streaming / innovation / alliance

Opposition to HB 985 (Amprey)

We write to oppose ill-fitting liability provisions in HB 985.

SIA is the united voice of the streaming community, working to tell streaming's positive story to state and federal policymakers. We seek to drive forward a new era of creativity, opportunity, value, and choice in home and mobile entertainment by advocating for smart policies that will support innovative streaming services and the viewers who love and depend on them. Our members represent the variety and breadth of streaming options available to consumers today including major entertainment services as well as smaller and independent options that offer relevant, authentic stories reflecting virtually every culture and community, with programming ranging from live sports to historical drama and everything in between.[1]

SIA respectfully opposes HB 985 (Amprey), which would create liability for video streaming services that transmit commercial ads louder than the accompanying video programming.

HB 985 borrows standards for loudness that apply to the very different broadcast and cable ecosystems, which are markedly different from over-the-internet streaming. While SIA understands the importance of this issue and the need to deliver ads at reasonable and expected volume levels consistent with underlying programming, as a practical matter, bluntly porting over liability rules from cable and broadcast to streaming won't work and will especially damage small and independent services that cannot always control volume levels for ads they receive from vendors and intermediaries in the digital ad ecosystem.

The federal CALM Act originally codified standards for the loudness of advertising on linear broadcast and cable networks, which had been voluntarily established by the Advanced Television System Committee, a group of professional and industry stakeholders. Those stakeholders engaged in consultations to reach consensus on voluntary standards that became a "best practices" guide for broadcast and cable ad volume. Eventually, those standards were codified in the CALM Act.

Those standards, however, are not practical for the streaming ecosystem, which is made up of numerous and varied entities and intermediaries not present in the linear broadcast and cable environment.

Advertising on linear broadcast and cable networks is a direct transaction between the advertiser (or agency) and the network or local TV station. The network, station, or cable provider orders slots on programming at specified times for purchase by the advertiser, and the advertiser, network, station, or cable provider knows when and where the commercial will appear. And, notably, all viewers see the same commercials on a particular program airing at a set time.

In the streaming environment, some advertisements are sold directly by a streaming service to an advertiser to be placed during a specific program. However, much of the advertising in streaming programs comes from third-party intermediaries who have ready-to-watch

[1] SIA's Members are: AfroLandTV, America Nu Network, BET+, Demand Africa, discovery+, FedNet, For Us By Us Network, In The Black Network, Max, MPA, MotorTrend+, Netflix, Paramount+, Peacock, PlutoTV, Radiant Media, Skinsplex Native America Online, Telemundo, Televisa Univision, TVEI Network, VAULT, Vix, The Walt Disney Company. See StreamingInnovationAlliance.com

commercials sourced from thousands of advertisers using different platforms, production technology, and distribution protocols. Those advertisements are ultimately paired with programming via auctions and displayed when a viewer chooses the program to watch on that streaming service.

When choosing a program, the viewer is essentially selecting a digital file, and the advertising is encoded via dynamic ad insertion with that file in real time. Viewers watching the same program are likely to see different advertisements since neither the production of the commercial nor the encoding within the program is controlled by the streaming service.

Streaming services also do not control the devices and technology used by viewers to watch and listen to different programming. Viewers have a wide variety of choices and options from tablets and smartphones to televisions and home theaters, and a myriad of services and interfaces through which they enjoy streaming programming on their various devices, whether a Microsoft Tablet, Apple TV, Roku, or smart TV native system. Sound options range from minimal wired headphones to earbuds to high performance over-the-ear headsets to native TV speakers to sound bars to Dolby Atmos home theater operations.

Streaming services have no ability to regulate these devices or the services that supply content to the devices on which viewers watch their shows and no visibility into how different ad packages interact with different viewing – and listening – technologies.

With such a complex ecosystem, a private right of action subjecting streaming services to unpredictable lawsuits over ad volumes isn't fair and would ultimately force many smaller and niche services out of the market or to limit where and when consumers watch and listen to their programming – a big step backwards in today's anywhere/anytime economy.
We urge you to consider changes to HB 985 to remove these unpredictable and damaging liability provisions and entrust any enforcement to the Attorney General, while clarifying exactly what constitutes a violation and providing platforms with an opportunity to cure alleged violations.

Thank you for considering our views as you refine and finalize this legislation.

Sincerely,

Streaming Innovation Alliance