

## COMMENT

# A BIRD'S-EYE VIEW OF INTERNATIONAL COPYRIGHT: THE PIRACY OF SATELLITE PROGRAMMING AND THE PUBLIC TRANSMISSION RIGHT

Instantaneous global communications have brought the world closer together. Satellite-borne television transmissions have given people glimpses of other people and other cultures never before possible. Satellites have also allowed citizens of many nations to share events of global significance—the thrill of manned exploration of space, the joy of a royal wedding in Great Britain, the excitement of the Olympic games. With greater knowledge of other cultures has come greater understanding.

—Mark Fowler, Chairman,  
Federal Communications  
Commission<sup>1</sup>

It is difficult to see how television, as we know it at present, could justify such unrelenting saturation as this might bring about, or the cost.

—David O. Woodbury, 1958<sup>2</sup>

### I. INTRODUCTION

Woodbury's remark indicates that in 1958 few, if any, could foresee the extent to which satellite-carried television would affect the world as we know it today. What began as the vision of Arthur C. Clarke in 1945<sup>3</sup> has materialized into a billion dollar industry.<sup>4</sup> Prompted by the surge of

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1. Fowler, *Introductory Remarks*, 16 CASE W. RES. J. INT'L L. 167, 169-70 (1984).

2. Owen, *Satellite Television*, THE ATLANTIC MONTHLY, June 1985, 45, at 46. Woodbury was an author who wrote skeptically about Russia's launch of Sputnik in 1957.

3. *Id.* Arthur C. Clarke, famed science-fiction author, was the first to publish the theory that satellites could be used for telecommunications. He suggested that three strategically placed "birds" could transmit information to 90% of the planet. Clarke first published his theory in the science-fiction magazine, WIRELESS WORLD, in 1945.

4. BROADCASTING/CABLECASTING YEARBOOK A-6 (Broadcasting Publications, Inc. ed. 1986).

international space exploration as well as the dwindling cost of technology, satellite telecommunications have become more readily accessible to our "global community" than in years past.<sup>5</sup> In the United States, more than forty-six percent of the households with television sets watch satellite-fed cable television.<sup>6</sup> In addition, an estimated 1.4 million satellite dishes<sup>7</sup> are installed in America's backyards, with an additional 1,000 dishes sold each day.<sup>8</sup>

On the international level, several European countries are actively encouraging satellite development and are currently in the experimental or early development stages of satellite deployment. Great Britain, for example, encourages private sector satellite development in a number of ways. The British Broadcasting Corporation (BBC) has been lobbying since 1980 for the formation of two satellite channels: one to offer feature films and sporting events as a pay-TV service, and the other to highlight the best programming available on the BBC to other regions of the country.<sup>9</sup> The Independent Broadcasting Authority (IBA)<sup>10</sup> coordinated the first pan-European satellite service, which simultaneously transmitted programming in six languages to fifteen countries.<sup>11</sup> Even British Telecom, which has been heavily involved with facsimile transmissions, electronic mail, and teletext<sup>12</sup> has been planning a small-dish service for Western Europe.<sup>13</sup> Furthermore, satellite development is not limited to Anglo-American ingenuity. France currently maintains television links

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5. See Owen, *supra* note 2, at 46.

6. Variety, Dec. 11, 1985, at 50, col. 2.

7. Doan, *A Scramble to Break the Satellite Dish*, U.S. NEWS & WORLD REP., Sept. 30, 1985, at 52. See also H. GLATZER, THE BIRDS OF BABEL—SATELLITES FOR THE HUMAN WORLD 38, at n.4 (1983). Satellite antennas which are commonly sold to consumers for private use, as well as those utilized by the satellite television industry (e.g., cable television, network broadcast television, or closed circuit programmers), are referred to as "television-receive only" (TVROs). They are commonly called "dishes" due to their parabolic shape.

8. Variety, Nov. 13, 1985, at 133, col. 3.

9. Paterson, *The British Renaissance: An Assessment of Satellite Developments in the U.K.*, SATELLITE COMM., Jan. 1983, reprinted in THE INTERNATIONAL SATELLITE TELEVISION RESOURCE MANUAL FOR THE THIRD BIENNIAL COMMUNICATIONS LAW SYMPOSIUM AT UCLA, at 80 (1984).

10. See generally L. GROSS, THE NEW TELEVISION TECHNOLOGIES (1983). The Independent Broadcasting Authority (IBA) is the governmental entity in the United Kingdom which broadcasts commercial television.

11. Paterson, *supra* note 9, at 81.

12. See generally F. WILLIAMS, THE COMMUNICATIONS REVOLUTION (1982). Facsimile is the digitizing of documents, letters, or graphs so that they may be transmitted over telephone lines. The equipment is used much in the same manner as a copier. Electronic mail ranges in form from the familiar telegram to simple long distance telephone calls. Teletext refers to electronic information which accompanies television images but which cannot be seen without the proper equipment. The information is carried over the air in the Vertical Blanking Interval (VBI)—the black bar that scrolls across the screen when the vertical hold is not stable. The captions which accompany "Closed Captioned" programs for the deaf can be accessed through the VBI.

13. Paterson, *supra* note 9, at 81.

with the islands of St. Pierre-et-Miquelon near the northern coast of Canada, and Germany exchanges radio programs with the Kigali station in the center of Africa.<sup>14</sup> The Soviet Union also transmits signals from the Clarke Belt<sup>15</sup> to its vast territories, and is by no means immune to signal piracy in Western Europe.<sup>16</sup>

Unlike previous telecommunication technologies, which have had a predominantly local and well-defined market area (e.g., radio and broadcast television), satellite transmissions cover vastly larger areas. One satellite's footprint<sup>17</sup> can cover not only the entire continental United States, but most of Canada and Mexico as well.<sup>18</sup> Similarly, one footprint could just as readily cover all of Western Europe as well as many Soviet-bloc countries. Thus, the potential exists for authors, playwrights, or movie studios to simultaneously reach a multitude of culturally and demographically diverse audiences with the transmissions of one satellite.<sup>19</sup> Along with this increase in potential markets, however, comes the increased risks of copyright infringement and signal piracy.<sup>20</sup> The present statutory attempts to protect the interests of authors<sup>21</sup> who transmit

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14. Pirard, *Political Bridles in Europe . . . for T.V. Distribution from Space, Television International*, reprinted in THE INTERNATIONAL SATELLITE TELEVISION RESOURCE MANUAL FOR THE THIRD BIENNIAL COMMUNICATIONS LAW SYMPOSIUM AT UCLA, at 76 (1984).

