

**LIABILITY FOR COPYRIGHT INFRINGEMENT
IN THE CASE OF TV TRANSMISSION VIA SATELLITE
(ESSEL VISION'S CLAIM ON INTERSPUTNIK)**

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History of Dispute

In 1993, India's Essel Vision (a subsidiary of ZEE TV) stated that its right for public demonstration of films in India had been violated by Asia United Media Ltd. (AUM) registered in the UK. AUM leased communications channels from Intersputnik. It was stated that Intersputnik bore joint responsibility with AUM that was in breach of copyright. According to the plaintiff's lawyers who referred to a provisional authority by the Bombay High Court the case could be submitted to a Russian court if Intersputnik did not take appropriate measures.

The plaintiff's statement at the Bombay High Court could be reduced to the idea that video copyright holders had no right to transmit video cassettes through satellite and cable TV, as defined in Section 14c) of the Copyright Law of India. In the plaintiffs' opinion the copyright for the video cassettes was transferred to the owners only for direct-to-home service.

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INTERSPUTNIK

In the decision of October 27, 1993, the Bombay High Court found the plaintiffs' arguments convincing but did not pass any final award. At the same time, the plaintiffs objected (even considering arbitration proceedings) against film satellite transmissions via channels originated in Russia whenever AUM had no appropriate copyrights.

At Intersputnik's request, the President of AUM advised that his company had all necessary rights to demonstrate TV programs in India and flatly repudiated the alleged copyright violation.

Comment

Disputes of this kind between broadcasting companies who accuse each other of being in breach of copyright will become more frequent as TV broadcasting service is expanded. In our particular case, we wanted to draw your attention to the fact whether the owner of telecommunication facilities (in particular, Intersputnik) is responsible for copyright matters in principle including the contents of the program and copyright observance by the program customer.

1. Mutual obligations of the Parties involved in satellite TV service and their liability are defined in a contract. According to the Contract with AUM, Intersputnik's obligations include only satellite operation in terms of technology; the satellite is used just as a technological facility to distribute AUM's programs in the territory of India.

The Contract reads: "Intersputnik shall not be liable for copyright matters" (Article 6). Intersputnik is entitled by its promoters to provide service while the contents of the transmitted signal is the responsibility of the clients.

2. The Brussels Convention on the Distribution of Programme-Carrying Signals Transmitted via Satellite of 1974 does not impose any responsibility on satellite operator (in our case Intersputnik) as a provider of technological service, for eventual violation of copyrights and associated rights of third parties while transmitting TV programs. The Convention does not include any specific provisions to protect authors' copyright and associated rights of third parties. The purpose of the Convention is to prevent unauthorized transmissions of programs. Strictly speaking, this Convention is the principal source of legal documentation applicable to this case. Moreover, Intersputnik as an intergovernmental organization is a subject of international public law. In our opinion, the Convention does not imply any responsibility of entities which technically transmit programme-carrying signals via satellite for eventual violation of the rights of third persons in relation to broadcast-programmes.
3. Development of advanced technology leads to convergence between FSS and DTH satellites. This fact was confirmed by member states of the European Convention relating to Questions on Copyright Law and Neighboring Rights in the Framework of Transfrontier Broadcasting (1994, Strasbourg). This makes it necessary to consider further legal aspects of broadcasting via satellite from the viewpoint of copyright law and neighboring rights.

The Strasbourg Convention recognizes that copyright and neighboring rights shall, as far as transfrontier broadcasting by satellites are concerned, be protected in conformity with provisions of the Bern Convention for the Protection of Literary and Artistic Works (Paris Act, 1971) and

the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961.

In the context of the problem under review, these conventions as well as the World Copyright Convention (Geneva, 1952) use the term "to air" synonymous to "making public" or "issuing" (e.g. Article 11-bis of the Bern Convention, Article 7 of the Rome Convention, Article 6 of the World (Geneva) Convention).

Both scholars and practical workers believe that programme-carrying signals inaccessible to public can not be regarded as "aired" in the sense of international copyright convention.

All the above international conventions deal with programs transmitted by satellite service providers/operators and no liabilities are imposed on them for the breach of third parties' rights.

Conclusion

The existing norms of international law do not impose any liability on Intersputnik, as a provider of technical satellite service, for the breach of copyright and associated right owners.

This is also confirmed by Article 6 of Contract for the Allotment of Intersputnik Space Segment Capacity to Asian United Media Ltd., UK, which precise that "Intersputnik shall not be liable for any copyright matters".

The contract goes still farther since it provides for a detailed arbitration procedure of any disputes and/or discords which may arise between INTERSPUTNIK and the AUM.

This special case illustrated by us may present interest to other satellite communications organizations, both international or private.