiple platforms and is free, over-the-air to any household using an antenna.
- The retransmission consent process allows private marketplace negotiations to efficiently and fairly dictate the value of broadcasters' signals for those seeking to retransmit them for profit. Current proposals to modify this system would encourage parties to posture for government regulators rather than work to reach contractual agreements, substantially complicating retransmission consent negotiations.
- To modify or throw out the retransmission consent process would disrupt this fully functional market and have the unintended consequence of hampering broadcasters' ability to serve their local communities with news, entertainment and lifeline weather coverage.

IS THE NEWS YOU'RE GETTING THE NEWS YOU NEED?

Satellite TV could be keeping your constituents from vital local news and information

Broadcasters supply vital information to their communities every day, but the Satellite Television Extension and Localism Act Reauthorization (STELAR) prevents that news in some rural areas from reaching those who need it. Read on to see how the areas impacted by this outdated bill are being kept in the dark and why we need to end STELAR.

The Satellite Television Extension and Localism Act Reauthorization (**STELAR**) allows satellite companies to deliver distant television stations into homes, instead of the local broadcast stations that provide critical news and weather updates.



BOWLING GREEN KENTUCKY



What they should have seen:

Heavy rainfall causes flooding and dozens of road closures across South Central Kentucky



What they saw:

11 people hospitalized with carbon monoxide poisoning in Brooklyn

OTTUMWA IOWA



What they should have seen:

Price of crop insurance on the rise, impacting farmers across Iowa



What they saw:

Garbage truck catches fire in Los Angeles

HELENA MONTANA



What they should have seen:

Montana Green Party makes last-minute push to qualify candidates for 2018 ballot



What they saw:

Santa Clara County Board of Supervisors Votes to Draft Gun Ban Ordinance



STELAR SHOULD EXPIRE

By refusing to air local broadcast stations, satellite companies are keeping their subscribers in the dark. These underserved communities deserve access to the information and updates that can keep them safe and help make their lives easier.

United States Senate

WASHINGTON, DC 20510

August 1, 2019

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
Washington, D.C. 20510

The Honorable Roger R. Wicker
Chairman
Committee on Commerce, Science, and Transportation
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
Washington, D.C. 20510

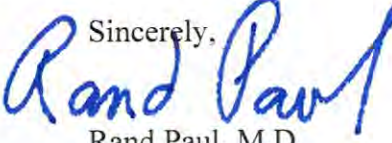
The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science, and Transportation
Washington, D.C. 20510

Dear Chairmen Graham and Wicker, and Ranking Members Feinstein and Cantwell:

I understand that many of my constituents in Kentucky do not have access to their local broadcast channels because satellite companies are permitted to import "distant signals" pursuant to the STELA Reauthorization (STELAR) Act of 2014 (P.L. 113-200). These distant signals are provided to cable and satellite companies at a government rate far below the rate of local channels, which are negotiated between the broadcasters and the multichannel video programming distributors. Kentuckians deserve and need access to local broadcasts to be informed of current events, weather, and emergency information.

STELAR, which will sunset at the end of 2019, is an obsolete law whose rationale for existence no longer exists. When the distant signal license was enacted into law thirty years ago, its purpose was to allow fledgling satellite companies the ability to compete with cable companies and to compensate for technological limitations that made carrying local broadcast stations impossible in certain parts of the country. Today, with the satellite industry fully developed and the improvements in signal technology, there is no policy rationale for government intervention in the market to continue to prop up one competitor over another, nor is there any technological reason for a segment of the country to remain unserved by their local television broadcasters. Consequently, we should allow STELAR to expire.

As your Committees deliberate whether STELAR's distant signal statutory license provisions should sunset, I would like to express my firm belief that this license has not only outlived its usefulness, but also provides what amounts to a government subsidy for corporations that have no compelling reason to receive them and come at a significant cost to my constituents who are unable to receive local broadcasts. I ask you to simply allow STELAR to expire.

Sincerely,

Rand Paul, M.D.
United States Senator

June 3, 2019

Chairman Frank Pallone Jr.
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Ranking Member Greg Walden
Committee on Energy and Commerce
2185 Rayburn House Office Building
Washington, DC 20515

Chairman Roger Wicker
Committee on Commerce, Science, & Transportation
555 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Maria Cantwell
Committee on Commerce, Science, & Transportation
511 Hart Senate Office Building
Washington, DC 20510

Dear Chairmen Pallone and Wicker and Ranking Members Walden and Cantwell,

On behalf of the undersigned organizations representing interests across rural America, we write in opposition to any renewal of the Satellite Television Extension and Localism Act Reauthorization (STELAR). STELAR – which serves to enable and incentivize major satellite television providers to neglect some of America's most rural communities – ought to be put out to pasture at the end of this year, as intended.

The policies of STELAR – first enacted before the rise of even the early Internet – have been surpassed by technological advances and now cause affirmative harm to our rural communities. Rural Americans rely on local broadcasting for critical information and news about our local communities and, especially when we are out in the field, up-to-the minute weather and emergency information. This is critical local information not only for the productivity of our lands, but also for the safety of our livestock and families. Yet, because of STELAR, major satellite television providers are carrying television stations from outside these rural areas rather than the local stations themselves.

