

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Request for Comment by the Media Bureau) MB Docket No. 15-64
on the Report of the Downloadable Security)
Technology Advisory Committee)

Comments of the Motion Picture Association of America

Executive Summary

The Motion Picture Association of America’s members—Walt Disney Studios Motion Pictures, Paramount Pictures Corp., Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corp., Universal City Studios LLC, and Warner Bros. Entertainment Inc.—are committed to offering their content to audiences through a wide variety of platforms and distributors. By cataloguing the vast array of choices viewers have for accessing video content, itemizing their unique characteristics, and outlining a flexible downloadable security framework that could work with each, the Downloadable Security Technology Advisory Committee report may facilitate the rise of additional platforms over which content providers might seek distribution in the marketplace.

To successfully enhance the availability to viewers of compelling, original content, downloadable security solutions—or any compatibility effort—must support the security and business terms that enable content providers to explore innovative, new distribution models and finance diverse, quality programming in the first place. The MPAA believes the DSTAC report’s “Application-Based Service with Operator Provided User-Interface” proposal will meet those goals. By leveraging the strength of downloadable applications, this approach will offer device manufacturers a variety of ways to access video, as well as enable them to innovate and differentiate their equipment, without interfering with licensing agreements.

By contrast, the “Competitive Navigation” proposal makes no commitment to abide by content providers’ licensing terms. Third-parties could potentially seek to disassemble the programming, features, and functions offered over distribution services and selectively reassemble some of them for their own commercial exploitation. This could interfere with contracts, upset copyright law, and run afoul of the First and Fifth Amendments to the U.S. Constitution. It would also impose significant costs, require the restructuring of networks, and necessitate standards yet to be developed. Thus, it fails the DSTAC’s charge to avoid solutions that are unduly burdensome.

Content Availability over Third-Party Devices and the Internet

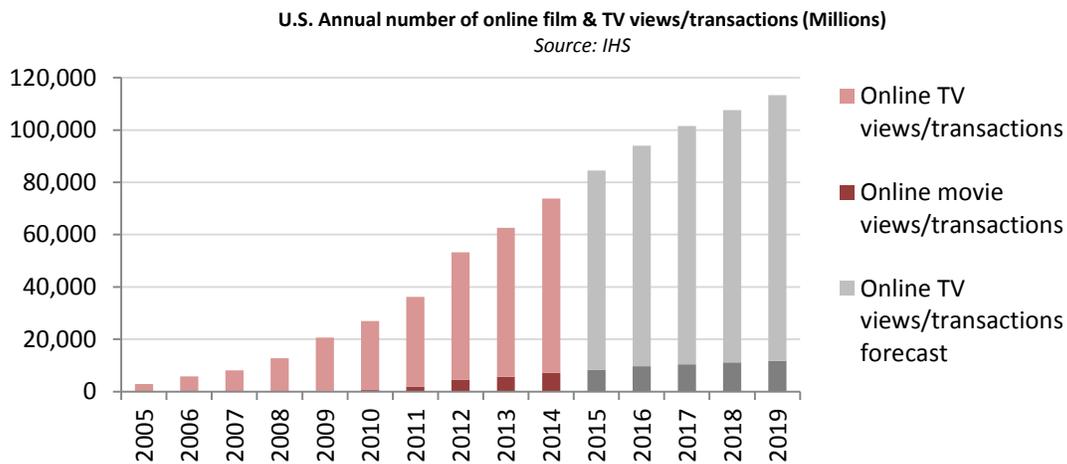
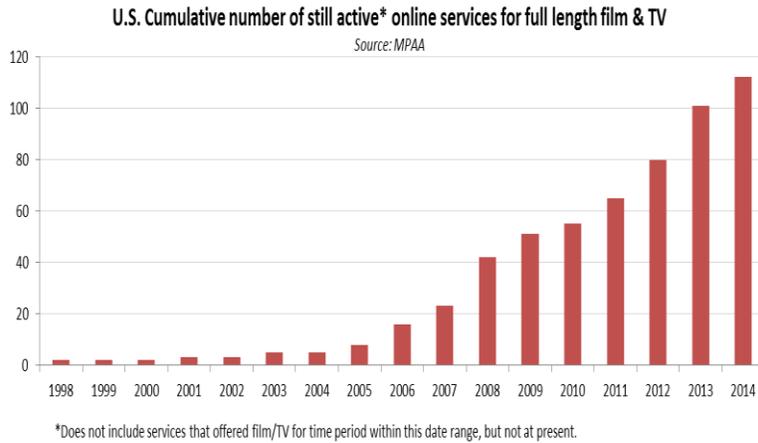
The DSTAC report provides an excellent inventory of the myriad MVPD and Internet-based options audiences have for watching content.¹ Indeed, in addition to making their programming available over pay-TV systems, many content providers offer programming directly to subscribers through their own applications, including popular, household-name networks such as A&E, ABC, CBS, CMT, Comedy Central, Disney, ESPN, Fox, Fox Sports, HBO, History Channel, MTV, NBC, Showtime, Sony, Starz, TBS, TNT, and USA. Content providers also license programming to “over the top” services. Subscription OTT services include Amazon Prime, Hulu Plus, Netflix, Nintendo Network, Playstation Network, Sling TV, Sony Vue, and Xbox Live. Ad-supported OTT services include Crackle, Hulu, and YouTube.

