CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 16, 2009

H.R. 3570
Satellite Home Viewer Update and Reauthorization Act of 2009

As ordered reported by the House Committee on the Judiciary on September 16, 2009

SUMMARY

Under current law, satellite and cable television carriers pay royalty fees to the Copyright Office for the right to transmit certain television signals to their subscribers. The Copyright Office later distributes those fees to the owners of copyrights on the transmitted material.

H.R. 3570 would amend and extend through December 31, 2014, the requirement that satellite carriers pay royalty fees to the Copyright Office for transmission of certain copyrighted broadcasts. The bill also would change the calculation of royalties that cable companies pay for the right to transmit copyrighted material to their subscribers. (The requirement to pay royalties for satellite transmissions is set to expire on December 31, 2009; royalty fees for cable transmissions do not expire). The bill also would authorize the Copyright Office to charge filing fees to satellite and cable operators to offset part of its cost to operate the royalty program.

CBO estimates that enacting the bill would increase revenues by $633 million over the 2010-2019 period. With higher royalty collections, the payments to copyright owners (including interest earnings) also would increase, resulting in an estimated increase in direct spending of $725 million over the 2010-2019 period. Thus, the net impact on the federal budget would be an increase in the deficit of $92 million over the over the same period. That net increase over the 10-year period reflects the payment of interest, which accrues during the period the royalties are held by the Copyright Office, in addition to amounts collected in royalties.

H.R. 3570 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on satellite carriers, cable carriers, broadcasters, and copyright holders. Based on information from industry sources and the Copyright Office, CBO estimates that the aggregate cost of complying with the mandates would not exceed the annual thresholds established in UMRA for intergovernmental or

private-sector mandates ($69 million and $139 million in 2009, respectively, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3570 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010-2014	2010-2019
CHANGES IN REVENUES												
Satellite Copyright Royalty Fees	20	97	101	104	106	79	0	0	0	0	428	507
Cable Copyright Royalty Fees	7	11	12	12	12	13	13	13	13	13	54	119
Copyright Office Filing Fees	0	0	0	1	1	1	1	1	1	1	2	7
Total Changes in Revenues	27	108	113	117	119	93	14	14	14	14	484	633
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	27	110	121	132	140	111	29	28	24	19	530	741
Estimated Outlays	1	16	14	39	72	108	132	132	112	99	142	725
NET EFFECT ON THE DEFICIT [a]												
Estimated Impact on the Deficit	-26	-92	-99	-78	-47	15	118	118	98	85	-342	92

a. Positive numbers represent an increase in the deficit; negative numbers represent a reduction in the deficit.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted before the end of December 2009 and that spending will follow historical patterns for the program. The bill would increase the collection of copyright royalty fees, which are recorded in the budget as revenues. Those fees, plus interest accrued between the time of collection and payment, would later be paid to copyright owners.

Revenues

H.R. 3570 contains provisions that would increase federal revenues by increasing royalty collections and assessing new fees on certain cable and satellite providers. Taken together, CBO estimates that enacting H.R. 3570 would increase revenues by $633 million over the 2010-2019 period.

Satellite Copyright Royalty Fees. H.R. 3570 would extend through December 31, 2014, the requirement that satellite carriers pay royalty fees to owners of copyrighted material to retransmit that material to some of their subscribers. The royalty is based on a flat fee charged for each subscriber that receives the copyrighted transmissions. The bill would require the Copyright Royalty Judges (CRJs) to set a new rate if the affected parties cannot come to an agreement voluntarily; the rate would be adjusted annually thereafter for increases in the cost of living. The bill also would make a number of changes to current law that would affect the number of households eligible to receive transmissions for which royalty payments would be due.

