

Boyden, Bruce

From: Boyden, Bruce
Sent: Wednesday, July 21, 2004 7:29 PM
To: 'Fuller, Stacy Robinson'
Cc: 'Attaway, Fritz'
Subject: TiVo User Agreement

Dear Stacy:

This is to respond more completely to your question, posed during our meeting yesterday with Commissioner Abernathy, concerning the TiVo user agreement. You asked us to explain why we are not comforted by TiVo's claim that the redistribution we are concerned about may be a violation of the TiVo user agreement. Reliance on such agreements alone is not sufficient; in adopting the Broadcast Flag regulation, the Commission found that "[i]n order to effectively address [piracy] concerns, . . . we believe that *technological steps* must be taken" (Report and Order and Further Notice of Proposed Rulemaking, Digital Broadcast Content Protection, MB Docket No. 02-230, para. 8 (rel. Nov. 4, 2003) (emphasis added).) TiVo has not provided any indication of how or even *if* it would have any means of knowing of a violation of its user agreement, or whether TiVoGuard technologically inhibits such violations in any way. In the absence of such technological measures, the mere fact, if true, that redistribution of Marked and Unscreened Content to others outside the home would be a violation of TiVo's user agreement is not sufficient to prevent the harm about which we are concerned. (See also the discussion of this issue in the White Paper filed by the MPAA on July 16, at pages 8-9.)

I hope this answers your question, and please let me know if you have any other questions concerning this issue.

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