Just as local broadcasting brings us together and provides a lifeline service when we need it most, our organizations applaud your Committees' attention and work in crafting solutions to close the rural broadband divide. While we are all proud of our traditions and way of life in rural America, we also recognize that we live in an increasingly connected economy. Broadband connectivity is critical to our futures, but local broadcast television is part of our heartland's past, present and future. As your Committees begin consideration of the video marketplace, we urge you not to extend this decades-old satellite law but instead to make closing the digital divide your top priority.

Sincerely,



American Agri-Women



American Dairy Coalition



Agricultural Retailers Association



National Association of Wheat Growers



National Black Growers Council



National Farmers Union



Rural & Agriculture Council of America



United States Cattlemen's Association



Women Involved in Farm Economics



Intertribal Agriculture Council



NABOB

National Association of
Black Owned Broadcasters

May 31, 2019

The Honorable Frank Pallone, Jr.
Chairman
House Energy & Commerce Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable Roger F. Wicker
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510

The Honorable Greg Walden
Ranking Member
House Energy & Commerce Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510

Dear Chairmen Pallone and Wicker and Ranking Members Walden and Cantwell:

As your committees examine the media marketplace in the coming weeks and months, the National Association of Black Owned Broadcasters (NABOB) urges you to allow the Satellite Television Extension and Localism Act Reauthorization (STELAR) Act to expire as intended. Further, your committees should reject any suggestions that would diminish the ability of local broadcasters to continue to invest in what makes our medium truly unique and irreplaceable: our service to local communities.

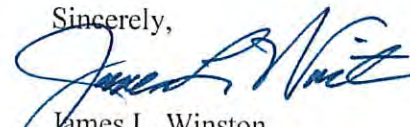
NABOB is the first and only trade organization representing the interests of African-American owners of radio and television stations across the country. In an increasingly fragmented media marketplace, the connection that local broadcasting has with multicultural and African-American audiences remains vital. NABOB's diverse owners of local broadcast stations are proud to be the voices of our communities and take seriously our responsibility to keep audiences informed in an era of mischaracterization of facts and mean rhetoric.

Your committees can ensure that local broadcasting continues to serve these multicultural and African-American audiences through the expiration of STELAR. STELAR's subsidy to encourage satellite competition with cable monopolies has succeeded. This law now merely incentivizes the neglect of viewers and denial of access to local broadcast stations. Congress should no longer facilitate the satellite industry's business decision to underserve local communities.

The Honorable Frank Pallone, Jr.
The Honorable Roger F. Wicker
The Honorable Greg Walden
The Honorable Maria Cantwell
May 31, 2019
Page 2 of 2

Finally, your committees should reject calls for changes to the media marketplace rules that would undermine investment in local broadcasting in favor of the bottom lines of our competitors. Proposals designed to enhance the negotiating leverage of the pay-TV industry – whether cloaked as well-intentioned consumer protections or mere modernization of outdated rules – should be given no consideration. For local broadcasting to continue to serve our communities, we must be able to seek fair compensation and compete in the marketplace. The success and growth of the next generation of diverse broadcast owners is counting on it.

Sincerely,



James L. Winston
President



March 22, 2019

Honorable Jerrold Nadler
Chairman
House Judiciary Committee
2132 Rayburn House Office Building
Washington, DC 20515

Honorable Doug Collins
Ranking Member
House Judiciary Committee
1504 Longworth House Office Building
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Collins:

We write to express opposition to any effort to reauthorize the Copyright Act's section 119 compulsory license for satellite retransmission of broadcast distant signals.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.

As the unified voice of the copyright community, representing the interests of individuals and organizations across the spectrum of copyright disciplines, the Copyright Alliance has a longstanding position generally disfavoring compulsory licenses because they represent an exception to the exclusive rights of copyright holders to determine the means of distribution for their creative works. The compulsory license for satellite retransmission of broadcast television distant signals, found in 17 USC § 119, was created by Congress in 1988 to foster competition in the video marketplace, and it has been reauthorized five times since then. The section 119 license is set to expire at the end of this year, and the Copyright Alliance does not support any further reauthorization of the license.

Audiences have never had as many options for watching movies, television shows, sports, and other original audiovisual programs. Creating audiovisual works with high production values is an expensive proposition, whether you are an independent documentarian, a major motion picture studio, a television production company, or sports league. The technologies and business models underlying the video industry are evolving daily and at an ever-increasing pace, leading to more flexible options for creators and consumers. This experimentation is healthy and spurs the development of other delivery systems.

