

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Expanding Consumers' Video Navigation
Choices

Commercial Availability of Navigation Devices

MB Docket No. 16-42

CS Docket No. 97-80

COMMENTS OF GOOGLE INC.

With linear programming channels, on-demand offerings, and online services from different providers, video is more abundant today than ever before. But, with a vast range of content options available across multiple screens, finding the right TV show, movie, or video clip is not as easy as it could be. There is widespread agreement that consumers should have simple and consistent ways to find and watch lawfully obtained content, whether that content is provided by a pay-TV service or available online. Google supports innovation in solutions for search and discovery of content for consumption on the TV screen, which can open new opportunities for partnerships and benefit consumers without eroding copyright, data security, or privacy protections.

I. Innovation Can Facilitate Discovery of Diverse Content and Increase Consumer Choice

Innovation in consumer electronics is giving consumers new tools and better ways of accessing content. In the mobile sector, for instance, the introduction of the smartphone a decade ago became the foundation for entirely new economic and social opportunities. While basic wireless phones are still available, consumers today can choose from a vast array of smartphones and applications that enable them to engage in social networking, improve their commutes, read,

study, watch videos, buy groceries, find restaurants, and play games. The range of options is essentially limitless. Indeed, the Google Play Store offers an estimated two million unique apps.¹ Revenue from mobile apps has grown by double digits every year since 2011, and is expected to top \$100 billion by 2020.² The app economy is credited with creating nearly 1.7 million jobs in the United States alone.³

Similarly, the attachment of non-harmful devices to the telephone network created new opportunities for businesses, network operators, content creators, and users. Innovators developed cordless phones, fax machines, and modems—the gateways to the Internet. Today, a wide variety of devices connects over more robust communications networks to the Internet—from computers, tablets, and smartphones to wearable fitness trackers, thermostats, and refrigerators. Within each device category, consumers can choose from among a variety of price points, designs, user interfaces, and features.

Technologies for finding and using video, music, and other entertainment could trigger similar breakthroughs. In particular, television viewing can evolve through expanding new options for content discovery and choice. Now there is more content to explore, from more creators. People all over the world can create music, video, text, and software applications using inexpensive digital tools. Online platforms enable these new voices to connect directly with a

¹ *Google Play Stats*, APPBRAIN, <http://www.appbrain.com/stats/number-of-android-apps> (last visited Apr. 22, 2016).

² *App Forecast: Over \$100 Billion in Revenue by 2020*, APP ANNIE (Feb. 10, 2016), <http://blog.appannie.com/app-annie-releases-inaugural-mobile-app-forecast/>; Artyom Dogtiey, *App Revenue Statistics 2015*, BUSINESS OF APPS (Nov. 16, 2015), <http://www.businessofapps.com/app-revenue-statistics/>.

³ Michael Mandel, *App Economy Jobs in the United States (Part 1)*, PROGRESSIVE POLICY INSTITUTE: THE PROGRESSIVE FIX (Jan. 6, 2016), <http://www.progressivepolicy.org/slider/app-economy-jobs-part-1/>.

global audience,⁴ giving diverse and independent creators unprecedented opportunities for exposure. YouTube, for instance, has become a launch pad for diverse and independent content⁵ and earned top marks for inclusiveness.⁶ Diverse and independent creators will gain even more opportunities for exposure to new audiences if they are supported by a broad-based network of developers and providers.⁷

If viewers can seamlessly discover and select lawful content online alongside programming from their pay-TV offerings, a new cycle of innovation will ensue. Search tools will enable consumers to find, view, and pay for more diverse and independent content. Creators

⁴ See Michael Masnick & Michael Ho, *The Sky is Rising!*, FLOOR64, at 10 (Jan. 2012), <https://assets.documentcloud.org/documents/562830/the-sky-is-rising.pdf>.

⁵ See Cecilia Kang, *YouTube Use Explodes, and Minorities Lead the Way*, THE WASHINGTON POST (July 26, 2011), https://www.washingtonpost.com/blogs/post-tech/post/youtube-use-explodes-and-minorities-lead-the-way/2011/07/26/gIQAduhnaI_blog.html. Issa Rae, Andrew and David Fung, Rachel Bloom, and Todrick Hall, are only a few of the creators who have brought diverse content to YouTube first, then later made the leap to television. See, e.g., Kate Stanhope & Lesley Goldberg, *HBO Gives Series Order to Comedy From YouTube Star Issa Rae*, THE HOLLYWOOD REPORTER (Oct. 15, 2015, 4:30 PM), <http://www.hollywoodreporter.com/live-feed/hbo-gives-series-order-comedy-832516>; Patrick Ryan, *'Todrick' is Latest YouTube Star Moving to TV*, USA TODAY (Aug. 30, 2015, 3:11 PM), <http://www.usatoday.com/story/life/tv/2015/08/30/todrick-hall-mtv-youtube-stars-fung-brothers/71383392/>.

