

TiVo vs. the Broadcast Flag Wavers

By Rob Pegoraro

TiVo, the company that makes the digital-video-recorder boxes that inspire such strange idolatry among their users, is in a weird spot. It's asking the Federal Communications Commission for permission to add a new feature—the option for a TiVo user to send recorded digital TV programs via the Internet to nine other people.

Huh? Permission? Doesn't the government's involvement in consumer electronics stop with making sure that a gadget doesn't jam your neighbor's reception or electrocute you? Since when do the feds get to vote on product designs?

The answer is, since last November, when the FCC voted to require manufacturers to support the "broadcast flag" system by July 1 of next year. This convoluted mechanism aims to stop full-quality copies of digital broadcasts from circulating on the Internet.

The FCC didn't mandate any one anti-file-sharing scheme and instead invited companies to submit their own proposals, which brings us to TiVo's vaguely Soviet predicament. Among the schemes a handful of firms have proposed, only TiVo's would allow tightly controlled online transfers of recorded programs.

For this, the company has drawn the ire of the National Football League and the Motion Picture Association of America, which have asked the FCC to deny TiVo's proposal.

The NFL says that TiVo's Internet-sharing feature will allow people to send game broadcasts to blacked-out viewers in real time (a team's home game can be aired locally only if it sells out beforehand).

"It's a question of pure ability to sell tickets," said Frank Hawkins, the NFL's senior vice president for business affairs. "Buffalo typically sells out September and October, but they've got an open-air stadium. They'll never sell out those December games if they are unable to enforce the blackout rule."

This is an important point: The NFL is not asking the FCC to protect its television business—never mind that the flag exists only to stop indiscriminate file sharing, not cure every copyright-infringement issue.

No, the NFL is asking for help with a *stadium* business, one that already benefits from massive government welfare. (A December 2002 Buffalo News story calculated that the taxpayers of Erie County, N.Y., had anted up about \$148 million for the Bills and their stadium over the previous decade.)

In other words, the league is asking manufacturers and viewers to further subsidize team owners who are already gorging themselves at the public trough.

There's also the slight problem that the NFL's nightmare—blacked-out viewers watching a game live on the Internet—is all but impossible. With almost every broadband connection available today, it would take hours to upload a game. A recipient would be lucky to finish watching a Sunday afternoon game before Monday, and sending a high-definition copy would take most of the week.

Jim Burger, a lawyer for TiVo, fumed about the NFL's complaint: "Maybe their engineers understand how to inflate a football, but I don't think they understand encoded, encrypted MPEG-2," TiVo's tightly secured format.

Whenever full-quality, real-time video on the Internet does become commonplace, I expect to see the NFL capitalizing on it instead of complaining, just as it has profited from such earlier advances as satellite TV.

The MPAA, meanwhile, says that the way TiVo would allow customers to share recordings online with people who may not be friends or family members amounts to indiscriminate redistribution.

The Washington-based group wants TiVo to impose an “affinity requirement,” said Fritz Attaway, its executive vice president for government relations.

But how can TiVo tell if the people to whom you’ve sent a program are really friends and family without launching its own Total Information Awareness program? Attaway called that “a good question.” Until that can be answered, his lobby contends that the safest course is to block Internet sharing—after all, he noted, you can just pop a DVD in the mail.

What the MPAA and the NFL overlook is that every TiVo box includes analog video outputs that can’t enforce copy controls. These allow these devices to work with the millions of TV sets lacking digital inputs, but they also let anybody plug a TiVo into a computer to upload video at will.

The FCC has already ruled out proposals to eliminate or deactivate analog outputs. (“We’ll probably have to go to Congress to enact legislation to deal with that,” Attaway said.) If the problem the MPAA and the NFL describe is real, the remedy they seek won’t solve it.

Understand that TiVo itself is no hero. Its proposed system is thoroughly hobbled. The people to whom you’d send recordings online would need you to add them to a “secure viewing group” by ordering special security keys for their Windows computers, associated with your TiVo bill. Each viewer would need to plug one such key into a PC to receive, watch or edit your recordings.

Left on its own, the market could give TiVo’s system its appropriate reward. Except we don’t have a free market in digital television—the FCC guaranteed that by approving the broadcast flag.

The MPAA and the NFL phrase their objections as reasonable attempts to err on the side of caution. “We’re asking them to just wait awhile, let’s think it out more thoroughly,” Attaway said.

But if a programmer or an engineer with a bright idea has to go to Washington, hat in hand and lawyers in tow, to request permission to sell a better product—and is then told “just wait awhile”—we are on our way to suffocating innovation in this country.