Viewers can access this content on customer-owned and TV-attached devices, including on widely available mobile devices such as tablets and smartphones, gaming systems, PCs and Macs, smart TVs, AppleTV, Kindle Fire, and Roku. Ongoing work, including use of new

¹ See DOWNLOADABLE SECURITY TECHNOLOGY ADVISORY COMMITTEE, REPORT OF WORKING GROUP 2, at 2-4, 12-13, 16-17, 21-23 (2015), available at <https://transition.fcc.gov/dstac/wg1-report-01-04212015.pdf>; REPORT OF WORKING GROUP 4, at 6-7, 36-43, 70-79, 95-101 (2015), available at <https://transition.fcc.gov/dstac/dstac-report-final-08282015.pdf>.

HTML5 streaming media standards developed by the World Wide Web Consortium and home networking solutions developed through the Digital Living Network Alliance and the RVU Alliance, will reach yet more retail devices.

With such equipment, American audiences can already choose from more than 110 services to legally access television and film content over the Internet, up from essentially zero in 1997. Viewers used these services to access 66.3 billion television episodes and 7.1 billion movies in 2014, up 229 percent and 1,132 percent, respectively, in just the last five years. The figures are expected to grow to 101.6 billion and 11.7 billion by 2019.



To help viewers navigate among all the choices, as well as avoid sites that contain pirated content and may expose them to malware, identity theft, and unseemly advertising, the MPAA created WhereToWatch (www.WhereToWatch.com). WhereToWatch is a free search site that enables fans to locate television shows and films by title, actor, or director and click through to lawful online sources, as well as see show times and buy tickets for movies still in theaters.



The movies and TV shows you love.
Simple search. Easy access.

Search for Movies, TV Shows, Actors and Directors

Search

EMMY NOMINATIONS 2015

BEST DRAMA SERIES BEST COMEDY SERIES BEST LEAD ACTOR BEST LEAD ACTRESS BEST SUPPORTING ACTOR BEST SUPPORTING ACTRESS



Orange Is the New Black
Netflix



Game of Thrones
HBO



Mad Men
AMC



Downton Abbey
PBS



House of Cards
Netflix

MOVIES

COMING SOON NOW PLAYING POPULAR



The Danish Girl



Black Mass



The Martian



Spotlight



Spectre

TELEVISION

COMING SOON NOW PLAYING POPULAR



Elementary



Louie (2010)



Transparent



The Honorable Woman



American Horror Story

Downloadable Security

The DSTAC and FCC staff deserve praise for fulfilling their congressionally defined mission to issue a report exploring downloadable security solutions that can promote the competitive availability of video navigation devices, and for completing the task within the statutory deadline. Importantly, the advisory committee reached a number of areas of agreement regarding downloadable security and the competitive availability of navigation devices.

For starters, the report “recognizes that programming and content has value, and mechanisms need to be put in place to protect intellectual property rights in such content. At a fundamental level, this involves encryption and the use of a secure system that can identify, authenticate, and protect content from all the points that have access to this system.”²

The report also eschews a one-size-fits-all approach. It makes no collective recommendation for any new FCC technology mandate; notes the wide diversity in networks, security systems, and communications technologies across video distributors; concludes that parties need not adopt the same architectures or systems; and states that “[i]t should not be necessary to disturb the potentially multiple present and future [Downloadable Conditional Access Systems] and other network technology choices” available to video providers.³

We also see much promise in Working Group 3’s “HTML5 Security APIs” proposal.⁴ Using the security APIs in HTML5 as a non-exclusive security interface provides a great deal of flexibility. It has the advantage of relying on the recent World Wide Web Consortium standard

² REPORT OF WORKING GROUP 1, at 2 (2015), available at <https://transition.fcc.gov/dstac/wg1-report-01-04212015.pdf>.

³ REPORT OF WORKING GROUP 3, at 22 & nn. 4-8 (2015), available at <https://transition.fcc.gov/dstac/dstac-report-final-08282015.pdf>.

