# [GB] Streaming Copyright Material Over Cable is Ok; Streaming it Over Mobile Telephony Networks is Not

**IRIS 2014-1:1/25**

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In an ongoing legal dispute involving two prior judgments and a reference to the Court of Justice of the European Union (CJEU), in the latest instalment, ITV, Channel 4 and Channel 5 have won the right to prevent an online streaming service provider from retransmitting the TV programmes they show to users of mobile devices via any "mobile telephony network". The decision is dated 7 October 2013.

The March 2013 ruling of the CJEU states, “The concept of ‘communication to the public’ ... covers a retransmission of the works included in a terrestrial television broadcast where the retransmission is made by an organisation other than the original broadcaster, by means of an internet stream made available to the subscribers of that other organisation who may receive that retransmission by logging on to its server, even though those subscribers are within the area of reception of that terrestrial television broadcast and may lawfully receive the broadcast on a television receiver."

The service was provided by TVCatchup, a website enabling “eligible members of the public to watch live television using the internet”. It is a UK company, providing “an online streaming service to users for personal, private and domestic use only, within the personal residence of the individual user, to qualified members who may only access the website from the area within which the broadcast was intended to be viewed…”

The broadcasters argued that the site streams material to which they own the rights without their permission.

Generally, UK copyright laws state that the unauthorised communication of rightsholders' content to the public is an act restricted by copyright in certain circumstances, namely, if a broadcast or film is made available to the public via an "electronic transmission" in a broadcast that is accessible by the public "from a place and at a time individually chosen by them". This is so by virtue of the Copyright and Related Rights Regulations 2003, implementing Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

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However, section 73 of the Copyright, Designs and Patents Act sets out an exception from the separate rights that broadcasters enjoy permitting “the unlicensed re-transmission of broadcasts transmitted over cable networks by ITV, Channel 4 and Channel 5 and other listed 'qualifying services' by others within the area in which the original transmissions are received, subject to compliance with the wider copyright rules relating to the reproduction and making available of their content.”

By the Order of 7 October 2013, Lord Justice Floyd ruled that TVCatchup may only communicate material insofar as it is permitted under section 73 CPDA; further, he ruled that TVCatchup may not make “…transient copies of films made by the broadcasters within the "buffers of [its] servers", unless the section 73 defence applies.”

*Judgment of the Court (Fourth Chamber), ITV Broadcasting Ltd and Others v TVCatchup Ltd, Case C-607/11, 7 March 2013*

http://curia.europa.eu/juris/document/document.jsf?text=&docid=134604&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=125843

***ITV and Others v TVCatchup Limited Order, 7 October 2013, High Court, Chancery Division***

http://presscentre.itvstatic.com/presscentre/sites/presscentre/files/TVCatchup.pdf

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