Hughes Hubbard & Reed

TV Everywhere v. Over the Top: The Ultimate Smackdown?

Client Advisories

Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

On December 17, we presented "TV Everywhere – Is It Everywhere You Want to Be?", the latest in our continuing series of free, CLE accredited webinars. During the program, we took a closer look at "TV Everywhere" (TVE), the fledgling initiative under which cable operators and other pay TV providers propose to make their programming–which was, up until now, available only on TV and by subscription–available online to subscribers via any internet-connected device. As we noted back in March,

"The initiative is, in many ways, the product of a "perfect storm" of the realities, opportunities and challenges facing not just the cable/satellite tv industry and content owners, but the advertising industry and advertisers themselves. Here's what is at play: • Cable, satellite and telco TV is one of the few sources of subscription content that people are willing to pay for. • That fact keeps most video content and programming off the Web as cable networks fight to preserve the 50% of revenue that comes from subscribers. Their fear is that, with content freely available on the Web, many viewers may decide to simply terminate their pay TV service. • The content owners are often reluctant to put content directly online for fear that the value of their respective offerings to the cable/satellite companies will be diminished, thereby undermining the traditional cable/satellite subscription model. • Yet the content owners and Web publishers recognize that there are ad dollars to be made by placing more and more content and programming on the Web."

TV Everywhere is based on a fairly simple premise: since consumers are already paying for the content they are watching at home on their TVs, why not let them watch the same content wherever they have a screen that is web-enabled? But even as TV Everywhere seeks to gain traction, and by doing so strengthen the hand of pay TV providers, "Over The Top" (OTT) distributors continue to pull an end around these providers by enabling consumers to watch Internet video content (a sizable portion of which is free or provided at no additional charge) on their TVs. OTT refers to video being delivered to homes over a broadband network that isn't owned by the distributor itself. For example, if you watch Hulu video in your home via a Verizon FiOS broadband connection, Hulu is going "over the top" of Verizon. Hulu doesn't own the broadband network, it simply rides on top of the one that's there, essentially competing with the broadband provider's own video service. Unlike TVE, OTT video services come in several different models from providers as diverse as Apple (Apple TV), Microsoft (Xbox Live), Sony (PlayStation Network), and Netflix. OTT providers are looking to extend the Web beyond the computer screen and onto TV sets in living rooms using a mix of subscription, pay-per-view and ad-supported models. While enabling viewers to watch YouTube videos of cats jumping on trampolines on a giant plasma screen may not be of concern to pay TV providers, giving them the ability to watch movies on-demand and free and premium cable content (the bread and butter content for pay TV providers) through an OTT service surely is cause for alarm. In what might be a pay TV providers worst nightmare, some OTT services could lead consumers to contemplate ditching their pay TV subscriptions altogether. For content owners, both TVE and OTT provide both opportunity and concern. In the case of TVE, the implementation of authentication technologies–to ensure that only paid-up subscribers have access to video content–is a significant advance in preventing piracy, one of the highest priorities of content owners. In addition, content owners receive payments from pay TV providers, based on revenue those providers receive from their subscribers. By making pay TV providers' revenue pie larger, content owners may ultimately receive a larger slice of that revenue. However, by merely extending access, TVE may not provide enough of an economic benefit to content owners, even if TVE deals are non-exclusive. For years those owners have been entering into agreements for the online distribution and syndication of their content, including deals for OTT services. These agreements provide for a variety of revenue streams, including up-front advances and substantial participation in advertising revenue. And although one of the future promises of TVE is the ability to serve targeted advertising to viewers–which could conceivably provide higher revenues–it is still too early to determine if that promise can or will be fulfilled. The situation is obviously very fluid, with the stakeholders (including pay TV providers, content owners, broadcast and cable networks, hardware and software providers, and yes, consumers) having multiple intersecting and conflicting interests. Our webinar took a closer look at TVE and some of these questions. We will also keep abreast of developments and undoubtedly provide additional insight here in the future.

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