

Remarks of the Honorable Greg Walden
Chairman, Subcommittee on Communications and Technology
“Retransmission Consent in the 21st Century”
The Hudson Institute
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(As prepared for delivery)

Thank you, Rob, for inviting me here today. It's always fun to see where good government servants wind up after their service. The Hudson Institute made a shrewd choice in bringing Rob on board for his insight and knowledge of the intersection between technology and global policy. Rob's work leading up to the WCIT in Dubai one year ago stands as a testament to the increasingly critical role of technology in all aspects of modern society. I'm pleased and honored to be here with you to discuss the challenges and innovation in the video marketplace today.

Yesterday, Fred Upton, Chairman of the House Energy & Commerce Committee, and I were joined by Rob to announce that we are launching the process of updating the Communications Act. We think it's time to take a hard look at the increasing gap between the outdated law and the incredible innovation and investment the Internet has brought to every silo of the communications world. We're rolling up our sleeves and asking all stakeholders to come to the table and help us modernize the law.

If you think about it, the Telecommunications Act of 1996 is old enough to get its driver's license, the Cable Act is old enough to drink alcohol legally, and the Communications Act of 1934 has long been eligible for Social Security. For Members of Congress, age is seniority and experience, but in the case of a technology statute, age can portend irrelevancy. In the on-demand world of the Internet and mobility, the statutes that govern the video marketplace are blissfully ignorant of the changes that have taken place around them. These laws don't reflect the truly dynamic marketplace we have today.

So what does that mean today for retransmission consent in the 21st century?

What we're really asking here is how do you ensure that viewers are able to access the broadcast programming they want, while, at the same time, respecting the rights of stations that transmit it over the air, ensuring certainty for the advertisers that support it, the networks that create it, and the cable, satellite and broadband companies that deliver it?

That's a mouthful of a question, but it reflects the complicated value chain created and maintained by a large number of stakeholders. We've found, for the most part, this chain doesn't break. The vast majority of retransmission consent agreements are resolved quietly, calmly, and without incident, and the same goes for the millions of other commercial contracts that comprise the way "Glee," "The Big Bang Theory," "Scandal," or "The Today Show" gets from studio to TV set.

For decades, this market has functioned smoothly. Just think of the affiliate agreements, carriage condition clauses, talent contracts, production deals, rate cards, audience measurements, and licenses that are required to run video programming from the studio over the air or through a wire to the consumer. These agreements capture a complex, interdependent industry that generates billions in value, employs millions of people, and ultimately entertains, educates, and inspires countless millions more.

Policymakers must be sensitive to the ripple effect of even the smallest changes in law. Some have seen the reauthorization of STELA as the only vehicle for addressing changes in the video marketplace. I believe it's the wrong place to make changes to this legal regime. A real update to the law should not be hastily slapped together for the benefit of a few players in the industry. A meaningful update to the Communications Act will require careful examination of the intertwined value chain and a clearer understanding of the ramifications of any changes on the businesses involved and their consumers.

This is where former Chairman Dingell and I agree. In response to our announcement, Mr. Dingell stated, "Changes should not be made simply for change's sake, but rather based on clear and documented need... This will affect a rapidly changing industry, with many jobs and billions of dollars in investment at stake. We should approach this in a balanced fashion in order to preserve and promote American leadership in the telecommunications industry." I wholeheartedly agree and deeply appreciate his support and willingness to work with us on this effort.

Let's go back to those millions of inspired and informed consumers for a moment. As I've often said, apparently there is a little known clause in the Constitution guaranteeing Americans the right to consume whatever content they want, whenever they want, wherever they want... or so I've learned during the DTV transition and each satellite television reauthorization. And it's something that the industry is learning as well, especially during these times, when new technologies have given the consumer the ability to take greater control of his or her viewing experience.

The consumer is the primary reason why this value chain is rapidly evolving to its next level, as my friend Rob McDowell has pointed out. During the announcement yesterday, he mentioned that his children are a perfect example of how consumers just don't care whether their video is delivered over unlicensed spectrum to a tablet or over copper or co-axial cable to an Xbox and a TV set. They just want their content when they want it where they want it.

And this is all occurring at such an accelerated pace. Back during my broadcaster days in 1994, I attended the NAB Futures conference in California. One of the speakers asked the audience how many of us had ever heard of the Internet and whether any of us had been on the Internet. About four hands went up. Four. Our speaker then proceeded to tell us that that change was on its way – that our content would be available via multiple methods of distribution – and that we were looking at a game changer. Today, 20 years later, it's easy to see how right he was.

