



September 17, 2010

**VIA EMAIL**

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Re: ivi TV  
Our Reference: IVII-5-1002

Dear Mr. Kummer:

We represent ivi, Inc. in intellectual property matters. We have received your letter regarding the retransmission of broadcast signals originating with NBC Universal and respond to your concerns in this letter.

Your letter recognizes that a cable system can retransmit content originally broadcast as an over-the-air transmission. You contend, however, that prior Internet-based television services have been enjoined or have ceased their services following legal challenge. Your letter does not mention any such instances with particularity, and to our knowledge there is little precedent. We are certainly aware of the *iCraveTV* litigation, but that dispute did not produce a final judgment on the merits and is hardly precedential. In addition, *iCraveTV* involved a factually different transmission, including the incorporation of advertising that was not in the original transmission. The Copyright Act expressly allows for secondary transmissions and we are not aware of any court decisions holding that a transmission over the Internet cannot meet this definition

We further disagree that ivi is subject to the Communications Act. Nothing in your letter explains how the Act would apply, and we are confident that it does not. Indeed, even the FCC has declared quite succinctly that “the FCC does not regulate the Internet or Internet Service Providers (ISPs).” See <http://www.fcc.gov/cgb/internet.html>. More recently, the FCC issued a bureau decision analyzing whether an Internet Protocol television entity was a multichannel video programming distributor (MVPD) and therefore subject to FCC rules. The FCC concluded that it was not because, among other things, an essential element of an MVPD is the provision of a transmission path for delivery of television programming. It is the internet service provider, not the internet television entity, that provides the transmission path. See *in re Sky Angel US, LLC*, 25 FCC Rcd 3879 (Media Bur. 2010). This same analysis applies to ivi, and would mean that ivi

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is not an MVPD. We do not believe there have been any decisions to the contrary ruling that an Internet television company is an MVPD.

This is, of course, not a complete statement of our analysis under the Copyright Act, the Communications Act, or any other applicable laws. Your letter to us only made a brief reference to these legal issues, and our response therefore addresses them at a similar level.

Finally, ivi TV would much rather work together with NBC Universal to reach an amicable conclusion to this issue. Its technology provides a very high quality video stream that is on a par with current digital programming over traditional cable or satellite media. ivi seeks to generate revenue by the distribution of television content over the Internet, and would be eager to negotiate an arrangement with NBC Universal in which both sides can profitably protect the content under all applicable laws while taking advantage of the Internet as a new channel of distribution. ivi can, for example, technologically restrict distribution of local channels to local areas and take advantage of other such features that may be desired by NBC Universal. While we remain confident that we have adopted a model that is allowed under all applicable laws, we are also open to engaging in discussions with NBC Universal to explore more direct contractual agreements under which ivi would distribute content originating with NBC Universal. We look forward to your response, and can arrange a meeting with ivi principals at your convenience.

Very truly yours,

BLACK LOWE & GRAHAM<sup>PLLC</sup>



Lawrence D. Graham

cc: ivi, Inc.