Court can't see Cablevision for what it is

Even if it records TV shows in its offices rather than in users' homes, Cablevision is no legally different from TiVo.

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THE SUPREME COURT ruled more than 20 years ago that recording TV shows on your VCR is legal. Nowadays, technology allows your cable company to essentially keep those shows on its VCR, not yours. Yet a federal court has ruled that this system violates copyright law.

What's the difference? This is not a case of technology changing behavior. It's a case of the law failing to adjust to new technology.

Cablevision Systems Corp., a Long Island-based cable TV operator, offers subscribers set-top boxes with built-in digital video recorders for $9.95 a month. A year ago, it announced plans for a system that put the recorder in Cablevision's offices instead of in subscribers' homes.

Hollywood reacted in typical fashion, suing to stop Cablevision from offering the "network DVR" service. U.S. District Judge Denny Chin sided with the studios, saying Cablevision's recorder had little in common with the VCR that the Supreme Court blessed in 1984. Cablevision would be making the recordings itself, Chin ruled, albeit at consumers' requests, and it would be selling a service, not a product.

This decision turns on differences in technology, not in function. For consumers, Cablevision's approach would be almost indistinguishable from a recorder built into a set-top box. It would require viewers to take the same steps to record and play back shows as they did with a recorder near their TV. From the industry's standpoint, Cablevision's system should pose no greater threat to video on demand, DVD sales or any other method for viewing shows after their scheduled time slot.

The potential effect of the ruling goes well beyond Cablevision and TV services. The latest so-called next generation of the Internet is based on a shift from products to services. Many companies, for instance, are offering the ability to back up files on hard drives based online instead of attached to your computer. Others are offering Web-based versions of programs that once had to be installed on a user's computer.

As the world becomes more connected and digital, it will become less important where people choose to store the data they've paid for. Law and policy should reflect that, and let the best technology win the marketplace.

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