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

In the Matter of	)	
	)	
Promoting Innovation and Competition in the	)	MB Docket No. 14-261
Provision of Multichannel Video Programming	)	
Distribution Services	)	

Comments of the
Motion Picture Association of America

Executive Summary

Consumers currently enjoy an online video marketplace that, while still nascent, is flourishing in the number of distribution services and the amount of film and television programming available. The Motion Picture Association of America's members—Walt Disney Studios Motion Pictures, Paramount Pictures, Sony Pictures Entertainment, Twentieth Century Fox, Universal City Studios, and Warner Bros. Entertainment—play a large role in making all these choices available, and are invested in seeing Internet-distributed video succeed.

As the NPRM notes, parties announce new online video initiatives and content deals almost daily. Among them, companies such as Sony, Verizon, and Dish are already moving forward with online linear services. All these online deals are being negotiated freely in the marketplace under existing copyright law and the Commission's current interpretations of the Communications Act.

Given that the highly-competitive marketplace is affording consumers more content and more ways to access that content, the MPAA does not believe additional regulation in this area is warranted. Not only will the proposal jeopardize the diversity of programming audiences are enjoying today over a variety of online platforms, but suggestions that the FCC might interfere with the licensing relationships among content creators, programmers, and distributors raise significant issues under the First Amendment and copyright law.

I. With Audiences Enjoying A Growing Abundance of Online Choice, Including Over Linear Services, the FCC Need Not Regulate Internet-Delivered Television

The notice of proposed rulemaking suggests that expanding the multichannel video programming definition to include linear online offerings may be necessary so that "nascent, Internet-based video programming services will have access to the tools they need to compete with established providers."[1] But even in their currently nascent state, Internet-based video programming services do have the tools they need, with programmers striking a flurry of deals. Indeed, the NPRM itself acknowledges daily reports of incumbents as well as new entrants experimenting with Internet-based business models, among them subscription linear services from DISH, Sony, and Verizon that include programing from large content providers.[2]

These linear services are developing along with the broader growth in online distribution because studios are in the business of reaching audiences. They have strong incentives to sell television and film content to all types of providers as technology and consumer demands change. Online distributors are further expanding viewing choices by investing in original programming. Netflix, Amazon, and Hulu, for example, are all growing the slate of exclusive content they offer, increasingly involving marquee writers, directors, and actors.

As the charts below indicate, the number of services lawfully providing access to movies and television shows online grew from essentially zero in 1997 to more than 110 in 2014. And the number of times audiences used those services to lawfully access movies and television shows online grew from 20 million and 2.8 billion, respectively, in 2005 to 5.7 billion and 56.9 billion in 2013, with the figures expected to grow to 10.3 billion and 91.6 billion by 2018.