15. H. GLATZER, *supra* note 7. The term, "Clarke Belt," refers to the orbit of satellites at 22,300 miles above the earth's surface. It is at this distance that satellites revolve around the earth in the same amount of time that it takes the earth to rotate once on its axis. Thus, satellites in this orbit appear to stay in the same place in the sky and are referred to as "geostationary." The region is named after Arthur C. Clarke, the first man to theorize the existence of satellites in this orbit.

16. Pirard, *supra* note 14, at 77; see also Owen, *supra* note 2, at 59. Soviet television signals have been intercepted by cable systems in the Netherlands for distribution across the country. Furthermore, students at Columbia University's W. Averell Harriman Institute for Advanced Study of the Soviet Union regularly watch the Soviet television network, Programma 1, which is intercepted off the Russian Molniya satellite.

17. See H. GLATZER, *supra* note 7, at 49. A footprint is that area of the earth's surface which a satellite signal covers.

18. *Id.* at 50.

19. Owen, *supra* note 2, at 46; see also Liebowitz, *Bringing Protection for Satellite-Delivered Programming Down to Earth*, 2 COMM. LAW. 5 (ABA Forum Committee on Communications Law ed. 1984). The Motion Picture Association of America (MPAA) typically distributes movies to the Caribbean Basin and other Latin American countries several months after the film has been released in the United States. Thus, if one of these countries were to intercept signals that contain recent movies, the MPAA has lost a sizeable market without compensation. Coupled with the fact that the typical satellite carries 24 transponders (dual receivers/transmitters) which can simultaneously accommodate 13,500 telephone calls and one television channel each, the potential for market loss is exponential.

20. See generally H. GLATZER, *supra* note 7, at 97. "Piracy" is the common term for unauthorized signal reception. "Infringement" is the act of enjoying the benefits of an author's work without paying a royalty or without being exempted for certain statutorily defined acts.

21. The word, "Author," is used throughout this comment to include creators of all types of copyrighted works. An author may be a writer, a painter, a sculptor, a photographer, a composer, or even a choreographer. 17 U.S.C. § 102 (1982).

their works via satellite often amount to no more than legal sieves through which pirates easily escape.

This comment focuses on the ramifications of these acts of piracy in light of the general copyright considerations of the domestic statutes of the United States, Canada, and Great Britain as well as the applicable international conventions. Furthermore, it will discuss the effectiveness of some current methods used to curb the risks of piracy and will offer alternative suggestions on how to improve the creative incentive in the satellite programming marketplace.

## II. COPYRIGHT CONSIDERATIONS

The underlying principle of any copyright statute is to strike a balance between the competing policies of providing the public with access to information and the right of an author to receive compensation for his labor.<sup>22</sup> In the typical broadcast contract, remuneration occurs when the broadcaster agrees to compensate the author for the use of his work in an intended market area.<sup>23</sup> Calculating the intended market becomes guesswork at best in light of a satellite's ability to dramatically inflate the audience size. Another factor which complicates this calculation is the risk of piracy by an unanticipated audience. When a satellite dish owner intercepts signals which are intended for a paying audience, he directly injures the remuneration aspect of the copyright scheme and jeopardizes the creative impulse of the satellite television industry. Damage to the copyright scheme occurs when the author is not compensated pro rata in relation to the actual size of the viewing audience.<sup>24</sup> The satellite television industry is adversely affected because authors are understandably reluctant to provide works to a system that is notoriously susceptible to piracy.<sup>25</sup> One recent example of such damage occurred in Western Europe. The French Post, Telephone, and Telegraph Administration<sup>26</sup> currently operates an experimental television channel which transmits from Paris to Tunis via Eutelsat's OTS-2 satellite.<sup>27</sup> The Amsterdam cable

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22. See generally *Mazer v. Stein*, 347 U.S. 201, 219 (1954). This case involved a dispute over whether a lamp base could be protected by copyright. It stands for the principle that copyrighted works need not be works of art and is most famous for the statement by Justice Reed that, "[s]acrificial days devoted to such creative activities deserve rewards commensurate with the services rendered."

23. Comment, *Direct Broadcast Satellites: Protecting Rights of Contributing Artists and Broadcasting Organizations*, 12 CAL. W. INT'L L.J. 204, 210 (1982).

24. Liebowitz, *supra* note 19, at 3.

25. Statement by Senator Robert W. Packwood, 130 CONG. REC. S. 14286, reprinted in 1984 U.S. CODE CONG. & ADMIN. NEWS, 4742, 4746 [hereinafter Packwood Statement].

26. K. LEESON, INTERNATIONAL COMMUNICATIONS: BLUEPRINT FOR POLICY 4, n.3 (1984). PTTs are government agencies which control the telecommunications industry. They are the European equivalent of the U.S. Federal Communications Commission.

27. Pirard, *supra* note 14, at 77.

network intercepted the signals and distributed them throughout its system.<sup>28</sup> Because these signals were not intended for use by the "general public," the Amsterdam network was obliged to stop intercepting and distributing the French signals under the International Telecommunications Convention.<sup>29</sup>

Piratical acts pose an interesting dilemma for copyright statutes. Copyright, by nature, is a domestic body of law which is applied primarily to protect authors against the unauthorized use of their works. However, the effectiveness of a country's copyright statute is contained within that country's borders. Conversely, satellite signals are not restricted by geographical boundaries, and they have the potential to exist internationally. Due to the dramatic increase in global communications during this century, many countries have sought international protection for copyrighted works.<sup>30</sup> Furthermore, applying copyright doctrines to satellite television can be difficult because the majority of copyright statutes were drafted prior to the current state of satellite technology. Even recent revisions of copyright statutes, such as that of the United States, fail to directly consider the ramifications of satellite signal piracy, although the protected areas of copyrighted works have been considerably broadened.

#### A. Copyright Protection in the United States

Within the United States, piracy mainly occurs in respect to signals intended for cable distributors.<sup>31</sup> For example, a programming service (such as Home Box Office (HBO) or WTBS)<sup>32</sup> purchases a program from an author and pays a fee based on the anticipation that each member of the intended audience will pay for the privilege of receiving the program. The programmer then leases a satellite feed from a resale transmission carrier<sup>33</sup> who beams the signal to the satellite (uplink) which, in turn, retransmits the signal (downlink) to the cable distributor.<sup>34</sup> The distributor receives the signal through his dish and distributes the program to paying customers.<sup>35</sup> Injury to the market occurs when a nonpaying dish owner intercepts the signal in his backyard. The issue then becomes one

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28. *Id.* at 76.

