

A deal made in Washington?

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On May 26, my friend and former colleague, Dan Glickman, of the Motion Picture Association of America, made the case for Congress enacting legislation to ratify the Federal Communication Commission's broadcast flag rule, which the Court of Appeals for the D.C. Circuit struck down in early May.

Mr. Glickman asked the rhetorical question: "So why should I care about a so-called broadcast flag regulation? The answer is simple. I want to make certain that the American people will continue to have the opportunity to see our movies and television shows on free television in the digital age."

For me, the answer to his rhetorical question is simple as well: If the MPAA expects Congress to ratify a rule that would limit the ability of ordinary consumers to share lawfully acquired digital broadcast television programs with one another, then it shouldn't be surprised if Congress insists that the MPAA accept in return a restoration of the fair use rights taken from consumers through the enactment of the Digital Millennium Copyright Act (DMCA).

As crafted, the FCC's broadcast flag rule recognized the right of consumers to share lawfully acquired digital broadcast content within their homes. But it also would have made it illegal for my staff to send a digital broadcast news clip from my district office to my Washington, D.C., office via the Internet. It would have precluded a library from sharing with a patron via the Internet excerpts from a digitally broadcast public affairs program. And it would have limited the ability of teachers to use material from digitally broadcast programs when engaged in distance education with students in rural areas--the very kind of activity Congress authorized in the TEACH Act.

Given these restrictions on traditional fair use activities, I expect that my colleagues will think twice before simply ratifying the FCC's rule. Moreover, given that the rule raises the question of consumer use of lawfully acquired content, I am confident that the House Energy and Commerce Committee will consider the appropriateness of amending any broadcast flag legislation with H.R. 1201, a bill that I introduced along with the Chairman of the Committee and Representative John Doolittle, to restore the fair use rights that ordinary consumers lost when Congress enacted the DMCA.

Both fair use proponents and content owners frequently say we need balance in our copyright laws. I agree. Adding H.R. 1201 to appropriately crafted broadcast flag legislation would achieve a long needed balance--bringing us back to the equilibrium that existed before the DMCA disrupted it to the detriment of consumers, librarians, teachers and the

public at large.

Congressman Rick Boucher
Virginia's Ninth Congressional District
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