

ALERT

Judge Orders ivi to Cease Streaming Broadcast Channels without Consent

February 28, 2011

A U.S. District Court judge took a major step toward preventing unauthorized distribution of broadcast content online, issuing a preliminary injunction on February 22, 2011 against Internet video distributor ivi. Judge Naomi Reice Buchwald of the U.S. District Court for the Southern District of New York found that ivi violated the Copyright Act by distributing broadcast content without consent from the copyright holders and ordered the company to stop retransmitting broadcast programming to which the plaintiffs owned a copyright.

The case was brought by broadcast networks, station groups, production studios and Major League Baseball Advanced Media.

Prior to the court's injunction, ivi streamed live feeds from local television stations in Seattle, New York, Chicago and Los Angeles over the Internet to any computer in the United States. The service enabled a subscriber in San Francisco to watch network broadcasting three hours early and a subscriber in Miami to watch Chicago sporting events otherwise unavailable in the Miami market.

ivi operated under what it claimed was a loophole in the Copyright Act. Section 111(c)(1) of the Copyright Act provides cable systems with a compulsory license to carry broadcast programming under two conditions: first, that they make statutorily-required payments to the Copyright Office, and second, that such carriage is permissible under Federal Communications Commission (FCC) rules. ivi claimed that it was a cable system under the Copyright Act's definition and that it did not need to comply with FCC rules to be "permissible" because the FCC does not regulate content on the Internet. As Judge Buchwald summarized the claim: "[ivi] argues that [it] is a cable system for purposes of the Copyright Act, and thus may take

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advantage of the compulsory license, but that it is not a cable system for purposes of the Communications Act and thus it need not comply with [the FCC's rules]."

Judge Buchwald rejected ivi's interpretation, holding that neither the purpose nor the text of the Copyright Act encompass Internet broadcasts. First, she held that the Copyright Act must be interpreted as Congress understood cable service at the time-as a service to expand broadcast availability in local areas, constrained by the Communications Act. Second, Judge Buchwald refuted ivi's arguments about why it meets the Copyright Act's definition of a "cable system," noting that ivi does not have "headends" or serve "contiguous communities" as stated in the Copyright Act, and that ivi's interpretation would permit "anyone with a computer, Internet connection and TV antenna" to qualify as a cable system.

This is the third recent opinion distinguishing Internet video distribution from a traditional cable service. In November, Judge Buchwald issued a temporary restraining order against FilmOn.com, which offered a similar service to that offered by ivi, but at no charge. The FCC also determined last year that Sky Angel, a subscription-based service that provides Christian-friendly programming using Internet Protocol was not a multichannel video programming distributor entitled to assert program access rights under the Communications Act.

A message on ivi's website states that the company will appeal, but in the meantime must "shut-down most of [its] broadcast channel offerings."

*Not admitted to the District of Columbia Bar, supervised by principals of the firm.