The ability to exercise copyright's exclusive rights through licensing is fundamental to



unlocking copyright's full potential, and allows artists to create and distribute their works how they see fit, entrepreneurs to innovate, and markets to operate in this burgeoning environment. The Copyright Alliance believes that creators are most fairly compensated when there are no distortions in the marketplace. We recognize that the licensing marketplace for broadcast television programming is very complex, involving a number of regulatory and statutory provisions spanning the Communications Act and Copyright Act, but that alone is not a compelling reason to retain the compulsory license in section 119. In keeping with our dedication to advocating policies that promote and preserve the value of copyright, we do not support extending the section 119 license.

Sincerely,

Keith Kupferschmid
CEO
Copyright Alliance

cc:

Rep. Mary Gay Scanlon
Rep. Zoe Lofgren
Rep. Sheila Jackson Lee
Rep. Steve Cohen
Rep. Henry C. Johnson
Rep. Theodore E. Deutch
Rep. Karen Bass
Rep. Cedric L. Richmond
Rep. Hakeem S. Jeffries
Rep. David N. Cicilline
Rep. Eric Swalwell
Rep. Ted Lieu
Rep. Jamie Raskin
Rep. Pramila Jayapal
Rep. Val Butler Demings
Rep. J. Luis Correa

Rep. F. James Sensenbrenner
Rep. Steve Chabot
Rep. Louie Gohmert
Rep. Jim Jordan
Rep. Ken Buck
Rep. John Ratcliffe
Rep. Martha Roby
Rep. Matt Gaetz
Rep. Mike Johnson
Rep. Andy Biggs
Rep. Tom McClintock
Rep. Debbie Lesko
Rep. Guy Reschenthaler
Rep. Ben Cline
Rep. Kelly Armstrong
Rep. W. Gregory Steube



Rep. Sylvia R. Garcia
Rep. Joe Neguse
Rep. Lucy McBath
Rep. Greg Stanton
Rep. Madeleine Dean
Rep. Debbie Mucarsel-Powell
Rep. Veronica Escobar



The Register of Copyrights of the United States of America

United States Copyright Office • 101 Independence Avenue SE • Washington, DC 20559-6000 • (202) 707-8350

The Honorable Jerrold Nadler
Chairman
House Judiciary Committee
United States House of Representatives
2132 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Doug Collins
Ranking Member
House Judiciary Committee
United States House of Representatives
1504 Longworth House Office Building
Washington, D.C. 20515

June 3, 2019

Dear Chairman Nadler and Ranking Member Collins:

I am pleased to deliver this response to your letter of May 28, 2019, regarding the compulsory license for secondary transmissions of distant broadcast programming by satellite under section 119 of the U.S. Copyright Act. The Copyright Office has administered the section 119 compulsory license since it was added as a temporary license in 1988, and we appreciate the opportunity to provide you with detailed information in response to your request for the Office's views about the current usage of this compulsory license and whether it should be reauthorized.

As detailed in the attached response, after considering the general ecosystem for licensing video content and the limited current usage of the section 119 license, the Office again recommends letting the license sunset without renewal. This recommendation is consistent with the Office's long-standing position on the section 119 compulsory license, reflected in the Office's previous comprehensive reports to Congress in 2011 and 2008, recommending that the license be allowed to sunset. We appreciate, however, that Congress is considering fully the many equities involved as it deliberates whether to reauthorize this license, set to expire on December 31, 2019. We would be pleased to provide further information on this subject and look forward to working with you on this issue.

Respectfully,

A handwritten signature in dark ink, appearing to read "Karyn Temple".

Karyn A. Temple
Register of Copyrights and
Director, United States Copyright Office

Enclosure

U.S. COPYRIGHT OFFICE ANALYSIS AND RECOMMENDATIONS REGARDING THE SECTION 119 COMPULSORY LICENSE

June 3, 2019

I. Background on the Section 119 License

Copyright law's compulsory license for secondary transmissions of distant broadcast programming by satellite under 17 U.S.C. § 119 is set to expire on December 31, 2019. Originally enacted in 1988, this provision must be reauthorized every five years and was most recently extended by the Satellite Television Extension and Localism Act Reauthorization Act ("STELAR") in 2014. The provision establishes a compulsory licensing regime for satellite transmissions of distant signal programming to "unserved households" by network stations and by non-network superstations "to the public for private home viewing . . . and [where] the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission," as well as by non-network superstations to the public "for viewing in a commercial establishment."¹

The section 119 compulsory license also interacts with the Communications Act of 1934 and federal communications policy, making the issue before Congress one involving multiple areas of the law. The House Judiciary Committee and the House Committee on Energy and Commerce, along with the Senate Committee on the Judiciary and the Senate Committee on Commerce, Science, and Transportation, have jurisdiction over STELAR and issues related to section 119's expiration.