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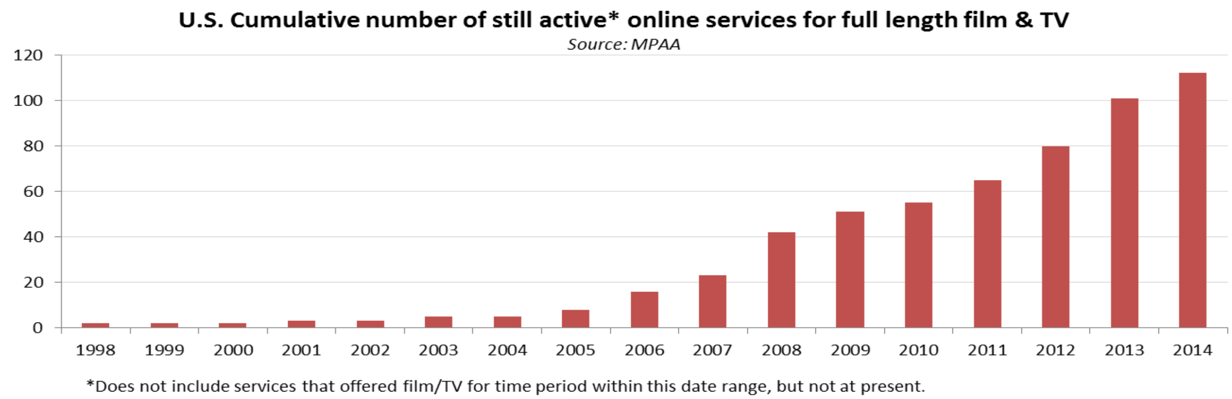
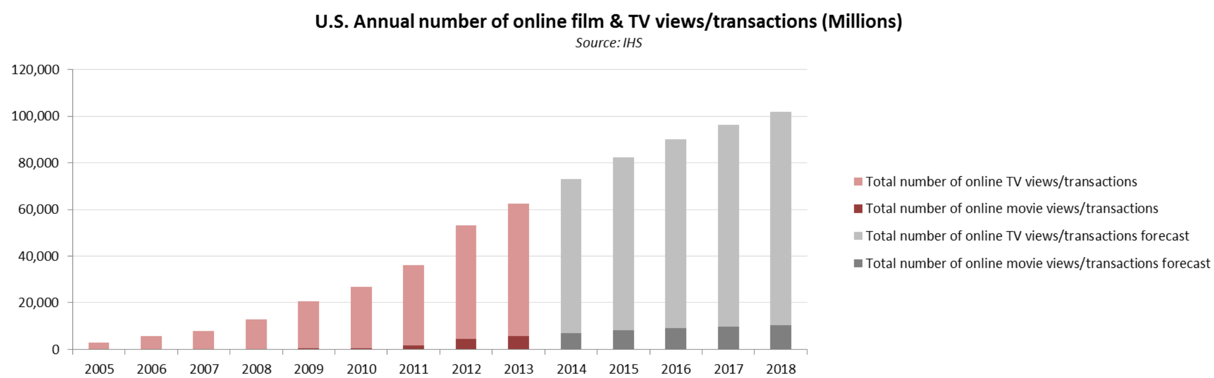
1 *In re* Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services, MB Docket No. 14-261, *NPRM*, FCC 14-210 at ¶ 1 (rel. Dec. 19, 2014).

2 *See id.* at ¶ 1 n.1, ¶ 2, ¶ 23 & nn. 57-58, ¶ 34 & n.90.





In fact, there are already so many online video services that the NPRM can divide them into five sub-categories, listing illustrative providers for each: 1) subscription linear, represented by Sky Angel, Aereo, DISH, Sony, and Verizon; 2) subscription on-demand, represented by Amazon Prime Instant Video, Hulu Plus, and Netflix; 3) transactional on-demand, represented by Amazon Instant Video, CinemaNow, Google Play, iTunes, Sony Entertainment Network, Vudu, and Xbox Video; 4) ad-based linear and on-demand, represented by Crackle, FilmOn, Hulu, Yahoo! Screen, and YouTube; and 5) transactional linear, represented by Ultimate Fighting Championship.[3]

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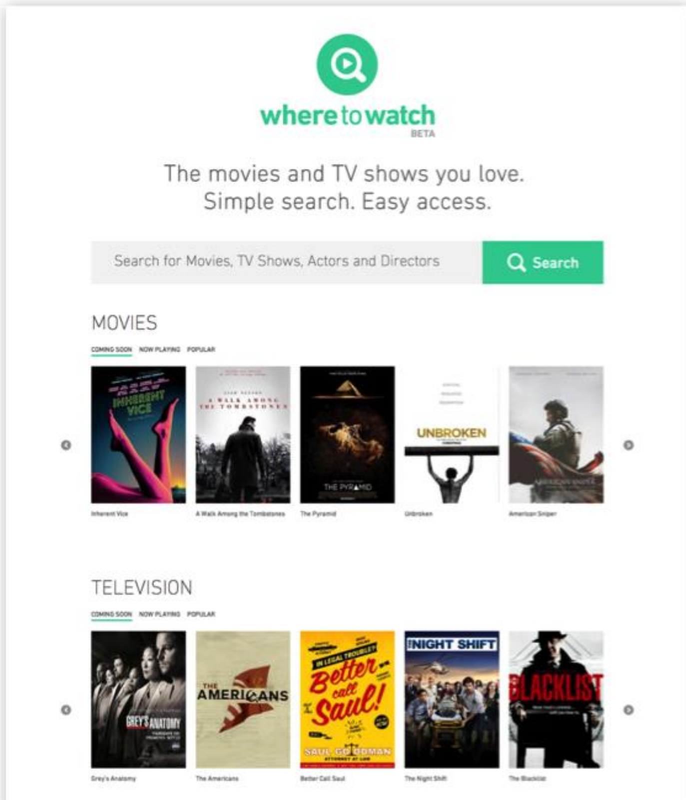
[3] *See id.* at ¶¶ 13, 34.

