Short-Wave Listening—Legal or Illegal?

K1VR is an attorney and president of Channel One, Inc., a dealer in home satellite TV receiving systems. In his opinion, if you really take a hard look at Section 605 of the Communications Act of 1934, you will see that it is not illegal to receive common carrier transmissions, as long as you do not divulge them.

BY FRED HOPENGARTEN*, K1VR

I've had an old (it was already old when I bought it) Hallicrafters S-38B since 1954. I paid $25 for it then. I could probably get $25 for it now. It continues to have market value because there is stuff worth listening to between the amateur bands.

In addition to amateurs, broadcasters, time signals, and other transmissions, it will cover frequencies that carry ship to shore traffic in clear voice. I was always under the impression that it was perfectly legal to tune in those transmissions, so long as I didn't divulge the contents of what I overheard. Recently though, two authors have taken the position that receiving common carriers without the permission of the sender is illegal.[1,2] A controversy swirls around the meaning of Section 605 of the Communications Act of 1934 (47 U.S.C. Section 605).

It is a prejudice common to lawyers that no one can truly read and understand the law, unless he or she is a lawyer. Frankly, I don't believe it. In my view, the biggest problems crop up when two parties argue about a law that neither has read recently. So let's take a look at Section 605.

§ 605. Unauthorized publication or use of communications

> Except as authorized by chapter 119, Title 18, no person receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpoena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is broadcast or transmitted by amateurs or others for the use of the general public, or which relates to ships in distress.
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> As amended June 19, 1968, Pub.L. 90-351, Title III, § 803, 82 Stat. 223.

Now look again. In the article by Cooper[2], the conclusion is simply stated: "(P)ermission, in advance, is required before you tune in any of these s.h.f. common carrier transmissions!" I disagree. As I read through the statute, here's what came through to me:

> no person receiving . . . shall divulge or publish . . . No person not being authorized . . . shall intercept . . . and divulge or publish . . . No person . . . not being entitled thereto shall receive . . . and use . . . No person having received . . . shall divulge or publish . . .

I think that the statute says that it is illegal to receive and divulge. Mere passive reception is legal. Always has been.

I think that Congress correctly recognized that government has no business watching over amateurs and short-wave listeners as they tune the r.f. spectrum.

Obviously, common carrier transmissions are entitled to some privacy under Section 605. Yet never before has the subject attracted so much attention. The reason? Entertainment television. In the 2 GHz range you can find first-run movies being transmitted to apartment houses and cable TV operators. Similarly, in the 4 GHz range you can find a wealth of TV programming from satellites in the sky 22,300 miles over the equator beamed at North America. Satellites are owned by RCA, Western Union, the Canadian Government, and others. They serve millions of people and get paid for it. But an experimenter with a big dish and receiving equipment sensitive enough can tune it in himself.

Despite the fact that radio transmis-

sions at 2 and 4 GHz carry entertainment programming, those signals are still common carrier transmissions by r.f. energy. They are no different from the ship to shore transmissions in clear voice mentioned earlier. So, for example, you can find WCC transmitting from Chatham, MA on 22,571.5 MHz, with ships replying on 22,202.5 in clear voice. Similarly, on the West Coast, KPH transmits on 22,567.5 and ships reply on 22,198.5.

Any programmable low-band scanner can find mobile to base radiotelephone conversations with both sides of the conversation every 30 kHz from 152.54 to 152.84 MHz. Going even higher, every 25 kHz from 459.8 to 460 MHz you will find air to ground mobile telephone conversations.

No one I know of seriously contends that "permission, in advance, is required before you tune in any of these . . . common carrier transmissions." I see no difference in technology that should make a difference in law when I contrast the common carrier services mentioned above. If you think that a radio signal is a radio signal, regardless of mode or frequency, then s.h.f. video is covered by the same considerations that control v.h.f. f.m. and h.f. a.m. Nor would I be afraid to turn on a printer when tuning across AP r.t.t.y. transmissions.

Any lawyer can dream up a spectrum (sorry!) of situations that challenge an otherwise obvious phrase. For example, in the following circumstances which is a "use" or divulgence?

> You put the signal up on a scope.
> You play the signal through a speaker, a teleprinter, a CRT.
> You invite your spouse into the shack. Your son. Your neighbor.
> You make an audio recording. A video recording.
> You give your recording to your neighbor.
> You run an extension speaker, a remote printer, an additional TV, with baseband output, at your neighbor's home.
> You wire the whole neighborhood.

In my opinion, the line is drawn when the signal, whether live or recorded, leaves your home. But that thought alone won't solve all the problems. What if neighbors buy an antenna in common, insert power dividers, and each owns his own radio? Frankly, I haven't thought that one through yet.

It is a continuing source of fascination to me that 2 meter f.m. ragchewers claim that it is illegal to record amateur QSO's. Go back and look at the statute. Section 605 "shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is . . . transmitted by amateurs . . ." Frankly, I don't see what prevents the tape recording of jammers.

The last time I checked, the First Amendment to the Constitution of the United States read: "Congress shall make no law . . . abridging the freedom . . . of the press . . ." Yet, strangely, Section 605 reads:

> No person . . . having become acquainted with the contents . . . of such communication . . . shall publish the existence . . . of such communication . . .

Recently, when I queried a lawyer at the FCC on this subject, he replied that he thought the language rather arcane, perhaps a remnant of middle English. I tend to agree. But it's amazing what you can find in the statute books. If it were literally true, no one could write about common carriers. Short-wave listener magazines would be subject to prosecution.

In a word, will you lose your amateur license for receiving common carriers? No. In comments filed before the FCC, March 23, 1979 (Docket 78-374), the nation's prosecutor, the Department of Justice takes the position that "existing laws do not require an FCC license to use a device that simply receives radio communications."

To the best of my knowledge, the FCC has never asked the Department of Justice to prosecute a case of mere passive reception. "Should the government be cruising around the neighborhood looking for illegal receivers?" asks Elliot Maxwell, a first assistant to the FCC chairman.[3]

There is no need to feel that some frequencies are forbidden. The networks, the National Association of Broadcasters, Messrs. Cooper and Cohen, have all stated what they think Section 605 says. If you accept what they say then surely our hobby is threatened. For if listening is illegal, then receivers are the tools of the crime. But if you take the trouble to read Section 605 for yourself, and if you agree with me that there is a big difference between receiving and divulging, as opposed to mere passive reception, then you can feel comfortable, as you sit down to tune around. From 2 MHz to 20 GHz, well beyond the capabilities of my S-38B, the listening is free.

Footnotes

[1]Cohen, Theodore J., N4XX, "Cateline . . . Washington, D.C.," *CQ*, September 1979, p. 48.

[2]Cooper, Bob, Jr., W8KHT, "All Airwaves Are Not Free," *QST*, October 1979, p. 79.

[3]*Boston Globe*, October 7, 1979, p. B3.