The section 119 compulsory license itself, however, is a copyright license. Section 119 modifies a copyright owner's exclusive right to publicly perform and display their work (*e.g.*, via television programming) and replaces it with a right to be remunerated when others use the work within the scope of the compulsory license. Under 17 U.S.C. § 119, satellite operators do not need permission for certain carriage of distant broadcast programming, although they must pay the copyright owner a set royalty rate. The Copyright Office has administered the section 119 compulsory license for three decades: collecting statements of account and royalties from satellite operators, and distributing them to the appropriate rightsholders following determinations by the Copyright Royalty Judges.²

Section 119 applies only to satellite carriage of distant broadcast signals. In practice, this license permits the importation of network stations (*e.g.*, ABC) into underserved communities, as

¹ 17 U.S.C. § 119(a)(2)(A)–(B); (a)(1). The model type of unserved household is "a household that cannot receive, through the use of a conventional, stationary, outdoor rooftop receiving antenna, an over-the-air signal of a primary network station affiliated with that network of Grade B intensity." *Id.* § 119(d)(10)(A). There are four other types of unserved households, including recreational vehicles and commercial trucks. *See Id.* § 119(d)(10)(B)–(E). As discussed below, the current distribution of distant signals provided to subscribers for each type of unserved household has not been shared by the satellite operators. Carriage is limited to up to two stations from the same network each day (*e.g.*, two different NBC stations).




² *See Licensing Division, U.S. COPYRIGHT OFFICE*, <https://www.copyright.gov/licensing/>; *Form SC – Statement of Account for Secondary Transmissions by Satellite Carriers*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/forms/formSC.pdf>.

well as the carriage of non-network superstations (a category that included WGN until its transformation into a destination cable network in late 2014, but today includes fewer stations with substantially fewer subscribers). Section 119 does not provide a compulsory license for the vast majority of television programming offered by satellite carriers to subscribers, whether through “base packages” (e.g., ESPN, C-SPAN), or as premium programming (e.g., HBO, STARZ).³ Nor does section 119 apply to satellite carriage of local broadcast signals (i.e., a local network affiliate such as WJLA), which falls under section 122, or carriage of local or distant broadcasts by cable systems, which falls under section 111. Both section 111 and section 122 are permanent compulsory licenses without expiration dates. Section 119 applies only to satellite carriers—not over-the-top (“OTT”) services that deliver television via the internet, which have flourished in recent years and are discussed further below. And unlike the other compulsory license for satellite carriers (section 122), section 119 does not require retransmission consent.⁴

II. Section 119 Usage has Plummeted Since 2014

Not only has the satellite industry long since matured from the fledgling industry that Congress sought to assist, but the use of the section 119 compulsory license has dropped dramatically following the last reauthorization. Satellite industry reports indicate that about 30 million U.S. households subscribe to satellite programming service, but relatively few receive a “distant signal” as defined by the copyright law.⁵ Royalties paid under section 119 have plummeted over the past five years. As seen in the table below, royalties reported by satellite carriers to the Copyright Office fell between about 85 percent and 99.5 percent between the first reporting period of 2014 and the first reporting period of 2018:

Table: Royalties Paid under Section 119 (2014/1 vs. 2018/1)⁶

	2014/1	2018/1	Change
DirecTV	\$26,649,895	\$3,524,799	 86.75%
DISH	\$15,103,235	\$2,337,095	 85%
DISH Puerto Rico	\$300,033	\$1,484	 99.5%

³ See, e.g., *DirecTV Select Package*, AT&T, <https://www.att.com/directv/select-package.html> (last visited June 2, 2019); *DISH Channel Lineup*, DISH, <https://www.dish.com/programming/channels/> (last visited June 2, 2019).

⁴ See 47 U.S.C. § 325(b)(2)(B).

⁵ The exact number of subscribers who receive distant signals is not known. The Satellite Broadcasting & Communications Association, which represents DirecTV and DISH and supports making section 119 permanent, estimates 870,000 households get at least one distant signal; the National Association of Broadcasters, which supports letting section 119 expire, estimates 500,000. See *Reauthorize and Revitalize the Satellite Home Viewer Act*, SATELLITE BROADCASTING & COMMUNICATIONS ASS'N, http://www.sbca.org/documents/Rural_Sat_Act.pdf; *Narrow Satellite Legislation Should Expire as Congress Intended*, NAT'L ASS'N OF BROADCASTERS (Sept. 2018), http://www.nab.org/documents/newsRoom/pdfs/NAB_STELAR_expiration.pdf.

⁶ In addition to paying royalties, parties using the section 119 license must file semi-annual statements of account with the Copyright Office covering the periods of January 1 through June 30, and July 1 through December 31 (i.e., January 1 through June 30, 2018 is considered period “2018/1”). See 37 C.F.R. § 201.11.

The fall in royalties paid is due to a dramatic decline in total subscribers receiving one or more stations under the section 119 license, which in turn is affected by (1) a drop in the overall number of distant network stations carried, and (2) the disappearance of non-network superstations, such as WGN.

For example, in the 2014/1 accounting period, DirecTV reported a monthly average of 4,031,442 private home viewing subscribers for network stations. (Subscription reporting figures treat each individual subscriber as a unique subscriber for each network station they receive.⁷) By 2018/1, that number had fallen to a monthly average of 2,097,663. Across those reporting periods, the number of distant network stations that DirecTV carried fell from 58 to 40. And, due to WGN's conversion from superstation to destination network, DirecTV subscribers to non-network superstations were eliminated—from a monthly average of about 12 million to zero.⁸ Each of these factors translated to a significant drop in the use of the section 119 license and, thereby, the royalties paid under the license. Taken together, these developments are responsible for the plummeting figures reported in the statements of account of the three satellite companies (DirecTV, DISH, and DISH Puerto Rico) that utilized the section 119 license, and filed with the Copyright Office as required, over the past five years.

