

service is not changed by simultaneous sale of original shows, just as it would not be changed by Teleprompter's simultaneous delivery of free ice cream or candy to every subscriber."

The decision acknowledged that in the five Teleprompter systems involved in the case—chosen, she noted, as representative of the issues raised in the suit—"it often cannot fairly be said" whether the "dominant function" is retransmitting or originating programs. "The service sold by Teleprompter is the combination of these functions, not either in isolation."

Perhaps, she added, "the lesson" of *Fortnightly* may be—aside from the "functional test" it prescribed—that, as an appeals court said "in another context" in the *Midwest Video Corp.* case, "broadcast signals are dedicated to the public."

She continued: "Certainly, that is one conclusion that can be drawn from the Supreme Court's first finding that the range of a viewer is determined by the equipment of both the broadcaster and the viewer, and then analogizing a CATV to a viewer's antenna. For if a CATV is like a viewer, and a viewer by his choice of equipment can determine the range of a broadcast, then there seems to be little limit to what can be done with broadcast signals by CATV's. The result indeed may be that [as the appeals court said in the *Midwest Video* case, currently awaiting Supreme Court review as to whether the FCC may re-

quire originations by CATV] 'the right to receive and distribute [signals] may be exercised by anyone with the capacity to capture the signals.'"

Use of microwave, interconnection, advertising and the sale of commercials were dismissed by Judge Motley as "minor features" that did not significantly change the function of the Teleprompter systems. Microwave, she said, is point-to-point, not broadcasting, and the advertising Teleprompter did in promoting its program originations did not in itself alter the function of the systems.

The interconnections involved, linking systems to closed-circuit theater-showings of two Sonny Liston/Mohammed Ali fights, occurred only on "two separate, temporary and special occasions" and, "whatever this brief interconnection may portend for the future, it does not transform [the present system] into a broadcast network as plaintiffs suggest." As for the sale of commercials, she held this factor was "small in both the amount of money involved and in relation to the amount of programing carried," and was, moreover, confined to programs Teleprompter originated, not involved in broadcast programs relayed.

Legal and other authorities at CBS declined to comment on the 40-page decision pending further study. Nor would they speculate on whether they would appeal, though other sources tended to think they would.

The case was filed more than seven

years ago (*BROADCASTING*, Dec. 14, 1964). The *Fortnightly* case—a suit brought by United Artists against *Fortnightly Corp.*, which then operated systems in Fairmont and Clarksburg, W. Va., picking up stations in Pittsburgh, Wheeling, W. Va., and Steubenville, Ohio—was already pending. When efforts to consolidate the two suits failed, it was agreed that the CBS-Teleprompter case would be stayed pending the outcome of *Fortnightly*. Subsequently, the plaintiffs were allowed to file supplemental complaints including allegations concerning events up to March 31, 1971.

The Teleprompter CATV systems involved in the case were in New York and in Elmira, N.Y., Farmington, N.M., Great Falls, Mont., and Rawlins, Wyo. Co-plaintiffs with CBS were Calvada Productions, which produced the *Dick Van Dyke Show*, Jack Chertok Television (*My Living Doll*) and Dena pictures (*Danny Kaye Show*).

The consensus of reaction among broadcasters after the decision was that it probably strengthened the position of the cable operators in their negotiations with copyright holders. At the same time, it was stressed that the National Cable Television Association is a signatory to the compromise agreement, worked out by the Office of Telecommunications Policy last November, and that the agreement contains promise that all parties will work for copyright legislation.

John Summers, general counsel of the

## Eyes now on McClellan and copyright

**But no action seen soon on pending bill while he campaigns hard for re-election**

Now that CBS has lost its suit against Teleprompter (see page 19), attention shifts to the copyright revision bill (S. 644) now pending before Senator John L. McClellan's Subcommittee on Patents, Trademarks and Copyrights.

But, according to a subcommittee spokesman, there is little chance that the subcommittee will have time to consider the legislation this year. For the past six weeks Senator McClellan (D-Ark.) has been in his home state campaigning for re-election (the primary is May 30); there is a Senate recess from June 30 to July 17 for the July 4th holiday and for the Democratic national convention and another recess Aug. 18 to Aug. 28 for the Republican national convention. In the time remaining in the session, the spokesman said, Congress is likely to work in earnest only on high-priority matters, such as appropriations bills. Any subcommittee action on copyright this year would be only "going through the motions," he said.

The copyright bill, introduced last year by Senator McClellan (*BROADCASTING*, Feb. 15, 1971), is nearly identical to the measure the subcommittee approved in 1969, but which had been held in abeyance until the FCC's cable rules became effective, March 31.

It is a complete revision of the 1909

Copyright Act that—as it now stands—would impose copyright liability on all CATV systems and establish two classes of carriage of TV stations. Systems in the top-50 markets would be limited to carriage of three network signals, three independents and one noncommercial; in other markets to three network, two independent and one noncommercial.

The bill also sets quarterly fees under a compulsory license provision, based on gross receipts from subscribers.

The fees are: 1% of receipts up to \$40,000; 2% of receipts exceeding \$40,000 but not more than \$80,000; 3% of receipts exceeding \$80,000 but not more than \$120,000; 4% of receipts exceeding \$120,000 but not more than \$160,000; 5% of any gross receipts above \$160,000; an additional 1% of gross receipts for each distant signal authorized by the FCC.

Excluded from copyright liability are master-antenna systems or other secondary transmissions for which there is no charge.

Another section of the bill provides royalties to recording artists for use of their records on TV and radio. Stations would have to pay either an annual fee of 2% on net receipts or a prorated fee based on the proportion of their programing occupied by records.

The bill would also create a Copyright Royalty Tribunal to periodically re-

view copyright fees and adjust them.

In a letter late last year to broadcasters, cable interests and other parties, soliciting their comments on the copyright bill, Senator McClellan's subcommittee said that it expects to delete provisions on signal carriage, which define broadcast markets and provide exclusivity rules. (*BROADCASTING*, Dec. 20, 1971). These items are already covered in the FCC regulations that resulted from compromise agreement reached by copyright owners, CATV operators and broadcasters. The modified bill, the subcommittee said, would grant copyright licenses for carriage of programs and provide for payment of royalties.

In answer to the subcommittee's letter, the National Association of Broadcasters, the Association of Maximum Service Telecasters and ABC said they are ready to support the legislation. CBS at the time declined to comment because it was opposed to the CATV compromise and was assuming a favorable outcome of the suit against Teleprompter (*BROADCASTING*, March 20).

The music-licensing organizations (American Society of Composers, Authors and Publishers; Broadcast Music Inc. and SESAC) contended that the licensing system used in broadcasting must be expanded to cover CATV.

Spokesman for professional baseball, football, basketball, hockey and golf and for the National Collegiate Athletic Association stressed the need to protect gate receipts by extending to cable the re-