

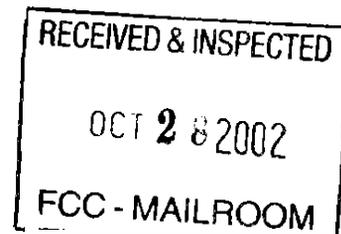


Electronic Frontier Foundation

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October 17, 2002



Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: *Ex parte* presentation in MB Docket No. 02-230

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, I write to report *ex parte* meetings with staff members of the Commission in connection with the above-referenced proceeding. I am enclosing two copies of this letter and two copies of an outline which we distributed at our meeting.

On October 11, 2002, Commission staff met *ex parte* with Cindy Cohn and Seth Schoen, representatives of the Electronic Frontier Foundation (EFF), in a series of three meetings on the same topic.

Present from the Commission's staff at the first meeting was Paul Margie. Present at the second meeting was Catherine Bohigian. Present at the third meeting were Rick C. Chesson, Amy L. Nathan, Steven A. Broecker, William H. Johnson, Mary Beth Murphy.

Our discussions concerned digital broadcast copy protection (MB Docket 02-230), substantially as presented in the enclosed outline.

Sincerely,

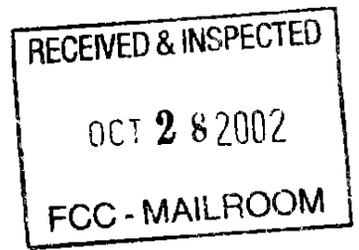

Seth Schoen

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EFF Notes for FCC

October 11, 2002

The Electronic Frontier Foundation (EFF) is the world's oldest on-line civil liberties organization, founded in 1990. We are a member-supported non-profit advocacy organization based in San Francisco, CA, and host one of the world's most linked-to websites at www.eff.org. EFF has been a leading voice for the preservation of civil liberties and individual rights in the digital world. EFF's newsletter reaches over 30,000 subscribers on a weekly basis. EFF was the only civil liberties organization and the only non-profit organization that participated in every meeting of the Copy Protection Technical Working Group's Broadcast Protection Discussion Group.

EFF publishes a web site about the BPDG broadcast flag negotiations and related policy issues. The web site serves as a leading source of public information about these questions. It may be found at

<http://bpdg.blogs.eff.org/>

We appreciate the opportunity to meet with Commission staff, and we also intend to file formal comments with the Commission in MB Docket No. 02-230.

* EFF supports DTV adoption

- * Difficulties with the adoption of DTV are well-known.
- * As the Commission is aware, many factors contribute to the problem, and there are a variety of current Commission actions related to it
- * The availability of content for terrestrial broadcast is an area which has seen substantial progress, with major networks committed to offer their entire prime-time line-ups in digital HD.
- * A variety of other programming is becoming available, including native-format HD programming from providers such as HDNet, which has invested \$112 billion in HD content.
- * High cost of new TV equipment continues to dissuade many prospective viewers. Consumer education and uncertainty are also relevant.

* A broadcast flag mandate would create many problems

- * We expect to address these in detail in our formal submission; briefly, they include:
 - Prohibiting open source sector participation in DTV
 - Driving a variety of participants out of the market

Economic losses and limits to technical innovation
Constitutional issues
Preventing low-cost open source technology solutions from
addressing DTV consumer cost problems

Hindering competition in DTV and related digital video markets.
Creating new barriers to entry
Limiting the selection of available components.
Limiting interoperability between devices.
Increasing costs to manufacturers and consumers.

Preventing reverse engineering
Legitimate reverse engineering is economically significant,
facilitates innovation,
is a standard industry practice,
and is expressly protected by law.

Curtailling lawful uses of broadcast programming by TV viewers
Existing consumer expectations include fair uses and
uses outside the scope of copyright law.
. Traditionally, new technologies, products, and services
have been developed over time. Copyright law, too, continues
to develop in response to these changes, so that new fair
uses are discovered which could not have been anticipated
in the past.
DTV transition adds value to television broadcast and can
permit the creation of a variety of new uses, some of which
can be identified now and some of which are still not
explored.
A broadcast flag mandate would curtail those opportunities
and freeze the development of many new technologies at a
particular historical moment. (The VCR is a historical
example of a new technology which caused a great deal of
anxiety when introduced -- but turned out to be a tremendous
boon to consumers, as well as to content companies which
had opposed its introduction.)
It's important to protect innovation and not halt the
evolution of the fair use doctrine.

FCC jurisdiction in this area is uncertain.

A broadcast flag mandate is not an appropriate or effective measure
Arguments about the supposed effect of DTV transition on
Internet-based copyright infringement are technically weak and
empirically unsubstantiated
Most copyright holders have not insisted on such a mandate.
The success of existing efforts to offer **digital** HD programming
appears to make such a step unnecessary.

The broadcast flag measure is not effective at addressing
Internet-based copyright infringement, as a technological matter.
Engineers generally recognize that the protection afforded by this
measure is extremely weak.
The broadcast flag rules proposed by BPDG can't solve the problem

Misconceptions about high-definition broadcast **as** a source of copynght infringement abound

EFF is happy **to** provide technical detail in support of these claims, and we will include such detail in our formal submission.

Other paths to DTV transition

Although the Commission has already undertaken to address the availability of ATSC tuners **in** TV equipment, the current generation of ATSC-capable televisions **is** well out of reach of many potential viewers' budgets.

Most American homes already have an HD-capable display device! The device is a computer monitor.

Computer monitors have had around 1,000 lines of vertical resolution for year?;. In 2000, 51% of U.S. homes owned at least one PC; this number continues to climb rapidly.

Better personal computer support for DTV applications appears to be a practical and low-cost way **for** most households to get started viewing DTV broadcasts.

DTV-receiving interfaces for personal computers currently cost **as** little as \$300, dramatically cheaper than current-generation HD-capable sets. This equipment **is** likely to gel even cheaper very quickly as a result of "Moore's Law" for semiconductor products. Open source software can perform display functions, and software demodulation capability **is** being actively developed. Such software is typically available to end-users at little or no cost.