

Where did the World Series Go?: Retransmission Consent and the Propertization of Broadcast Signals

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Traditional over-the-air broadcast signals sit in an awkward space legally. Signals are broadcast in the clear and anyone with an appropriate receiver can capture them. And do what? With the rise of first cable TV, then satellite broadcasting and more recently Internet TV, we have cobbled together a legal regime that defines how the signals can be used. That is a mix of copyright and communications law, but however pigeon-holed, these are choices about the scope of property rights. These choices continue to be live legal issues with the controversy over the WIPO Treaty on the Protection of Broadcasting Organisations and the pending notice of proposed rulemaking before the U.S. Federal Communications Commission on the rules regarding retransmission consent.

This paper looks at some of these issues. Traditional over-the-air TV signals are interesting in part because excludability is incomplete. While anyone with an antenna may be able to capture the signals that focuses on only one side of the market. Video content is a classic example of a two-sided market: broadcasters and other video creators sit in the middle between consumers and advertisers. With traditional broadcasting, consumers couldn't be excluded from the free signals, but advertisers could be. One-sided excludability has consequences for program content, as broadcasters will care only about the direct interests of their paying customers, the advertisers.

Cable TV and satellite broadcasting are built on two-sided excludability: both viewers and advertisers can be barred from access and each has to pay to receive access. In that setting, the retransmission consent regime emerges as useful tool for realigning the interests of TV viewers and over-the-air broadcasters. The retransmission consent rules make it possible for broadcasters to sell access to their broadcast signals to cable and other video providers. That means that broadcasters can monetize not only advertisers but consumers as well and that should improve program choices by broadcasters. That suggests that the FCC should be cautious in cutting back on the extent to which the retransmission consent rules effectively propertize broadcast signals.