

Dear FCC:

I am writing in comment about the proposed Broadcast Flag for digital broadcast content. Specifically, as a consumer and as a software developer, I am OPPOSED to the Broadcast Flag, and I hope and wish that you do not mandate it.

My comment below can be broken into the following parts:

(1) Will not reduce / eliminate commercial theft, but will reduce / eliminate personal "fair use" rights;

(2) Consumers less inclined to buy new equipment which reduces fair use rights and cannot properly interoperate with existing investment in equipment which \*does\* permit fair use;

(3) No provision for broadcast flag to stop applying to content which has fallen out of copyright;

(4) Content marked with broadcast flag could be lost to future generations because it's perceived by owner to have no current economic value, and individuals / entities interested in the content who are not concerned with economic value are prevented from preserving the content;

(5) General purpose computers prohibited from making use of broadcast flag-marked content, potentially eliminating whole new classes of (potentially valuable) content use / reuse;

(6) Free software / open source software prohibited from making use of broadcast flag-marked content in favor of closed source software, thereby creating government-imposed bias in favor of one form of software and against another;

(7) Permitted closed source software could contain flaws or security holes (potentially affecting even things / activities entirely unrelated digital broadcast content) which cannot be detected or repaired by consumers or third parties, which flaws and security holes might not exist in otherwise prohibited open source software.

As a consumer, based in part of the analyses of the Flag I've read about in print and online media and based on information provided by sources like "www.digitalconsumer.org" and the Electronic Frontier Foundation, I believe the proposed Broadcast Flag will not eliminate or reduce theft, and particularly not eliminate or reduce commercial theft for profit.

However, I \*do\* believe that the proposed Broadcast Flag will adversely affect the "fair use" rights that have been established for consumers by law, regulation, and judicial ruling. Even if a consumer technically retains their fair use rights, if the only equipment they can buy eliminates or destroys these rights and prevents a consumer from exercising their rights, or if the only equipment they can buy will \*intentionally\* not properly interoperate with existing equipment the consumer has which preserves these rights, the consumer is out of luck and defacto has no rights. Knowing this, a consumer might decide not to buy new equipment which destroys their rights, or which will not properly work with their existing equipment (which they might have already made a substantial investment in acquiring), or forgo content which does not allow them to exercise their rights or cannot be used with their existing equipment.

Further, as far as I am aware, there is no provision for content marked with the Broadcast Flag to have any effect of that flag upon the content limited based on the copyright status of the content. Specifically, no provision that content which eventually falls out of copyright (based on elapsed time) to not have limits based on a broadcast flag be applied to it (the out of copyright content) any longer. This may be unconstitutional, and therefore illegal.

Even further, this could ultimately allow content marked with the Broadcast Flag to abandoned, thrown away, and lost to future generations because the content is not currently economically valuable to the owner of the content but is still marked with the flag, even tho the content, if it could be processed and preserved by entities interested in the content who are not solely concerned with maximizing economic gain, could otherwise be easily and cheaply preserved. (Consider the analogy to the loss of movie and newsreel footage from the early days of the motion picture industry, which many people today might be interested in for cultural research or "nostalgia" purposes, which was lost because the movie studios which owned and physically possessed the footage felt it had no more value to \*them\*.)

As a software developer, I am concerned that the proposed Broadcast Flag will affect the ability of general purpose computers (which presumably will not possess the ability to recognize or force use of the flag, or will be able to defeat the flag) to not be allowed to make use of digital content containing the broadcast flag. This could eliminate whole new categories of ways of using this content by individuals and other entities not in the professional and commercial digital content creation and broadcast industry which are unimaginable today, but which could be highly socially and culturally (or even economically) valuable once they are conceived of.

Further, I am concerned that "free software" or "open source software" (because all aspects of its source code, and therefore any provisions for interaction with a broadcast flag, are available to anyone who cares to look at it) would be disallowed from being used with digital content containing a broadcast flag, even tho "closed source" or proprietary software \*is\* permitted. This would cause an unfair bias and handicap against the open source software industry, and represent a preference by the federal government towards the closed source software industry.

In addition, because of the inherent nature of the way open source software is created and maintained vs. closed source software, the available closed source software might well contain serious errors or security breaches, including even breaches affecting things which a reasonable person would think of as completely unrelated to broadcast digital content, which individual consumers (or third party developers using the closed source software) could neither detect in advance nor repair on their own, while open source software \*might\* at least allow the detection and/or repair of these problems by individual consumers or third party developers.

Thank you for time, and your consideration of my comments.

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