



## TECH LAW

[w | Read Next Article](#) February 13, 2012 08:37:42 AM

Please note that this material is copyright protected. It is illegal to display or reproduce this article without permission for any commercial purpose, including use as marketing or public relations literature. To obtain reprints of this article for authorized use, please call a sales representative at (818) 461-9700 or visit <http://www.ectnews.com/about/reprints/>.

## Measure to Ease Video-Rental Privacy Curbs Catches Flack in Senate



By Erika Morphy  
TechNewsWorld  
02/02/12 3:53 PM PT

[Back to Online Version](#)  
[E-Mail Article](#)  
[Reprints](#)

Some members of the U.S. Senate may have thrown a monkey wrench into Netflix's plans to share the titles of videos customers rent after getting their OK just once. The company has been pushing for passage of a modification to an antique privacy protection bill that requires explicit customer consent. The House easily approved the measure, but some senators are saying "not so fast."

▼ advertisement

### CyberSource 2012 Online Fraud Report

Nearly 50% of merchants say that fraud is "cleaner" than last year. Managing online fraud continues to be a significant and growing cost for merchants of all sizes. How do you outsmart fraudsters without breaking your budget? Learn about the tools you need to better manage fraud today. [Download today.](#)

A change to the 1988 Video Privacy Protection Act (VPPA) recently sailed through the House of Representatives without a hitch. The bill would allow a provider of rental DVDs or videos to get consent to share their customers' title selections, as long as users were provided with an opportunity to withdraw that consent.

That smooth ride ended in the Senate Judiciary Subcommittee on Privacy, Technology and the Law, when opponents of the measure took the opportunity to grill [Netflix](#) (Nasdaq: NFLX), which has been pushing hard for the change.

At face value, the measure seems harmless enough. The VPPA was passed after the titles of Supreme Court Justice candidate Robert Bork's video rentals were published in a newspaper article. Outraged, Congress passed what was for then -- and now -- a fairly airtight law: A provider cannot publicize or otherwise share video-watching habits of its customers without express written permission.

Netflix would like to see an exception carved out. It wants to be able to automatically share the titles of customers' video rentals after securing their permission just once, and continue to do so indefinitely unless and until that permission is revoked. The law would allow Netflix and other providers to share movie titles not only with social-media outlets such as [Facebook](#), but also with third-party partners.

Privacy advocates hate the proposal.

"It is a horrible idea," [Consumer Watchdog's](#) John M. Simpson told TechNewsWorld.

### **Netflix's Argument**

Video rental providers like Netflix are operating at a disadvantage compared to providers of books or music, many of which egg on their customers to help promote their products by sharing what they have read and listened to on Facebook. Such word-of-mouth marketing is the heart of social commerce.

Not surprisingly, providers of video services want in.

However, critics of the measure argue that amending the VPPA would erode one of the few strong consumer privacy measures to come out of Washington.

"This law provides fairly good protection, and for once it has carried over into the digital realm," Simpson said.

There are other reasons privacy advocates dislike the measure -- reasons that its proponents haven't highlighted. For instance, the amendment would allow video providers to share data with third-party partners, not just social networks. It is easy to image the implications for targeted advertising -- someone who rents a "learn to ski" instructional video could expect to be targeted with ads from ski resorts and sports equipment retailers, for example.

### **Why Not Ask Every Time?**

Senators at the hearing wondered why Netflix couldn't offer consumers the option of asking if they wanted to share their video selections each time they rented or streamed a flick. Certainly, many customers have rented video titles they would prefer not to share. Critics suggested that Netflix was more interested in making money from customer data than in protecting its clients.

"Prudence in the protection of privacy ought to be the thing that guides us," said Sen. Tom Coburn, R-Okla. "The question is, should we err on the side of privacy or err on the side of commerce?"

Given the objections voiced in the hearing, this bill will not have an easy time becoming a law, suggested Torin A. Dorros, partner with [Michelman & Robinson](#).

It is possible it could if the consent were clear cut and opt-in -- that is, made in such a manner that the consumer couldn't easily miss it or mistake it for something else.

"How the permission request is written and how the consumer is given a choice -- opt in or opt out -- will have a lot to do with whether it gets passed," he predicted. **ECT**

---

1

0

0

Share

1

[Back to Online Version](#) [E-Mail Article](#) [Reprints](#) [More by Erika Morphy](#)

---

Copyright 1998-2012 ECT News Network, [Terms of Service](#) | [Privacy Policy](#) | [How To Advertise](#)  
Inc. All Rights Reserved.