To help audiences navigate among all the choices, the MPAA has launched WhereToWatch.com, which enables viewers to search for video content by title, actor, or director and click through to a variety of legal online sources to access the film or show.



The NPRM recounts claims by Aereo and FilmOn that regulatory uncertainty has limited their ability to win subscribers, attract investment, or acquire programming.[4] But to the extent anything is stymying Aereo or FilmOn, it is their lack of sufficiently unique services or their decisions to build businesses around violation of copyright, rather than any shortcoming in the marketplace. Indeed, the Supreme Court held that Aereo violated copyright owners' exclusive

[4] *See id.* at ¶ 1 n.3, ¶ 10, ¶ 34.

right to publicly perform their works and a federal district court held FilmOn in contempt for violating an injunction to cease retransmitting content in violation of the Copyright Act.[5]

The NPRM says that "[b]roadcast and cable-affiliated programming could make Internet-based services attractive to customers, who would access the services via broadband."[6] That is undoubtedly true, but it is happening today without FCC intervention. A quick scan of announcements over just the last six months shows how vibrant the over-the-top television marketplace is already becoming:

- On Sept. 11, 2014, Verizon announced it will launch an over-the-top television service in mid-2015 that includes ABC, CBS, FOX and NBC programming.[7]
- Between Sept. 22, 2014, and Jan. 21, 2015, Hulu announced four original television programs, including a Steven King series produced by J.J. Abrams, a show directed by Jason Reitman, and a series created by Amy Poehler.[8]
- On Oct. 15, 2014, TimeWarner announced that it will launch a stand-alone, over-the-top, HBO service in the United States in 2015.[9]
- On Oct. 16, 2014, CBS announced the launch of *CBS All Access*, a subscription video-on-demand and live-streaming service that makes available both archived and current CBS television network programming.[10]

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5 *See, e.g.*, *ABC v. Aereo*, 134 S.Ct. 2498 (2014); *CBS v. FilmOn.com*, No. 10 CIV. 7532, 2014 WL 3702568 (S.D.N.Y. July 24, 2014).

6 NPRM at ¶ 5.

7 Verizon to Join 'Virtual MSO' Fray in Mid-2015 with Wireless TV Service, *available at* http://variety.com/2014/digital/news/verizon-to-join-virtual-mso-fray-in-mid-2015-with-wireless-tv-service-1201303707/.

8 Stephen King's Best-Seller 11/22/63 Finds its Place in History With Direct-to-Series Order from Hulu, *available at* http://blog.hulu.com/2014/09/22/stephen-kings-best-seller-112263-finds-its-place-in-history-with-direct-to-series-order-from-hulu/; Oscar®-Nominated Director Jason Reitman Comes to Hulu in Straight-to-Series Order for Casual, *available at http://blog.hulu.com/2014/10/30/jason-reitmans-casual-comes-to-hulu/;* Hulu Orders Amy Poehler's Difficult People Starring Julie Klausner and Billy Eichner, *available at* http://blog.hulu.com/2014/11/18/hulu-orders-amy-poehlers-difficult-people-starring-julie-klausner-and-billy-eichner/; Hulu Teams with Freddie Wong and RocketJump for Newest Hulu Original, *available at* http://blog.hulu.com/2015/01/21/hulu-teams-with-freddie-wong-and-rocketjump-for-newest-hulu-original/.

9 HBO Chairman and CEO Richard Plepler Announces HBO to Offer a Stand-Alone HBO Streaming Service in 2015, *available at* http://www.timewarner.com/newsroom/press-releases/2014/10/15/hbo-chairman-and-ceo-richard-plepler-announces-hbo-to-offer-a.

10 CBS Brings Programming Direct to Consumers with New Multi-Platform Digital Subscription Service, *available at* http://www.cbscorporation.com/news-article.php?id=1096.

