

Seven Facts about the Broadcast Flag

- **No Government Mandated DRM:** Public Knowledge is not against content protection - but we are against government mandated content protection that puts the FCC in the role of gatekeeper for new technologies. There are other options for protecting content, and the marketplace should sort them out.



- **Broadcast Flag ≠ Narrow:**



There is no "narrow" way to implement the broadcast flag scheme because it necessarily



puts the FCC in the role of gatekeeper, having to approve and **certify every**



technology that might carry DTV -



computers, cellphones, gameboys, etc.



As proof of the broad scope of the flag, when petitioned to exempt lawful uses of digital

television, the FCC declined

saying "practical and legal difficulties of determining which types of broadcast content merit protection from indiscriminate redistribution and which do not."

- **Causes Consumer Confusion and Slow DTV Transition:** At a time when Congress is concerned about making television sets obsolete at the end of the DTV transition, the flag would similarly render obsolete much consumer equipment because commonly used devices will not work together unless all use the same copy protection

"Compatibility is not a goal"

--Rick Lane, VP, Govt Affairs at News Corp.

technology. The flag will not help the transition to DTV, and indeed might harm it because it makes consumers' TVs less functional than before.

- **Limits Fair Use:** As the May 11, 2005 Congressional Research Service report noted, the flag will prevent important fair uses, like the ability of teachers to engage in distance learning and the ability of individuals to email fair use portions of works to themselves and others.

CRS Report

- **Not about P2P:** The infringement associated with *Revenge of the Sith* and other movies that have appeared online has absolutely nothing to do with the flag. Rather, the flag is about protecting supposedly "free" over the air digital television. MPAA provided no evidence that this content was being pirated nor would it be anytime in the near future.

- **Content Already Shown in HD with NO PIRACY:** In contrast to the argument that broadcasters won't put on "high value" content, we note that most prime time television is already broadcast in HDTV, **without protection**. Viacom threatened in 2002 to withhold programming, but did not do so and is now one of the leading producers of HDTV.

- **Court Spoke to the Merits:** The D.C. Circuit's broadcast flag decision was not merely "procedural." In



ruling that the FCC did not have the authority to

impose a

broadcast flag

scheme, the Court was

ruling on the scheme's

merits - namely, that it is so far reaching in its scope that it would permit the FCC, in the words of one judge at oral argument, to regulate "washing machines."