

# Coming to the end of the fin-syn road?

Upcoming court decisions in Chicago and Los Angeles may put networks in syndication

By Joe Flint

**T**he networks have renewed hopes that rules keeping them out of the production and syndication businesses will be dropped, clearing the way for ABC, NBC and CBS to acquire financial interest and syndication rights in all their programs.

The so-called fin-syn rules and the consent decrees that mirror them are under the microscope again—perhaps for the last time.

In Chicago, the U.S. Court of Appeals will rule on challenges to the FCC's new fin-syn rules. Passed earlier this year, the rules cleared the way for networks to acquire stakes in the programs they air as well as an interest in the rerun sales of those shows.

The FCC also conditioned part of its relaxed fin-syn rules on removal of antitrust consent decrees that mirror the original 1972 fin-syn rules. The big three are barred for two years from the demise of the decrees from acquiring backend rights in first-run syndicated programming, except that produced in-house, and from syndication of any program in the U.S. market.

Chicago is home field for the networks. It was the Chicago court that in November 1992 struck down the commission's fin-syn rules and told the FCC to further relax the policy in the network's favor. Now it will decide whether the commission went far enough or if it must rework the rules.

The pro fin-syn forces protested the three-member panel's decision last year, in part because one member—Judge Richard Posner—provided CBS with an affidavit arguing against the rules in 1977. Posner, Hollywood said, should be forced to recuse himself from hearings. The recusal request failed, and now Posner is not only still on the panel, he is expected to head it.

If the panel lets the current rules stand, the Supreme Court is the next stop for challengers of fin-syn. But an appeal request there by no means guarantees the case will be heard.

No matter what the Chicago court decides, until the consent decrees rules are lifted or modified, the networks will continue to sit on the side-

lines.

There is good news on that front as well. Last week, Los Angeles U.S. District Court Judge Manuel Real collected written arguments for removal of the decrees. There is no word on when Real will rule, but he has a reputation for speedy decisions and could make a ruling this week.

The networks got a boost in their fight to remove the decrees when President Clinton's Justice Department said it agreed with the previous administration's call for lifting the decrees.

And Hollywood won't even be able to argue against lifting the consent decrees. The Los Angeles court denied the producers' request to be heard in the case, meaning that if the decrees are lifted, pro fin-syn forces have no means of appeal.

The portion of the consent decrees that the networks want modified includes Section IV, which imposes a perpetual prohibition against network acquisition of financial interests in shows produced in whole or in part by independent producers and bars the networks from the domestic syndication business. Section VI prevents each network from conditioning the right to network airing of a show on the receipt of a financial interest from the show's producer.

But if the Chicago court sends the rules back to the FCC for further relaxing, the commission could lift the two-year sunset on syndication, meaning instant entry into that business for the networks once the decrees are removed.

Wall Street already thinks fin-syn is on its way to becoming history. Stocks of both Capital Cities/ABC and CBS

have risen in recent weeks in anticipation of new business possibilities or mergers with a studio.

With the momentum apparently going their way, network executives would seemingly be breaking out the bubbly. Logic says that the recent merger between Bell Atlantic and Tele-Communications Inc., along with the possible sale of Paramount Communications to either Viacom Inc. or Barry Diller's QVC, makes it virtually impossible for any court to say that programmers still need protection from the networks.

But the networks have been through this too many times to get excited now. "When Sony acquired Columbia [in 1989], reporters called me up and asked if the writing was on the wall for fin-syn," says one network lawyer who is not holding his breath while waiting for the end of the rules.

As for the consent decrees, "the only significant thing that happened last week is that something happened."

If everything goes the networks' way, negotiations for the 1994-95 programming season could take place without the financial interest rules in effect. However, says one network source, that is "the most optimistic schedule."

And, as an Oct. 4 article in *BROADCASTING & CABLE* pointed out, even if the rules are relaxed enough for a merger, a network may not automatically be able to take advantage of having a financial interest in in-house first-run shows, since the programming originally was not network property.

That, one FCC lawyer said, would "violate the spirit and letter of the rules. Buying a non-network converts those shows into ones that are solely purchased, not solely produced."

If the Chicago circuit does send the fin-syn rules back to the FCC, some observers also fear that a Hollywood-friendly Clinton administration might hamper rather than help the networks' fin-syn battle. "Who knows what could happen?" a network source asks, adding that the latest mergers make fin-syn a term that even "anachronism" fails to describe. ■

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