A federal appeals court yesterday threw out rules that would have forced some personal computers, DVD recorders and other devices to be built with technology to thwart piracy of television programming.

The ruling means that people who make or watch digital recordings of TV shows will not have to decide this summer whether to upgrade their equipment.

The decision deals a sharp blow to the Federal Communications Commission and the entertainment industry, which argued that the rules were necessary to protect digital and high-definition programs from being copied and shared on the Internet.

A unanimous three-judge panel of the U.S. Court of Appeals for the D.C. Circuit said the FCC brazenly overstepped its authority. Regardless of the potential for piracy, the judges ruled, the FCC could regulate only the design of devices that handle the transmission of programs, not ones that help consumers view or record them or play them back.

The ruling highlights the ongoing struggle over how to protect copyrighted works in a world that is continuously inventing new and better ways to copy and distribute those works.

Digital television, whose video and audio quality is superior to conventional broadcasting's, is a standard offering on for-pay cable and satellite TV systems, which scramble their signals. But Hollywood studios have balked at making high-definition digital movies widely available on free broadcast networks, for fear the signals could be easily copied and traded online.

To address the problem, and to spur more high-definition digital programming available on free television networks, the FCC adopted the "broadcast flag" rule in late 2003.

Under the system, programs would have been marked with a digital code that would be recognized by devices equipped with flag technology. While viewers could still see digital programs on existing televisions, they could not record or play them back on future DVD recorders unless those devices were equipped with the flag.

Similarly, a recording could be made or viewed only on computers equipped with the flag technology, which would prevent the program from being distributed online. Recording to video cassette recorders would not have been affected by the rules, which were scheduled to take effect in July.

From the beginning, the rules were attacked by consumer groups, digital-rights advocates, library associations and some technology companies. In addition to challenging the FCC's authority to impose design requirements on hardware, they said the rules would not work and would force consumers to buy new
equipment if they wanted to enjoy the same level of freedom they currently have to copy programs in one location and to view them elsewhere.

The appeals court did not address whether the rules would be effective. But it rejected the agency's attempt to impose the rules without specific authority from Congress.

"We can find nothing . . . indicating that Congress meant to provide the sweeping authority the FCC now claims over receiver apparatus," the court ruled. "And the agency's strained and implausible interpretations . . . of the Communications Act of 1934 do not lend credence to its position."

The FCC, under the leadership of Chairman Kevin J. Martin, declined to comment. Martin supported the rule, which was championed by former chairman Michael K. Powell.

Dan Glickman, head of the Motion Picture Association of America, said in a written statement that "if the broadcast flag cannot be used, program providers will have to weigh whether the risk of theft is too great over free, off-air broadcasting and could limit such high quality programming to only cable, satellite and other more secure delivery systems."

The MPAA has failed to get Congress to impose technical anti-piracy requirements, but yesterday's decision is likely to renew its efforts.

Library associations, consumer organizations and digital-rights groups were jubilant.

"This case is about what the limits of the FCC's power should be over the Internet and over new technologies," said Gigi B. Sohn, head of Public Knowledge, a digital rights advocacy group that funded the court challenge.

Librarians were particularly gratified because the judges also ruled that they had legal rights to challenge the broadcast flag.

Only parties that can show they are harmed by an action have such rights. Some universities put video clips of television programming onto the Internet for distance-learning classes.

Representatives of consumer electronics makers, which stood to benefit from an upgrade cycle of equipment, said they were studying the ruling. But the Information Technology Association of America, which represents many large technology firms, praised the decision.

"Congress never intended the FCC to be the Federal Technology Commission," the group said in a statement. "Just as video recorders and DVD players have created substantial new markets for motion picture producers, we believe that copyrighted digital broadcasts will build substantial new markets and new business opportunities for a wide range of copyright owners."

© 2005 The Washington Post Company
Get $150,000 loan for $720 per month. Refinance while rates are low.
www.lowermybills.com