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Cable Piracy in Queens: How Much Can You Pay

Michael E. Morrah '94

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THE MEDIA LAW PROJECT

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individual authors and do not necessarily represent the
opinions of New York Law School, the Reporter or the
Media Law Project.

CABLE PIRACY IN QUEENS: How Much Can You Pay?

by Michael E. Morrah '94

You are sitting at home in front of the TV, furiously flicking through several channels during a commercial break. Several seconds later your screen turns black. Your cable converter box is broken. You go to your cable distributor to have it replaced, and when you arrive, you are told that you are illegally using your cable company's services and that you will be served with a \$110,000 fine if you do not comply with the company's wishes.

This practice, the work of American Cablevision of Queens located in Astoria, Queens, is the newest method of combatting cable theft. Fed up with the rising ingenuity and sophistication of people who wish to see Pay programs

without paying for them, ACQ decided to launch a voltage spike, or an "electronic bullet", through the ACQ system to short circuit illegally installed microchips. And if you return your box to ACQ to have it repaired or replaced, you will be served with a fine.

However, it turns out that the microchips or "pirate chips", were installed by ACQ servicemen who solicited viewers by offering a one-time-only "lifetime subscription" to such premium pay channels like HBO, SportsChannel, foreign-language programming, Playboy Channel, and Bravo for a one time fee of \$300, cash. Upon installation, each subscriber was given a business card with a beeper number if there were any problems with the pirate chip. Unsuspecting viewers like Joan M. of Flushing, Queens thought they were getting a good deal when offered the pirate chips by ra
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MEDIA COVERAGE OF THE THOMAS HEARINGS: SETTING A NATIONAL AGENDA

By Fredrik Cederqvist '94

The accusations of sexual harassment levied by Professor Hill against newly confirmed Supreme Court Justice Clarence Thomas gripped the attention of the nation. Staying in on a weekend evening to watch television gained a new found respectability. Aware of its power, the media took full advantage of the situation. While viewers watched endlessly for answers they would not receive, the media helped to shape a national agenda against sexual harassment.

The accusations against Thomas first gained prominence when an "unidentified" staff member of a Senator on the Judiciary Committee leaked information provided by a confidential FBI report. The result was public outrage against the "system" that thrust an unwilling witness into the limelight and that tarnished the name of a man who had overcome poverty and bigotry to serve for the highest court in the land. Few, however, pointed fingers at the media.

Allowing unidentified people to disperse information through the media shields those people from taking responsibility for their words, contrary to the right conferred to defendants in our courts. Leaking the FBI report to the public was illegal, after all. Some worry that the right of newspapers and the media to report such information will open an avenue for interest groups to unfairly attack future nominees seeking what is designed to be a nonpolitical post. However, by showing anger only towards the government who leaked the information and not the media which reported it, the American people gave credence to the notion of the public's right to know such information if it is made available.

The contradictory standards to which the public held the government and the media

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Pirate Cable, Cont'd from page 1

supposedly reputable agent, but found otherwise when informed of the \$110,000 fine.

Out of 90,000 subscribers within their viewership, ACQ ferreted out 317 potential pirates with the bullet technique. ACQ filed suit against all 317 in Queens County on April 25. Some viewers readily chose to settle, but it is not clear whether all of these people accused actually stole these special services. It is important to note that some people like Paula M., also from Flushing deny the existence of owning a pirate chip and cannot prove their case because ACQ possesses the evidence to clear her. Yet she, like many, settled for fear of further litigation from superior representation.

Feig Cont'd

companies such as Grudge Records, Vanguard Records and Sound of New York Record Co., writers such as David Karp and Barbara Taylor Bradford, and bands such as Newcleus and Crown Heights Affair. Approximately 20% of my practice is regular commercial work including estates.

2. WHAT WAS ONE OF YOUR MOST SATISFYING EXPERIENCES AS AN ENTERTAINMENT LAWYER? AND WHAT WAS ONE OF YOUR MOST DISMAL?

One of my greatest experiences was when I introduced an English (BBC) television program entitled "It's a Square World" to the "GARY MOORE SHOW". This program was the forerunner of "MONTY PYTHON", and was developed by Michael Bentine whose partners were David Frost and Peter Sellers.

One of my darkest moments occurred at ICM when I was asked to endorse performers' checks by top executives who wished to use the proceeds for their own purposes. Such an activity obviously violates the Canons of Legal Ethics. I refused to comply, and shortly thereafter, I was asked to resign.

3. WHAT ADVICE CAN YOU GIVE LAW STUDENTS INTERESTED IN BREAKING INTO THE INDUSTRY?

I would tell them to keep an open mind. New York and California are not the ends of the entertainment world. I've had students who have gone on to work in entertainment divisions in New Jersey, Florida, New Mexico, Colorado, Illinois and Texas. States other than New York and California have a real need for attorneys that are knowledgeable about intellectual property and contracts unique to the entertainment industry such as management agreements, agency contracts, union contracts, collaboration agreements, option agreements, etc. Also, I would suggest that graduating students look in Standard and Poors to get names of companies involved with intellectual property. There are many fascinating avenues to explore besides the law firm route such as book publishing companies, ad agencies, independent production companies, networks and talent agencies.

4. HOW CAN ONE USE A LAW DEGREE TO PURSUE NON-LAWYERING CAREERS IN THE ENTERTAINMENT INDUSTRY?

Law school trains you to think in a Socratic manner. This skill provides an excellent background for business, and can also be applicable to agenting, managing and producing.

5. WHAT DO YOU SEE AS THE FUTURE "HOT" AREAS IN MEDIA LAW?

Magnetic media, fiber optics and other advanced technology. I believe that the rapid advent of new technology will create a real need for lawyers versed in media law.

