

## Novel Copyright Action Involving Webcasting and Geofencing to be Decided in Harrisonburg, Virginia

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Radio stations that stream over the Internet typically have to pay **performance royalties** to the **copyright owners** of the songs that are being broadcast over the Internet. Last month, a group of radio broadcasters in Virginia brought a copyright lawsuit challenging whether they had to pay royalties for **streaming Internet** if their audience was restricted to a 150-mile radius from the station's transmitter.

Technological advances, such as geo-fencing, allows websites to restrict access to those within a certain geographic area. If the audience of a streaming radio station is limited to a 150-mile radius, then the web-based audience is arguably the same as the AM/FM broadcast audience.

More importantly for purposes of this case, there is a specific provision of the **Copyright Act** that exempts broadcasters from having to pay performance royalties for **digital retransmissions** of their broadcasts provided the retransmissions do not go "more than a radius of 150 miles from the site of the radio broadcast transmitter." 17 U.S.C. 114(d)(1)(B)(i).

When that provision of the Copyright Act was adopted more than a decade ago, it was not technologically possible to restrict the audience of an Internet broadcast. Therefore, radio stations that live-stream their content have been paying performance royalties under the Copyright Act. The technological development of geo-fencing, however, makes it possible to restrict the geographic scope of the audience and raises this novel issue of copyright law. This is the first time that a court has been asked to consider this issue.

Digital retransmission is a major issue in all media. A case involving the delivery of television signals over the Internet--involving very different issues of what constitutes public versus private performance under a separate provision of the Copyright Act--is currently pending before the Supreme Court and is one of the blockbuster cases that the Supreme Court has yet to decide this term.

The radio broadcast case is styled **WTGD 105.1 FM v. Soundexchange, Inc.** and is going to be heard by Judge Urbanski in the Harrisonburg Division of the Western District of Virginia. The defendant was granted an extension of time in which to respond and will file an answer or motion to dismiss on June 23.

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