

## Cable Challenges Satellite TV

By Fred Hopengarten

**A**lthough people like Jack Valenti of the Motion Picture Association of America have branded unauthorized reception of cable fare by satellite TV enthusiasts as "piracy," there have been *no* lawsuits having to do with home satellite receiving systems.

High-revenue movie stations, such as Showtime and The Movie Channel, have income to protect and take a hard line against satellite TV. But low-revenue services, such as the Cable News Network, where the programmers get only 10 to 20 cents per subscriber per month, generally take a laissez-faire attitude. These companies are trying to enlarge their audiences and increase their appeal to advertisers. Free-to-subscriber services also wish to expand their audiences and tend to encourage the spread of private earth stations.

To make enforcement even tougher for cable companies, it is difficult, if not impossible, to detect or prevent satellite TV reception. There was a time when one manufacturer was going to make special receivers for the home market that would not tune into transponders which carried programming from sources that objected to home viewing. But that idea has faded away. Such a receiver would be unmarketable anyway.

A dispute still exists, of course, between high-revenue distributors and satellite TV enthusiasts, who tune into cable TV programming without paying. To solve the problem, a suggestion by Fritz Attaway of the MPAA makes sense. He advocates establishing a one-time fee, pooled in the manner of the Copyright Royalty Tribunal. This payment would satisfy cable companies and allow the satellite TV industry to get on with the business of bringing entertainment to those not served by cable.

In the meantime, it remains difficult to understand claims that it is legal to receive high-frequency signals from a shortwave radio, but

illegal to receive satellite signals with an earth station.

Following are the views of some leaders in cable television regarding satellite TV reception:

### **Showtime**

David A. Dreilinger, associate general counsel of Viacom (Showtime's parent corporation) writes: "Please be advised that it is the position of Showtime Entertainment that any reception of the Showtime Service by way of satellite (or otherwise) must be authorized and licensed by Showtime. No inference should be drawn that such a license is or will be available."

### **Cable News Network**

Patty Holland, a sales assistant for Turner Cable Sales, writes: "At this time there is no charge to private individuals who receive CNN for their own personal, non-commercial use."

### **Modern Satellite Network**

Thomas L. Pry, division manager, writes: "We make our programming available to anyone, so long as they return a postage-paid reply card."

### **Christian Broadcasting Network**

Scott Hessek, CBN Satellite Services, writes: "Like you, we believe reception consent is unnecessary. However, should that condition ever be challenged, we have developed a simple permission slip which shows our authorization to use our signal."

### **The Public Broadcasting Service**

Jackie Weiss, an attorney, advises that she has at least 60 letters on her desk on the subject of home reception, all unanswered. The problem she faces can be summarized this way: there is a conflict of policies as yet unresolved.

PBS has a mandate developed in the Public Telecommunications Financing Act of 1978 to serve unserved areas. Yet there are no PBS stations in Wyoming or Montana, for instance. PBS programming is supposed to be tailored to the local community, with involvement by the local affiliate, but with direct reception of satellite signals from a central source, this may be impossible.

### **The United States Department of Justice**

Kenneth Robinson, an attorney, writing for the Antitrust Division in the Inquiry Concerning the Regulation of Domestic Receive-Only Satellite Earth Terminals, explained the position of the government's prosecutor: "Existing laws do not require an FCC license to use a device that simply receives radio communications. The FCC is not a guarantor under the 1934 Communications Act of private commercial operations."

### **Reviewing the Law**

Under the Copyright Act of 1976, the rights of a copyright holder are limited. The statute entitles a rights holder to reproduce material, to prepare derivative works, to distribute, to perform and to display. The passive acts of receiving, watching and viewing are omitted.

The Communications Act of 1934, which created the Federal Communications Commission, also does not ban the viewing of programming transmitted by satellite. The statute says that it is illegal to receive and publish or use broadcast material. Mere passive reception of broadcast signals is legal. Congress correctly recognized that government has no business watching over individuals as they tune the spectrum of radio frequencies. □

*The author is an attorney and the president of Channel One in Lincoln, MA, a distributor for the Microdyne Megastar System.*

## Satellite TV Law Debated

To the editor:

In the article "Cable Challenges Satellite TV" by Fred Hopengarten (*Dealerscope II*, Oct. 1981) I am mentioned as having proposed that the pay TV piracy problem could be solved by a "one-time fee, pooled in the manner of the Copyright Royalty Tribunal." I have never met Hopengarten, and I have never made such a proposal.

Unauthorized interception of satellite signals is a violation of Section 605 of the Communications Act and is subject to both criminal and civil penalties. Despite Hopengarten's assertions to the contrary, this is the law as firmly established in recent court decisions, including *National Subscription Television v. S&H TV*, Ninth Circuit, May 7, 1981; and *Chartwell Communications Group v. Westbrook*, 637 F. 2d 459 (Sixth Circuit, 1980).

The manner in which necessary authorizations are obtained is a matter to be resolved in the marketplace by program owners, distributors and users. It is not my place to suggest a solution to this issue. It is up to the marketplace and those who must operate within it.

Fritz Attaway

*Vice President and Counsel*

Motion Picture Association of America, Washington, DC

*The author replies:*

*Fritz Attaway is right and wrong.*

*We've never met and he never made such a proposal. But I never suggested that we have met. The suggestion that a lifetime fee could be tacked on to the purchase price of an earth station came from Fred Finn, attorney for the Society for Private and Commercial Earth Stations (SPACE). I regret whatever embarrassment I may have caused Attaway.*

*However, Attaway is wrong when he says that the National Subscription Television and Chartwell cases firmly establish the law of satellite TV reception. Both involved subscription television (STV).*

*As for Section 605 of the Communications Act, a person must engage in more than mere passive reception to violate it. One must "intercept... and divulge or publish" a communication to become entangled. Note the title: "Section 605. Unauthorized publication or use of communications."*