In fiscal year 2008, the Copyright Office collected about $90 million in royalties from seven satellite carriers. Based on information from the satellite industry and groups representing copyright holders, CBO expects that the parties would reach an agreement on new rates that would not result in a significant increase in royalty collections. H.R. 3570 could also affect royalty collections by increasing the number of households that would be eligible to receive copyrighted transmissions. Based on information from satellite providers, CBO expects that royalty collections could increase by about 5 percent per year once the infrastructure is in place to transmit the broadcasts to more households. We estimate that, taken together, those changes would increase revenues by $507 million over the 2010-2019 period.

Cable Copyright Royalty Fees. Under current law, cable companies pay a royalty fee to use copyrighted material based on revenues collected from subscribers that are entitled to receive the copyrighted material whether or not they receive those broadcasts. H.R. 3570 would increase royalty rates set in law and eliminate the requirement that copyright fees be paid on revenue from subscribers that do not receive the copyrighted material. The bill also would authorize the Copyright Office to distribute any royalty payments received as the result of private agreements reached between cable systems and copyright holders.

In fiscal year 2008, the Copyright Office collected about $150 million in royalties from cable television carriers on revenues reported by approximately 5,000 cable systems. H.R. 3570 would increase the rate charged on those revenues by 5 percent. CBO estimates the higher royalty rate would increase revenues by $119 million over the 2010-2019 period.

Copyright Office Filing Fees. H.R. 3570 would authorize the Copyright Office to establish a new fee to be paid by satellite and cable providers that report subscriber or revenue data twice yearly with their royalty payments. The fees would be set at a rate sufficient to cover a portion of the costs to administer the licensing program; copyright holders pay the full cost of the program under current law. Based on information from the Copyright Office, CBO estimates that those new filing fees would ultimately generate about $1 million per year for a total of $7 million over the 2010-2019 period and would increase direct spending by the same amount.

Penalties. H.R. 3570 would significantly increase the size of the penalties that could be assessed for violations of rules that restrict satellite transmissions to households that cannot receive over-the-air network broadcasts that originate in their local market. This increase could result in additional federal revenues when penalties are assessed for violations of the territorial restrictions. Civil penalties are recorded as revenues, however, CBO estimates that such revenue collections would not be significant due to the small number of cases expected to be involved.

Direct Spending

Royalty Payments with Interest. With higher satellite and cable royalty collections under H.R. 3570, payments to copyright holders also would increase. Under current law, CRJs are responsible for determining the distribution of royalties collected and for settling disputes over royalty claims. Because the process relies on the copyright holders' agreement on the allocation of the amount due, royalty collections can be held by the Copyright Office for a number of years. Historical spending patterns indicate that copyright holders generally begin to receive payments several years after the revenues have been collected. Thus, we estimate a significant lag between increases in revenue collections and payments to copyright holders.

Under current law, interest, which accrues on the collections during the time they are held by the Copyright Office, is paid to the copyright holders at the time the royalties are distributed. Based on historical spending patterns, CBO assumes that the royalties would be held for four years, on average, before being distributed.

CBO estimates that increases in direct spending resulting from increases in royalty collections would total $718 million over the 2010-2019 period. Of that amount, approximately $90 million represents payments of accrued interest.

Filing Fees. Under current law, the full cost to administer the royalty program is deducted from payments due to copyright owners. As noted above, H.R. 3570 would authorize the Copyright Office to charge cable and satellite carriers filing fees to offset a portion of those administrative costs, in effect, distributing the program costs between those paying the royalty fees and those receiving the royalty distributions. This would result in an increase in the amount of royalties paid to the copyright holders because they would be covering a smaller portion of the administrative costs. CBO estimates that this provision would increase direct spending by $7 million over the 2010-2019 period.