At hand are the issues of whether cable has grown to such a size and importance that it can exert its influence like a government licensed monopoly, and if there is a policy conflict between a service that is both private and public and if the severity of such drastic measures taken to make pirates pay is legal. ACQ, in this case, has the means to monitor, target, and control the legal framework of its case. ACQ owns the boxes, so they own the evidence of the pirate chip which was installed by their own employees. ACQ is aware that most people cannot afford to fight a company with deep pockets, so settlement is the only option for most, regardless of guilt or innocence. And it can be had for a mere \$500. Seeing that this would be the way out for most people, ACQ then instated an amnesty program for all potential violators in May of this year.

At present, more than 40% of claims have been settled through the amnesty program. The others claim innocence.

Make no mistake, cable is big business now. By the end of this year, over two-thirds of the homes in the United States will have cable television running into their homes. This endless stream of pictures where HBO, Showtime, Sports Channel and the emerging Pay-Per-View compete means profit and problems to the companies who provide these services. For the cable industry, illegal reception of signals has been a problem since its inception. A recent figure by the National Cable Television Association cites losses of \$300 million per year as a result of cable piracy. One figure from Multichannel News claims that as large a portion of people who watch pay channels like HBO, Showtime, and Sports Channel don't pay. So the cable companies have taken matters into their own hands.

The electronic bullet represents the frustration of cable distributors across the nation, looking for a way to stop cable pirates. However, the problems raised by this method of catching pirates is not the intent of the distributor, who rightfully wishes to charge customers for their services, but the method they use to catch pirates in the act.

Barry Rosenblum, President of ACQ, sees it like this "It is our view the signal never leaves our property. It originates in a building we own, is carried on lines we own, and goes into a box we own." In other words, if you want TV like HBO or Sports Channel you can only go to one place to get it, and if you do, you are subject to the rules of the cable distributor. You

may not use your own converter, you may not use your own cable-ready television or your remote control. This is problematic for two reasons. First, it ignores normal viewers who have had service disrupted without having a pirate chip installed and second, it has the potential to target closed-captioned viewers, whose special chip might be burned out.

The distributor controls every facet of the viewing process and in doing so, makes the consumer obliged to cable companies to a higher degree than government regulated services like telephone services. With phones, once the line enters your home, you can add connections in any room, use your choice of phone, and choose from a number of long distance distribution services in competition with one another. Cable does not afford such an option, and this is because of a lack of regulation in the cable industry.

Barry Rosenblum feels that "ACQ has sent out a message loud and clear" for pirates to stop illegal reception of signals, but according to a 1985 study of cable pirates' habits in the journal Criminology, distributors needn't speak so loud to lower their rates of theft. Gary Green, of the University of Evansville claims that cable theft can be curtailed drastically by making the viewer who steals pay services from the distributor aware of the illegal nature of cable piracy through public notice advertisements transmitted through the cable service. The people who steal cable signals are not criminal types. As we have seen, they might not even be aware that their actions are illegal. This way ample notice to pirates is given informing them of the risk and consequences of their actions, and it works. In a cross-country survey, the notice technique has cut down on illegal behavior once viewers understand what they are doing is illegal and is taken very seriously by the cable distributors.

What is needed is a balance between the pirates who are constantly pushing for new techniques to provide pirate services and those using heavyhanded methods of safeguarding against pirates and consumers who are caught in the middle. Joan McCoy ended up settling for \$1500, the pirate chip servicemen have been fired, and ACQ can still fire other bullets at will. Manhattan Cable and other distributors across the nation are now contemplating "the bullet" for their own systems. So, if you see your cable screen go black, you'll know why.

Television in Politics:
Access, Form and Substance

by Scot Mackoff

How has television affected America? Some will say it has brought us closer together, instantly allowing people from different parts of the country to see and hear the events at the same time. Some say that it has added to our culture, allowing us to experience many of these same things, while others say it has turned us into a bunch of couch potatoes, that lack initiative and creativity. At its best television is a great communicator, bringing historic events into your home as they happen, with a personal and timely touch that no other medium can equal. At its worst it is mere fluff.

One of the biggest effects on America that television has had is in the way we select our leaders. Debatably, John F. Kennedy became president because of how he looked on television; and Lyndon Johnson remained president in large part through the negative portrayal of his opponent in a television ad. Moreover, Johnson lost the presidency as America viewed its first T.V. war. In the same vein, Ronald Reagan was known as the television president and probably won election because he was a recognized name (a T.V. and movie star) rather than a great leader.

So television, while allowing more ideas to be communicated to more people in a shorter period of time, also edits the quality of ideas and limits the number of people who can express their ideas. Only so many people get on the air. Even if I developed the best platform to solve America's problems, I still couldn't realistically expect to be elected to office without the money to express those policies on television.

Television has created politicians who must get their ideas across in a 30 second commercial, and to add to the drama, the candidates are usually more interested in attacking their opponents than in expressing their own views for solving the nation's problems.

Because in order to run for office today, you need money, then looks and last of all a good platform. It may be this skewed sense of priorities in the selection process of our leaders that has put America in such questionable times. Television has created the fluff without substance politician, which ultimately affects the country in a negative way. Could Franklin Roosevelt be elected once, much less four times, if he had to campaign on television?

FAST STARTS IN NEW
COMMUNICATIONS TECHNOLOGIES:
STRATEGIES FOR
ENTREPRENEURS, LENDERS & LAWYERS

Session I, 9:00 a.m.
Lunch, 12:00 p.m.
Session II, 1:45 p.m.

November 14, 1991

Communications Media Center
Federal Communications Commission
National Telecommunications and
Information Administration

RECEPTION FOLLOWING CONFERENCE