29. *See infra* notes 114-31 and accompanying text.

30. *See infra* notes 94-131 and accompanying text.

31. The Motion Picture Association of America has stated that \$200-400 million are estimated to be lost to satellite piracy in one year. *Variety*, Nov. 13, 1985, at 133, col. 4.

32. L. GROSS, *supra* note 10, at 32 (1983). Home Box Office was the first premium cable service to transmit via satellite. WTBS was the first broadcast station to transmit via satellite.

33. *Id.* at 34. A resale transmission carrier is a satellite service that provides programmers with the technological means necessary to broadcast via satellite.

34. H. GLATZER, *supra* note 7, at 46, 184.

35. L. GROSS, *supra* note 10, at 22.

of determining whether this piracy constitutes an act upon which the copyright owner can recover.

The Copyright Act of 1976<sup>36</sup> (Copyright Act) grants five exclusive rights to copyright holders: reproduction, adaptation, distribution, public performance, and display.<sup>37</sup> Conceivably, three of these may concern copyright holders who are affected by signal piracy: reproduction, public performance, and display.<sup>38</sup> However, the success of an infringement action based upon any of these grounds seems tenuous due to the obstacles that must be overcome in each.

The reproduction right protects the copyright holder from unauthorized copies of his work.<sup>39</sup> Reproduction necessarily carries with it the requirement that the original must be "fixed" in a tangible medium of expression,<sup>40</sup> and fixation requires that a work be more than transitory in its nature.<sup>41</sup> Although no court has ruled on this matter, it would appear at the outset that television signals (regardless of the duration of the transmission) are no more than transitory and hence are incapable of being fixed.<sup>42</sup> The Copyright Act does provide, however, a general definition of protected works, which may be interpreted to include video programs. Copyright protection covers "original works of authorship, fixed in any *tangible medium of expression*, now known or later developed, from which they can be perceived . . . either directly or with the aid of a machine or device."<sup>43</sup>

Another pertinent form of protection afforded to copyright holders is the right of public performance, which is premised on the doctrine that the author must be allowed the exclusive right to perform his work in public.<sup>44</sup> The difficulty with applying this right to satellite transmissions which are pirated by individuals stems from the definition of "public performances."<sup>45</sup> In general, "public" refers to a "substantial number of persons outside of a normal circle of a family and its social acquaintances."<sup>46</sup> This definition would clearly exclude the individual who intercepts the signals in the privacy of his own home. In addition, the Copyright Act provides an alternative definition of public performance:

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36. 17 U.S.C. § 101 (1982).

37. 17 U.S.C. § 106 (1982).

38. For a detailed discussion, see Piscitelli, *Home Satellite Viewing: A Free Ticket to the Movies?*, 35 FED. COMM. L.J. 1 (1983).

39. 17 U.S.C. § 101 (1982).

40. 17 U.S.C. § 102 (1982).

41. 17 U.S.C. § 101 (1982).

42. See generally S. REP. NO. 473, 98th Cong., 1st Sess. 58 (1976).

43. 17 U.S.C. § 102 (1982) (emphasis added).

44. 17 U.S.C. § 101 (1982).

45. *Id.*

46. *Id.*

to transmit or otherwise communicate a performance or display of the work . . . by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.<sup>47</sup>

This definition may be broad enough for the protection of satellite signals dispersed over a large area but intended to be received only by a small percentage of that area.<sup>48</sup>

Another obstacle to asserting protection under the performance right is the home-viewing exception found in section 110(5).<sup>49</sup> Under this exception a person does not infringe the public performance right if he receives the transmission on a "single receiving apparatus of a kind commonly used in private homes."<sup>50</sup> Although satellite dishes are not yet considered commonplace, neither should they be perceived as uncommon, since the number of dishes bought in the United States is steadily increasing.<sup>51</sup> This section does have one catch that may prove beneficial to those persons who hold copyrights in programs which are transmitted over pay television services such as cable. If a direct charge is made to see or hear the transmission, the home viewing exception does not apply.<sup>52</sup> Therefore, the fact that the transmission is intended for paying customers may prevent the home pirate from escaping liability.

The final possible source for protection within the Copyright Act is the right of display. The display right provides the copyright holder with the exclusive right to show individual images of a motion picture<sup>53</sup> in nonsequential order.<sup>54</sup> Although this exclusive right is the latest to be enacted,<sup>55</sup> it also suffers from the same "public" definitional problem as does the performance right.<sup>56</sup> Also, the home viewing exception and its

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47. *Id.*

48. *But see* Teleprompter Corp. v. CBS, 415 U.S. 394 (1974); Fortnightly Corp. v. United Artists Television, Inc., 392 U.S. 390 (1968). These cases hold that a person who turns on a television set sits on the "viewer" side of the "viewer/performer fence," and hence, does not "perform" the work.

49. 17 U.S.C. § 110(5) (1982).

50. *Id.* *See also* Twentieth Century Music Corp. v. Aikens, 422 U.S. 151 (1975). Aikens involved a restaurateur who played local radio broadcasts over four home stereo speakers in his place of business. Section 110(5) is a direct result of this case.

51. *See supra* note 7.

52. 17 U.S.C. § 110(5) (1982).

53. Section 101 of the Copyright Act defines "motion pictures" as "audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any."

54. 17 U.S.C. § 106(5) (1982).

55. *See generally* A. LATMAN, COPYRIGHT FOR THE EIGHTIES (1985). The 1976 Act was the first U.S. statute to recognize the exclusive right of display.

56. *See supra* notes 44-47 and accompanying text.

limitations apply to the display right.<sup>57</sup> Thus, it may be somewhat optimistic to rely solely on this right for the protection of satellite signals.