Spending Subject to Appropriation

H.R. 3570 would require the Copyright Office to develop new regulations to allow reports submitted to the Office to be audited and to establish the new filing fees. In addition, the Federal Communications Commission would be required to develop a new model to determine the eligibility of households to receive copyright-protected satellite signals in light of the switch to digital broadcasting. Finally, the Department of Homeland Security would be required to develop regulations that would allow cable and satellite carriers to broadcast certain material to federal agencies in the event of an emergency. Based on information from each agency, CBO estimates that implementing those requirements would not have a significant effect on spending subject to appropriation.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 3570 would impose intergovernmental and private-sector mandates, as defined in UMRA, on satellite and cable carriers, broadcasters, and copyright holders. Based on information from industry sources and the Copyright Office, CBO estimates that the aggregate cost of complying with the mandates would not exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates ($69 million and $139 million in 2009, respectively, adjusted annually for inflation).

Mandates that Apply to both Public and Private Entities

Secondary Transmission of Network Signals. The bill would extend an existing mandate on satellite carriers and copyright holders that requires them to participate in a process to set royalty rates for certain types of transmissions. The bill also would adjust some of the methods for determining subscribers' eligibility for those transmissions. The requirement to participate in the process is set to expire on December 31, 2009.

In the absence of the bill, royalty rates would be set in the private market. Under the bill, satellite carriers, as users of copyrighted materials, would not need specific permission from copyright owners to retransmit those materials to their eligible subscribers but would be required to pay royalties and abide by certain conditions when using the material. The bill would require satellite carriers and copyright holders to negotiate in good faith to set royalty rates. If a party objects to the rates set during the negotiations, the bill would require CRJs to establish rates that represent the fair market value. The cost of the mandate to satellite carriers and copyright holders would be equal to the difference between the royalties that would be set in the absence of the bill and the royalties set during the process required by the bill. Based on information from industry sources and the Copyright Office, CBO expects that the parties would reach an agreement on new rates that would not differ significantly from the rates that would be set in the market. Consequently, we estimate that the costs of complying with this mandate would be small.

H.R. 3570 also would extend an existing mandate on broadcasters and copyright holders to allow satellite providers to retransmit network signals of certain stations without paying royalties. Based on information from the Federal Communications Commission and industry sources, CBO expects that few subscribers would be eligible for such transmissions. Therefore, CBO estimates that the cost to comply with the mandate would be minimal.

Cable Royalty Rates. The bill would increase the royalties that cable carriers pay for retransmitting the signals of distant network stations by $54 million over the 2010-2014 period. Based on information from industry sources about the number of cable carriers involved, CBO estimates that the cost to public cable carriers of the royalties set in the bill would total less than $3 million per year and that the cost to private cable carriers would total no more than $12 million per year.

Filing Fees. The bill would require satellite and cable carriers to pay filing fees to the Copyright Office for any royalty payments incurred from retransmitting distant network signals. Based on information from the Copyright Office, CBO estimates that the cost to satellite and cable carriers would be $1 million per year beginning in 2013. At the same time, the bill would direct the Copyright Office to reduce fees that copyright holders pay under current law to register, renew, or change a copyright in an amount equal to the fees to be paid by satellite and cable carriers.

Broadcaster Audits. The bill would require satellite and cable carriers to allow copyright holders to audit their subscriber lists. Because such subscriber information is already collected and maintained by satellite and cable carriers, CBO estimates that the cost of complying with this mandate would be minimal.

Retransmission to Certain Government Organizations During Emergencies. The bill would limit the ability of copyright owners to collect compensation when secondary transmissions of copyrighted works are made for emergency purposes. CBO expects that few such emergencies would occur and estimates that the loss of compensation to copyright holders would be small.

Mandate that Applies to Private Entities Only

Satellite Reporting Requirements. The bill would require satellite carriers to submit additional information about subscribers that receive local retransmission of network stations. Based on information from industry sources regarding current industry practice and the availability of such information, CBO estimates that the costs to comply would be minimal.

ESTIMATE PREPARED BY

Federal Costs: Susan Willie
Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle
Impact on the Private Sector: Sam Wice and Paige Piper/Bach

ESTIMATE APPROVED BY

Theresa Gullo
Deputy Assistant Director for Budget Analysis