

Today, Americans have the unhindered ability to view their programming of choice. Whether viewed over-the-air, through an analog or digital cable system, or through a satellite receiver, they can watch what they want, transfer it to a recordable medium (be it VCR, DVD, or the newer PVR systems like TiVo), and archive it. They can use this recording for purposes of time-shifting, or for viewing repeatedly at a later date, or they could even (if they use recordable media) share the recording with a friend.

Existing copyright law prohibits the commercial use of these recordings, and payment mechanisms are in place already for the legitimate commercial use of recorded media.

My point here is that there is no "analog hole", nor is there a significant threat inherent to the conversion to digital broadcast streams from the current analog system. All I, as a consumer, am looking for is the exact same ability to archive and time-shift broadcast media that I have today. No more, no less. It is merely a benefit that media will become digital in nature - it makes it easier for me to exercise my rights as a citizen and a consumer.

Media companies, with their emphasis on copy prevention, are trying to create a problem that doesn't really exist in the mainstream today. Today, in the analog world, it is already trivially simple to pirate movies or television for non-legitimate commercial use. Yet that ability has not materially harmed the broadcast industry or its revenues. Instead, the threat to broadcast companies has come from the fragmentation of traditional media into hundreds of specialty broadcasters, each of which now appeals to a smaller, more specialized audience. Until ESPN, for instance, all viewers had to get their sports coverage from the networks. As ESPN has thrived, networks have scaled back on their sports coverage, and multiple other sports networks have emerged, on both the national and regional scope.

This same principle applies to almost any special interest today (the Golf Channel, HGTV, Food Network, TLC, Discovery, to name just a handful). This fragmentation is seen by most to be a good thing for the consumer and for the industry as a whole. Yet it's the biggest single threat to the largest broadcasters. However, we don't see any legislative or rule-making effort targeted at trying to eliminate the diverse competition. Digital television is exactly the same. Restricting usage and recording rights will only slow the adoption of digital TV by the American consumer, and circumvention (legal or otherwise) systems will rapidly appear. The industry's proposals will only have the effect of making the normal, expected behavior of nearly 300 million television viewers illegal. That's just wrong.