⁶ See Saba Hamedy, *Diversity Report Card: YouTubers Get the Only 'A' Grade of 2015*, MASHABLE (Dec. 29, 2015), <http://mashable.com/2015/12/29/diversity-report-card-online-video-2015>.

⁷ See, e.g., Robert L. Johnson, *Consumers Deserve Choice and Minority Programmers Deserve Opportunity*, THE HILL: CONGRESS BLOG (Jan. 22, 2016, 4:00 PM), <http://thehill.com/blogs/congress-blog/technology/266653-consumers-deserve-choice-and-minority-programmers-deserve>; Letter from Broderick Byers, Founder and Chief Executive Officer, iSwop Networks, to Thomas Wheeler, Chairman, Federal Communications Commission, MB Docket No. 15-64 (Feb. 15, 2016); Clifford Franklin, *Online Streaming: The Best Hope for African-American Audiences*, TARGET MARKET NEWS (Jan. 19, 2016), <http://targetmarketnews.com/storyid01191602.htm>; Eric Easter, *FCC's Set-Top Box Proposal is Really about a Level Playing Field*, THE HILL: CONGRESS BLOG (Feb. 17, 2016, 8:00 AM), <http://thehill.com/blogs/congress-blog/technology/269588-fccs-set-top-box-proposal-is-really-about-a-level-playing>; Letter from Stephen Davis, Chief Executive Officer, New England Broadband, to Thomas Wheeler, Chairman, Federal Communications Commission, MB Docket No. 15-64 (Feb. 3, 2016).

will have incentives to generate more programming because of their greater abilities to reach larger audiences. Television sets—the first home video devices and still the preferred video screen for many—will increasingly be a part of a wider digital marketplace. With more digital consumption, broadband network investment also will grow.

II. Consumer Choice Can Flourish Without Eroding Copyright Protections or Privacy Safeguards

A rich and dynamic market for content navigation can be achieved without diminishing copyright and privacy safeguards. Innovation focused on search and discovery should not impact the fundamental legal protections that exist today under copyright law. And the robust privacy and data security protections that already apply at the federal and state levels will continue to protect consumers.

A. Improved Video Navigation Will Not Damage Copyright Protections for Content

Allowing manufacturers to design devices and applications that improve content discovery, selection, and user interfaces would not undermine the protections that ensure that copyrighted content and pay-TV signals remain secure. Programmers and video service providers can use proven technical solutions to protect against infringement by viewers and safeguard their content. Inside home networks, pay-TV operators rely on RVU⁸ or VidiPath⁹ technologies that use link protection to provide an encrypted connection between a content source and a receiver, while allowing the same user interface and feature experience across TVs

⁸ See *About RVU: What is RVU*, RVU ALLIANCE, <http://rvualliance.org/what-rvu> (last visited Apr. 22, 2016) (explaining that “RVU technology allows a PayTV provider to enable the same User Interface and feature set experience across every TV in the home.”).

⁹ See VIDIPATH, <http://vidipath.com/> (last visited Apr. 22, 2016) (explaining that VidiPath “enables streaming of subscription TV to any VidiPath Certified device throughout the home regardless of the manufacturer.”).

in the home. Most pay-TV operators, moreover, already distribute content online and offer apps that allow subscribers to access that content within their subscriptions. Innovation in video navigation can make use of the same technical solutions that are being used to protect in-home network distribution and online offerings, opening new opportunities to distribute and monetize video content and letting content owners reach larger audiences.

In fact, increasing choice and access to convenient and legal digital content offerings is one of the best tools to fight piracy.¹⁰ A study conducted by Spotify found that overall piracy rates decreased as the popularity of legitimate music services increased.¹¹ Researchers at Carnegie Mellon University similarly found that ABC’s decision to add its television content to Hulu.com led to a nearly 20 percent drop in piracy for that content.¹² “[D]elivering television content in more convenient, readily available channels,” they concluded, “can cause a substantial number of pirates to turn from illegal file-sharing to legal channels.”¹³ Increased options for accessing video content lawfully on televisions should have a similar effect.

B. Privacy Safeguards Will Remain Intact and Subject to Vigorous Oversight

Providing consumers new ways to discover and choose content likewise should not erode the important data protection and privacy safeguards that consumers demand.¹⁴ The devices and

¹⁰ See *How Google Fights Piracy*, GOOGLE INC. 4 (Oct. 17, 2014), <https://drive.google.com/file/d/0BwxyRPFduTN2NmdYdGdJQnFTeTA/view>.

¹¹ *Adventures in the Netherlands: Spotify, Piracy and the New Dutch Experience*, SPOTIFY (July 17, 2013), <https://press.spotify.com/us/2013/07/17/adventures-in-netherlands/>.

¹² Brett Danaher et al., *Understanding Media Markets in the Digital Age*, in ECONOMIC ANALYSIS OF THE DIGITAL ECONOMY 385, 401 (2015).

¹³ *Id.* at 404.

