

Streaming Broadcast Television – Is it Legal?

- The streaming applications in themselves are not illegal - unless they carry the channels of major broadcasters that they do not have the licence for?
- Who makes the copy and transmission? The individual user or the service provider? If it is the individual user, then the service may be legal in terms of copyright law as the service itself just helps the individual user's fair-use watching and copying the broadcast for personal use only. Is it the responsibility of the user to make sure they are only streaming content with the correct licence?
- Centralised applications – subscription only – monthly or annual fee – multimedia corporations happily provide content for download as they are making money from it.
- Decentralised applications – no gatekeeper to collect revenue – commercial broadcaster's worst nightmare

Japan – January 2011

A company providing real-time Internet broadcasts of Japanese television programmes to subscribers overseas was found to be in violation of the Copyright Law by the Supreme Court.

Subscribers purchased a commercially available transmission appliance, which they entrusted to the company. With an initial enrolment fee and a monthly users fee, subscribers located overseas or in Japan outside of Tokyo could view programmes from key broadcasters in real time.

The focus of the lawsuit was whether or not 'ManekiTV' constituted an "act of public transmission" which would signify a violation of the broadcasters' copyrights. The judges

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in the lower courts ruled that the service was a one-on-one relationship between each subscriber and the company, and therefore did not constitute public transmission. The Supreme Court, however, concluded that anyone could subscribe to the service, and that the company had proactively transmitted programmes to an unspecified number of people.

The ruling does not suggest that the transmission of programmes from one individual to another is illegal. For example, it is possible for Japanese living overseas to entrust family members or friends in Japan with a transmission appliance in order to watch Japanese television programmes elsewhere.

America – August 2012

A federal appeals court ruled that an upstart service (ivi Inc) that streamed broadcast television over the internet is not a cable system and therefore is not protected by the Copyright Act.

The U.S. Copyright Act requires that broadcasters license their content to satellite and cable companies under a regulated pricing scheme known as compulsory licensing – but not to online streaming service such as ivi.

The court ruled:

- ivi retransmitted the plaintiffs' copyrighted programming without their consent;
- The quantity and quality of efforts put into creating television programming, retransmission and advertising revenues, distributions models and schedules would all be adversely affected;
- These harms would extend to other copyright holders of television programming. Continued live retransmissions of copyrighted television programming over the Internet without consent would thus threaten to destabilise the entire industry.

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