

IS CATV'S FUTURE IN FCC'S HANDS? continued

copyright liability in the context of television broadcasting," the Supreme Court said, as it sought to apply an act drafted at a time that television, let alone CATV, had not been invented. "If it were, many people who make large contributions to television viewing might find themselves liable for copyright infringement—not only the apartment-house owner who erects a common antenna for his tenants, but the shopkeeper who sells or rents television sets, and, indeed, every television set manufacturer."

The court's key finding was that CATV systems—in the program-distribution process—are more akin to viewers than to broadcasters. "One [the broadcaster] is treated as active performer; the other [the viewer], as passive beneficiary.

"When CATV is considered in this framework," the court said, "we conclude that it falls on the viewer's side of the line. Essentially, a CATV system no more than enhances the viewer's capacity to receive the broadcaster's signals; it provides a well-located antenna with an efficient connection to

the viewer's television set . . . CATV equipment is powerful and sophisticated, but the basic function the equipment performs is little different from that performed by the equipment generally furnished by a television viewer."

"With due regard to changing technology," the court concluded, "we hold that the petitioner did not under [the] law 'perform' the respondent's copyrighted works." Joining Justice Stewart in the majority opinion were Chief Justice Earl Warren and Justices Hugo Black, William Brennan, and Byron D. White. Justices William O. Douglas, John M. Harlan and Thurgood Marshall did not participate in the decision.

Justice Fortas argued that the majority had erred in not following the precedent of a 1931 case in which the court had held that a hotel receiving a broadcast on a master radio set and piping the broadcast to all rooms of the hotel had "performed" the material that was broadcast.

Justice Fortas said that the majority's opinion would not be "objectionable" if the majority had replaced "what it considers an outmoded interpretation

of the term 'perform' with a new, equally clear and workable interpretation." But it hasn't, he said. And, barring such an acceptable substitute, he said, the court's major object should have been "to do as little damage as possible to traditional copyright principles and to business relationships, until the Congress legislates and relieves the embarrassment which we and the interested parties face."

Justice Department attorneys who participated in the preparation of the friend-of-the-court brief that was filed in the case, regard the verdict a rather complete victory for CATV—one that would affect all 2,000 systems. They cite the language stating that CATV systems do not "perform" the works they carry.

However, communications lawyers taking a different view cite two footnotes in the opinion. One stated that the decision is "with reference to the facts of this case." The Fortnightly CATV systems do not employ microwave; they relay signals of stations no more than 82 miles away. What, these lawyers ask, about systems using microwave to bring in signals from a point hundreds, possibly thousands of miles distant?

The second footnote, appended to a sentence noting that the Fortnightly systems neither edited the programs they received nor originated programs of their own, said: "Some CATV systems, about 10%, originate some of their own programs. We do not deal with such systems." Does this mean, the lawyers ask, that CATV systems that do originate programs would be liable for copyright payments?

The CBS case which could be used to seek the answers to these questions has been held in abeyance pending a decision on the UA suit. It involves a suit CBS brought against Teleprompter in 1964, in an effort to establish the principle that CATV systems may not retransmit programs without permission of copyright owners (BROADCASTING, Dec. 14, 1964). One of the three systems involved, in Farmington, N. M., uses microwave in relaying CBS programs from Albuquerque, N. M., some 100 miles distant. It also originated programming. One of the other systems in Elmira, N. Y., uses microwave to import programming from New York independents. The third system is in Johnstown, Pa.

CBS officials and attorneys were intensively studying the Fortnightly case last week but as of Thursday were unable to say whether the CBS case would be pursued. They said they would not discuss any phase of the Fortnightly decision or its possible ramification until they had completed their study.

CATV delivers daily newspapers by wire

Local origination on CATV has many forms, but there appears to be a new one in Placerville, Calif.—a televised daily newspaper.

The newspaper, currently published weekly, is the *Placerville Mountain Democrat*. It's cooperating with Valley Vision Cable Television to provide that CATV's 700-plus subscribers a televised daily newspaper, compiled by the *Mountain Democrat* staff, through the use of a Tell-A-Channel machine.

The machine, developed by Valley Vision engineer Robert B. Cooper Jr., displays news reports on local events on a continuous-belt device. News items on cards are inserted on the belt and are displayed on the TV screen in a vertical crawl. These items may be updated without disturbing other news being shown. The machine at present has 900-word news capacity with a visual flow of words at the rate of 100 words per minute.

Although the prototype machine is a floor-to-ceiling monster, Mr. Cooper says he's developed a miniaturized version about three-feet long



Valley Vision Cable Television general manager William T. Baker (l) and 'Placerville (Calif.) Mountain Democrat' publisher Phil Hayes (r) with the Tell-a-Channel news machine.

and one-foot high. The machine, now undergoing testing in the Placerville system, provides multiple audio-video inputs and switching facilities for local origination control, and is expected to sell for about \$2,500.