- Between Oct. 27, 2014, and Feb. 12, 2015, Amazon introduced the Google Chromecast competitor Fire TV Stick; announced the debut of three original television series and 12 original television pilots; entered a development deal with Sid and Marty Krofft to re-launch '70s children live-action series *Sigmund and the Sea Monsters*; and signed Woody Allen to create his first television series.[11]

- Between Oct. 29, 2014, and Feb. 25, 2015, Netflix announced 15 original television series and that it had added a record 13 million new subscribers during the fourth quarter of 2014, bringing its total subscriber base to 57.4 million.[12]

- On Nov. 13, 2014, Sony announced the launch of PlayStation™ Vue, a cloud-based TV service that makes available 75 channels of live and archived programming, including from CBS, FOX, FX, FOX Sports, YES Network, National Geographic, NBC, NBCSN, CNBC, Telemundo, Bravo, E!, Oxygen, Sprout, Syfy, USA Network, BET, CMT, Comedy Central, MTV, Nickelodeon, VH1, Discovery, TLC, Animal Planet, Oprah Winfrey Network, HGTV, Food Network, and the Travel Channel.[13]

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[11] Introducing Fire TV Stick, *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=1981713; Amazon Debuts First Original Live-Action Kids Series Gortimer Gibbon's Life on Normal Street, *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=1982430; Amazon's First Pilot Season of 2015, Featuring Slate of 13 Original Comedy, Drama, Docuseries and Kids Offerings, will Debut January 15, *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=2003577; Amazon Announces Lineup for its First Pilot Season of 2015, *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=1988353; Amazon to Debut the Highly-Anticipated Dramatic Comedy Mozart in the Jungle, *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=1991658; Amazon to Debut its First Original Hour-Long Drama Series Bosch, *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=2007574; Amazon Studios Developing Sigmund and the Sea Monsters with Sid and Marty Krofft, *available at http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=2016229*; Amazon Studios Signs Woody Allen to Create His First Television Series Ever, *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=2007234.

[12] AwesomenessTV's All New Richie Rich Series to Air Only on Netflix, *available at* https://pr.netflix.com/WebClient/getNewsSummary.do?newsId=1701; The Wildest Party Ever Hits the Jungle When the Netflix Original Series All Hail King Julien Debuts Dec. 19, *available at* https://pr.netflix.com/WebClient/getNewsSummary.do?newsId=1715; From Academy Award® nominees Peter Morgan and Stephen Daldry: The Masterful New Netflix Original Series, The Crown, *available at* https://pr.netflix.com/WebClient/getNewsSummary.do?newsId=1741; Netflix to Adapt Lemony Snicket's A Series of Unfortunate Events into Original Series, available at https://pr.netflix.com/WebClient/getNewsSummary.do?newsId=1742; Netflix TCA Winter 2015 Release, *available at* https://pr.netflix.com/WebClient/getNewsSummary.do?newsId=1831; Netflix Expands Its Portfolio of Original and Exclusive TV Series with Five New Shows for Kids of all Ages, *available at* https://pr.netflix.com/WebClient/getNewsSummary.do?newsId=1924; Netflix Adds Record 13 Million New Members in 2014; Q4 Revenue and EPS Rise, *available at* http://www.thewrap.com/netflix-adds-record-13-million-new-members-in-2014-q4-revenue-and-eps-rise/.

[13] Sony Network Entertainment International And Sony Computer Entertainment Unveil PlayStation™Vue, *available at http://www.sony.com/SCA/company-news/press-releases/sony-corporation-of-america/2014/sony-network-entertainment-international-and-sony-.shtml?icid=pr-newswire-feed*.

- On Jan. 5, 2015, DISH announced the launch of Sling TV, a live, over-the-top television service, including content from ESPN, Disney, TNT, TBS, Food Network, HGTV, and the Cartoon Network.[14]

Everything in the marketplace indicates that, although still in its infancy, Internet-distributed video is alive and well. Indeed, one industry analyst wrote recently that:

> [m]omentum is in OTT video's corner, and viewing on mobile devices, streaming media players and game consoles will continue to rise. These consumption trends and the use of Internet-connected devices and the OTT apps on them may have the ability to change the way TV is conceptualized.[15]

II. Expanding the MVPD Definition Risks Deterring, Rather than Promoting, Linear Services

The NPRM seeks "to ensure that the rights and responsibilities of an MVPD are not jeopardized by changes in technology,"[16] but we should make sure to avoid the converse: that changes in technology and business models are not jeopardized by MVPD regulation. As discussed above, linear video services are emerging and over-the-top offerings are flourishing generally under the current regulatory framework, with content companies actively seeking new ways to distribute films and TV programming online.

