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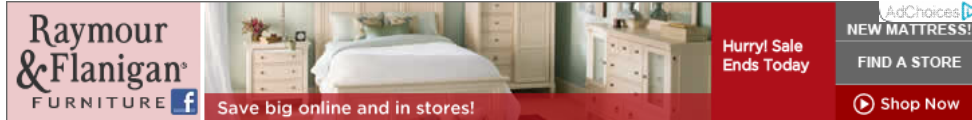
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### Networks' fight with Dish over ad-skipping has huge implications

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Menu for Dish's AutoHop feature (Associated Press / May 25, 2012)

By Meg James and Dawn C. Chmielewski  
May 25, 2012 | 6:06 p.m.

The major broadcast networks' legal skirmish with satellite television service Dish Network over its new ad-skipping device is shaping up to be a titanic struggle with enormous implications.

The outcome of their high-profile dispute could influence what features will be available to consumers on their TV devices, as well as the price they pay for their monthly service.

Three of the major networks — Fox, CBS and NBC — sued Dish Network on Thursday over its controversial AutoHop feature, which allows consumers to bypass all commercials in their prime-time programming block with a single click of their remote control.

Dish simultaneously filed its own lawsuit against the three networks as well as Walt Disney Co.'s ABC, asking a federal court judge to rule on whether its ad-skipping feature was in violation of copyright laws.

"This is the biggest copyright case since Napster," said prominent entertainment attorney Bonnie Eskenazi, a partner at Greenberg Glusker in Los Angeles. "The entire financial model of the television industry is at risk."

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The networks argue that AutoHop, the latest technological enhancement to zap commercials, will seriously erode the foundation of their business, similar to how the free file-sharing service Napster fractured long-established music business fundamentals more than a decade ago.

The U.S. broadcast television model is built on advertising revenue. The networks rake in more than \$19 billion a year in advertising, money that pays for the high cost of programming. Without advertising, network executives say, media companies would have to charge distributors three times the current rate for their signals. The added costs would be passed on to consumers.

Dish said that it believes that the AutoHop feature, which rolled out May 10, does not violate the networks' copyright. Instead, the Englewood, Colo., company said AutoHop is simply an enhancement of existing ad-zapping technologies, and ultimately a matter of consumer choice.

The key question is whether the networks can copyright entire chunks of programming — including the commercials — or just individual programs.

"It's not very clear that the networks have the copyright for the entire programming block," said Eskenazi, who is not involved in the case. "The question is whether this ad-skipping feature is any different from handing a person a remote control."

Pay TV subscribers with digital video recorders for years have had the ability to fast-forward through commercials of shows they record. But the AutoHop feature goes further.

Dish customers with the device can record all of the prime-time TV programming on ABC, CBS, Fox and NBC for later viewing. Then when a commercial break appears, the screen goes black, and a few seconds later the program returns — minus the ads. The feature becomes available the day after the programming first airs.

"Consumers have the right to control their TVs," said Art Brodsky, communications chief for the Washington, D.C., consumer group Public Knowledge. "People have been skipping commercials for years. You can already skip them without the help of a Hopper." The Hopper is a Dish DVR service.

The dispute is reminiscent of a legal battle in 2001 that pitted TV networks against makers of one of the first digital video recorders, called ReplayTV. That device allowed consumers to record programs and automatically skip over ads. It also contained a feature that let users send a recorded show to other device owners over the Internet. The networks accused the maker of ReplayTV with contributing to copyright infringement.

That matter was never resolved in the courts because Sonicblue Inc., maker of ReplayTV, filed for bankruptcy protection and the technology was acquired by a Japanese company. New versions of the device were sold without the ad-skipping feature.

The stakes in the Dish case are enormous given the fast pace of technological advancements.

Mitch Stoltz, a staff attorney for the Electronic Frontier Foundation, a nonprofit group that advocates for digital rights, said he found similarities in the ReplayTV and Dish cases. Both hinge on the notion that the device enables consumers to engage in copyright infringement when they bypass a commercial.

"It depends on convincing a judge that an individual TV watcher who skips commercials is violating copyright," Stoltz said, a legal theory which suggests that the viewer would be guilty of an act of infringement "by getting up to make a sandwich during a commercial."

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