



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

June 3, 2016

The Honorable Lamar Smith  
U.S. House of Representatives  
2409 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Smith:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."<sup>1</sup>

Starting with broadcast, and continuing with cable, satellite and the Internet, the FCC has for more than 80 years regulated networks that content owners use to transmit their works to the public. In these activities, the Commission has always recognized the statutory rights of content owners and has pursued policies that encourage respect for these rights. In addition, several FCC-related statutes explicitly prohibit the alteration of broadcasts or the theft of cable transmissions that contain copyrighted works.

I am confident that these FCC-specific authorities and well-practiced contractual arrangements will safeguard the legitimate interests of all of the participants in the video ecosystem. We have seen this work in the cases of the statutory regime governing must carry and of the essentially contractual regime governing retransmission consent, for example. Specifically, I can assure you that, as you suggest, third party competitors should not be "making commercial use of or modifying copyrighted programming" as a result of this action to fulfill the statute's directive.

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<sup>1</sup> *Sony Corp. v. Universal City Studios*, 464 U.S. 416, 429 (1984).

Section 629 of the Communications Act, adopted by Congress in 1996, requires the Commission to promote competition in the market for devices that consumers use to access their pay-television content. The Commission has executed and will continue to execute this law in a manner that is consistent with the legal rights of copyright owners. The Notice of Proposed Rulemaking we adopted earlier this year proposes updating our rules implementing section 629 to allow device manufacturers and other innovators to develop devices or software that will give pay-television subscribers new ways to access the content they have purchased. We took this action because consumers have few alternatives to leasing set-top boxes from their pay-television providers. The statutory mandate is not yet fulfilled. This lack of competition has meant few choices and high prices for consumers. In a recent Rasmussen Report Study, 84 percent of consumers felt their cable bill was too high. Included in every bill is a no-option, add-on fee for set top box rental. According to a congressional study, consumers spend, on average, \$231 in rental fees annually. Even worse for consumers, these rental fees continue to increase.<sup>2</sup>

The goal of this rulemaking is to promote competition, innovation and consumer choice. It will not alter the rights that content owners have under the Copyright Act; nor will it encourage third parties to infringe on these rights. All of the current players in the content distribution stream, including cable and satellite companies, set-top box manufacturers, app developers, and subscribers, are required to respect the exclusive rights of copyright holders. The rulemaking will require any companies that enter this market subsequent to our action to follow the same requirements. For guidance about what these requirements entail, all market participants can consult a series of Federal court decisions made over the past several decades that have carefully distinguished non-infringing uses of copyrighted video content from infringing uses.

While the protection of artistic work and the promotion of technological innovation may be presented as conflicting values, I believe that in many situations these two important policy goals can complement each other. While many people feared that the Sony Betamax would harm the ability of content owners to earn money through films and television, it actually created a brand new and profitable market – the videocassette and later the DVD market – for content owners. Our rulemaking will ensure that this rapidly-changing industry continues to strike the proper balance between property rights and consumer choice. None of us can predict exactly what the video marketplace will look like 10 or 20 years from now, but the goal of this rulemaking is that it will be a healthy ecosystem that supports a wide variety of diverse content and gives consumers many convenient ways to purchase and view this content.

I believe the Commission's proposal will lead to competition that will improve consumer choice while respecting and protecting the exclusive rights of content creators. This is also the opinion of the Writers Guild West, who concluded the following in one of its filings in this proceeding: “[t]he proposed rules for a competitive navigation device market are a logical and necessary next step in giving consumers more choice and further opening the content market to

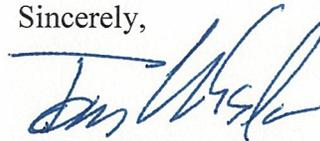
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competition. While fears of piracy have been raised in this proceeding, the WGAW's careful analysis is that the Commission's rules can promote competition *and* protect content."<sup>3</sup>

As we develop a record and explore fulfilling our statutory mandate, I look forward to continuing to work with you on this important consumer issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a horizontal line above the first few letters.

Tom Wheeler

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<sup>3</sup> Writers Guild of America, West Reply Comments, MB Docket No. 16-42, CS Docket No. 97-80, at 15 (May 23, 2016).



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

June 3, 2016

The Honorable Dave Trott  
U.S. House of Representatives  
1722 Longworth House Office Building  
Washington, D.C. 20515

Dear Congressman Trott:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."<sup>1</sup>

Starting with broadcast, and continuing with cable, satellite and the Internet, the FCC has for more than 80 years regulated networks that content owners use to transmit their works to the public. In these activities, the Commission has always recognized the statutory rights of content owners and has pursued policies that encourage respect for these rights. In addition, several FCC-related statutes explicitly prohibit the alteration of broadcasts or the theft of cable transmissions that contain copyrighted works.

I am confident that these FCC-specific authorities and well-practiced contractual arrangements will safeguard the legitimate interests of all of the participants in the video ecosystem. We have seen this work in the cases of the statutory regime governing must carry and of the essentially contractual regime governing retransmission consent, for example. Specifically, I can assure you that, as you suggest, third party competitors should not be "making commercial use of or modifying copyrighted programming" as a result of this action to fulfill the statute's directive.

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While the protection of artistic work and the promotion of technological innovation may be presented as conflicting values, I believe that in many situations these two important policy goals can complement each other. While many people feared that the Sony Betamax would harm the ability of content owners to earn money through films and television, it actually created a brand new and profitable market – the videocassette and later the DVD market – for content owners. Our rulemaking will ensure that this rapidly-changing industry continues to strike the proper balance between property rights and consumer choice. None of us can predict exactly what the video marketplace will look like 10 or 20 years from now, but the goal of this rulemaking is that it will be a healthy ecosystem that supports a wide variety of diverse content and gives consumers many convenient ways to purchase and view this content.

I believe the Commission's proposal will lead to competition that will improve consumer choice while respecting and protecting the exclusive rights of content creators. This is also the opinion of the Writers Guild West, who concluded the following in one of its filings in this proceeding: "[t]he proposed rules for a competitive navigation device market are a logical and necessary next step in giving consumers more choice and further opening the content market to

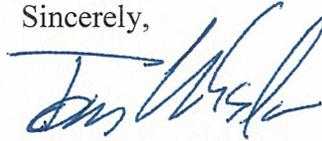
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As we develop a record and explore fulfilling our statutory mandate, I look forward to continuing to work with you on this important consumer issue.

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

June 3, 2016

The Honorable Mimi Walters  
U.S. House of Representatives  
236 Cannon House Office Building  
Washington, D.C. 20515

Dear Congresswoman Walters:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

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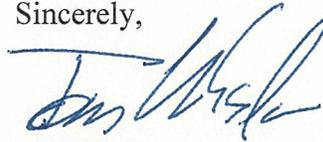
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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

June 3, 2016

The Honorable Debbie Wasserman Schultz  
U.S. House of Representatives  
1114 Longworth House Office Building  
Washington, D.C. 20515

Dear Congresswoman Wasserman Schultz:

Thank you very much for your letter expressing your concerns about how the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators. I take your concerns seriously and assure you that they will receive careful consideration. The purpose of this proceeding is to fulfill the statutory mandate to give consumers a meaningful choice in the video navigation device and app market, while respecting and protecting the exclusive rights the Copyright Act gives to content creators.

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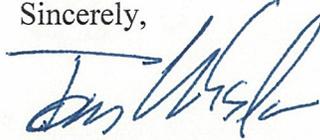
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Tom Wheeler

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