One possible source of protection for satellite transmissions outside of the copyright realm is the Communications Act of 1934 (Communications Act).<sup>58</sup> While copyright law preserves the creative incentive for authors, communications law attempts to preserve the management of the airwaves.<sup>59</sup> Section 605 of the Communications Act prohibits the unauthorized interception of signals and states specifically that no unauthorized person shall receive any radio transmission "for his own benefit or for the benefit of another not entitled thereto."<sup>60</sup> The Federal Communications Commission<sup>61</sup> has interpreted this section to apply to satellite transmissions,<sup>62</sup> and it would appear that this is all that is necessary to provide some assurance to copyright holders that their works will be protected in some form or fashion. However, Congress amended section 605 to provide a "home-pirate" exemption to its attempt to curb satellite piracy.<sup>63</sup> The new exemption allows the direct interception by individuals of satellite transmissions unless the signals are scrambled<sup>64</sup> and the programmer has established a marketing system under which private viewing is authorized.<sup>65</sup>

Although the home-pirate exemption is a step in the right direction, it falls short of providing the protection that satellite transmissions deserve. This deficiency is a direct result of the mistaken American belief that if something emanates from the air, it is there for the taking and the taking should be free.<sup>66</sup> This belief is also fueled by two rather large misconceptions. First, many promoters of this belief paint a Rockwellian picture of rural America where the forgotten farmer is deprived of his God-given right to twenty-four television channels.<sup>67</sup> Although this argument would apply to signals which are strictly advertiser supported, it

57. 17 U.S.C. § 110(5) (1982).

58. 47 U.S.C. § 151-757 (1982 & Supp. III 1985).

59. 47 U.S.C. § 601 (Supp. III 1985).

60. 47 U.S.C. § 605(a) (Supp. III 1985).

61. 47 U.S.C. § 151 (Supp. III 1985). The Federal Communications Commission is the administrative body of the Communications Act.

62. See FCC Pub. Notice No. 11850 (Jan. 24, 1979); FCC Pub. Notice No. 7999 (Oct. 3, 1978).

63. 47 U.S.C. § 605(b) (Supp. III 1985).

64. See generally H. GLATZER, *supra* note 7. "Scrambling" refers to the process of encrypting satellite signals so that they cannot be intelligibly viewed without the use of a decoding device.

65. 47 U.S.C. § 605(b) (Supp. III 1985).

66. Owen, *supra* note 2, at 58; see also *supra* note 8.

67. H. GLATZER, *supra* note 7, at 97. "The law is an ass, if that's the law. If somebody wants to put a signal down in my backyard, nobody can tell me not to look at it." (statement made by the Honorable Dr. Patrick L. McGear, Minister of Universities, Science, and Communications, Victoria, British Columbia, after learning that his installation of a satellite dish had broken Canadian law).

ignores the fact that the majority of satellite transmissions are intended for cable or subscription television (STV) audiences and also ignores the increasing fact that satellite dishes are no longer strictly a rural phenomenon. The second claim that is made attempts to view satellite transmissions as a direct return on the enormous amount of tax dollars which have been spent on developing space exploration ("The satellite industry would not be such an advanced technology if it were not for our tax dollars.").<sup>68</sup> This belief, although not entirely a non sequitor, is primarily tenuous and, at best, naive.

The problem with the home-pirate exemption stems from the inherent assumption that market strategies and scrambling are the ultimate solutions.<sup>69</sup> With cable penetration totalling forty-six percent,<sup>70</sup> programmers such as HBO understandably are not eager to negotiate with each individual viewer.<sup>71</sup> As a more marketable alternative, the satellite programming industry has been attempting for several years to develop an efficient encryption device and decoder. HBO poured more than \$10 million into scrambling technology over the last five years with no direct benefit to show from it until this year.<sup>72</sup>

From its inception, satellite signal scrambling has been plagued with shortcomings. The thrust of the problem stems from the fact that a decoder malfunction at one head-end<sup>73</sup> would knock out service for that entire area.<sup>74</sup> On the marketing level, problems exist in the form of a lack of an industry standard that may cause dish owners to either purchase a separate decoder for each system or forego receiving certain programming services.<sup>75</sup> Also, special interest groups which view satellite programming as the only means for watching television are vehemently opposed to scrambling.<sup>76</sup> The Society for Private and Commercial Earth Stations (SPACE) is one of the most outspoken of these groups. Due to SPACE's increased lobbying efforts, Congress recently considered the Satellite Television Viewing Rights Act, which proposed restrictive measures on scrambling signals.<sup>77</sup> The House Committee on Commerce, Science, and Transportation suggested a two-

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68. Owen, *supra* note 2, at 58.

69. *Id.*

70. *See supra* note 6.

71. Owen, *supra* note 2, at 57.

72. *Id.* *See also Ready, Set . . . Scramble*, SATELLITE COMM., June, 1985, at 20.

73. *See generally supra* note 12. "Head-end" refers to the cable television facility which receives a signal and prepares it for distribution to subscribers.

74. Owen, *supra* note 2, at 56.

75. Stoddard, *Solving the Backyard Blues*, SATELLITE COMM., May, 1985, at 32.

76. Owen, *supra* note 2, at 58.

77. S. 1618, 98th Cong., 2d Sess., 126 CONG. REC. 11206-07 (1985).

year moratorium on scrambling as well as incentives for the cable industry in an attempt to promote reasonable market strategies.<sup>78</sup> Furthermore, the Justice Department announced last fall that it would be investigating possible antitrust violations committed by cable programming suppliers who are in the process of scrambling their signals.<sup>79</sup>

While the current U.S. copyright scheme by itself fails to sufficiently address the piracy issue, the extent to which the home-pirate exemption will force the cable industry to play its scrambling hand is yet to be seen. Furthermore, Congress' willingness to consider corollary bills such as the Satellite Television Viewing Rights Act implies that the legislature in the United States is more apt to address the rights of authors through avenues that do not require the further revision of the Copyright Act.

### *B. Copyright Protection in Canada*

Piracy is not a problem limited to national borders. Canada, as well as several Central American countries, intercept U.S. satellite signals for distribution within their own borders.<sup>80</sup> Canada's Cancom service currently distributes to its northern regions broadcast signals that it receives from U.S. stations located near the border.<sup>81</sup> Cancom operates without paying sufficient royalties to U.S. copyright holders, while the opposite is true in this country.<sup>82</sup> However, the Canadian legislature is aware of this problem and is currently discussing new copyright measures to insure adequate remuneration.<sup>83</sup>

The Canadian Copyright Act of 1970 (Canadian Act)<sup>84</sup> may provide some protection for foreign signals transmitted via satellite. However, the same shortcomings which affect the U.S. Copyright Act plague the Canadian version as well. As with the U.S. Copyright Act, the pertinent Canadian protection for determining piratical liability is the public performance provision. The Canadian Act protects the copyright holder's exclusive right to "perform . . . the work or any substantial part thereof in public"<sup>85</sup> and includes the right to communicate the work by "radio communication."<sup>86</sup> As to the radio communication issue, the Canadian Act does not provide any guidance. "Radio communication" has been

78. Stoddard, *More, or Less Regulation*, SATELLITE COMM., Jan. 1986, at 27.

79. *Scrambling Investigation: Serious?*, SATELLITE COMM., Dec. 1985, at 10.

