

“TV Everywhere” key to cable operator strategy

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Today’s consumers of video programming have a myriad of viewing options available on an array of devices. Now multichannel video programming distributors (“MVPDs”¹) are looking to add value and provide viewing flexibility by offering their subscribers the ability to access their respective offerings on multiple screens and from multiple platforms.

The TV Everywhere initiative in the United States allows MVPD subscribers that have been authorised to receive the content from a programming network as part of their underlying MVPD subscription to access that content on a streaming basis on various devices such as laptops, desktop computers, tablets, game consoles, connected TVs and smartphones. The subscribers gain access to the program network operators and the MVPD websites via software applications that are either already installed or alternatively can be downloaded onto the device.

The success of the concept of TV Everywhere hinges on the ability of MVPDs, programming networks and consumer electronics manufacturers to forge mutually beneficial agreements. Some programming networks like Turner (which owns CNN, TNT, TBS and Cartoon Network) embrace TV Everywhere, while other program providers are more reticent, with many wishing to seek incremental value in order to grant these additional rights. MVPDs, which have not historically embraced the availability of video content from programming networks on the Internet, are supporting authenticated access to their video offerings by subscribers using Internet-connected TVs (Samsung), set-top boxes (Roku, TiVO), Blu-ray players, and game consoles (Xbox 360, PlayStation 3).

Comcast, the largest cable operator in the United States has partnerships with both Samsung and Microsoft. These relationships are expected over time to provide Comcast’s digital video subscribers with the ability to browse, find, sort and access video content from Comcast’s Xfinity TV service on Samsung Smart TVs, the Samsung Galaxy Tab and the Xbox 360. In addition, Comcast and Disney recently announced a long-term, and comprehensive distribution agreement

that for the first time ever, will permit Comcast's Xfinity TV customers to watch ESPN, ABC or Disney shows live or on demand across multiple screens.

Despite these recent successes, all is not rosy. Last year, Viacom (which owns MTV, BET, Nickelodeon and Spike TV) filed a lawsuit against Cablevision to prevent it from distributing Viacom video content to Cablevision subscribers for use in-home viewing on Apple's iPad. Viacom settled its lawsuit with Cablevision on undisclosed terms that permitted Cablevision to make the Viacom channels available to its subscribers via internet-connected devices for in-home use.

Viacom is also embroiled in a dispute with Time Warner Cable ("TWC") regarding the same issue. After receiving a cease and desist letter from Viacom, TWC removed the Viacom content from its in-home iPad application. However, TWC filed for a declaratory judgment against Viacom contending that delivery of the Viacom channels does not infringe Viacom's copyright and therefore that TWC's existing carriage agreements permit it to deliver Viacom programming to subscribers viewing in the home.

While TV Everywhere does continue to progress, problems persist. A significant gating factor to the widespread deployment of live linear television on tablet devices is the current inability of Nielsen to measure television viewing audiences on these devices. Programming networks depend on Nielsen ratings to sell advertising; consequently it is imperative to the future growth of TV Everywhere to establish a television ratings system that can measure audience viewing figures regardless of the device on which the program is watched. Intellectual property rights issues also play a critical role in the expansion of TV Everywhere. When acquiring content for their channels, programming networks need to be vigilant in acquiring the panoply of rights that will enable them to license their channels to MVPDs. MVPDs expect to have the rights to make the content available to authenticated subscribers on a variety of devices and platforms. As programming networks and MVPDs enter into agreements that expressly address the concept of

TV Everywhere, we can expect these agreements to address (in addition to the scope of rights and content to be made available) the authentication process, content delivery, promotion and branding, content protection, privacy, user data, advertising and traffic measurement. Of course these issues will be subject to negotiation, many of which will require the resolution between competing interests.

Providing subscribers with access to video content on their screen of choice is critical to MVPDs as they seek to combat competition from Internet-based distributors like Netflix, Hulu Plus and Google TV. While undoubtedly many obstacles still exist, and programming networks continue to license more content to online video distributors, the recent alliances between MVPDs, programming networks and device manufacturers bodes well for the continued implementation of TV Everywhere in the United States.



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1 MVPDs include cable, IPTV and satellite distributors.