

Summary

Although the immediate question presented in this case is whether Internet-based retransmission services are eligible for the compulsory license made available by Section 111 of the Copyright Act, this statute does not exist in a vacuum. Rather, Congress has established a comprehensive statutory regime governing the retransmission of broadcast television through several laws that span two titles of the United States Code. In particular, Section 111's compulsory license is available only to a "cable system"—a type of broadcast retransmission service that is also subject to, and defined by, a host of statutory requirements enacted by Congress in the 1992 Cable Act. When the Copyright Act is read in conjunction with the Cable Act, as it must be, along with other provisions of the Communications Act and a long line of judicial decisions, the unmistakable conclusion is that Defendants' service cannot be a "cable system" within the meaning of the Copyright Act.

Of greatest importance to Congress's legislative framework governing retransmission is the requirement that any entity retransmitting broadcast television—regardless of the technical means—first obtain consent from the owner or primary transmitter of the television programming. By interpreting the Copyright Act's compulsory license to make it available to Internet-based retransmission services, the lower court undercuts that legislative framework. Although cable systems (and satellite carriers) are eligible for a compulsory copyright license for which they do not need explicit permission from television program owners, under the Communications Act they must still generally obtain a broadcast station's consent before retransmitting its signal. To obtain this consent, cable companies must generally pay an agreed upon amount to broadcasters on top of statutory copyright royalties. For all other entities that wish to retransmit broadcast television, no compulsory copyright license is available; they must bargain for the right to publicly perform television shows with the shows' owners.

Defendants seek to sidestep both of these obligations by concocting a supposed loophole in federal law—engaging in a sort of regulatory arbitrage between the Communications Act and the Copyright Act. Thus, Defendants claim that they are both eligible for the compulsory copyright license available to cable systems, and also that their service is technically configured to escape the reach of the Communications Act's provision empowering broadcast stations to decide whether to consent to a cable system's retransmission of their signals. Not surprisingly, and as the text and purpose of the Copyright Act and the Communications Act reveal, Congress never authorized this ploy.