Meanwhile, other new technologies and programming-delivery models have emerged and flourished without the assistance of a compulsory license. Particularly relevant to section 119 is the growth of OTT services that deliver television and video via the internet. OTT media, which includes services like Netflix, Hulu, and Amazon Video, now has subscribers in almost two-thirds of U.S. households.⁹ A subset of OTT media is the OTT television services, such as Hulu with Live TV, YouTube TV, and Sling TV (a subsidiary of DISH Network), that offer broadcast network programming to subscribers—and without the advantage of a compulsory license. Instead, OTT television services have negotiated licenses with programming rightsholders. And doing so has not appeared to curb their ability to establish themselves in the programming delivery marketplace. In fact, these services continue to cut into cable and satellite subscriptions as more consumers look for additional program-viewing options.¹⁰ Though OTT television accounts for a fraction of overall OTT media subscribers, the number of U.S. households

⁷ In other words, one home subscriber receiving distant network signals for ABC, CBS, and FOX would be counted as three private home viewing subscribers for network stations.

⁸ Similarly, DISH, which transmitted six superstations before WGN's conversion, saw superstation subscribers fall from about 9 million per month to about 1.3 million.

⁹ See Press Release, PR Newswire, Parks Associates Announces 2018 Top 10 U.S. Subscription OTT Video Services (Nov. 7, 2018, 10:00 AM), <https://www.prnewswire.com/news-releases/parks-associates-announces-2018-top-10-us-subscription-ott-video-services-300745430.html>.

¹⁰ See, e.g., VIDEO ADVERTISING BUREAU, YOU DOWN WITH OTT? AN OVERVIEW OF THE COMPETITIVE VIDEO ECOSYSTEM 8 (2018) (reporting that the number of U.S. households that relied on OTT services for television and video programming, rather than a traditional cable or satellite subscription, nearly tripled between 2013 and 2018, though not all of these households received broadcast network programming via OTT services), <https://www.thevab.com/wp-content/uploads/2018/03/OTT-Ecosystem-Overview-Final.pdf>; Jared Newman, *Pay TV Is Now Losing 12,000 Cord-cutters Every Day*, FAST COMPANY (May 3, 2019), <https://www.fastcompany.com/90343905/cord-cutting-speeds-up-cable-satellite-losing-12k-pay-tv-customers-a-day>.

subscribed to OTT delivery of broadcast network programming rose to 4.1 million in the first quarter of 2018.¹¹

In letters sent to the chairman and CEO of AT&T (parent company of DirecTV) and to the president and CEO of DISH Network, this Committee sought critical information about the continued use of section 119.¹² Specifically, the Committee asked about:

1. The total number of subscribers that currently receive one or more stations through a distant signal license under section 119.
2. The number of these subscribers that qualify under each of the five “unserved household” provisions found in 17 U.S.C. § 119(d)(10)(A)–(E).
3. The number of subscribers, if any, that receive a station under the section 119 license under a statutory authority not found in 17 U.S.C. § 119(d)(10)(A)–(E).
4. The number of subscribers that receive stations through a section 119 license in markets where the satellite operator provides no local stations.
5. The number of subscribers that receive stations through a section 119 license in a “short market” (per 17 U.S.C. § 119(g)(2)(E)) and whether any of those subscribers were included in the response to Question 4.

Both satellite operators responded that they use the section 119 license to provide one or more local broadcast stations to about 870,000 subscribers, but they declined to answer the Committee’s request for details about the numbers for each type of qualifying unserved household or for short markets, guarding this information as “competitively sensitive.”¹³ It is unclear from DirecTV and DISH how many of the approximately 870,000 subscribers are rural households and how many are, as DirecTV suggested, “long-haul trucks, RV and camping enthusiasts, and tailgating sports fans.”¹⁴ Neither response provided any information that would counter their statements of account filed with the Copyright Office that indicate usage of the section 119 license is in dramatic decline.

¹¹ See CONGRESSIONAL RESEARCH SERVICE, CABLE AND SATELLITE TELEVISION ISSUES IN THE 116TH CONGRESS 2 (2018), <https://fas.org/sgp/crs/misc/IF11053.pdf>.

¹² Letter from Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives, to Randall L. Stephenson, Chairman and Chief Executive Officer, AT&T Inc. (Mar. 22, 2019); Letter from Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives, to W. Erik Carlson, President and Chief Executive Officer, DISH Network Corp. (Mar. 22, 2019).

¹³ Letter from Tim McKone, Executive Vice President Federal Relations, AT&T, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (Apr. 19, 2019); Letter from Jeff Blum, Senior Vice President Public Policy and Government Affairs, DISH/Sling TV, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (Apr. 19, 2019).

