ReplayTV's New Owners Drop Features That Riled Hollywood

By ERIC A. TAUB

The development of consumer-friendly electronics products may be a hallmark of the digital age, but that engineered friendliness is not always appreciated in Hollywood.

Last month the maker of ReplayTV, a line of digital video recorders that allows consumers to record and store hours of their favorite television programs on hard drives instead of tape, agreed to remove two features from its devices that simplified life for consumers but complicated business for entertainment providers.

ReplayTV's new 5500 model, which will go on sale next month, will no longer be able to skip entire commercials automatically without recording them or to send recorded programming over the Internet to other ReplayTV users outside a home network. The recorders will, however, still be able to store large libraries of programming indefinitely and allow users to skip manually through recorded commercials in 30-second increments.

Sonicblue Inc., the former owner of ReplayTV, was considered the company in the digital video recording industry that most seriously pushed against the copyright interests of the entertainment industry. Two years ago, a consortium of movie and television studios sued
Sonicblue for abetting copyright infringement with ReplayTV's commercial-skipping feature, among other claims.

Hollywood is becoming more vigilant about digital recording technology because it fears that skipping commercials and unauthorized sharing of programs will become widespread as soon as the devices become commonplace.

Like any kind of antisocial behavior, one entertainment company executive said, "Every system tolerates some amount of it. But when it starts to overwhelm the business activity, there won't be any more business activity. That's when we have to take action."

The lawsuit against Sonicblue was stayed when the company filed for bankruptcy protection in March. In April, D&M Holdings of Japan acquired the ReplayTV brand from Sonicblue.

Although executives at D&M said the elimination of the two crucial features was voluntary, the entertainment industry had demanded in its lawsuit that those features be dropped.

D&M's decision to alter its product represents what some observers consider a major shift in power toward providers of entertainment content and away from the manufacturers of devices that deliver that content to homes and the consumers who ultimately see it. If advertising revenues and program licensing fees are to continue to support content, entertainment industry executives argue, their interests must be accommodated.

Critics see this not as accommodation, but as capitulation.

"Companies are under considerable pressure to bow to the wishes of the entertainment industry. This is unfair and anticompetitive," said Jeff Joseph, vice president and spokesman for the Consumer Electronics Association, a manufacturers' trade group. "If advertisers and broadcasters are seeing their traditional business model threatened, then it would behoove them to consider alternative business models."

Ever since the Supreme Court ruled in Sony Corp. of America v. Universal City Studios Inc., the 1984 case that held that the makers of VCR's do not infringe on copyrights when consumers use the machines to record television programs for their own use for later viewing, electronics manufacturers have been improving recording technology, going beyond simple recording, playback and fast forward. Lawyers for the entertainment consortium contended that ReplayTV's features were qualitatively different and crossed the line into copyright infringement.

The new owners of ReplayTV seem eager to find a mutually acceptable solution.

"The question became, how do we make sure that consumers get to do things with their personal video recorder without abusing the rights of the copyright holders," said Jim Hollingsworth, the president of the ReplayTV division of D&M.

"We did this on our own. There was no coercion," Mr. Hollingsworth said of the alterations to the digital video recorders. "We will take features out because we want to be a positive force in the industry."
ReplayTV's rivals — including TiVo, UltimateTV from Microsoft and EchoStar Communications’ Dish Network — have not gone quite as far in offering a commercial-skipping feature. However, consumers can skip through 30-second commercials on most other digital recorders. For example, many TiVo owners have learned that by pressing a sequence of buttons on the remote control, they can skip forward 30 seconds on a program. The company does not instruct users about that process, but instead promotes a feature that lets viewers fast-forward through commercials at up to 60 times normal speed.

"The broadcasters and advertisers are understandably concerned about commercial-skipping," said Brodie Keast, a senior vice president and general manager at TiVo. "With our fast-forward feature, some viewers actually go back and watch the commercials that interest them." NBC and Discovery Communications, among others, are shareholders in TiVo and have an interest in having consumers watch commercials.

The 30-second skip feature has long been available, if not widely used, on standard VCR's as well. But program providers have not taken action against VCR manufacturers because those devices are generally more difficult to use.

"When things become too easy to do, that changes the legal argument," said Mike Fricklas, executive vice president, general counsel and secretary of the board at Viacom, one of the plaintiffs in the lawsuit against Sonicblue. "These people are then taking a free ride on the existing economic model."

Program creators have argued that those delivering their copyrighted work, like makers of recording devices, have no right to distort it or make it easy for others to do so.

"Companies that manufacture hardware must have a conversation with program providers who want to be assured that their programming will be handled in a certain way," said Robert M. Schwartz, a lawyer representing some plaintiffs, including AOL Time Warner, in the Sonicblue suit.

That is a conversation that some think is not needed. The decision by ReplayTV's new owner to deactivate certain features shows that the electronics industry has given up its power, said Cindy Cohn, legal director of the Electronic Frontier Foundation in San Francisco. "ReplayTV's current actions are a clear indication that the entertainment companies are gaining de facto control over what is in our homes," Ms. Cohn said. "Why do we, as consumers, have to prove what features we need on our recording devices? We should be the ones who decide."

Yet this is one issue in which electronics manufacturers, who would normally resist interference in their business, have broken ranks.

"Hollywood does have a role to play in the features we can offer in some of our products as we are dealing with their content," said Dave Arland, the director for worldwide trade relations of Thomson, owner of the RCA brand. "The former owners of Replay pushed the envelope too far. We need a balance between the industry's legitimate ownership rights and viewer expectations."
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