The NPRM posits that "[s]pecifying the circumstances under which an Internet-based provider may qualify as an MVPD, possessing the rights as well as responsibilities that attend that status, may incent new entry that will increase competition in video markets."[17] But imposing MVPD obligations on companies wishing to offer multiple linear streams of video programming online would create burdens and regulatory uncertainties that might divert resources and attention from such experimentation, to the detriment of consumers. The Internet

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14 Sling TV to Launch Live, Over-the-Top Service, *available at* http://about.dish.com/press-release/products-and-services/sling-tv-launch-live-over-top-service-20-month-watch-tvs-tablets.

15 SNL Kagan, Frictionless content, millennials and the 'appification' of TV at CES '15, *available at*, https://www.snl.com/InteractiveX/article.aspx?id=30546111.

16 NPRM at ¶ 3.

17 *Id.* at ¶ 5.

is enabling innovative business models in video distribution that can reduce costs and provide added flexibility to producers, distributors, and viewers, alike. It would be a shame if we put all this experimentation at risk, especially in these early stages of online video distribution, by trying to fit new square pegs into old round holes.

The NPRM appears to recognize this, asking whether expanding the MVPD definition to linear online services would "impede innovation by imposing regulations on business models that may be better left to develop unfettered by the rules applicable to MVPDs,"[18] as well as "deter investment in new technologies and drive some current or prospective Internet-based distributors from the market[.]"[19] The concern is well founded, as the NPRM acknowledges that the proposal could impose costs both on newly classified MVPDs and third parties.[20] In addition to purely economic costs, government must also consider the impact on the existing marketplace dynamics, which are characterized by rapid innovation and intense competition as content owners and distributors seek to accommodate ever-changing consumer expectations. The current environment has fostered significant investment in online distribution of video and allowed market participants to experiment both with new technologies and new business models to support them. Imposing one-size-fits all regulation is particularly ill suited to the Internet, and could squelch the diversity that is its hallmark. What may work for one entrepreneur entering the market may not work for others, and the freedom to experiment is likely to be critical in the early years.

We know that online distribution continues to thrive—including with the launch of at least three new linear services from Sony, DISH, and Verizon—following the Media Bureau's

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18 *Id.* at ¶ 25.

19 *Id.* at ¶ 38.

20 *Id.* at ¶ 39.

2010 decision not to expand FCC regulation to over-the-top services. The Commission should allow experimentation in the marketplace to continue unfettered by regulation.

III. Interfering With Negotiations over Internet Distribution Rights Raises First Amendment Issues and Conflicts with Principles of Copyright Law

Despite the clear success of content owners, programmers, and distributors in expanding the availability of linear and other online video services, the NPRM seeks comment on the impact of the definition change on content owners,[21] including: 1) whether the FCC should require cable and broadcast networks to acquire Internet distribution rights of all the programming they distribute on traditional platforms and then further negotiate licenses of those Internet rights to the newly-designated Internet MVPDs,[22] and 2) whether the Internet distributors should similarly be obligated to enter into negotiations for those Internet rights.[23] The intrusions into the robustly competitive marketplace are not only unnecessary and potentially harmful to consumers; they also raise First Amendment issues and conflict with principles of copyright law.

Among the most important ingredients in the success of the video marketplace is respect for two fundamentally American values: free speech and intellectual property. Under the First Amendment, it is the speaker and the audience acting in the marketplace of ideas—not the government—that determines what is said and heard. And the Copyright Clause recognizes that respecting the right of creators to determine how to disseminate their works increases both the

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[21] *Id.* at ¶¶ 7, 65.

[22] *Id.* at ¶¶ 41, 44, 69.

