

THE MPAA/5C “BROADCAST FLAG” PROPOSAL: A PROMISE UNFULFILLED, A PRICE TOO HIGH TO PAY

The High Costs of Adopting the MPAA/5C Proposal...

Imposition of a Massive and Highly Invasive Regulatory Regime

- Notwithstanding proponents’ claims that its digital broadcast content protection scheme is “simple” and narrowly tailored, adoption of the MPAA/5C Proposal would require a massive new regulatory regime, requiring the FCC to insinuate itself, by mandating either directly or indirectly the use of “authorized” technologies, into the design, manufacture and licensing of virtually every consumer electronics and computer product within (and some outside of) a consumer’s home network.

Unacceptable Barriers To Consumer Fair Use and Enjoyment of Digital Technology and DTV

- Instead of preserving consumers’ fair use expectations—so essential to driving consumer acceptance of the DTV transition—the MPAA/5C Proposal would create a major economic barrier to consumers’ ability to record and play back broadcast DTV content within their home network and prohibit any possible point-to-point exchange of digital content with family and friends over the Internet.

Enormous Potential For Anticompetitive Abuses By Licensors of “Approved Technologies”

- The MPAA/5C Proposal includes no safeguards to prevent content owners and digital content protection licensors from abusing their control of “authorized technologies” and the licenses that accompany them, limiting competition and impeding innovation in both the consumer electronics and digital content protection technology markets.

...Far Outweigh Its “Benefits”

The MPAA/5C Proposal Does Not Even Achieve Its Core Purpose!

- By failing to protect digital content passed through analog outputs (and recognizing that restrictions on analog outputs would doom the DTV transition to certain failure vis-à-vis its acceptance by consumers), the MPAA/5C Proposal, in the end, *fails to achieve its core purpose of effectively preventing unauthorized redistribution of digital broadcast content to the public over the Internet.* The MPAA itself has admitted this failing, stating: “...because of the continued availability of unprotected analog connections permitted [under the plug and play agreement], the agreement *fails to achieve meaningful protection of digital content.*” Comments of MPAA on the Commission’s NPRM in the “Plug and Play Agreement” (CS Docket No. 97-80, PP Docket No. 00-67) (March 28, 2003) at 2. (Emphasis added)
- Moreover, the MPAA/5C Proposal also fails to address the impact of software demodulators, which could greatly undermine the efficacy of its proposed system.

Moreover, the FCC Lacks Authority to Mandate That All Devices Respond To The Broadcast Flag

- The Communications Act does not authorize the FCC to require consumer electronics and computer devices to respond to the flag, and the FCC cannot regulate such devices absent an unambiguous grant of congressional authority. In fact, adoption of MPAA’s proposed approach is directly contrary to Congress’s recent policy decision, in Section 1201(c)(3) of the Digital Millennium Copyright Act, not to require consumer electronics or computer products to respond to particular technological measures. MPAA’s proposed regulatory regime would be far more extensive and burdensome than regulations required by the explicit congressional mandates for closed captioning, the V-Chip, cable compatibility, and competitive availability of navigation devices.

There Is Time to Explore Better, More Effective Alternatives

- There is time, especially given the technical limitations on Internet redistribution of HDTV and SDTV content, to explore technologies that provide a holistic solution, protecting content traveling over both digital and analog outputs, and for the Commission to obtain clear statutory authority from Congress to implement such a solution. Substantial progress has been made on a DTV content protection system, based principally on watermarking, that avoids the anti-consumer, anti-competitive and anti-innovation effects of encryption-based systems such as the broadcast flag-triggered MPAA/5C Proposal.