80. See generally Comment, *Use of American Broadcast Signals by Canadian Cable Networks: The Cancom Decision*, 32 BUFFALO L. REV. 731 (1983) [hereinafter *Cancom Decision*].

81. *Id.* at 736.

82. 17 U.S.C. § 111 (1982).

83. *Variety*, Oct. 16, 1985, at 1, col. 1. The proposed penalty would amount to Can\$1 million. The present penalty for failure to pay royalties is Can\$200.

84. CAN. REV. STAT. ANN. ch. C-30, § 1 (1970).

85. *Id.* at § 3 (1970).

86. *Id.*

interpreted by the Canadian Supreme Court to mean the equivalent of "broadcasting to the public,"<sup>87</sup> and therefore leaves the ultimate determination with the definition of "public." The current Canadian judicial interpretation of "public" holds that the interception of broadcasts which are to be distributed over cable does not amount to public performance.<sup>88</sup> The Court specifically refused to rest the issue on the number of private homes which received the retransmissions—declining to define "public" on a numerical basis—and the opinion has been criticized for this reason.<sup>89</sup> Hence, Canadian protection of satellite transmissions stumbles on the same predicament as does the U.S. Copyright Act: the judiciary's reluctance to interpret "public performance" broadly enough to include private reception of the airwaves.<sup>90</sup>

Similar to the United States, Canada has attempted to incorporate a nationwide communications policy. Its Radio Act of 1935 (Radio Act)<sup>91</sup> is similar to the U.S. Communications Act<sup>92</sup> in that it also was devised long before the current state of technology and has been slow to adequately reflect industry advances.<sup>93</sup> One problem unique to the Canadian Act involves the basic structure of the Canadian federal system. The British North America Act of 1867<sup>94</sup> grants to the provinces the power to regulate inter-provincial commerce.<sup>95</sup> Recent attempts to draft a national constitution have spurred debates over the issue of domestic communications, because even though the majority of the Canadian population lives within one hundred miles of the U.S. border, satellite technology enables those Canadians living in the high frontier to view the same American programs as their southern counterparts.<sup>96</sup> The inability of the Radio Act to address new technology, coupled with the failure of the Canadian Copyright Act to adequately protect the authors of satellite programming, currently permits Canadians the privilege of receiving U.S. television programming free from proper remuneration.<sup>97</sup>

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87. *Composers, Authors, and Publishing Association of Canada v. CTV Television Network*, 68 D.L.R.2d 98 (1968).

88. *Canadian Admiral Corp. v. Rediffusion, Inc.*, (1954) Can. Exch. 382.

89. See Swinton, *Advertising and Canadian Cable Television—A Problem in International Telecommunications Law*, 15 OSGOODE HALL L.J. 543 (1977).

90. See *supra* notes 44-47 and accompanying text.

91. CAN. REV. STAT. ANN. ch. 233, § 1 (1970).

92. 47 U.S.C. § 601 (1985).

93. H. GLATZER, *supra* note 7, at 97.

94. The British North America Act, CAN. STAT. ch. 111, § 2 (1867).

95. H. GLATZER, *supra* note 7, at 97.

96. *Id.* at 98. Until recently, with the onslaught of satellite technology, the rural areas of the high frontier were lucky to have access to two television stations.

97. See *Cancom Decision*, *supra* note 80.

### C. *Copyright Protection in The United Kingdom*

The Copyright Act of the United Kingdom (U.K. Act), unlike that of many other countries, specifically provides for the protection of broadcasts made by either of its broadcasting organizations, the BBC or the IBA.<sup>98</sup> Authors are given the primary right to authorize the broadcasting of their works, and furthermore, upon authorization the actual broadcasts are protected.<sup>99</sup> Although this unique shelter extends protection to a degree unheard of in the United States or Canada, it does not entirely avoid the dilemma of defining "public," which plagues the protection of satellite transmissions. Furthermore, it has been questioned whether the U.K. Act's definition of broadcast is broad enough to encompass satellite transmissions.<sup>100</sup>

The rights given specifically for television broadcasts include reproduction, rebroadcasting, and public performance.<sup>101</sup> Again, for copyright holders who transmit their works via satellite to a paying audience the major concern is the interpretation of "public performance." Section 14(4)(c) states that the copyright holder has the exclusive right to "cause" a television broadcast "to be seen in public . . . if it is seen . . . by a paying audience."<sup>102</sup> On its face, this subsection appears to cover those satellite transmissions that are intended for a paying audience (such as cable or STV) but are intercepted by a nonpaying dish owner. Paragraph (8), however, states that "paying audience" is limited to persons who pay for admittance to the place where the broadcast is shown, or to persons who have been admitted to a place that is charging an inflated price of admission due to the showing of the broadcast.<sup>103</sup> The application of this section to the private home viewer appears tenuous.

The uncertainty of the application of the U.K. Act's definition of broadcast to satellite transmissions stems from two sections. Section 14(10) defines "television broadcast" as "visual images broadcast by way of television, together with any sounds broadcast for reception along with those images. . . ."<sup>104</sup> Albeit somewhat circular, this definition would appear to encompass satellite transmissions. However, the interpretative

98. Copyright Act, 1956, 4 & 5 Eliz. 2, ch. 14.

99. *Id.*

100. The Whitford Report on the Reform of the U.K. Copyright and Designs Law, *reprinted in THE INTERNATIONAL SATELLITE TELEVISION RESOURCE MANUAL FOR THE THIRD BIENNIAL COMMUNICATIONS LAW SYMPOSIUM AT UCLA*, at 305 (1984) [hereinafter *The Whitford Report*].

101. Copyright Act, 1956, 4 & 5 Eliz. 2, ch. 14(4); *see also* 17 U.S.C. § 101 (1982). In general, the definitions of these exclusive rights are the same as for the U.S. Copyright Act.

102. Copyright Act, 1956, 4 & 5 Eliz. 2, ch. 14(4).

103. *Id.*

104. *Id.*

chapter of the U.K. Act provides a specific limitation on the above definition:

broadcasting . . . shall not be taken to constitute . . . causing visual images or sounds to be seen or heard; and where visual images or sounds are displayed or emitted by any receiving apparatus, to which they are conveyed by the transmission of electromagnetic signals . . .

