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July 27, 2004

## **BY ELECTRONIC FILING**

Marlene H. Dortch, Esquire  
Secretary  
Federal Communications Commission  
445 12th Street, NW  
Washington, DC 20554

**Re: Notification of *Ex Parte* Communication**  
**MB Docket No. 04-63**

Dear Ms. Dortch:

This is to advise you, in accordance with Section 1.1206 of the FCC's rules, that I transmitted the attached "TiVo Correction to MPAA" on Tuesday, July 26, 2004, to the members of the Commissioners' staff listed on Attachment A..

As required by Section 1.1206(b), as modified by the policies applicable to electronic filings, one electronic copy of this letter is being submitted for the above-referenced docket.

Very truly yours,



James M. Burger

**ATTACHMENT A**

**Commissioner Abernathy's Office**

Stacy Robinson Fuller

**Commissioner Adelstein's Office**

Johanna Miles Shelton

**Commissioner Martin's Office**

Catherine Crutcher Bohigian

**Commissioner Copps' Office**

Jordon Goldstein

Maggie Sklar

## TiVo



- **TiVoGuard prevents indiscriminate redistribution. A “total stranger” could not use remote access to receive content recorded by a registered user. TiVo’s application clearly provides that: (a) The owner must register each device. (b) The registered owner must subscribe to the TiVo service. (c) The registered owner must request TiVo to include the device in their secure viewing group. Finally, a device may be only in one secure viewing group.**
- **TiVoGuard provides for revocation. Unlike any MPAA-endorsed technology, TiVo regularly communicates with every TiVo device; TiVo can easily terminate remote access for any individual device, and any device that fails to regularly communicate with TiVo is automatically revoked when its digital sharing certificate expires.**
- **TiVoGuard protects broadcast content. MPAA confuses the mere possibility of individual, limited unauthorized use with the FCC’s Broadcast Protection goal to limit massive, illegal redistribution. The “technological steps” cited by the MPAA are designed to limit individuals’ ability to expose unlimited amounts of free over-the-air DTV material to copying by large numbers of unknown others. Moreover, if two friends shared a program using TiVo’s remote access, it would be no different than mailing the friend a copy of an HDTV program protected by a Recording Method. Tens of millions will likely exchange DVD copies across town, across the country or across the globe, yet the MPAA does not oppose any Recording Method certification.**
- **The possibility a TiVo owner might be willing to include a relative or friend in their secure viewing group, as opposed to their own summer home or laptop, hardly rises to the massive, widespread P2P piracy supporting the FCC’s authority to implement Broadcast Protection.**
- **TiVoGuard is far more than a speed bump. The FCC and MPAA characterized the broadcast flag a “speed bump.” It would take considerable effort and expense to buy a TiVo device, register it in another’s secure viewing group, and have them pay for the TiVo service to only access the very limited free over-the-air DTV content in a single secure viewing group limited to nine other devices. It would be simpler and cheaper to download the GNU radio project’s ATSC software, buy a tuner, a capture card, and use traditional peer-to-peer software to trade unlimited amounts of content with unlimited numbers of total strangers. TiVo’s remote access is far more than a speed bump – it prevents widespread indiscriminate redistribution of**

**content over the Internet, which is the only legitimate litmus test for certification under these proceedings.**

- **Approval of TiVoGuard is important for innovation today. The MPAA is incorrect when it asserts that failure to approve the TiVoGuard certification will have no commercial impact; such a failure will affect devices in the market today. Distribution of the digital boxes with TiVo software currently supplied by DirecTV that are capable of multi-room viewing would be prohibited after July 1, 2005. Perhaps more significantly, the DTV transition would be adversely affected since TiVo would be unable to sell its new over-the-air HDTV devices after July 1, 2005.**