

The Burger Court Opinion Writing Database

*Teleprompter Corp. v. Columbia
Broadcasting System, Inc.*

415 U.S. 394 (1974)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 1, 1974

Re: No. 72-1628 - Teleprompter Corporation v. CBS
No. 72-1633 - CBS - Teleprompter Corporation, et al

Dear Bill:

Please show me as joining in your dissent in this
case.

Regards



Mr. Justice Douglas

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Harlan

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1628

Circular 2-20

Teleprompter Corporation et al.,
Petitioners,

v.

Columbia Broadcasting System,
Inc., et al.

Recirculated.

On Writ of Certiorari
to the United States
Court of Appeals for
the Second Circuit.

[February —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

The Court today makes an extraordinary excursion into the legislative field. I did not participate in *United Artists Television, Inc. v. Fortnightly Corp.*, 392 U. S. 390; but on studying it I think it a most dubious decision. The lower courts had found infringement of the copyright in *Fortnightly*; but this Court reversed holding that the CATV systems in *Fortnightly* were merely a "reception service," were "on the viewer's side of the line" *id.*, at 399, and therefore did not infringe the copyright act. They performed by cable, reaching into towns which could not receive a TV signal due, say, to surrounding mountains and expanded the reach of the TV signal within the confines of the area which a broadcaster's telecast reached. In my view that function is only a continuation or extension of the telecast that reached a given area but, in spots, imperfectly.

However that may be, we should not take the next step necessary to give immunity to the present CATV organizations. Unlike those involved in *Fortnightly*, the present CATV's are functionally the equivalent to a regular broadcaster. TV waves travel in straight lines, thus reaching a limited area on the earth's curved surface. This scientific fact has created for regulatory purposes

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall
 Mr. Justice Thurgood Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 72-1628

Circulate: *3-1*

Teleprompter Corporation et al.,
 Petitioners, } Recirculated: On Writ of Certiorari
 v. } to the United States
 Columbia Broadcasting System, } Court of Appeals for
 Inc., et al. } the Second Circuit.

[March 4, 1974]

MR. JUSTICE DOUGLAS, dissenting.

The Court today makes an extraordinary excursion into the legislative field. In *United Artists Television, Inc. v. Fortnightly Corp.*, 392 U. S. 390, the lower courts had found infringement of the copyright in *Fortnightly*; but this Court reversed holding that the CATV systems in *Fortnightly* were merely a "reception service," were "on the viewer's side of the line" *id.*, at 399, and therefore did not infringe the copyright act. They performed by cable, reaching into towns which could not receive a TV signal due, say, to surrounding mountains and expanded the reach of the TV signal within the confines of the area which a broadcaster's telecast reached.

Whatever one thinks of *Fortnightly*, we should not take the next step necessary to give immunity to the present CATV organizations. Unlike those involved in *Fortnightly*, the present CATV's are functionally the equivalent to a regular broadcaster. TV waves travel in straight lines, thus reaching a limited area on the earth's curved surface. This scientific fact has created for regulatory purposes separate television markets.¹ Those whose tele-

¹ The Communications Act of 1934, §§ 303 (c), (d), (h), empowered the FCC to: "[A]ssign frequencies for each individual station," "determine the power which each station shall use," "[d]e-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 19, 1974

RE: No. 72-1628 Teleprompter v. CBS
No. 72-1633 CBS v. Teleprompter

Dear Potter:

I agree.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

2nd DRAFT

Stewart

SUPREME COURT OF THE UNITED STATES

Nos. 72-1628 AND 72-1633

FEB. 15, 1974

Teleprompter Corporation et al., Petitioners, 72-1628	v.	On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.
Columbia Broadcasting System, Inc., et al.		
Columbia Broadcasting System, Inc., et al., Petitioners, 72-1633		
Teleprompter Corporation et al.		

February 15, 1974.

Mr. Justice Stewart delivered the opinion of the Court.