- (a) the operation of any apparatus whereby the signals are transmitted, directly or indirectly, to the receiving apparatus *shall not be taken to constitute performance* or to constitute causing the visual images or sounds to be seen or heard . . .<sup>105</sup>

Clearly, the U.K. Act in its present state does not protect against the unauthorized interception of satellite signals. As mentioned, this concern has been raised in Parliament and current measures are being considered to amend the U.K. Act.<sup>106</sup> Once again, it may be necessary to go outside the realm of copyright to seek proper protection.

Similar in many respects to the United States Communication Act,<sup>107</sup> the United Kingdom Wireless Telegraphy Act of 1949 (Wireless Act)<sup>108</sup> governs the transmissions of broadcasting organizations in Great Britain. Like its American counterpart, the Wireless Act protects against the unauthorized reception of transmissions and also extends this shelter to satellite transmissions which are not intended for the general public.<sup>109</sup> In addition, the Wireless Act resembles its American counterpart by being noncommittal as to the protection of satellite transmissions.<sup>110</sup> However, there is a strong movement to extend to satellite broadcasts the legal protection afforded to terrestrial broadcasts.<sup>111</sup>

### III. INTERNATIONAL COPYRIGHT CONVENTIONS

The various statutes discussed provide tenuous protection for satellite transmissions. Consequently, the question remains to what extent protection can be guaranteed when the transmissions cross international borders. Similar concerns in other areas of communications have

105. *Id.* at ch. 48 § 5(a) (emphasis added).

106. See The Whitford Report, *supra* note 100, at 307.

107. 47 U.S.C. § 601 (1985).

108. See The Green Paper issued by the United Kingdom Government, July 1981 *reprinted in* THE INTERNATIONAL SATELLITE TELEVISION RESOURCE MANUAL FOR THE THIRD BIENNIAL COMMUNICATIONS LAW SYMPOSIUM AT UCLA, at 309 (1984).

109. *Id.*

110. *Id.*

111. *Id.* at ¶ 11.

prompted a number of countries to meet periodically in order to formulate and adopt international treaties.<sup>112</sup> Four such conventions directly influence the issue of copyright protection for satellite transmissions: the Berne Convention,<sup>113</sup> the Universal Copyright Convention,<sup>114</sup> the International Telecommunications Convention,<sup>115</sup> and the Brussels Convention.<sup>116</sup>

#### A. *The Berne Convention*

Viewed as the cornerstone of international copyright,<sup>117</sup> the Berne Convention is based largely on the European approach to intellectual property. Although a detailed discussion of this convention is beyond the scope of this comment, it is sufficient to state that it focuses upon preserving the rights of the author.<sup>118</sup> The Berne Convention accomplishes this through a system of national treatment. Each member state must provide protection to foreign authors to the same degree as it would provide to its own authors.<sup>119</sup> The importance of the Berne Convention for satellite transmissions is that it is the only international copyright treaty which gives rights directly to authors.<sup>120</sup> This protection includes the exclusive right to authorize the broadcast of a work.<sup>121</sup>

Although the Berne Convention constitutes a major accomplishment for authors in general, it falls short of being a panacea for those authors who utilize satellite transmissions. Article 11*bis* describes broadcasting as the "wireless diffusion of signs, sounds or images."<sup>122</sup> As with

112. See generally E. PLOMAN, *COPYRIGHT—INTELLECTUAL PROPERTY IN THE INFORMATION AGE* (1980).

113. The Berne Convention for the Protection of Literary and Artistic Works, revised July 24, 1971, 828 U.N.T.S. 221 [hereinafter Berne Convention].

114. The Universal Copyright Convention, revised July 24, 1971, 25 U.S.T. 1341, T.I.A.S. No. 7868, 943 U.N.T.S. 0 [hereinafter U.C.C.].

115. The International Telecommunications Conference, latest revision Oct. 25, 1973, 28 U.S.T. 2495, T.I.A.S. No. 8572, 2 M.I.G.O. 1400 [hereinafter I.T.C.].

116. The International States Conference Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, opened for signature, May 21, 1974, 13 I.L.M. 1444 [hereinafter Brussels Convention].

117. See E. PLOMAN, *supra* note 112, at 49. The Berne Convention has survived numerous revisions and is considered the grandfather of international treaties.

118. Berne Convention, *supra* note 113, at the Preamble.

119. *Id.* at art. 4.

120. See generally Berne Convention, *supra* note 113; see also C. JOYCE, *COPYRIGHT LAW* 368, 369 (1986). Such rights include droit de suite and moral rights. Droit de suite is basically the author's right to collect remuneration upon all subsequent sales of the work. In contrast, the U.S. Act of 1976 recognizes the "first-sale" doctrine, which provides that upon the original disposition of a work, the owner is free to dispose of the work in any manner he pleases. Thus, the author receives nothing after the first sale. Moral rights include the author's control over all distribution, reproduction, and editing of the work.

121. Berne Convention, *supra* note 113, at art. 11*bis*.

122. *Id.*

the various copyright statutes discussed above,<sup>123</sup> if satellites are to be covered by such language, protection may be achieved only by inference. Another shortcoming of the Berne Convention is the failure of the United States, the Soviet Union, and many Latin American countries to ratify it.<sup>124</sup> One major obstacle to universal adoption is the recognition of an author's moral rights.<sup>125</sup> Under the doctrine of moral rights, an author has the right to authorize reproductions or performances as well as protect his work from mutilation or editing.<sup>126</sup>

### B. *The Universal Copyright Convention*

The United States and other countries which were not willing to revise their copyright laws to include the protection of moral rights formed the Universal Copyright Convention (U.C.C.).<sup>127</sup> The U.C.C., similar to the Berne Convention, is based on national treatment. However, it establishes as its guiding principles not only the protection of the individual author but also the doctrines of universal dissemination of information and increased access to such information.<sup>128</sup> Thus, the author loses a degree of protection in order to facilitate this compromise.

The inherent weakness of such a dichotomy, coupled with the lack of reciprocity, concerns the author of works transmitted via satellite. The U.C.C. does not require reciprocal treatment between countries that exchange copyrighted works.<sup>129</sup> In other words, the protection that one country extends to the authors of another country need not equal the degree of protection that authors of the first receive from the latter.<sup>130</sup> This is especially a concern among American authors because the United States exports more copyrighted works than it imports.<sup>131</sup> Finally, the U.C.C. suffers from the same definitional problems concerning public performance as the Berne Convention and the various copyright statutes.<sup>132</sup> Once again, it is not certain that "broadcasting" encompasses satellite transmissions within the confines of the U.C.C.

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123. See *supra* notes 50-106 and accompanying text.

124. E. PLOMAN, *supra* note 112, at 58.

125. *Id.* at 52.

