

February 5, 2015

Broadcasting Commission: These are matters pertaining to copyright and private commercial arrangements

I write in reference to a letter to the Jamaica Observer's editor titled "Who will protect my Empire rights" published in the Daily Observer of February 4, 2015. The writer's statement that the "Broadcasting Commission is of no help" implies that there is some responsibility which the Commission is failing to discharge. This is definitely not the case.

In Jamaica, cable television operators and broadcasters operate within a regulatory framework which includes the **Copyright Act**. This means that they are required to transmit **only** content for which they have acquired a licence. In the case of cable operators, they acquire licences for channels. Television operators, on the other hand, purchase individual programmes including movies, sitcoms, drama series such as "Empire" as well as special events, for example, the Miss Universe Pageant.

What each station or channel carries and when, is dependent on the licence. In the specific case of cable operators, it must be understood that they are channel distributors in the main and have no ownership or say over the content on the channels they carry. So, even though the cable operator might have a licence to carry a channel, this does not mean everything on the channel will be shown in Jamaica because the channel owner itself might not have acquired the rights to carry a particular programme in the Caribbean. Therefore, if a television station buys the exclusive rights to that programme, the cable operator has to block it. So, although it can be annoying and inconvenient, it is quite legitimate that from time to time, a channel will be blocked because it is carrying a programme which has not been cleared for the Caribbean or has been sold to other interests such as a local television station.

As an illustration, I have extracted the following provision from a licence which has been entered into between cable operators and a channel owner:

The licence granted under this Agreement is non-exclusive. The Licensor may itself distribute or exhibit or grant to other persons licences to distribute or exhibit any of the

*services or the content contained therein in any location, on any media and on whatever terms and conditions Licensor desires. The content, selection, scheduling, substitution and withdrawal of any programming, advertising, promotion or other content on the services shall remain at all times within the sole discretion of the Licensor and may be changed at any time **without notice** to Operator in accordance with Licensor's standard practise.(my emphasis).*

This clause makes it abundantly clear that the cable operator has only a non-exclusive licence and the channel owner can therefore make any arrangement it wishes in relation to content. But more to the point, the individual owner of a programme is also entitled to sell it to a USA based cable channel for distribution **only** in the USA, in which case the Jamaican cable operator can be directed to block that programme or it might even be changed without any notice being given to the cable operator.

I also wish to make it clear that there are some cable operators who distribute channels for which they have no licence, in violation of the **Copyright Act** and broadcasting rules. In the course of carrying out its regulatory duties the Broadcasting Commission might require that such channels be discontinued, if it is not satisfied that commercial arrangements are being made for legitimate access.

Subscribers to cable are being made aware of these issues so that their expectations can be grounded in the reality that they will, on occasion, experience blocking of programmes, access to some programmes only on local television or programmes being released or carried at a later date or time than obtains in the USA.

As it relates to the contract which the writer states that she has signed with her cable provider, the Broadcasting Commission is not privy to those details, but if it has been breached, as is claimed, she has contractual and consumer rights recourse. If she makes contact with the Commission we would be happy to assist.

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