



A Threat to Our Privacy

The FCC's Set-Top Rule Strips Away Key Privacy Protections for Your Personal TV Viewing Data

Strong federal statutes currently protect the privacy of our personal television viewing choices and information. But these laws do not cover the tech companies seeking to enter the video market via the new set-top box rule being considered at the FCC – creating a privacy protection gap for viewers that FCC regulations have no effective way to close. The Commission could solve this privacy dilemma by rejecting the AllVid-like approach at the core of the current NPRM, and instead embracing the apps-driven revolution that already lets cable and satellite customers watch programming on hundreds of millions of consumer-owned devices, without compromising their privacy.

Your TV Viewing History is Protected by Strong Privacy Laws

Congress has enacted strong privacy laws to ensure that your TV viewing choices remain private. Cable and satellite companies can't unilaterally sell or disclose your personally identifiable viewing records, and must follow stringent notice and consent requirements. Individual viewing records can't even be shared with law enforcement agencies without a court order. If a TV provider violates these laws, you have a right to sue in federal court for statutory and punitive damages.

These Laws Don't Cover Device Makers – and the FCC Can't Fix That

These privacy laws included in the Communications Act don't apply to Internet giants like Google or consumer electronics companies like Vizio. So while FCC Chairman Tom Wheeler promised he would address this concern by imposing on device makers "the same kind of rules that cable companies have," the truth is that the FCC lacks the statutory authority to rewrite the Communications Act to cover tech companies.

Instead, the FCC is Proposing a "Just Trust Us" Approach

The FCC can't compel tech companies to follow these laws, so instead they're proposing to just ask nicely. Under Chairman Wheeler's rule, device makers will be asked to self-certify that they will honor the same restrictions – a "just trust us" approach that wouldn't actually protect consumers or give them any meaningful recourse when device makers break these promises.

What's more, the proposal would actually ask cable and satellite companies to police the certifications of those device makers for violations. As the *Washington Post* observed, "*The proposal effectively contemplates a world where Comcast could be overseeing Google*" – even though the entire proposal is written to deny TV providers the technical and legal ability to see or restrict how third-party devices are using their video streams. Even the FCC's proposed remedy – requiring TV providers to cut off access for devices that violate their self-certification – will cause consumer confusion and anger. Without any concrete means of enforcing its privacy promises, the FCC proposal is left grasping at straws – even asking whether strong privacy laws *in Europe* might somehow be enough to protect U.S. viewers.

Tech Companies With a History of Abusing Consumer Privacy Should Not Be Trusted to "Self-Certify"

The FCC would be naïve to simply trust the companies pushing for this AllVid-like rule to honor unenforceable promises to protect consumer privacy. Google, whose entire business is built on aggregating and mining customers' email content and web browsing records to better target advertising, was fined \$22.5 million by the FTC for bypassing browser privacy settings. The search giant is also in hot water for tracking the online activity of nearly 50 million students and teachers using its *Google for Education* apps without giving parents a way to opt out. And Vizio was exposed last year for tracking customers' viewing habits through its smart TVs and selling that data to advertisers without consent – and then defended itself by pointing out that consumer device makers are not bound by cable and satellite privacy protections.

There's a Better Way: Apps

Consumers are eager to watch video on innovative new devices that don't require a set-top box. Consumers also deserve the full protection of the laws enacted by Congress that keep personal viewing data private. Chairman Wheeler's AllVid-like approach makes these goals mutually exclusive – but they don't have to be. Instead, the FCC should embrace the app-driven innovations that are already giving customers more choices for video devices and services than ever before, without needlessly exposing consumer viewing data to Google and other companies that aren't covered by these statutory privacy protections.

Modern digital apps allow you to watch TV through an ever-expanding galaxy of devices, from smart TVs and video game consoles to Roku streaming players and tablets. Apps from pay TV providers are already available on more than 460 million customer-owned devices. These apps come with the statutory privacy protections already baked in – protections that would be lost if you watched through an app or device offered by Google, or any other tech company. As Apple's Tim Cook recently said, "The future of TV is apps." Anyone concerned about the privacy of our TV viewing habits should agree.