Title VI in an IP Video World

Marvin Sirbu

WIE 2017
The Evolution of Video Delivery

- Over The Air (OTA) Broadcast
- Multichannel Video Program Distributors
  - Community Antenna Television ➔ Cable TV
  - Direct Broadcast Satellite
  - Telco TV
- Video Over The Top of the Internet (OTT video)
Enduring Policy Values in Broadcasting

- **OTA Broadcast Values**
  - Public Trustee Doctrine
    - Broadcaster holds license in trust for publicly owned airwaves
  - Localism
    - Responsive to local news and public affairs
  - Diversity of Voices
    - Limits on common station ownership
  - Content regulation
    - Limitations on “indecency”
    - “Fairness Doctrine” (extinct)
    - Children’s programming
  - Support for Emergency communications
    - Emergency Alert System (EAS)
  - Accommodation of persons with disabilities
    - Closed captioning
Policy Issues for MVPDs

- **Rights and obligation to retransmit OTA broadcast**
  - Compulsory copyright
  - Must-carry and retransmission consent
  - Non-duplication rules

- **Public, Educational and Governmental Programming**

- **Limitation of cable’s monopoly power**
  - Limits on total audience for a single operator
  - Limits on how much of cable capacity for affiliated content
  - Must make affiliated programming available to other MVPDs on a non-discriminatory basis

- **Must support**
  - Closed captioning
  - Emergency messaging

- **Reduced content-based regulation**
The Rise of Internet Video

- 1995 Real Networks first to stream video
  - Few had broadband adequate for video streaming
- 2005 YouTube founded
  - 15 million households with at least 2.5Mbps downstream
- 2007 Netflix begins SVOD service
  - By 2016 Netflix accounts for 30% of peak hour Internet traffic
- 2009 MVPDs begin introducing TV Everywhere
- 2010 4G mobile provides adequate speed/capacity for video to smartphones and tablets
- 2015 SlingTV launches as first “virtual” MVPD
- 2017 video accounts for 75% of all Internet traffic
U.S. FCC identifies four types of Internet Video

- Subscription linear
  - “Virtual” MVPD (vMVPD)
  - SlingTV, DirecTV Now, Hulu Live, Sony Vue
- Subscription Video on Demand (SVOD)
  - Netflix, Hulu Plus, Amazon Prime Instant Video
- Transactional Video on Demand
  - Apple iTunes Store, Google Play, Vudu
- Advertising supported streaming and on-demand
  - YouTube, FilmOn, Facebook Live
Policy Questions Around OTT Video

- Should vMVPDs or SVOD be treated for regulatory purposes the same as facilities-based MVPDs?
  - Compulsory license
  - Must-carry

- Non-discriminatory access to Content

- What other video rules should apply to OTT video?
  - Closed captioning
  - Emergency alerts
  - Commercial loudness

- What is the impact of vMVPDs on broadcast localism?
21st Century Communications and Video Accessibility Act

- 2010 law focused on persons with disabilities
- Required that any Internet video program that had been broadcast or carried on an MVPD with closed captioning must have closed captioning on the Internet
  - Affects MVPDs, SVOD and transactional video providers
  - Would not apply to YouTube and other Internet-only video
- Live Internet broadcasts that are stored for later access on demand must be closed captioned within 12 hours
- Directs FCC to examine requiring “audio description” soundtrack for the blind for both MVPDs and OTT video
Original content helped drive early demand for cable
  - Required in 1966 by the FCC, later overturned by the Courts
By 1992 50% of cable content owned in part by cable operators
1992 Cable Act required operators to make affiliated content available to DBS and telco TV distributors

In 2012 Netflix begins offering original content to drive adoption
  - House of Cards, Orange is the New Black
In 2017 Netflix will spend $6 billion on content creation
  - Second only to ESPN
If Netflix categorized as an MVPD it would have to make exclusive affiliated content available to other MVPDs
OTT Video and Localism

- Internet video is potentially available nationwide
- Networks could use a single video stream to serve all locales \(\Rightarrow\) death of localism
- In fact, vMVPDs are streaming local affiliate in each city
  - DirecTV Now, CBS All Access, etc.
  - \(\Rightarrow\) vMVPD service not available in a DMA until negotiations complete with each affiliate.
  - Goefencing to deliver appropriate affiliate or nothing
- However, in June 2017, Fox began streaming a national feed in cities where negotiations with an affiliate had not concluded
  - Could presage declining strength for local broadcasters
Cable introduces 2-way capabilities, digital encoding, and VOD to compete with DBS
  - Requires set-top box to demultiplex digital video

2-way allows set-top box to report what channel customer is watching at any time.
  - For first time cable operator has detailed knowledge of household viewing habits

VOD capability allows sending unique content to a household

Capability to send a unique ad to individual households interspersed with broadcast video stream
OTT Video is delivered as a unicast stream to individual receivers
- Smart TVs, gateway devices, laptops, tablets, mobile devices

User authentication typically required
- Identifies user across devices

OTT video providers have detailed knowledge of viewing habits by customer
Because targeted ads are more effective, advertisers will pay from 2-10 times per impression.

vMVPDs see ability to target ads as key revenue differentiator to compensate higher costs of Internet delivery.

But, MVPDs are also moving to addressable advertising, thus reducing the vMPVD advantage.
Privacy and Addressable Ads

- **U.S. law specifically limits what MVPDs can do with customer proprietary network information**
  - “(1) Except as provided in paragraph (2), a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.”

- **Several U.S. public interest groups have petitioned the FCC to enforce this law against MVPD collection of detailed viewing records.**
  - 18 months later still no response from FCC

- **MVPDs claim that they operate their own advertising targeting service, and thus the information is not disclosed outside the company.**
No US law limits what an Internet website (edge provider) can collect or what it can do with the information

- Some sector specific legislation
- COPPA limits data collection on children

General laws prevent “unfair and deceptive practices”

As long as edge providers act consistently with any posted privacy policy they have a safe harbor

- No one reads privacy policies

Thus OTT video providers are free to use personal viewing information and to sell it to third parties, as long as they disclose this fact.
OTA Moves to IP Video: ATSC 3.0 Protocol Stack
The OTT Video Future

- Content creators moving into OTT distribution and vice versa
  - Amazon, Netflix, Apple invest in content creation
  - CBS, HBO, Disney invest in OTT distribution

- Reduced market power for content aggregators
  - Cable had market power when it was the only MVPD
  - vMVPDs do not control costly-to-replicate bottleneck access facilities and thus the content aggregator market is more competitive

- Future is large content owners responsible for own OTT distribution
  - Consumers must sign up with multiple content owners to acquire all content

- Demise of localism
How Should Video Be Treated in a New Communications Act?

- **Must Carry and Retransmission Consent?**
  - Will we still have OTA broadcasters?
  - Future of localism

- **Will there be bottleneck video aggregators?**
  - If not, no need for horizontal and vertical limits

- **Should we be concerned that consumers must subscribe to many OTT distributors to get all content**
  - Will the future be like magazine or newspaper subscription?

- **Closed captioning and support for those with disabilities?**

- **OTT obligations for emergency communications**

- **Privacy and targeted advertising**