

Video on the Net Policy Forum: New Reality, New Issues

Remarks of Martin L. Stern
Partner, Preston Gates Ellis & Rouvelas Meeds LLP, Washington, D.C.

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We've heard a lot over the last several days about a new and rapidly evolving Video on the Net ecosystem. Listening to folks, I think it's fair to say that it's not just a single ecosystem, but likely several different ecosystems.

We've also heard about democratization, the explosion of user generated platforms, and platforms for "storing, indexing, finding" and I would add, delivering, the good stuff.

And we've also heard about the challenges this poses for traditional media; as one speaker put it, how to encapsulate content for consumption by a Net audience -- the idea that people are willing to watch consumable bits on their PCs, but there are also times when we just want to sit back and watch TV, particularly for video of more than a few minutes.

And in the last few days we've heard a lot about applications that can get video from the Net to your TV. In an announcement from Apple earlier in the week we heard that not only was it launching a movie download service, but it would be bringing to market a wireless device to display the downloads on TVs, a device which it would begin selling in the first quarter of 2007 -- not quite in time for this year's holiday season, but damn close.

Yes folks, after years of talk, it is, at long last, showtime, indeed!

But Apple was not the only one with an announcement this week, AT&T also announced that it would be offering a Video on the Net subscription service called AT&T Broadband TV that would include a lineup of linear cable programming services for \$19.99 per month.

And the news from Geneva this week was not great for folks in the telecom and tech spaces. There, an international group known as WIPO decided to send forward for consideration by a diplomatic conference a broadcasting treaty that if adopted, according to treaty opponents, would seriously curtail how broadcast programming, including excerpts, can be used and retransmitted on the Web and even home networks. More on that later.

From a regulatory and policy perspective, we're in somewhat uncharted waters here. On the user-created content side of things, the copyright issues seem to be vexing, particularly as we talk about mixing and mashing other's content into new creations. And as we talk about more established programmers, questions arise regarding the extent to which programmers that want to distribute on the Net have the necessary rights from content providers to do so, or have the ability to get those rights.

As we move into using the net for distribution of more traditional fare, including directly to the TV, a number of additional policy issues come up, with some expecting that regulators will start paying attention to Internet TV as its customer base starts growing. The risk, of course, is that there will be regulatory burdens from traditional video distribution technologies, such as broadcast, cable and DBS, that may find their way onto the Net.

And what about regulatory benefits? Of course, the risk of regulatory creep increases as Video on the Net providers seek to take advantage of regulatory provisions that benefit other providers. For example, are Net providers covered by statutory provisions and FCC rules that allow competitive

cable operators and DBS providers to get access to satellite delivered programming at non-discriminatory prices? And query whether these platforms should be considered “cable systems” for purposes of the copyright laws such that they have the right to carry and distribute local television stations under what is known as the cable compulsory license.

No doubt a number of these questions will soon be before the FCC and the courts, and also may get teed up in the next round of Telecom Act and copyright reform.

And as Video on the Net platforms evolve from clip-based services to providers of cable-quality, on demand and serial programming akin to that provided by cable operators and DBS, there are huge implications for such arrangements on the existing affiliate agreements between programming services and multichannel distributors. While one might expect serious pushback from existing distributors, some will take the “If you can’t beat ‘em, join ‘em” approach, rolling out their own Video on the Net platforms, akin to the service announced by AT&T earlier this week.

And no doubt we’ll also see partnerships develop between “over the top” Video on the Net providers and existing network operators that will be beneficial to both. Overall, the extent to which network operators and Video on the Net providers will be competitors and the nature of that competition -- or will instead find themselves in more symbiotic relationships -- is clearly a developing story.

So too are many of the policy issues that will come to the fore and that we’re discussing today, as Video on the Net takes off.



Marty Stern (mstern@prestongates.com) represents telecommunications, information technology, and media firms in the U.S., Asia, and elsewhere, and is Chair of the Telecom and Media Group at Preston Gates.

Marty is the former deputy chief of the FCC’s Competition Division. He has handled video competition issues for over twenty years, at the U.S. Justice Department’s Antitrust Division, at the FCC, and in private practice. Most recently, he has been representing the competitive broadband industry on program distribution policy matters, and has been handling competitive issues involving Video-over-the-Net distribution. He also represents satellite programmers and distributors on regulatory, policy and commercial matters.

Marty holds a J.D. from Georgetown University, and a BA/MBA from the University of Rochester.

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