



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

November 10, 2009

### **S. 1670**

#### **Satellite Television Modernization Act of 2009**

*As ordered reported by the Senate Committee on the Judiciary  
on September 24, 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.

S. 1670 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.)

CBO estimates that enacting the bill would increase revenues by \$604 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 \$695 million over the 2010-2019 period. Thus, the net impact on the federal budget would be an increase in the deficit of \$91 million 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.

S. 1670 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (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).

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 1670 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
<b>CHANGES IN REVENUES</b>												
Satellite Copyright Royalty Fees	20	94	96	98	100	77	0	0	0	0	408	485
Cable Copyright Royalty Fees	<u>7</u>	<u>11</u>	<u>12</u>	<u>12</u>	<u>12</u>	<u>13</u>	<u>13</u>	<u>13</u>	<u>13</u>	<u>13</u>	<u>54</u>	<u>119</u>
Total Changes in Revenues	27	105	108	110	112	90	13	13	13	13	462	604
<b>CHANGES IN DIRECT SPENDING</b>												
Estimated Budget Authority	27	106	115	124	132	107	28	27	23	18	504	707
Estimated Outlays	1	17	15	37	69	104	126	125	106	95	139	695
<b>NET EFFECT ON THE DEFICIT <sup>a</sup></b>												
Estimated Impact on the Deficit	-26	-88	-93	-73	-43	14	113	112	93	82	-323	91

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

S. 1670 contains provisions that would increase federal revenues by increasing royalty collections. CBO estimates that enacting S. 1670 would increase revenues by \$604 million over the 2010-2019 period.

**Satellite Copyright Royalty Fees.** S. 1670 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.

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. We estimate that this change would increase revenues by \$485 million over the 2010-2015 period, with no collections after 2015.

**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. S. 1670 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. S. 1670 would increase the rate charged on those revenues by 5 percent. CBO estimates that the higher royalty rate would increase revenues by \$119 million over the 2010-2019 period.

**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. However, CBO estimates that such revenue collections would not be significant due to the small number of cases expected to be involved.

## **Direct Spending**

With higher satellite and cable royalty collections under S. 1670, 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 \$695 million over the 2010-2019 period. Of that amount, approximately \$90 million represents payments of accrued interest.

### **Spending Subject to Appropriation**

S. 1670 would require the Federal Communications Commission 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. Further, 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**

S. 1670 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.

S. 1670 also would extend an existing mandate on broadcasters and copyright holders to allow satellite carriers 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.

Likewise, the bill would impose a mandate on low-power stations by requiring them to allow satellite carriers to provide secondary transmissions to subscribers within a local market, without paying royalties. Based upon information from the Copyright Office and the small number of low-power stations, CBO expects the cost to private and public low-power stations 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.

## **PREVIOUS CBO ESTIMATE**

On October 16, 2009, CBO transmitted a cost estimate for H.R. 3570, the Satellite Home Viewer Update and Reauthorization Act of 2009, as ordered reported by the House Committee on the Judiciary on September 16, 2009. H.R. 3570 would reauthorize the requirement that satellite carriers pay royalty fees to the Copyright Office for transmission of certain copyrighted broadcasts. In addition, H.R. 3570 includes

provisions that are not in S. 1670 that would increase the number of households that could receive copyrighted transmissions and would authorize the Copyright Office to collect filing fees to offset the cost of a part of its operations. The two cost estimates reflect those differences.

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