

Michael Elkin Discusses New DVR Product “Auto-Hop”

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Winston & Strawn partner [Michael Elkin](#) was featured in the May 14, 2012 *Hollywood Reporter* article titled “How the TV Industry Blew Its Best Chance to Kill Dish’s Ad-Skipping Technology” and *Law360*’s August 21 article titled “Dish Updates Hopper Suit To Stress Users’ Role In Ad Skipping.”

The Hollywood Reporter article discusses the potential lawsuit that may result from the recent introduction of a new DVR product that will automatically delete commercials. Many in the legal industry expect that the new DVR, Auto Hop, will be reminiscent of the ReplayTV controversy. In 1999, ReplayTV introduced a time-shifting DVR. Two years later it was sued by copyright holders, and not long after the owner of ReplayTV declared bankruptcy. The lawsuit was stayed, and it was eventually dismissed in 2004 because there was no controversy left to adjudicate. Broadcasters then sued Cablevision over a remote-storage DVR system, but the Supreme Court found that the system was similar to a VCR, and thus Cablevision’s system was only acting at the best of its users.

Mr. Elkin, who feels that the Cablevision case “validated the DVR functionality,” believes the potential lawsuit will be similar to that of Cablevision rather than ReplayTV, saying “Here, Dish is a licensee of the major television broadcasting companies and intends as I understand to limit the commercial skipping device to discrete TV programs just on the major networks.” Mr. Elkin also noted that broadcasters would likely claim the device is altering the content of its copyrighted programming.

Law360’s article focuses on the amended complaint filed by Dish which stresses that users of its ad-skipping DVR must choose to record blocks of programming and skip commercials. In previous court documents, Dish said its Hopper DVR “automatically” recorded all prime-time network TV shows.

“To the extent that Dish is seeking to give full control to the consumer to facilitate skipping, it appears [it’s] attempting to avoid having any volition attributed to itself,” Mr. Elkin said.

Michael Elkin is an intellectual property lawyer and the managing partner of the firm’s New York office.

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