

JumpTV wants to put TV signals on the internet

IP column published in *The Lawyers Weekly*

January 12, 2001

Edward Hore
Hazzard & Hore
141 Adelaide Street West, Suite 1002
Toronto, ON M5H 3L5
(416) 868-1340
edhore@hazzardandhore.com

Do people want to watch TV on their computers? JumpTV is betting that they do.

JumpTV (see www.jumpTV.com) is a Montreal-based company that hopes to take advantage of a wrinkle in Canadian copyright law to bring the multichannel universe to your PC. Your secretary will be able to watch her favourite soaps when you're not looking.

The legal wrinkle is this: instead of negotiating a license fee with broadcasters to transmit their signals (which the broadcasters probably wouldn't agree to), JumpTV wants what amounts to a compulsory license.

This past fall, it asked the Copyright Board to approve an interim tariff under the "retransmission of distant signals" regime, s. 31, of the Copyright Act, that would allow it to start sending TV signals on the internet before the end of 2000.

It's unlikely the Board will approve an interim tariff that fast, since things have a way of moving slowly in the copyright world. But JumpTV's request raises interesting issues.

In effect, JumpTV is saying "Copyright Board, since the Act does not refer to the internet, treat us like a traditional cable company for now. It's not clear that we have any obligation to pay content providers. But we're prepared to pay under an interim tariff, while the legal issues are clarified. But we want to start now, at least on a small scale, and not be buried by years of expensive hearings and bureaucratic delay."

A little history is in order here. Prior to 1989 nothing in the Copyright Act prevented anyone in Canada from picking up TV signals on a big antenna and retransmitting the signals into people's homes, in return for a subscriber fee. That's how the Canadian cable companies got going; they picked up US broadcasts, and transmitted them over their cable network to your house, without paying for the signal.

The US networks were unhappy. As part of the Free Trade Agreement negotiations, the US insisted Canada change its law. The result was section 31 of the Copyright Act, which says, in effect, that cable companies and direct-to-home (DTH) companies are not infringing copyright by retransmitting "distant" signals to their subscribers, provided they

pay a royalty to content providers. "Distant" has a technical definition, but essentially includes everything but local cable shows, for which no fee need be paid.

The royalty is set out in a tariff approved by the Copyright Board. The royalties are calculated per "premises" - basically, per subscriber. The proceeds are then divided up among various collective societies representing content providers. In other words, s. 31 gives cable companies a compulsory license; content-providers get paid, but can't refuse the cable company the right to retransmit.

JumpTV.com argues it's like a cable company. It wants the board to set an interim tariff, meaning that it could put broadcast signals on its website now, while paying nominal fees to copyright owners, perhaps calculated as a percentage of its revenues.

Existing cable companies and broadcasters say JumpTV is not like a cable company, and not entitled to the benefit of s. 31. For one thing, it won't have subscribers; it plans to sell advertising. That means it will be competing with broadcasters for ad dollars, unlike cable companies. Also, the CRTC has decided not regulate the internet, so internet TV transmission won't have Canadian content rules.

IN some ways this is a sequel to the iCrave TV story. Remember iCrave TV? iCrave was a Canadian company that started distributing TV signals over the internet in the spring of 2000.

There are two big differences between iCrave and JumpTV. First, iCrave started put broadcast signals on its site before the copyright issues were resolved. Since all you needed was a Canadian telephone area code to get on the site, Americans could access it. That was a clear violation of US copyright law, which has no equivalent of s. 31, so the US courts were quick to shut iCrave down. iCrave was forbidden even to apply for a tariff from the Canadian authorities. JumpTV.com, however, says it won't start internet "retransmission" at least until an interim tariff is in place.

Although iCrave had no effective way to prevent its website from being viewed in the US, jumpTV.com says it has solved this problem. It uses technology called BorderControl (see bordercontrol.com) that can screen out users outside Canada.

Content providers are mobilizing to stop jumpTV. They oppose an interim tariff, and want a full hearing on whether s. 31 applies, before any tariff is approved. They want Copyright Act amendments that would stop upstarts like jumpTV.

In the short term, the Copyright Board has a procedural decision: do we approve an interim license for JumpTV, or not? Whatever it decides, similar internet-related issues about broadcasting are going to keep coming up.