⁴ *Id.* at 23-33.

that a variety of vendors are deploying on millions of devices that access content across the web. All major browsers today support HTML5, but the technology also offers benefits outside of a traditional web browser environment. The associated Encrypted Media Extensions will allow individual content streams and files to flow through a variety of different security systems, enabling a robust, competitive marketplace for content protection technologies, lowering costs, promoting innovation, and increasing resiliency against evolving attacks.

Although discussions regarding video system compatibility and the commercial availability of navigation devices center around distribution networks and equipment, what flows through those distribution networks and over those devices is content, and the content is what viewers are seeking. The MPAA's members generate revenue, in part, by licensing content to third-party distributors. Accordingly, they benefit from a robust, competitive platform and distribution market, and are eager to evaluate new licensing opportunities as technology evolves. Addressing compatibility and navigation device issues between distribution networks and third-party providers, however, cannot come at the expense of content owners' security in their intellectual property, which is essential to preserve the owners' economic incentives to create content in the first place.

Whatever solutions video distributors and third-parties adopt, they must respect the security provisions that give content owners the confidence to enter into distribution deals.⁵ These include support for authentication practices, including subscriber validation, device authentication, subscription validation, and service entitlement; conditional access and digital rights management systems; compliance and robustness rules; geolocation systems to support service area and use conditions; ordering processes and billing systems; and output conditions.

⁵ See REPORT OF WORKING GROUP 1, at 6, 9, 12-21.

Without assurances that content will only be used as authorized, experimenting with new business models becomes a far riskier proposition. That is especially true for business models that involve portable, online, and short-term access to programming, which raise unique security challenges.

Non-Security Issues

Whatever solutions distributors and third-parties adopt to address compatibility and navigation device issues must also respect the business terms that content providers negotiate with distributors to enable the financing of diverse, quality programming.⁶ These include provisions related to brand protection, advertising, updates, channel placement, interactivity, presentation, on-demand and pay-per-view access, DVR functionality, resolution, cloud access, and availability windows and duration.

The average major motion picture costs \$100 million to make and television shows are beginning to rival movies in terms of production values as well as cost. But only four out of ten films will ever make back their initial investment and, according to one rule of thumb, 80 percent of television scripts never become a pilot, 80 percent of pilots never become a series, and 80 percent of series never see a second season. Because of these dynamics, licensing deals often include provisions governing how programming will be presented, monetized, and accessed. Making video distribution services accessible over third-party navigation devices need not—and should not—ignore these economic realities. Unfortunately, aspects of the report do just that, especially when it turns to non-security related issues.

As a threshold matter, we note that section 106(d) of the 2014 Satellite Television Extension and Localism Act Reauthorization directs the advisory committee “to identify, report,

⁶ See *id.*; REPORT OF WORKING GROUP 4, at 43-66.

and recommend performance objectives, technical capabilities, and technical standards of a not unduly burdensome, uniform, and technology- and platform-neutral software-based downloadable security system designed to promote the competitive availability of navigation devices in furtherance of section 629 of the Communications Act of 1934.”⁷ As explained in a bipartisan, June 18, 2015, letter to the FCC from Reps. Robert Latta and Gene Green—the authors of the amendment that led to the inclusion of set-top box issues in the satellite reauthorization—section 106(d) does not direct the advisory committee to recommend just any performance objectives, technical capabilities, or technical standards that allegedly further the goals of section 629, but only those performance objectives, technical capabilities, and technical standards related to designing a downloadable security system that further the goals of section 629.⁸

Congress did not empower the advisory committee to do anything beyond that. Indeed, a Senate amendment that would have required the DSTAC to propose and the FCC to adopt a “methodology for access to a system’s programming, features, functions, and services” was withdrawn for lack of support.⁹ This is consistent with the narrow scope of the set-top box related provisions of the satellite reauthorization. STELAR ended only the FCC’s integration ban prohibiting cable operators from incorporating security functionality within their set-top boxes,

⁷ Pub. L. No. 113-200, 128 Stat. 2059, 2063, § 106(d) (2014) (emphasis added).

⁸ Letter from Reps. Robert Latta and Gene Green to Chairman Tom Wheeler, FCC (June 18, 2014), available at, <http://apps.fcc.gov/ecfs/document/view;NEWECFSSSESSION=F4vrWLhhQM6TmSCztRLJQG59J6LYXZJh4VrB4W6m6rHNrppWsgbT!-681833196!-729788805?id=60001223514>.

⁹ See Amendment of Sen. Edward Markey to the Satellite Television Access and Viewer Rights Act, S. 2799 (2014), available at, <http://www.commerce.senate.gov/public/cache/files/2812a1c3-9606-4144-8f0e-fc7c41f3f384/5D7D0E8B69AA8E628F19A87181D253EC.s.2799-markey1.pdf>.

and left untouched the FCC's compatibility requirements.¹⁰ Thus, the DSTAC report could have ended its analysis once discussion of downloadable security was complete.

