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## **Copyright and DVRs: Implications of Timeshifting, Commercial Skipping, and Networking**

Digital Video Recorders (DVRs) have become the latest battleground in the copyright wars. Broadcasters have banded together with content creators to challenge the legality of DVRs based on consumers' use of the device to timeshift and skip commercials.

This paper will discuss the legal and policy implications of DVR, attempting to delineate current legal uses of the device, in two parts.

In Part One, I will focus on decentralized "set-top" DVRs, such as those provided by TiVo and cable companies. I will argue that, despite the criticism of content providers and some legal scholars, manufacturers of "set-top" DVRs are not liable as secondary infringers. Under *Sony*, timeshifting television programming is a fair use. In addition, I will argue that a consumer who skips commercials in a timeshifted program is not a copyright infringer because the commercials, though protected individually, are not so integrated into the entertainment programming that they become part of a protected audio-visual compilation. Finally, to the extent that content providers challenge the DVR on the basis of the economic harms resulting from commercial skipping, I will argue that there is little empirical support for this contention and, even if it were substantiated, the Copyright Act does not protect business models.

In Part Two, I will suggest, while decentralized DVRs are legal, centralized, or "network," DVR services provided by Multichannel Video Programming Distributors (MVPDs) may be vulnerable to attack from a variety of fronts: the Copyright Act, FCC regulations, and handful of other federal and state laws. After examining the ways in which those various regulations constrain MVPD network DVR providers, I will suggest that, ultimately, a choice must be made between offering only decentralized DVRs and offering network DVRs subject to renegotiated licenses with content providers. Given the risks of the renegotiated licenses including terms that unduly restrain lawful uses (through DRM) and invade consumer privacy (for purposes of commercial personalization) I conclude that it is in the consumers' interest to prefer decentralized DVRs.