

prepared to seek civil and criminal sanctions to halt theft of service if necessary.”

The court's order was another in a series indicating that the courts are virtually unanimous in the view that Section 605 of the Communications Act prohibits the unauthorized reception of pay signals. Davis granted the preliminary injunction in part on the ground that, in view of “recent federal appellate decisions which . . . have held that such practices constitute violations” of the law, Private Channel has “met the burden of demonstrating the likelihood of success on the merits.”

Sticky issue in WGN-United Video case

**District court judge must
decide whether inclusion of
teletext signal in TV broadcast
falls under copyright protection**

A U.S. district court judge in Chicago who is wrestling with a complicated copyright case involving a common carrier's transmission of broadcast signals to cable television systems last week got predictably conflicting views from the parties involved—WGN Continental Broadcasting Co. and United Video Inc.

The question Judge Susan Getzendanner asked the parties to address is whether United Video's transmissions of WGN-TV Chicago's signal are performances to the public “within the statutory definition ‘to perform or display to the public.’”

The case is a product of the new information era. At issue is not the television programming of WGN-TV that is being transmitted but the teletext material the station is including, in a text, in the vertical blanking interval of the signal. United Video is stripping the information—program schedules—and inserting material of its own, the Dow Jones business news service. WGN is seeking a court order to prevent United Video from continuing the practice (BROADCASTING, May 4).

WGN bases its request on the ground that United Video's satellite transmission of the programming in a “mutilated and altered” fashion is an infringement of the Copyright Act because United Video exercised direct control over the content of a primary transmission of the programming, in violation of the act.

United Video has promoted the fact that some 3.5 million subscribers watch WGN-TV programming on the cable systems it serves—more than 1,000. But it maintained in its brief last week that transmitting material to cable systems does not constitute a performance “to the public,” as spelled out in the Copyright Act.

“United Video's role as a carrier is identical to that of a trucker who ships books

from a publisher to various bookstores,” the company said in its brief. “The trucker may ‘select’ the publisher from which deliveries are made, but has no control over the content or selection of books shipped, except as ordered by the trucker's paying customers. In no case would the trucker be liable for copyright infringement of the books shipped.”

WGN offers a different view. “Even engaging in the incredible assumption that UVI has nothing to do with the transmission of WGN's programming to 3.4 million cable system subscribers,” WGN said, “UVI's retransmission of WGN's TV signal to its 1,134 cable system customers independently constitutes a performance ‘publicly.’”

The argument that it is not engaged in “public” performance is United Video's principal but not sole defense against the copyright infringement charge. The second—which would pose an even more vexing question for the court—is that the teletext material is not part of the copyrighted program. Rather, United Video said it is a separate transmission, both in terms of content and physically, since it is not viewable on ordinary television receivers. Since it did not carry the teletext material, United Video contends, “there can be no claim of infringement.” Thus, the question the court would be obliged to answer, if it rejects the first defense, is whether WGN-TV is transmitting one program or two.

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