

On Satellite Television Rebroadcast - Piracy and The Law in Nigeria

By Gbenga Bamodu *Submitted On December 15, 2009*

The growth in the Direct-to-home (DTH) satellite television industry globally is well documented. Nigeria is certainly one of the countries in which such growth is evident and there are at least four major competing satellite television services providers in the Nigerian market. In addition, there is a small but growing number of satellite television enthusiasts who explore the opportunities available for viewing satellite television transmissions without subscription. Generally, there tends to be widespread misconception among the wider populace that satellite television is automatically equivalent to subscription television in ignorance of the fact that there is quite a considerable amount of free-to-air (FTA) transmission available without subscription. It should also be mentioned, however, that some of the enthusiasts do stray beyond simple FTA television into realms bordering on illegality, depending on the circumstances, with the use of some satellite receivers with modified software to watch encrypted material without subscription.

The issue of legality concerning satellite television broadcast and reception in Nigeria is topical currently in light of litigation before the Nigerian courts involving some of the DTH operators in the market and various other parties, especially some cable television service providers. Typically, the DTH operator has paid top dollar for premium content - a prime example being English Premier League (EPL) football - and wishes to protect its revenue stream by avoiding or preventing its dilution as a result of the activities of those who seek to disseminate the same content independently of the DTH. This is more so especially where the DTH operator has paid for exclusive rights. The dissemination, independent of the DTH operator, is usually by some cable service operators who often will obtain the content by satellite and re-broadcast it via cable to their own customers for a fee. In this respect, the main legal issue is whether those distributing such content independently of the DTH operator have the legal right to do so. The on-going litigation in the Nigerian courts between Hi-Media (operators of HiTV) and CTL (a cable services provider) typifies the scenario painted here.

Evidently, where encrypted satellite signals are obtained from the facilities of a DTH operator with exclusive domestic rights and re-distributed for a fee domestically without the DTH operator's authorisation or consent, the rebroadcast is most likely an unlawful violation of the intellectual property rights of the DTH operator. However, Nigerian law is not entirely clear on the question of the legality of the rebroadcast of satellite signals within Nigeria where the signals are broadcast from outside the country of reception, by an operator that does not have domestic broadcast rights and, especially, where the signals are transmitted FTA without encryption. This scenario is also unfolding in Nigeria with the recent complaints lodged with Nigerian authorities by some Middle East & North Africa (MENA) DTH operators, especially Orbit Showtime about the rebroadcast of their signals by some cable service operators in Nigeria. In fact, the question of re-broadcasting of FTA signals is a constant issue of controversy and legal uncertainty in other countries particularly in Europe. For example, there was a recent crack-down in Spain on 'illegal' broadcasters. However, the crack-down seems to have been focused on operators re-broadcasting encrypted content without authorisation whereas it seems that those operators who re-broadcast FTA signals have largely been able to continue their operations as long as they are legally compliant in other respects such as basic licensing requirements and tax responsibilities.

In respect of the situation in Nigeria, the issues turn ultimately on questions of interpretation and application of Nigerian common law and a number of Nigerian legislation including the Copyright Act as amended. It is evidently very likely that the courts will rule that the domestic rights holder of particular content (exclusive rights in the case of EPL football) is able to challenge and restrain any rebroadcast of its own signals without its content or authorisation. It is a different matter if transmission signal for that same content has been obtained from a different source. e.g. a foreign broadcaster of EPL football as opposed to the domestic rights holder. Nevertheless, in such a case the domestic rights holder with exclusive rights may be able to successfully rely on the exclusivity of its own rights irrespective of the source from which the re-broadcaster might have obtained the signal. Potentially, the foreign rights holder may also claim for the violation of its own intellectual property rights.

The least clear legal situation concerns the re-broadcasting in Nigeria of FTA content transmitted or originating from a foreign country. From a wider perspective, there have always been at least two views of this situation. Firstly, the view exists that as long as the domestic re-broadcaster has a suitable broadcasting license and is otherwise in compliance with other relevant law, the re-broadcasting of FTA content is acceptable. Some argue that this explains the activities of some operators in some European countries e.g. Spain, Switzerland etc, where the re-broadcasting of signals originating from another country, especially the United Kingdom, is a well known phenomenon. The second view is that the re-broadcasting of FTA content without the authorisation of the (foreign) origin at least *should always be* illegal if it is not already so. Evidently, the rebroadcast involves taking advantage of the intellectual property of the originator but other considerations are also taken into account such as that the originator might itself be geographically restricted in terms of its broadcasting rights and that advertisements may be targeted at a particular country.

It is thought that the ongoing litigation before the Nigeria courts does not directly touch on the question of the re-broadcasting in Nigeria of FTA signals originating abroad. It is hoped that the Nigerian courts will provide clarification on the matter at the earliest arising opportunity.

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