

Statement of

The Honorable Orrin Hatch.

United States Senator
Utah
May 12, 2004

Statement of Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Hearing on

"The Satellite Home Viewer Extension Act"

Good afternoon and welcome to today's hearing on the "Satellite Home Viewer Extension Act." Today we will be discussing some very important issues relating to the reauthorization of section 119 of the Copyright Act, which provides a statutory license for the retransmission of distant network signals. The extension of section 119 has far reaching implications for the satellite and broadcast television industries, as well as for those who create video content, and I am sure that the tremendous panel of witnesses that we have here today will do their best to make this somewhat difficult subject matter accessible to all of us, while also providing us with some insight into the economics of providing direct broadcast satellite or DBS service.

Television has come a long way since it was invented by Utah native Philo T. Farnsworth in 1927. The first television image was nothing more than a straight line that rotated 90 degrees from a vertical to a horizontal position on the screen. I think that most people would agree that television programming has, at the very least, become more interesting than Philo's rotating line.

Although, based on all the letters I have received about the last Super Bowl half-time show, I am not sure that all of my constituents think that the taste in programming has improved all that much.

I want to take some time to describe in a general way the approach that I believe Congress needs to take on this legislation. Before I do that, I want to emphasize that I have been impressed by the degree of bipartisan and bicameral cooperation that has been apparent thus far in our work on this legislation. I thank Senators Leahy, Kohl, and DeWine for their efforts on this bill, and I hope that we will continue to work together to pass legislation that appropriately balances the interests of the affected parties and industries, while advancing sound public policy and consumer choice.

With that in mind, I will outline some of the larger policy objectives that I believe should be important in guiding us to a resolution of a number of issues that have been raised in connection with this legislation.

First, we need to bear in mind that compulsory licenses are strongly disfavored due to the market distortions they create and then perpetuate. Although I support extending the statutory license in section 119 for another five years, Congress needs to think carefully about how to begin minimizing the overall distorting effect of this compulsory license on the market, while retaining its central purpose of providing broadcast network signals via satellite to households that cannot receive them over the air. With local stations now available from DBS providers in over 110 markets which, I am told, encompass roughly 85 percent of U.S. television households, one obvious approach is to create appropriate incentives that will further encourage a transition from the section 119 distant signal license to the section 122 local-into-local license.

Second, I believe that we need to have a reasonable adjustment of the copyright royalty rates that are paid under the section 119 license. Once we depart from rates that are set at or near fair market value under a compulsory license, not only do we introduce substantial - and potentially increasing - market distortions, but Congress eventually finds itself without any clear guiding principle to apply in determining the proper rate. For this reason, unless the affected parties can move toward some resolution of the rate issue, the Senate should consider an approach similar to the approach taken in the House Judiciary Committee, in which a Copyright Arbitration Royalty Panel would determine the rate, and it would then be subject to Congressionally-mandated discounts.

Third, Congress should carefully consider ways to increase parity between cable and DBS to ensure that consumers continue to benefit from competition and have increased programming choices. For example, I believe satellite providers should be allowed to provide significantly viewed stations to their subscribers in the same way that cable companies do.

Finally, I want to mention the two-dish issue. I believe that the Senate should prohibit the discriminatory placement of certain stations on a second satellite, requiring subscribers to obtain a second dish to receive them. I am particularly concerned that Spanish-language, religious, and public broadcast stations have been singled out for this treatment.

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