

Remarks of Senator Gordon H. Smith before

The Media Institute

September 13, 2006

[Introduction]

Thank you for inviting me to be here with you today. I'll begin my remarks with a simple question. What do the following items have in common?

- a book by Hemingway;
- Citizen Kane;
- the local newscast;
- the latest album by Bob Dylan; and
- Washington Redskins' kicker John Hall kicking a 47 yard field goal.

Give up? Each can be converted into a collection of 1s and 0s. Except for John Hall's 47 yard field goal, which apparently can only be converted into a 0.

What does this mean? Well, for media companies, a myriad of potential new revenue streams. We have already witnessed an explosion of deals to deliver content in non-traditional ways. For instance today I can:

- download music from Apple's iTunes store;
- listen to 50 different radio channels on a Sprint cellular phone;
- watch local and national news, weather, and sports on a Verizon cellular phone;
- watch HBO on a Cingular phone;
- download feature films via the Internet from movieflix.com; or
- watch NBC and MTV video clips on YouTube.com.

Just yesterday Apple announced that its customers have downloaded more than 45 million TV shows; that iTunes now has more than 220 shows, and that Apple is adding a NFL Network and full length feature films to its iTunes service.

Increasingly, the traditional distinctions among your cable company, your telephone company, your TV network, and your newspaper are blurring.

The business model upon which many of the companies represented in this audience are relying presupposes two things. First, that there is a broadband network capable of reaching your consumers; and second, that your content can be adequately protected from theft once it is delivered into the stream of commerce.

Today both are questionable suppositions. But Congress stands ready to enact legislation that will secure a more stable business environment both by removing barriers to broadband deployment and protecting digital property rights.

[Broadband]

Enacting national policies now that promote broadband deployment will not only ensure a more palatable business environment but prove vital to our national economy.

In most recent International Telecommunications Union study, the United States fell from 13th to 16th in global broadband deployment. This is unacceptable. We must reverse this disturbing trend through direct investment in broadband infrastructure. Countries in Asia and Europe are rolling out Internet service that is both cheaper and faster than that available in the United States. As this broadband chasm continues to widen, the United States is rapidly positioning itself to lose more and more high tech, broadband-centric jobs – developing new commercial applications, products and services – to Asian and European countries.

The Brookings Institution has estimated that the widening broadband divide could cost the United States as much as \$1 trillion in losses in economic productivity over the next decade, as well as more than 1.2 million jobs that could be created by better broadband service.

These figures do not consider the many social benefits that high-speed-broadband can deliver such as videophones, teleconferencing, practical telecommuting, remote diagnosis and medical services, interactive distance education, digitally controlled home appliances or the myriad unexploited entertainment possibilities.

Broadband deployment is critically important to the U.S. economy and the United States' international competitiveness and must become a national priority.

The telecommunications reforms we recently passed out of the Senate Commerce Committee address four areas of reform essential to building world-leading broadband networks for all Americans: (1) deregulation of the video market, (2) promotion of unlicensed wireless broadband services, (3) preservation of the right of municipalities to offer broadband services, and (4) use of universal service funds to construct broadband networks.

This legislation is purposefully and rightfully directed towards opening new markets for broadband services and encouraging competition in the marketplace to ensure that consumers pay a reasonable price for access to these new services.

[Copyright]

But enacting national policies that promote broadband deployment is only half of the equation. It is content that drives subscribers to broadband. Consumers will buy broadband to see their friends at Youtube.com. Americans want to download movies and missed television programming from iTunes. In order to increase broadband subscribers in the United States we must ensure that the high quality content that Americans crave is available. Without adequate protection from theft, high quality content will disappear.

There is no question that piracy and the threat of piracy has a devastating impact on the production and consumption of digital content. According to the latest figures from the Motion Picture Association of America in 2005, its studios lost \$2.3 billion worldwide to Internet piracy alone. The Recording Industry of America estimates its losses closer to \$4 billion a year. Piracy denies compensation to creators and distributors of digital content, stifles expression, threatens the growth of new media and e-commerce, and deprives consumers of a robust marketplace of content offerings.

There are already some good laws on the books that help thwart would be pirates

- The Communications Act of 1984 provides penalties and remedies for unlawfully accessing cable TV and satellite services;
- The Digital Millennium Copyright Act of 1998 prohibits the circumvention of technical measures used to protect copyrighted works against theft; and
- in 2005, President Bush signed the Family Entertainment and Copyright Act, which makes camcording in a theater a federal felony. First-time violators can be sentenced to prison and fined up to \$250,000.

But these laws do not adequately address the entire problem. Today, in many parts of the country, consumers have access to free over-the-air digital television and digital radio programming that far exceeds the quality and clarity of analog programming.

The recent growth in digital programming has been fueled in part by the availability of secure distribution media, including DVDs, CDs, computer applications like iTunes, and cable and satellite television. These media share one important attribute – they use technological measures to protect against piracy.

Broadcast digital television and radio enjoy no such protection.

Some media, like satellite digital audio radio, offer technological protections against piracy, but deny compensation to content creators for certain uses.

Our challenge, of course, is to balance the content creator's right to be compensated with the consumer's right to use content in the ways to which they have become accustomed – all without stifling innovation. We must maintain the environment that lead to transformational technologies like the MP3 player and the DVR.

The bill we passed out of Committee would authorize the FCC to adopt the digital television broadcast flag rules that were struck down in 2005. The FCC would be granted narrow authority to implement rules that will discourage indiscriminate file sharing while allowing consumers to utilize new technologies like Tivo. These rules are the culmination of a hard fought compromise among the broadcast, movie and television, equipment manufacturing and information technology industries.

In addition, the bill would create a federal advisory committee tasked with developing audio flag technology to protect digital audio transmissions by FCC licensees. If industry and consumer groups are unable to reach consensus within the federal advisory committee, the FCC could initiate its own rulemaking. An industry-focused framework of this sort is absolutely essential to the development of fair and effective digital audio protection measures.

[Net Neutrality]

As I stated at the outset, Congress stands ready to enact these reforms. Our bill is out of Committee. Unfortunately getting the bill to the floor has proven problematic. The debate over net neutrality has sucked all the air from the room. I have expressed before my concern over this net neutrality debate and its place in the broader consideration of telecommunications law reform.

Modernizing our telecom laws in ways that encourage the deployment of new telecommunications services to the marketplace strengthens the long-term competitiveness and economic well-being of the United States.

We must therefore measure every proposed provision in telecom reform legislation against this backdrop and in so doing ask ourselves two questions. First, does the proposal at issue encourage or impede the deployment of broadband service. Second, how will the proposal at issue affect the cost of consumer broadband access.

Any legislation that regulates the internet in the manner that net neutrality advocates are suggesting, risks slowing broadband deployment and increasing the cost of consumer broadband access. I have not heard one salient argument that rebuts these suppositions.

Moreover, stronger net neutrality provisions are unnecessary at this juncture. The Federal Trade Commission and the Department of Justice have ample authority to investigate complaints concerning anti-competitive behavior on the Internet.

The fact that we are spending what precious little time we have left this session debating net neutrality, legislation that may in fact operate to frustrate the underlying objectives of telecom reform alarms me.

Of greater tragic irony is the fact that meaningful discussion concerning digital copyright protections are at once tied to the net neutrality debate and obscured by it. Does anyone really care how fast and ubiquitous a broadband network is if there is no content driving consumers to subscribe?

So the next time you speak to your Senator, remind them what we are trying to accomplish with the telecom bill and urge them to keep their eyes on the ball when considering these important issues.

Thank you for allowing me to speak with you this afternoon.