The plaintiffs in this litigation, creators and producers of televised programs copyrighted under the provisions of the Copyright Act of 1976, as amended, 17 U. S. C. § 1 et seq., commenced suit in 1964 in the United States District Court for the Southern District of New York, claiming that the defendants had infringed their copyrights by intercepting broadcast transmissions of copyrighted material and rechanneling these programs through various community antenna television (CATV) systems to paying subscribers.¹ The suit was initially

¹ The exclusive rights of copyright owners are specified in § 1 of the Copyright Act.

"Any person entitled thereto, upon complying with the provisions of this title, shall have the exclusive right

3, 4, 5, 6, 13, 15, 16, 17

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-1628 AND 72-1633

Circulated: _____

Recirculated FEB 21 1974

Teleprompter Corporation et al.,
Petitioners,

72-1628 *v.*

Columbia Broadcasting System,
Inc., et al.

Columbia Broadcasting System,
Inc., et al., Petitioners,

72-1633 *v.*

Teleprompter Corporation et al.

On Writs of Certiorari
to the United States
Court of Appeals for
the Second Circuit.

[February —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

The plaintiffs in this litigation, creators and producers of televised programs copyrighted under the provisions of the Copyright Act of 1909, as amended, 17 U. S. C. § 1 *et seq.*, commenced suit in 1964 in the United States District Court for the Southern District of New York, claiming that the defendants had infringed their copyrights by intercepting broadcast transmissions of copyrighted material and rechanneling these programs through various community antenna television (CATV) systems to paying subscribers.¹ The suit was initially

¹ The exclusive rights of copyright owners are specified in § 1 of the Copyright Act:

“Any person entitled thereto, upon complying with the provisions of this title, shall have the exclusive right:

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 18, 1974

Re: Nos. 72-1628 & 72-1633 - Teleprompter Corp.
v. CBS

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 19, 1974

Re: No. 72-1628 -- Teleprompter Corporation v. Columbia
Broadcasting System, Inc.
No. 72-1633 -- Columbia Broadcasting System, Inc., v.
Teleprompter Corporation

Dear Potter:

Please join me in your opinion.

Sincerely,



T. M.

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

From: Blackmun, J.

Circulated: 2/26/74

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1628

Teleprompter Corporation et al.,
Petitioners,
v.
Columbia Broadcasting System,
Inc., et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Second Circuit.

[February —, 1974]

MR. JUSTICE BLACKMUN, dissenting.

I was not on the Court when *Fortnightly Corp. v. United Artists Television, Inc.*, 392 U. S. 390 (1968), was decided. Were that case presented for the first time today, I would be in full agreement with what Mr. Justice Fortas said in dissent. I would join his unanswered—and, for me, unanswerable—reliance on Mr. Justice Brandeis' unanimous opinion in *Buck v. Jewell-LaSalle Realty Corp.*, 283 U. S. 191 (1931). But *Fortnightly* has been decided, and today the Court adheres to the principles it enunciated and to the simplistic basis* on which it rests.

With *Fortnightly* on the books, I, as MR. JUSTICE DOUGLAS, would confine it "to its precise facts and leave any extension or modification to the Congress." *Ante*, p. —. The United States Court of Appeals for the Second Circuit decided the present case as best it could with the difficulties inherent in, and flowing from, *Fortnightly* and the Copyright Act, and within such elbow-room as was left for it to consider the expanding technology of modern-day CATV. Judge Lumbard's opinion, at 476 F. 2d 338, presents an imaginative and well-reasoned solution without transgressing upon the restrictive parameters of *Fortnightly*. I am in agreement with that opinion and would therefore affirm the judgment.

*"Broadcasters perform. Viewers do not perform." 392 U. S., at 398 (footnotes omitted).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 16, 1974

No. 72-1628 Teleprompter v. CBS
No. 72-1633 CBS v. Teleprompter

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 19, 1974

Re: No. 72-1628 - Teleprompter v. CBS
No. 72-1633 - CBS v. Teleprompter

Dear Potter:

Please join me.

Sincerely,

WW

Mr. Justice Stewart

Copies to the Conference