¹⁴ Eighty-nine percent of consumers say they avoid companies that do not protect their privacy. 2016 TRUSTe US Consumer Data Privacy Survey, TRUSTe, <https://www.truste.com/resources/privacy-research/ncsa-consumer-privacy-index-us/> (last visited Apr. 22, 2016).

applications that consumers use to access content are subject to robust privacy laws at the federal and state levels, and consumers have access to privacy policies that inform them about how their personally identifiable information will be used.

At the federal level, the Federal Trade Commission has broad authority under Section 5 of the Federal Trade Commission Act to take action against businesses that engage in unfair or deceptive trade practices.¹⁵ The FTC has taken action on a range of consumer privacy issues including the collection of consumer's online histories across unaffiliated platforms; the security of consumer information stored on connected devices and elsewhere; and unexpected and unwanted uses of consumer information, including sharing with third parties.¹⁶ The FTC has also exercised its unfair trade practices authority in cases where businesses have changed their privacy policies retroactively, used software to spy on consumers, or misused consumer data.¹⁷

In addition to federal laws enforced by the FTC, nearly every state has enacted its own consumer protection statute. These statutes prohibit fraudulent or deceptive practices, and more broadly forbid both unfair and deceptive acts.¹⁸ Most contain a private right of action.¹⁹ Some states also require businesses that collect personally identifiable information on websites or mobile apps to post a policy identifying the types of information collected and how it will be

¹⁵ 15 U.S.C. § 45(a)(2) (“FTC Act”).

¹⁶ See, e.g., Daniel I. Solove & Woodrow Hartzog, *The FTC and the New Common Law of Privacy*, 114 COLUM. L. REV. 583, 631-36 (2014).

¹⁷ *Id.* at 635-42.

¹⁸ See MICHAEL M. GREENFIELD, CONSUMER LAW: A GUIDE FOR THOSE WHO REPRESENT SELLERS, LENDERS, AND CONSUMERS 158-62 (1995).

¹⁹ See JONATHAN SHELDON & CAROLYN L. CARTER, UNFAIR AND DECEPTIVE ACTS AND PRACTICES 967-89 (6th ed. 2004) (noting that all states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands have one or more consumer protection statutes).

used.²⁰ The representations in these privacy policies are enforceable at the federal level under the FTC Act.²¹ Privacy policies are now commonly posted on websites, and businesses compete to provide better privacy protections than their peers.²²

Imposing new privacy rules specifically directed to new generations of devices and applications is unnecessary given the comprehensive scope of the FTC Act and state privacy laws, which can be enforced directly against equipment manufacturers and application developers in appropriate cases. Federal and state authorities, as well as private litigants, will ensure that providers of new navigation devices will be required to honor the commitments they make in their privacy policies.²³ Although limitations on the FCC’s jurisdiction under Section 629 of the Communications Act prevent it from applying the rules that apply to “cable operators” and “satellite carriers”²⁴ to suppliers of devices,²⁵ the FCC can work closely with the FTC to

²⁰ See, e.g., CAL. BUS. & PROF. CODE § 22575; DEL. CODE ANN. TIT. 6 § 205C.

²¹ See Julie Brill, Commissioner, Federal Trade Commission, *Weaving a Tapestry to Protect Privacy and Competition in the Age of Big Data*, at 5-6 (June 2, 2014), available at https://www.ftc.gov/system/files/documents/public_statements/313311/140602edpsbrill2.pdf (discussing competition among companies based on their privacy promises).

²² *Id.*

²³ Letter from Robert Pitofsky, Chairman, Federal Trade Commission, to The Honorable Edward J. Markey, Ranking Member, Subcommittee on Telecommunications, Committee on Energy and Commerce (May 11, 2001), available at https://www.ftc.gov/system/files/documents/public_statements/944143/010511tivoinvestigationltr.pdf (concluding that TiVo’s information collection practices were consistent with its published policies).

²⁴ See, e.g., *EchoStar Satellite L.L.C. v. FCC*, 704 F.3d 992, 999 (D.C. Cir. 2013) (Commission could not impose encoding rules on all MVPDs where its statutory authority “was directed at cable systems alone.”).

²⁵ *Cf. Am. Library Ass’n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005) (Commission lacks authority to require that broadcast reception devices recognize and honor recording limits embedded in broadcast television signals.).

ensure that consumers are protected if device providers fail to live up to their privacy obligations.²⁶

As more options for content discovery and selection become available, moreover, consumers will be able to choose an application or device based on a business's privacy policy and its track record for good privacy practices, among other considerations. New technologies and partnerships between a wide range of content, service, and device companies will help ensure that existing and new devices and applications protect consumer data and privacy.

Conclusion

A new generation of innovative options will give consumers better ways to discover, choose, and interact with content, expanding opportunities in the content marketplace without eroding copyright, data security, or privacy protections.

Respectfully submitted,



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²⁶ See FCC-FTC Consumer Protection Memorandum of Understanding (Nov. 2015), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-336405A1.pdf.