[23] *Id.* at ¶¶ 51-52.

production and distribution of content, to the ultimate public benefit.[24] The ability of content producers and distributors to decide what programming to create, license, and disseminate is what makes the online marketplace so dynamic. It also enables companies to manage the economic risks they face in the competitive and unpredictable online video marketplace, thereby allowing them to continue investing and innovating to deliver high-quality content to consumers. The NPRM proposes to disrupt all this, however, asking whether the FCC should impose online licensing requirements on programmers and distributors—parties who in many cases are neither seeking, nor would benefit from, the expanded MVPD definition—raising significant First Amendment and copyright issues in the process.

The Communications Act governs the transmission of signals.[25] Indeed, the retransmission consent, must-carry, and program access rules all pertain to the availability of network signals, not the underlying content. By contrast, production, distribution, and licensing of, as well as access to, particular underlying content is left to the free market, the First Amendment, and copyright law. Indeed, all of the tremendous growth in online distribution of video is occurring pursuant to contract and licensing agreements, as MVPD regulation and compulsory copyright licenses do not apply.

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[24] *See* U.S. CONST., art. I, § 8, cl. 8 (conferring upon the legislative branch to role "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries").

[25] *See* 47 U.S.C. §§ 151, 152(a), 153(33), 153(52) (creating the FCC "[f]or the purpose of regulating interstate and foreign commerce in *communication by wire and radio*," stating that "[t]he provisions of [the Communications Act] shall apply to all interstate and foreign *communication by wire or radio*," and defining communication by wire and radio as "the *transmission* … of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission") (emphasis added).

Dictating to content providers and distributors what content they must make available online—as well as when and how—would raise significant First Amendment issues.[26] As the Supreme Court has made clear, government forced access to media "brings about a confrontation with the express provisions of the First Amendment and the judicial gloss on that Amendment."[27] And when it comes to regulation of speech on the Internet, that gloss has a high sheen, as the Supreme Court's "cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium.[28] Indeed, according to the Court:

> [T]he record demonstrates that the growth of the Internet has been and continues to be phenomenal. As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it.[29]

Congress has been careful to minimize the Communication Act's impact on speech,[30] and is explicit when it wants the FCC to regulate in ways that bear upon the First Amendment.[31] Thus, to avoid potential First Amendment issues, the FCC must not interpret provisions of the Act as authorizing regulation of speech absent express language. The D.C. Circuit held in 2002, for example, that the First Amendment precluded the FCC from imposing video description rules absent a direct Congressional authorization to do so.[32] Because the FCC was trying "[t]o regulate

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[26] *See, e.g., Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974) (finding government compulsion of a newspaper to publish content it otherwise would not have published violated the First Amendment).

[27] *Id.* at 254.

[28] *See, e.g., Reno v. American Civil Liberties Union,* 521 U.S. 844, 866-70 (1997).

[29] *Id.* at 885.

[30] *See, e.g.*, 47 U.S.C. § 544(f) (providing that "[a]ny Federal agency ... may not impose requirements regarding the provision or content of cable services, except as expressly provided in this title"); 47 U.S.C. § 326 (providing that "no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication").

[31] *See, e.g.*, 18 U.S.C. § 1464 ("Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both."); 47 U.S.C. § 315 (governing provision of broadcast time to candidates for public office); 47 U.S.C. § 399 ("No noncommercial educational broadcasting station may support or oppose any candidate for political office.").

[32] *See MPAA v. FCC*, 309 F. 3d 796 (D.C. Cir. 2002).

in the area of programming," it could not rely on the general provisions of section 1 of the Communications Act."[33] Because nothing in Titles III or VI of the Communications Act, or in Section 706 of the 1996 Telecommunications Act, explicitly authorizes the FCC to regulate the video content producers make available on the Internet, the FCC cannot do so.

Forcing parties to enter into licensing arrangements for particular content would also amount to a limitation on copyright owners' rights under the Copyright Act. Section 106 of the Copyright Act gives copyright holders the exclusive rights to distribute and publicly perform their works.[34] While the Copyright Act does provide for a limited compulsory copyright license covering the retransmission of content on certain platforms,[35] this does not extend to retransmission on the Internet, as courts and the Copyright Office have definitively confirmed.