126. The 1976 revision eliminates many of the barriers which block ratification of the Berne Convention. However, it requires too much formality. See E. PLOMAN, *supra* note 112, at 59.

127. U.C.C., *supra* note 114.

128. E. PLOMAN, *supra* note 112, at 58.

129. *Id.*

130. See generally *supra* note 79.

131. See Liebowitz, *supra* note 19, at 6; see also generally A. LATMAN, COPYRIGHT FOR THE EIGHTIES (1985).

132. See *supra* notes 50-106 and accompanying text.

### C. *The International Telecommunications Conference*

One of the most basic and widely accepted bodies of telecommunications law is the International Telecommunications Conference (I.T.C.).<sup>133</sup> The I.T.C. provides the basis for much of the international regulation of the frequency spectrum and is adhered to in virtually every developed nation.<sup>134</sup> Although primarily technology oriented,<sup>135</sup> the I.T.C.'s administrative body provides some guidance for satellite transmissions. Article 17 of the Radio Regulations<sup>136</sup> is the international equivalent of the United States Communications Act<sup>137</sup> and the United Kingdom Wireless Telegraphy Act<sup>138</sup> in that it prohibits the unauthorized interception of radiocommunications not intended for the general use of the public.<sup>139</sup> The "general public" limitation leads to definitional ambiguities in much the same way as do the copyright statutes previously discussed. Article 1 defines "broadcast-satellite services" as "radiocommunication services in which signals . . . are intended for direct reception by the public. . . . [T]he term 'direct reception' [encompasses] both individual reception and community reception."<sup>140</sup> Therefore, due to this inherent ambiguity, the I.T.C. is another weak foundation for protection and may permit both pirates and copyright holders to utilize the Radio Regulations to their respective benefits.

### D. *The Brussels Convention*

The lack of stringent sanction procedures in the I.T.C. and the Radio Regulations, coupled with the fact that they are more concerned with the technical aspects of telecommunications, prompted the development of a new multilateral treaty aimed at the protection of satellite transmissions. The Brussels Convention<sup>141</sup> provides a refreshing change in the focus of international intellectual property law. Instead of vesting new property rights in the individual authors or broadcasting organizations, this Convention shifts the area of concern from international private law

133. See I.T.C., *supra* note 115.

134. Adams, *The Geostationary Orbit: Legal, Technical, and Political Issues Surrounding its Use in World Telecommunications*, 16 CASE W. RES. J. INT'L L. 223, 237 n.68 (1984). Currently, 157 countries are members of the I.T.C.

135. See *supra* note 23, at 213.

136. The Radio Regulations, *latest revision* July 17, 1971, 23 U.S.T. 1527, T.I.A.S. No. 7435 [hereinafter Radio Regulations].

137. 47 U.S.C. § 601 (1985).

138. Wireless Telegraphy Act of 1949, 12, 13, & 14 GEO. 6, ch. 54.

139. Radio Regulations, *supra* note 136, at art. 17.

140. *Id.* at art. 1.

141. Brussels Convention, *supra* note 116.

to international public law.<sup>142</sup> It accomplishes this by leaving the methods of suppressing signal piracy to each member state.<sup>143</sup> Thus, no new rights are created in the satellite-transmitted programs, and each member state may choose the manner in which it will implement the general principle of this Convention.<sup>144</sup>

Instead of addressing the issue of unauthorized reception of satellite signals, the Brussels Convention focuses on unauthorized *distribution*.<sup>145</sup> Thus, the scope of this Convention is limited to the prevention of the distribution of signals by an unauthorized entity to a subscriber base.<sup>146</sup> Article 3 specifically excludes coverage of the situation in which the signal is directly received by the public.<sup>147</sup> The Main Commission<sup>148</sup> deliberately worded this provision to shadow number 84AP Spa 2 of the Radio Regulations,<sup>149</sup> but it was careful not to delve into the problems associated with specifically encompassing broadcasts. In addition, the Report of the General Rapporteur states that it was the intention of the Main Committee to avoid the I.T.C. shelter of both individual reception and community reception.<sup>150</sup> It is this limitation that has prevented many countries from ratifying the Brussels Convention.<sup>151</sup>

#### IV. THE PUBLIC TRANSMISSION RIGHT

In light of the underlying principle of copyright law—to allow public dissemination of information while compensating authors for their labor—current copyright statutes and international treaties appear inept. Satellites have provided our society and others with an enormous medium through which information may be dispersed to literally millions of people. However, the present copyright laws examined above appear to allow wholesale piracy of copyrighted works en route to the public. A more comprehensive attitude towards copyright infringement should be encouraged, especially as applied to satellite piracy. Instead of resting

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142. *Id.*

143. E. PLOMAN, *supra* note 112, at 83.

144. Brussels Convention, *supra* note 116, at art. 2; *see also* THE RECORDS OF THE INTERNATIONAL STATES CONFERENCE RELATING TO THE DISTRIBUTION OF PROGRAMME-CARRYING SIGNALS TRANSMITTED BY SATELLITE 50 (Unesco/WIPO ed. 1974) [hereinafter Unesco/WIPO]. The Convention purports to protect "the container and not the content." In other words, the Convention set out from the start to merely protect the signals and not the programs transmitted over them.

145. Brussels Convention, *supra* note 116, at art. 2.

146. Unesco/WIPO, *supra* note 144, at 54.

147. Brussels Convention, *supra* note 116, at art. 3.

148. Unesco/WIPO, *supra* note 144, at 28. The Main Commission consisted of one delegate from Brazil, Japan, Sweden, and the United States.

149. Radio Regulations, *supra* note 136; *see also* Unesco/WIPO, *supra* note 144, at Part IV(d).

150. Unesco/WIPO, *supra* note 144, at 62.

151. E. PLOMAN, *supra* note 112, at 82.

the issue solely on the public-private dichotomy, more emphasis should be placed on the determination of economic benefit or deprivation. In other words, protection must be provided to ensure that a home viewer who intercepts a signal aimed at an audience from whom remuneration is anticipated does not escape the liability of paying for that privilege.