¹⁴ Letter from Tim McKone, Executive Vice President Federal Relations, AT&T, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (Apr. 19, 2019).

III. The Section 119 License Should Sunset Without Reauthorization

From a copyright policy perspective, the U.S. Copyright Office recommends that Congress let the satellite distant signal license in section 119 expire at the end of 2019.

Although the Copyright Office has long supported permitting copyright owners to develop marketplace licensing options to replace the compulsory licenses in sections 111, 119, and 122, the case for removing the section 119 compulsory license in favor of less-regulated alternatives has never been stronger than today. Originally established to encourage the development of a nascent market, the section 119 compulsory license has been made unnecessary by the substantial growth of the satellite industry, now a strong incumbent, and the changed realities of the programming delivery market—in particular plummeting carriage of distant signals by satellite, as reflected by Copyright Office data.

Congress recognized the dangers of a long-term exemption and, accordingly, created the section 119 compulsory license as a temporary one.¹⁵ Congress enacted section 119 to provide households with distant network station service where local broadcast service from network affiliates was unavailable. It was concerned that the satellite industry, in most markets unable to carry local programming, would need to import distant signals to give subscribers access to network programming. But the rationale for renewing the expiring license has waned, and markedly so in the past five years. The satellite industry today has established itself firmly within the programming delivery market—with some 30 million subscribers, compared to about 47 million cable subscribers and 4 million OTT network programming subscribers.¹⁶ Yet the section 119 license continues to advantage the satellite industry with discounted license rates over new competitors (such as OTT television services) who must negotiate all carriage licenses.

A statutory license creates an artificial, government-regulated market that operates as an exception to the general rule that copyright owners hold exclusive rights and can negotiate whether and how and at what cost to distribute their copyrighted works; statutory licenses tend to be below the fair market value. The section 119 compulsory license also imposes a secondary cost on rightsholders: administrative fees related to the Copyright Office collecting royalties from satellite providers and distributing them to rightsholders.

The distant signal license may also negatively impact subscribers: several Members of Congress recently expressed concern that the section 119 compulsory license provides satellite operators with a financial incentive to deny subscribers local broadcast stations—including the news, weather, and emergency information carried by those local broadcast stations—and instead import distant broadcasts at below-market rates.¹⁷ Moreover, the technological

¹⁵ See H.R. REP. NO. 100-887, pt. 1, at 15 (1988) (stating that the new section 119 would have a sunset provision because “[t]he bill rests on the assumption that Congress should impose a compulsory license only when the marketplace cannot suffice”).

¹⁶ See *US Pay-TV Providers Lost 975,000 Subs in 3Q 2018*, BROADBAND TV NEWS (Nov. 14, 2018), <https://www.broadbandtvnews.com/2018/11/14/us-pay-tv-providers-lost-975000-subs-in-3q-2018/>.

¹⁷ See Letter from Susan M. Collins, U.S. Senator, & Angus S. King, Jr., U.S. Senator, to Lindsey Graham, Chairman, Comm. on the Judiciary, U.S. Senate, Roger F. Wicker, Chairman, Comm. on Commerce, Sci., & Transp., U.S. Senate, Dianne Feinstein, Ranking Member, Comm. on the Judiciary, U.S. Senate, & Maria Cantwell, Ranking Member, Comm. on Commerce, Sci., & Transp., U.S. Senate (Mar. 27, 2019) (expressing concern that

limitations that once made it burdensome or impossible to provide local programming to certain markets have been overcome. In short, the considered rationales for enacting—and renewing—section 119 no longer exist.

Unlike thirty years ago, today the market could respond to service underserved communities in the absence of the section 119 compulsory license. Satellite providers are no longer stymied by technological limitations. DISH already provides some local programming in all 210 U.S. media markets;¹⁸ DirecTV provides it in 198 markets.¹⁹ Eight years ago, the Copyright Office concluded that a variety of licensing options could ease the transition that would follow an expiration of the section 119 license;²⁰ the Report also predicted that “additional innovative solutions may develop over time.”²¹ The development of new business models since then further supports this view. And, as evidenced by DISH’s ability to carry at least one local broadcast station in all 210 U.S. media markets, satellite operators and broadcasters can successfully negotiate in good faith.

At Congress’ request, the U.S. Copyright Office has evaluated the section 119 compulsory license numerous times since its addition to copyright law in 1988. Repeatedly, the Copyright Office has recommended that Congress phaseout the section 119 compulsory license for secondary transmissions of distant television programming by satellite.