The NPRM suggests that if the FCC adopts the proposed expansion of the MVPD definition, companies such as Aereo might be entitled to the cable compulsory copyright license under Section 111 of the Copyright Act.[36] But the federal courts and the Copyright Office have repeatedly ruled that over-the-top providers are not cable systems entitled to the section 111 license and that the section 111 license does not apply to Internet transmissions.[37] An FCC ruling that linear service providers are MVPDs would not change that.

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33 *Id.* at 804.

34 17 U.S.C. § 106 (3), (4).

35 *See, e.g.*, 17 U.S.C. §§ 111, 119, 122 (creating compulsory copyright licenses for retransmission of broadcast signals over cable and satellite services in certain circumstances).

36 NPRM at ¶ 11 & n. 20.

37 *See WPIX v. ivi*, 691 F.3d 275, 282-83 (2d. Cir. 2012) (stating that Congress did not intend for section 111 to extend to Internet transmissions, that Internet retransmissions services are not cable systems, and that such services are not entitled to the section 111 license); *ABC v. Aereo*, 12-cv-1540, slip op. at 5-10 (S.D.N.Y Oct. 23, 2014) (stating that the Supreme Court's *Aereo* decision did not change the fact that Aereo is not a cable system entitled to the section 111 compulsory license and that section 111 does not apply to Internet transmissions); *CBS v. FilmOn*, 10 Civ. 7532, slip op. at 9-11 (stating that FilmOn is not a cable system entitled to the section 111 compulsory license and that section 111 does not apply to Internet transmissions).

Forcing copyright holders to make their content available online, and restricting the terms and conditions they could otherwise negotiate in the free market, is tantamount to creating a compulsory license for Internet access to content. That is something outside the authority of the FCC to create, conflicts with the policy choices Congress has made in the Copyright Act in decidedly not creating such a compulsory license, and encroaches on the discretion the Copyright Act gives to copyright holders over the distribution and public performance of their works.[38]

IV. Conclusion

The production and distribution of video content is already fraught with significant risk in this competitive environment. A major motion picture costs on average $100 million to make, and six out of ten will not recoup the initial investment. Major television productions are beginning to rival feature films not only in quality, but cost, and according to one rule of thumb 80 percent of scripts submitted will never become a pilot episode, 80 percent pilots never become a series, and 80 percent of series never see a second season.

Even with this risk, the industry continues to invest because audiences continue to clamor for more original programming from both established and new sources. Millions of jobs and tens of thousands of businesses are built, in part, on the current regulatory environment. Altering the

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[38] *Cf. Orson Inc. v. Miramax Film Corp*., 189 F.3d 377 (3rd Cir. 1999) (partially pre-empting a Pennsylvania statute restricting a motion picture distributor from entering into an exclusive first-run exhibition agreement with an exhibitor because it violate the distributor's rights under the Copyright Act); *Naumkeag Theatres Co. v. New England Theatres, Inc*., 345 F.2d 910, 912 (1st Cir. 1965) (supporting proposition that a movie distributor is under no obligation to make its motion picture available in all markets at the same time); *Syufy Enterprises v. National General Theatres*, 575 F.2d 233, 236 (9th Cir. 1978) (supporting proposition that a movie distributor may license a movie exclusively); *Paramount Film Distributing Corp. v. Applebaum*, 217 F.2d 101, 124 (5th Cir. 1954) (stating that "a distributor has the right to license or refuse to license his film to any exhibitor, pursuant to his own reasoning, so long as he acts independently"); *Westway Theatre Inc. v. Twentieth Century Fox Film Corp.*, 30 F. Supp. 830, 836-37 (D. Md.) (stating "it is clearly the established law that the distributors have the right to select their customers, and therefore the plaintiff has no absolute right to demand exhibition rights for the pictures of any of the distributors") (citations omitted), *aff'd*, 113 F.2d 932 (4th Cir. 1940).

existing regime could lead to considerable uncertainty about the future of the content marketplace, potentially hindering investment and experimentation.

The ability to determine the substance of their content and the mechanisms by which it is distributed is essential to enabling producers to develop relationships with distributors and audiences as technology and consumer expectations evolve. Government should let the market do its work: bringing audiences, programmers, and distributors together as consumer demand generates more and more great content over a diverse and expanding array of linear and other online distribution mechanisms.

Respectfully Submitted,

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