

**Before the House Commerce and Energy Subcommittee on  
Telecommunications and the Internet  
Testimony of Andrew Setos  
President of Engineering  
Fox Entertainment Group**

**September 16, 2008**

Good morning Chairman Markey, Ranking Member Stearns, and Members of the Subcommittee. My name is Andrew Setos, and I am the President of Engineering for the Fox Group. Thank you for inviting me to participate in this hearing.

As we approach the deadline for the digital transition, Fox is incredibly excited about the many benefits that digital television will bring to the American public. We have been working diligently to prepare our network, our owned stations, and our affiliates for this important transition from analog to digital, and we are on schedule. From the beginning, Fox has been a leader:

- in the digital TV build out;
- in the creation and distribution of high definition programming (including 100% of NFL, Major League Baseball, NASCAR, and scripted programming);
- and in the effort to educate consumers on how to prepare for the digital transition, with more than 38,000 public service announcements (PSAs) aired on Fox-owned stations.

I would like to focus on one issue that is vital to the long-term success of local broadcast television: the broadcast flag. The flag is a descriptor that broadcasters may embed in a television program that signals that the program is not to be indiscriminately redistributed. Currently, there is no requirement that any television product respond to the broadcast flag. Local broadcasters are required by law to provide their content “in the clear.” This means that high value content like *The Super Bowl*, *The World Series*, *American Idol*, and *The Simpsons* is not technologically protected against indiscriminate redistribution. Other platforms, such as cable, satellite, telephone companies and Internet distributors of television programming, have already spent millions on the design, deployment and maintenance of increasingly sophisticated technology for content protection. By contrast, local broadcasters are unable to offer ANY protection.

This imbalance threatens the long-term viability of local broadcasting, which will lose high value content to platforms that offer technological protections. The broadcast flag is the best way to prevent this serious threat to the future of free TV and we therefore strongly urge Congress to pass legislation that would authorize the FCC to adopt the broadcast flag rule.

The past few decades have seen an explosion in consumers’ options for enjoying audiovisual content. Where once people were limited to watching just three major broadcast television channels, we now have hundreds of channels being distributed on multichannel platforms. There has been a steady stream of new and innovative ways for

people to enjoy television programming, such as video-on-demand, video iPod, and video-over-mobile devices.

In fact, since your last hearing on the DTV transition in October 2007, we launched a venture with NBC Universal called Hulu, an online video service available in the U.S. that offers hit TV shows, movies and clips. This content is available on Hulu.com and on a variety of other Internet sites like MSN, MySpace, AOL, Comcast, and Yahoo! — all on an advertising-supported basis, without charge to consumers. Hulu also offers its users the ability to legally share full-length episodes or clips of television shows via e-mail or on other Web sites, blogs and social networking pages.

Unfortunately, this digital revolution has also created the opportunity for the theft of content on an unprecedented scale. The formerly burdensome and time-consuming process of uploading video content to the Internet is easy to accomplish today. Millions of users of “peer-to-peer” applications upload and download copies of broadcast television shows stripped of their commercials, thus putting local broadcast television at risk. Why? Because local broadcast TV cannot exist without advertising revenue, which is determined based on the size of the broadcast audience that is exposed to those advertisements. Fewer local broadcast viewers translate into less advertising revenue. If our revenues drop because of content theft, local broadcasters will no longer be able to compete with other distribution platforms for high value content. This, in turn, means that people will no longer be able to watch their favorite shows or national sporting

events from their local broadcasters for free. And without high value content, local broadcasting will struggle to survive.

The demise of local broadcast stations would be devastating for tens of millions of Americans for whom local broadcast stations are the sole source of news and entertainment. But even for people who have cable or satellite service, local broadcast stations are the only source of televised local news, local political races, local community affairs, local sports, local traffic, local weather reports, including *lifesaving* emergency weather updates. Local broadcast television, free to the public, is uniquely American.

The broadcast flag is the only solution to protect against the indiscriminate redistribution of local broadcast content while at the same time protecting the television viewing experience. With the broadcast flag, people will:

- Continue to enjoy the ability to make multiple copies of their favorite broadcast television shows;
- Continue to enjoy the flexibility of their home network;
- Continue to enjoy the features of every digital TV product that has been sold to date.

The FCC has already endorsed the broadcast flag, adopting a rule after taking into account the views of all interested parties. This rule was widely viewed as an acceptable compromise by virtually every stakeholder. The few that disagreed appealed to the courts, and in May of 2005, the U.S. Court of Appeals for the D.C. Circuit ruled that the

FCC lacked jurisdiction to enact the broadcast flag regulation, absent a specific grant of authority from Congress. The broadcast flag legislation that we support establishes the jurisdiction the court says was lacking and allows the FCC to reinstate the carefully crafted broadcast flag rule it previously adopted.

In conclusion, the broadcast flag will have no impact on the American public's legitimate enjoyment of broadcast television, while at the same time protecting the future of free LOCAL television.

Thank you once again for the opportunity to address this important matter. I would be pleased to answer any questions.