

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

Implementation of Section 304 of the Telecommunications Act of 1996)	
)	CS Docket No. 97-80
)	
Commercial Availability of Navigation Devices)	
)	
Compatibility Between Cable Systems and Consumer Electronics Equipment)	
)	PP Docket No. 00-67
)	

**OPPOSITION OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.
TO THE PETITION FOR RECONSIDERATION FILED BY DIRECTV, INC.**

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March 8, 2004

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INTRODUCTION AND SUMMARY

This opposition is in response to the Petition for Reconsideration of DirecTV, Inc., filed in the above-captioned proceeding on December 29, 2003. In its Petition, DirecTV objects to the Commission’s regulation of the content protection that can be offered by satellite operators, while the Commission expressly excluded similar regulation of cable-modem and Internet-delivered content. In particular, DirecTV objects to the inclusion of Sections 76.1901(b) and (c) in Subpart W of Part 76 of the Commission’s rules, which provisions exclude “distribution of any content over the Internet,” including an MVPD’s “operations via cable modem or DSL,” from the content protection requirements otherwise applicable under such subpart. DirecTV suggests altering the rule to apply not just to content provided by MVPDs, but to “all digital content distribution methods, including the Internet . . . and digital recorded media such as DVDs.”¹

While the MPAA, like DirecTV, opposes the extension of Subpart W to satellite

¹ DirecTV Petition at 5.

operators, the solution is not, as DirecTV suggests, to broaden the application of Subpart W even further. Rather, for the reasons stated below, the Commission should except satellite-delivered content from the reach of Subpart W.

I. The Commission Should Not Expand Subpart W to Other Distribution Methods, But Should Limit Its Application to Cable MVPDs

As DirecTV notes in its Petition, the carve-out in Section 76.1901 for “distribution of . . . content over the Internet,” including cable modem services, puts satellite operators at a distinct disadvantage with respect to cable operators, since satellite operators do not offer broadband Internet service capable of supporting distribution of high-quality audiovisual content. The result will be to “excus[e] all of the MSO signatories to the MOU from compliance with their own encoding rules to the extent they deliver video to consumers via cable modems, while non-signatories, such as the DBS operators, will be subject to the rules.”² DirecTV proposes resolving this unbalanced situation by applying the Subpart W content protection limitations to all forms of digital content distribution, including the Internet. The Commission should reject this proposal, however, for three reasons. First, the rules would be better modified by excepting satellite operators from their coverage rather than extending them to new distribution channels; second, such a change would perversely drive secure content to foreign distributors beyond the reach of the FCC; and third, the Commission’s jurisdiction to adopt such a rule may not be appropriately considered in this proceeding.

As the MPAA has previously argued in this proceeding, Subpart W unduly restricts market actors from determining the optimum protection for television content. The Commission’s stated intent in doing so was to ensure “competitive parity” between cable and

² DirecTV Petition at 5.

satellite providers.³ However, as DirecTV has observed, the rules as adopted actually have the opposite effect, due to differences in the services offered by cable and satellite providers. There is no reason to believe, however, that the unbalanced application of the content protection rules would be remedied by sweeping in other services beyond DBS, such as Internet-delivered services and goods, including physical media bearing copyrighted audiovisual works. Indeed, it is likely that the rules proposed by DirecTV would fail to account for peculiarities in those distribution methods as well, and similarly harm them at the expense of cable distribution. Instead, the Commission should ensure “competitive parity” by applying Subpart W only to those MVPDs that participated in its creation and that agreed to it – namely, cable operators.

Second, the extension of Subpart W to Internet-delivered content may have the unintended consequence of driving high-quality content to foreign Internet distributors for distribution over the Internet. That is, while Internet distributors located in the United States would be governed by Subpart W, those located abroad may, as a practical matter, be beyond the Commission’s reach, and therefore in a position to offer content protected in accordance with different rules, but rules that the market will bear. Since Internet distribution is, unlike cable or even satellite distribution, available worldwide without the need for physical facilities in the locality at the receiving end, foreign Internet distributors would in effect have a significant advantage over domestic distributors due to their immunity from this regulation.

Finally, DirecTV’s proposal that the Commission extend Subpart W to Internet distribution would require analysis of jurisdictional issues that were not raised or addressed in the course of this proceeding and therefore may not appropriately be considered on

³ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80 and PP Docket No. 00-67, FCC No. 03-225 ¶ 43 (rel. Oct. 9, 2003)

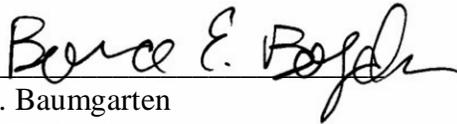
reconsideration. If the Commission chooses to investigate DirecTV's alternative, it should do so in another rulemaking and after the compilation of a complete record.

CONCLUSION

For the reasons stated above, the Commission should remedy the situation noted by DirecTV, but should do so by limiting, rather than expanding, the reach of Subpart W.

Respectfully submitted,

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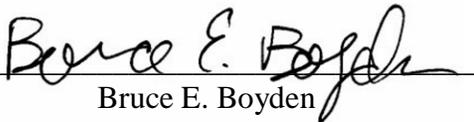
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CERTIFICATE OF SERVICE

I, Bruce E. Boyden, hereby certify that a true and correct copy of the Opposition of the Motion Picture Association of America, Inc. to the Petition for Reconsideration Filed by DirecTV, Inc. was served on the following parties on March 8, 2004, by first-class mail, postage prepaid:

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