At the insistence of some members of the advisory committee, however, Working Group 4 was created explicitly to address non-security issues. Despite our reservations, the MPAA participated in Working Group 4 in the hopes of advancing the compatibility of video distribution systems and the competitive availability of third-party navigation devices in a way that would not disrupt the licensing terms content owners negotiate for in order to produce high-value and diverse programming for viewers.

We are optimistic that the "Application-Based Service with Operator Provided User-Interface" proposal will meet those goals.¹¹ It leverages the strength of downloadable applications, which are commonly used today to access video over computers, laptops, tablets, smartphones, game systems, specialized video devices such as Roku, and Smart TVs. The HTML5 standard developed by the World Wide Web Consortium is also expanding the availability of applications to smaller platforms, thereby reaching an even greater number of devices. This approach will offer device manufactures a variety of ways to access video content, including building device-specific applications, using HTML5-compatible browsers or components, or using home networking systems built to Digital Living Network Alliance or RVU Alliance standards. The consumer electronics user interface controls the device, allowing manufacturers to innovate and differentiate their equipment, while the video provider's interface controls the service, preserving any licensing conditions. By building to these standards, both the device manufacturer and the service provider can continue to innovate while maintaining compatibility.

¹⁰ See Pub. L. No. 113-200, 128 Stat. 2059, 2063, § 106(a) (2014).

¹¹ See REPORT OF WORKING GROUP 4, at 127-144.

By contrast, the “Competitive Navigation” proposal makes no commitment to abide by content providers’ licensing terms.¹² Third-parties could potentially disassemble the programming, features, and functions offered over distribution services and selectively reassemble some of them for their own commercial exploitation. This is not unlike the 2010 “AllVid” proposal the FCC abandoned following widespread opposition by content creators; cable, satellite, and IPTV distributors; and others. The DSTAC report provides an extensive analysis of the various shortcomings of the disassembly approach, including its costs, the restructuring of networks that would be required to accommodate it, and its need for protocols and standards yet to be invented.¹³ For reasons such as these, the proposal is inconsistent with the statutory mandate for the committee to avoid “unduly burdensome” approaches.

Content providers, distributors, and third-party equipment and service providers interested in such an approach can seek voluntary licensing agreements. Mandating such a regime, however, could violate content owners’: 1) contracts with distributors regarding how their content may be presented, monetized, and accessed; 2) exclusive rights under section 106 of the Copyright Act to determine how their content is copied, distributed, and publicly performed;¹⁴ 3) First Amendment right against compelled speech; and 4) Fifth Amendment right against taking of property without due compensation. If third-parties wish to offer a subset of content, services, features, and functions rather than all the choices distributors offer customers in the way that they offer them, the appropriate course is through individualized negotiation, not regulatory fiat.

¹² *See id.* at 107-127.

¹³ *See id.* at 144-166.

¹⁴ *See* 17 U.S.C. § 106(1), (3), (4).

In any event, such a system is unnecessary, since content is already readily available through a wide variety of services and a broad selection of devices, including many that distribute content over the Internet. Such a system would also undermine, rather than advance, the goals of section 629. Had the FCC imposed the similar AllVid proposal, it would have harmed consumers, content creators, and service providers by mandating a one-size-fits-all approach; ignoring the economic, technological, and competitive realities of the marketplace; and hindering the development of the myriad programs, devices, and services consumers enjoy today. Attempting to impose it again would similarly have a detrimental impact. The impact might even be worse, given the meteoric rise of innovative distribution platforms, which has occurred without government intervention.

Conclusion

The Downloadable Security Technology Advisory Committee should be commended for producing a report that advances discussion of downloadable security, video system compatibility, and competitive availability of navigation devices, and for completing the complex report within the statutory deadline. The MPAA believes the downloadable security framework outlined in the HTML5 Security APIs proposal can help point in the right direction those parties wishing to develop additional video distribution platforms in the marketplace. Mandating particular security approaches, however, would be a mistake and conflict with the DSTAC report's support for technological diversity. Mandating the non-security proposals contained in the report would also be a mistake. Doing so would impose the predictive judgements and economic interests of a few on a rapidly-evolving and unpredictable marketplace of content creators, distributors, and device manufactures that continues to bring more choices in video programming and ways to access it. No matter what it does, we urge the Commission to

ensure that any action in this area does not interfere with distribution deals, as doing so could jeopardize the robust video content and service choices viewers have today, as well as contravene contracts, copyright law, and the First and Fifth Amendments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Neil Fried". The signature is fluid and cursive, with the first name "Neil" and last name "Fried" clearly distinguishable.

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