“this license has not only outlived its usefulness, but now provides a below-market incentive for AT&T/DIRECTV to deny viewers in Northern Maine the in-state coverage they desire and deserve”); Letter from Jared Golden, U.S. Representative, to Frank Pallone, Jr., Chairman, Comm. on Energy & Commerce, U.S. House of Representatives, Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, Greg Walden, Ranking Member, Comm. on Energy & Commerce, U.S. House of Representatives, & Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (May 10, 2019) (“It is clear that the distant signal license has outlived its usefulness and now disincentivizes AT&T/DIRECTV from offering local programming to viewers in Northern Maine.”); John Eggerton, *Texas Rep. to Hill: Sunset STELAR Act*, MULTICHANNEL NEWS (May 3, 2019) (reporting on a letter from Michael Cloud, U.S. Representative, to Frank Pallone, Jr., Chairman, Comm. on Energy & Commerce, U.S. House of Representatives, Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, Greg Walden, Ranking Member, Comm. on Energy & Commerce, U.S. House of Representatives, & Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives); *see also* Letter from Jon Tester, U.S. Senate, Michael B Enzi, U.S. Senate, Michael F. Bennet, U.S. Senate, & John Barrasso, U.S. Senate, to John Donovan, Chief Executive Officer, AT&T Communications, LLC (Mar. 14, 2019) (stating that DirecTV’s failure to provide any local broadcasts in twelve markets, despite technological advances, and to import distant signals from Los Angeles and New York causes “subscribers in these situations to miss vital information on public safety, weather, elections, and opportunities for community engagement”).

¹⁸ *See* Letter from Jeff Blum, Senior Vice President Public Policy and Government Affairs, DISH/Sling TV, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (Apr. 19, 2019). Seven of these 210 markets are “short markets,” meaning that they lack one or more local broadcast stations.

¹⁹ In its response to this Committee, DirecTV did not detail the media markets to which it provides local broadcast signals; however, it is reflected in statements of account filed with the Copyright Office.

²⁰ *See* U.S. COPYRIGHT OFFICE, SATELLITE TELEVISION EXTENSION AND LOCALISM ACT § 302 REPORT 66–67 (2011) (introducing sublicensing, collective licensing, and direct licensing as but three marketplace alternatives to the video compulsory licenses); *see also id.* at 67–128 (discussing each of those licensing alternatives, and suggesting that a hybrid licensing model permitting licensors and licensees to choose among licensing alternatives would work best).

²¹ *Id.* at 66.

The Copyright Office has conducted five extensive studies of copyright law's compulsory licenses for broadcast programming (sections 111, 119, and 122).²² (Links to these reports are provided in the Appendix.) These reports reflect the Copyright Office's long-held view that a compulsory license "should be utilized only if compelling reasons support its existence,"²³ and that the video compulsory licenses have outlived their purposes. In particular, as the Office concluded in 2008, section 119 is "undergirded by outdated rationales set forth in 1988, [and] is no longer necessary nor appropriate."²⁴

The Copyright Office's most recent Report on compulsory licenses for broadcast programming was the result of a 2010 mandate from Congress to provide a blueprint for phasing-out all three licenses.²⁵ The Copyright Office recommended that Congress begin by setting a firm date to end the distant signal licenses, leaving repeal of the local signal licenses to an unspecified future date. The Office concluded that business models based on sublicensing, collective licensing, and direct licensing, as well as business models that may yet emerge, provided "feasible alternatives" for licensing the rights to retransmit television programming.²⁶ In 2016, the Copyright Office also consulted on a U.S. Government Accountability Office report to Congress that concluded "that a phaseout of the statutory licenses may be feasible for most market participants."²⁷

Since the Copyright Office's 2011 Report, congressional testimony from Copyright Office leadership has reiterated that the video compulsory licenses are an area of copyright law ripe for reform. For example, in the March 2013 hearing that launched Congress' multi-year review of copyright law, the Register of Copyrights identified "updating the framework for cable and satellite transmissions" as among a long list of issues requiring congressional attention.²⁸ The following year, Copyright Office leadership testified that consumers could benefit from

²² The studies were published in 2011, 2008, 2006, 1997, and 1992. See U.S. COPYRIGHT OFFICE, SATELLITE TELEVISION EXTENSION AND LOCALISM ACT § 302 REPORT (2011); U.S. COPYRIGHT OFFICE, SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT SECTION 109 REPORT (2008); U.S. COPYRIGHT OFFICE, SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT § 110 REPORT (2006); U.S. COPYRIGHT OFFICE, A REVIEW OF THE COPYRIGHT LICENSING REGIMES COVERING RETRANSMISSION OF BROADCAST SIGNALS (1997); U.S. COPYRIGHT OFFICE, THE CABLE AND SATELLITE CARRIER COMPULSORY LICENSES: AN OVERVIEW AND ANALYSIS (1992). Links to each of these publications are provided in the Appendix.

²³ U.S. COPYRIGHT OFFICE, A REVIEW OF THE COPYRIGHT LICENSING REGIMES COVERING RETRANSMISSION OF BROADCAST SIGNALS 13 (1997) (quoting *Copyright/Cable Television: Hearings on H.R. 1805, H.R. 2007, H.R. 2108, H.R. 3528, H.R. 3530, H.R. 3560, H.R. 3940, H.R. 5870, and H.R. 5949 Before the Subcomm. on Courts, Civil Liberties, and the Admin. of Justice*, Pt. 1, 97th Cong. 959–60 (1981) (statement of David Ladd, Register of Copyrights, U.S. Copyright Office)).

