



Ohio Supreme Court Rules in Favor of Online-Streaming Providers on Municipal Fee Issue

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By way of brief background, in August 2020, the City of Maple Heights, Ohio, (“Maple Heights”) filed a complaint in the U. S. District Court for the Northern District of Ohio against Netflix and Hulu based on their alleged violations of the Fair Competition in Cable Operations Act — R.C. Chapter 1332.21 et seq. (“Act”). Essentially, the Act requires video-service providers to obtain authorization from the director of commerce prior to providing video services within Ohio. Video-service providers are then typically required to pay a fee, based on their revenues, to the municipalities in which they operate. Maple Heights sought a declaration that Netflix and Hulu are video-service providers who must pay video-service provider fees to Ohio municipalities. Maple Heights also sought damages for Netflix and Hulu’s previous failures to comply with the Act.

In October 2021, Netflix and Hulu filed motions to dismiss Maple Heights’ complaint. Netflix and Hulu both argued that they do not qualify as video-service providers under the Act. Hulu argued that Maple Heights did not have statutory authority to bring suit to enforce the Act. Prior to ruling on the motions to dismiss, the Federal District Court certified two state law questions to the Ohio Supreme Court, which they accepted. The certified questions were: (i) “Whether Netflix and Hulu are video-service providers under Ohio law?” and (ii) “Whether Maple Heights can sue Netflix and Hulu to enforce Ohio’s video-service provider provisions?”

On the first question, the Court held that Netflix and Hulu are not video-service providers under Ohio law because their services do not meet the definition of “video service” under the Act. The director of commerce determines whether a particular entity is a “video-service provider” under the Act, and there is no authorization for municipalities to challenge that determination. Further, under R.C. 1332.21(J), “video service” means providing video programming over wires or cables located, at least in part, in the

public right of way. Video programming provided as part of a service that allows users to access content through the internet does not qualify as “video service.” Therefore, the Court determined that because Netflix and Hulu provide access to their online-streaming services over the internet, without placing wires or equipment in the public right of way, they are not video-service providers subject to the video-service authorization provisions of the Act.

On the second question, the Court held that Maple Heights did not have the authority to sue Netflix and Hulu to enforce Ohio’s video-service provider provisions for three reasons. First, Maple Heights does not have authority to bring an action to enforce the video-service provider provisions of the Act because under the statute the director of commerce has the sole authority to provide the video-service authorizations and to investigate violations of the Act. Second, Maple Heights does not have the authority to bring an action to enforce the video-service provisions of the Act because the Act expressly limits the authority of local governments and grants them only the authority to dispute fee calculations – not whether fees should be paid. Lastly, Maple Heights does not have the authority to bring suit to enforce the video-service provider provisions of the Act because there is no implicit right for Maple Heights to enforce the Act under the Cort v. Ash, 422 U.S. 66 (1975) test for implicit rights of action.

If you have questions, or would like more information, please contact any attorney with Frost Brown Todd’s [Government Services](#) practice group.

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