But not everybody got it right. In 1995, Newsweek ran a column by Clifford Stoll that said "[v]isionaries see a future of telecommuting workers, interactive libraries and multimedia classrooms. They speak of electronic town meetings and virtual communities. Commerce and business will shift from offices and malls to networks and modems. And the freedom of digital networks will make government more democratic. Baloney. ... The truth is no online database will replace your daily newspaper, no CD-ROM can take the place of a competent teacher and no computer network will change the way government works."

Poor old Cliff Stolls. The unthinkable is here. We're launching major legislative initiatives via Google Hangout. Consumers are "shaving" the cord or even cutting the cord completely and relying on streaming video offerings from Netflix, Amazon, Google, and Apple and digital antennas to receive high-definition signals over the air. It won't be long before you'll be able to get same-day service Amazon.com via drone. People laugh at the idea that Jeff Bezos will be

sending remote octocopters throughout your neighborhood to drop off cardboard boxes full of yet more electronics, but then they laughed at the idea of the Internet changing it all, too.

American media businesses can't afford this kind of attitude. Companies are finding that they have to re-think traditional business models – twisting, turning, and re-shaping them to fit the new ways that their products and services are being consumed. Time-shifting, for example, is impacting the business, increasing the complexity of how a network calculates the value of a program to its consumers and advertisers. The advent of new devices like the iPhone and higher broadband speeds have dramatically expanded the availability and demand for content. As a result of all this change, traditional media companies are scrambling to respond to new entrants, new content, and new distribution methods, and they're responding in different ways, offering consumers even more variety and choice, often at lower cost.

And during this transformation of the video programming industry, what role should policymakers take?

Congress cannot predict the future. And the people in the video programming and distribution industries are far more capable than Congress to make the tough calls needed in this business. In fact, I'm sure the events of the past few months have clearly demonstrated that you don't want government building technology solutions for anything. Too often, Washington attempts to correct a perceived distortion in the market and skews the playing field or creates arbitrage opportunities. Ultimately, allowing the market to work is the most efficient way to deal with transformations in the industry. Where we need to regulate, the law needs to be flexible and nimble to allow innovators to satisfy the demands of consumers.

That's the first principle of our update to the Communications Act: Get outdated government rules off the books so innovators and market disruptors can do what they do and serve their customers. Policymakers should ensure that legacy regulations are not holding companies back from innovating and investing; policymakers should ensure that outdated laws do not tilt the playing field in favor of one party over another. And at the end of the day, we all work for consumers to foster a vibrant, competitive marketplace that works for them.

To that end, as part of a comprehensive update to the laws, we hope to work with our colleagues in Judiciary to review and update the compulsory copyright licensing system for retransmission of broadcast signals. It would make little sense to change the retransmission consent regime without considering the effects of the compulsory licensing system. Video programming is valuable, and creators of video content should be compensated fairly for their work.

In this diverse and evolving marketplace, this remains true: you should be compensated for your content, network investments or intellectual property. If you lay fiber, you should receive fair compensation in the marketplace for your investment. If you create content – movies, TV shows, or apps – you should receive fair compensation in the marketplace. If you create smartphones, tablets, dongles, or software, you should receive fair compensation in the marketplace. This is another key principle for the update of the Communications Act: Allow creators and investors to reap value from their efforts.

It is precisely because we have a vibrant, competitive system of video production and distribution that our economy can support the development of first-rate, epic-scale programs like "Game of Thrones," while at the same time supporting local news and weather. Say what you will about the video marketplace in America – and it certainly has its detractors – but Americans

enjoy quality and choice in video programming that is the envy of consumers around the world. And at the heart of this volume of video programming and choice is retransmission consent – a recognition of the value of video programming.

Whatever steps are taken to change our retransmission consent regime, content will remain valuable, and I suspect that quality programming will continue to command premium prices. Our efforts to modernize today's video law should only seek to improve the clarity of signals in the market and allow participants more flexibility to innovate and invest – by adapting to the technology environment, by testing the limits of creativity, and by responding to their customers every day to maintain the trust of the people they serve.

We are committed to maintaining a market for the provision of video service over satellites and improving the quality and flexibility of our nation's communications laws. But make no mistake; these are not the same thing. As we work to reauthorize STELA and improve the provision of local television over satellites, advocates would be wise to remember that the satellite laws are not the Cable Act, and vice versa. Our cable laws are in need of updating, too, but the satellite reauthorization is not the time or place for that debate. I look forward to working with my colleagues, industry, and the FCC on updating those laws, as part of the initiative we announced yesterday. We expect to reauthorize the satellite law for less than five years – with an eye toward rolling up those provisions under the more comprehensive update. Chairman Upton and I strongly encourage those concerned with these issues to participate actively in our process. [[#CommActUpdate](#)]

I thank Rob McDowell and the Hudson Institute for having me here today. Thank you for the critical thought that you all contribute to our nation's dialogue on domestic and international public policy. I welcome your contributions to the upcoming debate on modernizing the Communications Act.

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