²⁴ U.S. COPYRIGHT OFFICE, SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT SECTION 109 REPORT at 85 (2008).

²⁵ See Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175, § 302, 124 Stat. 1218 (2010).

²⁶ U.S. COPYRIGHT OFFICE, SATELLITE TELEVISION EXTENSION AND LOCALISM ACT § 302 REPORT at iii (2011).

²⁷ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, STATUTORY COPYRIGHT LICENSES: STAKEHOLDERS' VIEWS ON A PHASEOUT OF LICENSES FOR BROADCAST PROGRAMMING 38 (2016).

²⁸ *The Register's Call for Updates to U.S. Copyright Law: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. 2 (2013) (written statement of Maria A. Pallante, Register of Copyrights).

phasing-out the compulsory licenses and encouraging negotiations between copyright owners, broadcasters, and cable and satellite providers.²⁹

Today, section 119 is more ripe for expiration than ever.

As requested, the Copyright Office's recommendation is focused on the section 119 compulsory license for secondary transmissions of distant television programming by satellite that was renewed in 2014 for the five-year period ending in 2019. Although the Copyright Office has also recommended a phase-out of the section 111 compulsory license for secondary transmissions of broadcast programming by cable and the section 122 compulsory license for secondary transmissions of local television programming by satellite,³⁰ we recognize that repealing those licenses could be a less straightforward process because of issues related to retransmission consent.

Discussion of section 119 often gets lumped with the other compulsory licenses for broadcast programming in sections 111 and 122, but when evaluating section 119 by itself, it is apparent that the circumstances around the 119 license do not justify its renewal. The Copyright Office believes that the time is ripe to let the 119 exemption sunset, as Congress envisioned would become necessary when establishing this license thirty years ago. Congress would be justified in allowing section 119 to expire even if the other video compulsory licenses are left untouched for an indefinite period.

²⁹ See *Compulsory Video Licenses of Title 17: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. 17 (2014) (written statement of William J. Roberts, Jr., Acting Associate Register of Copyrights) (discussing the Copyright Office's 2011 Report that provided a blueprint for phasing out the compulsory licenses for cable and satellite carriers).

³⁰ See generally U.S. COPYRIGHT OFFICE, SATELLITE TELEVISION EXTENSION AND LOCALISM ACT § 302 REPORT (2011).

APPENDIX: COPYRIGHT OFFICE REPORTS AND TESTIMONY ON SECTION 119

U.S. Copyright Office Reports:

- 2011 – Satellite Television Extension and Localism Act Section 302 Report, <https://www.copyright.gov/reports/section302-report.pdf>
- 2008 – Satellite Home Viewer Extension and Reauthorization Act Section 109 Report, <http://www.copyright.gov/reports/section109-final-report.pdf>
- 2006 – Satellite Home Viewer Extension and Reauthorization Act Section 110 Report, <https://www.copyright.gov/reports/satellite-report.pdf>
- 1997 – A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals, <http://www.copyright.gov/reports/study.pdf>
- 1992 – The Cable and Satellite Carrier Compulsory Licenses: An Overview and Analysis, <http://copyright.gov/reports/cable-sat-licenses1992.pdf>

U.S. Government Accountability Office (in consultation with the U.S. Copyright Office):

- 2016 – Statutory Copyright Licenses: Stakeholders’ Views on a Phaseout of Licenses for Broadcast Programming, <https://www.gao.gov/assets/680/676935.pdf>

U.S. Copyright Office Testimony and Speeches (2009–Present):

- **The Register’s Perspective on Copyright Review** – April 29, 2015 (written statement of Register of Copyrights Maria A. Pallante), <https://docs.house.gov/meetings/JU/JU00/20150429/103385/HHRG-114-JU00-Wstate-PallanteM-20150429.pdf>
- **Compulsory Video Licenses of Title 17** – May 8, 2014 (written statement of Acting Associate Register of Copyrights William J. Roberts, Jr.), <https://www.copyright.gov/regstat/2014/wjrstat05082014.html>
- **The Register’s Call for Updates to U.S. Copyright Law** – March 20, 2013 (written statement of Register of Copyrights Maria A. Pallante), <https://docs.house.gov/meetings/JU/JU03/20130320/100539/HHRG-113-JU03-Wstate-PallanteM-20130320.pdf>
- **The Next Great Copyright Act** – March 4, 2013 (Manges Lecture delivered by Register of Copyrights Maria A. Pallante), <https://docs.house.gov/meetings/JU/JU03/20130320/100539/HHRG-113-JU03-Wstate-PallanteM-20130320-SD001.pdf>
- **Copyright Licensing in a Digital Age: Competition, Compensation and the Need to Update the Cable and Satellite TV Licenses** – Feb. 25, 2009 (statement of Register of Copyrights Marybeth Peters, testifying on findings of the Copyright Office’s 2008 report), <https://www.copyright.gov/docs/regstat022509.html>