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Univision Heads to Court to Keep Televisa TV Shows Off the Internet

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Univision, the leading Spanish language television network in the US, licenses a substantial portion of its programming from Televisa, an operator of Spanish language television networks in Mexico and throughout the world. Now, in a case that highlights the potential conflicts that can arise when television programming is made available online, Univision has filed suit against Televisa in the US District Court in Los Angeles claiming that by distributing its shows on the Web, Televisa is in breach of its agreement with Univision which granted Univision exclusive rights to certain Televisa programming in the US. At issue is the broadcast "overspill" clause of the 1992 distribution agreement between Univision and Televisa. Under the agreement, Televisa granted Univision exclusive broadcast rights in the US to certain programming produced by Televisa but the agreement contains an exception to Univision's exclusivity for any transmission of a program emanating from a television station located in Mexico. This clause, which is typically included when television rights are licensed on an exclusive basis for a specific territory, is designed to address the issue of broadcast "overspill" resulting from the ability of television signals broadcast from neighboring countries to be received across the border. Televisa contends that under the broadcast "overspill" clause, it may exhibit and distribute its programming on the Internet via servers based in Mexico. A decision against Univision could have a significant adverse impact on Univision's viewership and ratings (and hence its advertising revenues) because Televisa typically broadcasts its shows in Mexico several months before the programs are made available to Univision and other broadcast licensees outside Mexico. US viewers could potentially watch the extremely popular Televisa soap operas and telenovelas on the Internet six months ahead of when they air on Univision. A similar issue is involved in litigation filed in 2007 by the Starz pay TV programming service against Disney. In the litigation, Starz contends that Disney's distribution of its films via the Internet through services such as iTunes and Amazon.com violates the exclusive pay television rights granted by Disney to Starz under various pay television license agreements between the two companies. Starz is also distributing Disney's films online through its Starz On Demand and Vongo services. The Univision/Televisa litigation and the Starz/Disney litigation illustrate the problems that can be created by new media applications under agreements purporting to license television rights on an exclusive basis. These problems can be particularly acute under older "legacy" agreements where key definitions and terms used to describe the licensee's exclusivity may have been drafted without a view to potential future exploitation via the Internet and other new media distribution platforms. For example, a random Pay TV agreement from 1994 I just pulled off my shelf

defines "Pay Television" as "the encrypted transmission and/or retransmission from a distance (i.e., other than from the premises where received) and intended for receipt on a television monitor or other comparable non-public video display by broadcast, microwave, satellite, optical fiber, telephone cable and/or coaxial cable of synchronized video and audio signals both of which are received upon payment by a Subscriber of a periodically charged or supplemental subscription and/or access fee." This definition would appear to encompass not only traditional pay television rights typically granted to HBO, Showtime and Starz but also digital video-on-demand rights granted to various Internet distribution services such as Amazon.com and BestBuy.com. Obviously, in licensing rights for distribution via the Web and other new media platforms, such as mobile and handheld devices, content owners need to examine pre-existing, legacy television distribution deals to ensure that those rights are available and are not encompassed within the grants of exclusive television rights. Also, practitioners on both sides of new television deals need to take particular care in defining the scope of the licensee's exclusivity to avoid the types of problems that have surfaced in the Starz and Univision cases.

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