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afternoon? Should the rules change, shall we say, midgame? And can the FCC really announce a new rule via Twitter?

No matter what standard the FCC chooses to apply when considering whether to fine broadcasters for unplanned profanity, surely the FCC cannot hope to resolve the backlog of 500,000 indecency complaints currently before it by determining whether the words are "spoken from the heart," whether the words touch our hearts, whether they occur in a patriotic rather than an entertainment context, or whether the head of the agency regulating them agrees with the sentiments expressed. How would broadcasters confidently predict whether the FCC would issue fines for indecency under a "spoken from the heart" standard?

The FCC is currently asking the public to comment on how it should address indecency regulation. We should tell them: not like this. Why? Because, as David Ortiz explained (albeit in a different context), "Nobody is going to dictate our freedom."

> Standards should be applied consistently, in accordance with the rule of law.

Especially with unfettered discretion, on a case-by-case basis.

Carter Phillips, the attorney who argued the most recent broadcast indecency cases before the Supreme Court, told us recently, "While I applaud the Chairman's reaction to David Ortiz's perfectly understandable use of the word 'fucking,' the situation just shows why unelected officials should not be in the business of deciding what speech is permissible and what speech is unacceptable. How anyone could distinguish Bono's exuberance at winning an award and Ortiz's intensity of emotion over the tragedy in Boston is unfathomable. I hope the Commission will realize finally that there is no constitutionally sound way to enforce the concept of indecency as applied to fleeting expletives and images on broadcast television."

Whether the FCC agrees with Phillips remains to be seen. In the meanwhile, standards should be applied consistently, across the board, and in a manner that demonstrates that the rule of law is still alive and well.

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State AGs Take a Stand Against Global IT Theft

California, Massachusetts and Washington attorneys general lead the charge; rest of the country should follow.

BY ANKUR KAPOOR

Earlier this year, California and Washington state joined Massachusetts in taking actions against companies that gain unfair competitive advantages though the use of pirated information technology.

On January 24, California Attorney General Kamala Harris filed actions against two apparel manufacturers, one based in China (*California v. Ningbo Beyond Home Textile Co. Ltd.*) and one based in India (*California v. Pratibha Syntex Ltd.*), alleging the two companies gained illegal advantages over law-abiding competitors in U.S. markets by using pirated or counterfeit information technology (IT). The lawsuits were filed under California's Business & Professions Code § 17200.

Global IT theft has been a drag on the international economy for decades. According to the Software Alliance, a 10 percent reduction in IT piracy during the next two years in the United States alone would add $52 billion in gross domestic product, $8 billion in U.S. tax revenue and more than 25,000 new jobs.

The problem initially affected original-technology and -equipment developers. More recently, IT theft has drawn attention as a tool for companies in nearly any industry to gain unfair advantages over competitors that legally invest in IT as the basis for competitive growth. The problem is particularly acute for U.S. manufacturers, which face intense competition from abroad and invest billions of dollars each year—$95 billion in 2010 alone—in the technologies that power advanced research, design, process planning, manufacturing and distribution.

In addition to improvements needed in international enforcement of IT protection at the federal level, states can and should act to protect their local industries from unfair competition. These businesses are harmed by IT theft in both the short and long term.

First, pirated IT provides manufacturers with immediate unlawful cost savings, enabling them to undercut their law-abiding competition or invest their unlawful gains elsewhere to compete. This is particularly detrimental to competition in low-margin industries such as apparel manufacturing.

Second, manufacturers' use of pirated or counterfeit IT gives them an unlawful long-term dynamic advantage. Unchecked theft of IT reduces manufacturers' incentives and abilities to invest and innovate in such technology, while simultaneously enhancing unlawful users' ability to do so because of their illegal cost advantage.

The California actions are a bold step in the right direction, particularly due to their breadth. The two lawsuits seek to enjoin the defendants—as well as any person or entity "acting under, by, through, or on behalf of Defendants, or acting in concert or participation with or for Defendants"—"from distributing or receiving any of Defendants' products in the State of California." Complaint ¶ 56, *California v. Ningbo Beyond Home Textile Co., Ltd.*

To monitor and enforce compliance with a possible injunction, the California attorney general also seeks to appoint a trustee, at the defendants' cost, with full access to the defendants' computer systems to verify the defendants' lawful purchase of all IT being used.

And, just last month, Washington state Attorney General Bob Ferguson resolved, without initiating formal proceedings, a major IT manufacturer's dispute with a major Brazilian manufacturer concerning the use of pirated software, using a law that former Washington Attorney General Rob McKenna helped pass in 2011. Washington's "Stolen or Misappropriated Information Technology Law" makes it unlawful to offer for sale in Washington state a product manufactured using stolen or misappropriated technology.

These actions, and the case successfully pursued by Massachusetts Attorney General Martha Coakley in October 2012 against a seafood-processing company in Thailand, are critical first steps that should be emulated across the country. Innovative people and businesses rely on robust intellectual property protection to create the products and services that drive the American economy and benefit the world.

When announcing the California actions, the attorney general's office made clear the stakes. California has lost nearly 400,000 manufacturing and technology jobs during the past decade to countries where piracy rates are as high as 80 percent. That activity resulted in losses of $1.6 billion in economic activity and $700 million in tax revenue for the state.

In today's global economy, competition law enforcers can and should act to protect property rights and ensure that companies compete on a level playing field. The actions brought by the California and Massachusetts attorneys general, and the legislation passed in Washington, are significant steps toward just that.

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