Broadcast LAW BLOG

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Federal Court Says No To Internet Retransmission; Section 111 Compulsory License Does Not Permit Internet Broadcasting Without Compliance With Federal Regulations

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As our colleague Brian Hurh wrote recently on our sister blog, the www.broadbandlawadvisor.com, a federal district court last week granted a preliminary injunction prohibiting the mere retransmission of broadcast television programs over the Internet, without more. The order is not only important for its confirmation of a 2008 Copyright Office decision rejecting Internet retransmission of video programming under Section 111 of the Copyright Act, it also reaffirms the "quid pro quo" of compulsory licensing – that one cannot merely retransmit programs over the Internet (or any other medium, for that matter) without acquiescing to federal regulation. *See WPIX, Inc. et al v. ivi, Inc.*, Case No. 1:10-cv-07415-NRB (S.D.N.Y., Feb. 22, 2011).

The order stems from a preliminary injunction sought by national broadcasting networks and local stations, Major League Baseball and several motion picture studios against a single defendant, ivi, Inc. ivi's business consisted of capturing over-the-air broadcast programming in several major markets and retransmitting it over the Internet to ivi subscribers across the country.
The central issue was whether ivi could lawfully retransmit such programming over the Internet pursuant to a "compulsory license" under Section 111 of the of the Copyright Act (17 U.S.C. § 111). In a brief but informative history of Section 111, the Court explained that the compulsory license was created to allow the then-nascent cable industry to retransmit over-the-air programming to subscribers in exchange for a statutory license fee paid to the Copyright Office. That bargain, however, also required cable operators to willingly submit to the FCC's jurisdiction. According to the record, ivi refused to adhere to this bargain, instead arguing that its Internet video service was outside the purview of the FCC because it was transmitted over the Internet. The Court flatly rejected this argument, holding that ivi not only was not a cable system eligible for a license, it could not both benefit from a compulsory license while at the same time avoid obligations under federal law.

In essence, the Court's decision reinforces the notion that there is, and has always been, a balance between the development of new video technologies and respecting the copyrights of content owners. Cable operators accomplished this through the Section 111 compulsory license; the Internet has yet to discover a balance of its own.