Communications law, in tandem with copyright law, shows the most promise for providing backbone to the protection of satellite transmissions. For instance, section 605 of the U.S. Communications Act<sup>152</sup> is a sturdy foundation, but with the addition of the "home-pirate" exemption<sup>153</sup> its protection is less than adequate.<sup>154</sup> One commentator has suggested an alternative to the market system proposed by section 605.<sup>155</sup> He proposes an international collection and distribution agency to ensure the compensation of authors through the payment of royalties.<sup>156</sup> The agency would function as a clearing house in which works transmitted via satellite would be mandatorily enrolled and records would be kept of their use.<sup>157</sup> While not outside of the capacity of the international community, such an agency would require the formation of a separate regulatory body whose function would consist of the operation of the agency. Owing to the speed (or lack thereof) at which international wheels turn, countless works would remain unprotected and vast royalties would be lost before such an agency could be operational. Furthermore, the guiding principles of such an independent body would go against the independent sovereignty of the Brussels Convention<sup>158</sup> and the national treatment of both the Berne Convention<sup>159</sup> and the U.C.C.<sup>160</sup>

This comment suggests a somewhat different approach to the problem of satellite transmission protection. As a means of circumventing the inherent difficulties involved with individually negotiating the remuneration for works which are widely distributed, a handful of countries have established a public lending right in works which are collected in public libraries.<sup>161</sup> A central fund is established out of which royalties are paid

152. 47 U.S.C. § 605 (Supp. III 1985).

153. *Id.* at § 605(b).

154. Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 1984 U.S. CODE CONG. & ADMIN. NEWS 98 Stat. 2779 (codified at 47 U.S.C. § 605(b) (Supp. III 1985)).

155. *See supra* Comment, note 23, at 224.

156. *Id.*

157. For a detailed description of a clearing house, see Finklestein, *ASCAP as an Example of the Clearing House System in Operation*, 14 BULL. COPYRIGHT SOC'Y 2 (1966-67).

158. *See supra* notes 143-50 and accompanying text.

159. *See supra* note 120 and accompanying text.

160. *See supra* note 128 and accompanying text.

161. *See generally* Seltzer, *Exemptions and Fair Use in Copyright: The "Exclusive Rights" Tensions in the New Copyright Act*, 24 BULL. COPYRIGHT SOC'Y 215, 325 (1977); *see also* P.L.R.: REPORTS OF AN ALAI SYMPOSIUM AND ADDITIONAL MATERIALS (H. Cohen Jehoram ed. 1983) [hereinafter REPORTS].

to the author based on the extent to which his work is accessed through the library. Each time a work is loaned by the library to a patron or another library a statutorily determined fee is distributed to the author. The rationale behind the public lending right is that the use of the work by a library patron is a substitute for a purchase in the marketplace.<sup>162</sup> This system recognizes that an author's expectations of reward are not fulfilled by the "ordinary economics of the copyright scheme."<sup>163</sup>

Similar deficiencies are found in the present copyright scheme which governs satellite transmissions. The direct result of these deficiencies is the unwillingness of the creative community to realize the vast potential of the satellite industry and its ability to disseminate information.<sup>164</sup> A public "transmissions" right for satellite programming, structured in a system not unlike the public lending right for libraries, would exist primarily on the national level and possibly could be incorporated directly into the nation's copyright statute.<sup>165</sup> Thus, the states that are party to either copyright convention would maintain the emphasis on national treatment, and furthermore, the remuneration would adjust for the lack of private property rights in the Brussels Convention.<sup>166</sup> The system would not be burdensome to install because it would utilize the collection agencies and clearing houses which are already operating in the majority of industrialized countries.<sup>167</sup> The fund could be supplied by a combination of a blanket license on the sales of satellite dishes, a percentage of cable revenues, and a surcharge on the sale or lease of decoders.<sup>168</sup> Moreover, a percentage of the traditionally negotiated broadcast contract could reflect a deposit into the collection fund. Success of this system would not only ensure the creative rewards of authors while allowing easy access to information for the public, but it could also be used to promote the creative arts through the establishment of endowments and grants.<sup>169</sup>

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162. See Seltzer, *supra* note 161.

163. *Id.*

164. Packwood Statement, *supra* note 25.

165. E. PLOMAN, *supra* note 112, at 114. Currently, West Germany is the only country to incorporate the public lending right into its copyright statute. One major reason why other countries with public lending rights are reluctant to incorporate this right into their copyright statutes is the doctrine of national treatment under the Berne Convention. If the country affords public lending right protection to its own authors, it must also do so for foreign authors regardless of reciprocal treatment by that author's government.

166. See *supra* notes 143-50 and accompanying text.

167. See generally Finklestein, *supra* note 157.

168. A similar proposal was suggested for the funding of educational scholarships for prospective elementary and secondary math and science teachers. The proposal would have established a "National Competitiveness Education Trust Fund" by tacking an excise tax onto each television set sold in America. See S. 1932, 99th Cong. 1st Sess. (1985).

169. E. PLOMAN, *supra* note 112, at 118; see also REPORTS, *supra* note 161, at 83. Sweden, which has had a public lending right since 1954, has established similar grants to promote the

## V. CONCLUSION

The development of the satellite industry has not only exceeded the wildest dreams of David Woodbury,<sup>170</sup> it has created a dilemma for the application of various copyright statutes and international treaties. The capacity with which satellites can disseminate information is largely unrealized today due to the unwillingness of the creative community to utilize a system that is so susceptible to piracy. Currently, the emphasis of basic copyright issues which concern satellite transmissions are entrenched in a determination of private versus public use of such transmissions.

It is time for the copyright scheme to awaken to the realization that many private viewings of transmissions are depriving authors of anticipated and well-deserved remuneration. Present attempts at combatting this dilemma often fall short of their expectations. International treaties become weighted under the auspices of compromise and result in weak enactments that oftentimes fall prey to the rapid advances in technology. The process of scrambling signals so that only those viewers with decoding devices may receive the transmissions has already cost the satellite television industry millions of dollars and is only beginning to justify its existence. The exorbitant costs and the faulty track record of scrambling has led many inside the industry to look for other solutions.<sup>171</sup> Finally, to expect satellite programmers to conduct individual market strategies in an audience market whose potential spans international borders may be too cumbersome to ever reach fruition.

The deficiencies in the system require a rejuvenating process through which the underlying principle of copyright law—the balance between public access and creative reward—may remain intact. The public transmission right is one such process. It calls for remuneration without direct user hardship. More importantly, it instills in the creative community the assurance that its labor will go neither unnoticed nor unrewarded.

*William H. Shute\**

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efforts of unrecognized authors. In 1978, the fund distributed 16 million Swedish crowns. In fiscal year 1982-83, the fund collected 37 million Swedish crowns.

170. Owen, *supra* note 2.

171. *A Scramble for Scramblers*, U.S. NEWS & WORLD REP., Jan. 27, 1985, at 8.

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