

Reason for rejoicing in CATV ranks

CATV industry sources didn't hide their ebullience regarding the future of their industry as the result of last week's U. S. Supreme Court decision (see page 19), but they proved to be more inscrutable (or was it super-cautious?) about the future of copyright negotiations with broadcast groups. Those negotiations between the National Cable Television Association and the National Association of Broadcasters have remained dormant since last month pending some decision by the high court (BROADCASTING, May 13).

But sources at the NAB appeared to be more willing to discuss the prospects of future talks. As one official put it glumly: "Why should they [NCTA] want to talk now?" Another source termed future negotiations an apparent "exercise in futility." If the talks are to continue, he said, perhaps the question of CATV copyright liability should be pressed more by the copyright owners rather than by NAB.

However NCTA spokesmen indicated that as far as they were concerned, there was "no reason why

we shouldn't keep meeting," although they were indefinite as to whom they would continue to meet with. Another NCTA source responded to a question about the negotiating by saying that "it's their move now."

Ford Silent ■ Frederick W. Ford, NCTA president, refused to comment on this court decision and its companion that affirmed FCC jurisdiction over CATV (BROADCASTING, June 17). He said that the two decisions presented a number of questions that would have to be mulled over by NCTA's board of directors and executive committee during the association's convention in Boston June 29 (see page 33), and that he couldn't publicly take a position regarding the two CATV decisions at this time.

One board member said that at those Boston meetings the board may hammer out a united front to present to the NCTA membership regarding the complexities resulting from the copyright decision. In his opinion the board may not want the membership to walk out of the con-

vention with the idea it's not going to have to pay copyright fees, because he feels that some copyright payments on local originations are "inevitable."

Other cable sources said they preferred to let "the dust settle" before making firm predictions about CATV's future. But there were some who expressed relief that a muddled legal cloud that has hung over the cable industry for the last two years has apparently been dispelled. The court decisions, they said, prescribe "livable conditions" under which CATV could build a "solid basis for the future."

Another industry source speculated that now that the ground rules have been established, more investors, who to this point had been leary about getting into the cable marketplace for want of some specific rules, would be putting money into cable. With the new ground rules, he said, what CATV's should be concerned about now is who are going to occupy seats on the FCC. What CATV needs, he suggested, are "favorable" commissioners.

favor," the fact remains that "legislation which is fair to all concerned . . . will be the proper and enduring solution to the copyright problem."

Mr. Kahn said the cable industry negotiating committee is seeking that end, and added, "I hope that the fruits of this negotiation are a bill which Congress can vote on favorably, thus enabling us to achieve very soon a fair resolution we all seek."

Charles F. Dolan, president of Manhattan Cable Television which, like Teleprompter, operates a CATV system in New York, indicated what he feels the Supreme Court decision means to CATV systems. He said Manhattan Cable's "subscribers will be protected from increase in rates "that might have resulted from copyright charges imposed on the cable systems. "Third parties," he added, "will not be permitted to interfere with the right of the subscriber to receive all programs carried by the cable system. The decision is a giant step forward in permitting cable television operators to make full use of the enormous multichannel capabilities which are inherent in coaxial cable."

Mr. Dolan said Manhattan Cable is considering the importation of sports programs, feature films and educational

programs from Philadelphia stations that will "supplement but not duplicate local programming."

More Talks ■ In New York, representatives of programming sources appeared optimistic that talks that copyright owners had been holding with CATV-industry spokesmen would resume in an effort to arrive at a fair formula for payment by cable companies that relay copyrighted material. The programming sources representatives said that several CATV operators had, in the past, indicated a willingness to pay. Copyright owners are expected to confer with CATV industry spokesmen at the NCTA convention in Boston this weekend (see page 33).

There is considerable disagreement among copyright owners as to whether congressional action is necessary to effect a fair compromise. Some feel it is. But one program company official said: "Nobody really wants Congress in the act." He thought the parties could do a better job of devising a compromise than could Congress.

There is also the feeling among copyright owners that they are not without bargaining power, despite the court decision. CATV systems unwilling or, because of stockholder pressure, unable to make a reasonable settlement could

be brought into line by the copyright holders' ability to make them pay dearly for programming material that is subject to copyright payment, that is, material that originates on the CATV system cable.

How It Started ■ The case on which the court acted involves the copyright-infringement suit that United Artists brought against Fortnightly Corp. as a result of the pick-up and retransmission of UA-controlled programs by systems Fortnightly then owned in Fairmont and Clarksburg, both West Virginia. The systems, now owned by Jack Kent Cooke, relay the signals of stations in Pittsburgh, Wheeling, W. Va., and Steubenville, Ohio.

The court held that the copyright act does not give a copyright holder control over all uses of his material—it merely lists certain rights that are made exclusive to the holder. Anyone using the work within the scope of those rights infringes those rights, the court said.

The lower court had held that a CATV system "performed" the works it was relaying by virtue of the amount of work it did in bringing the copyrighted material to the public.

"But mere quantitative contribution cannot be the proper test to determine