

February 28, 2008

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Rulemaking to Establish Rules)	
Governing Network Management Practices)	WC Docket No. 07-52
by Broadband Network Operators)	
)	
Petition for Declaratory Ruling Regarding)	
Internet Management Policies)	

**REPLY COMMENTS OF
MOTION PICTURE ASSOCIATION OF AMERICA**

The Motion Picture Association of America (hereinafter "MPAA") submits this reply in response to comments filed in the above captioned proceeding pursuant to the Commission's Public Notices released January 14, 2008 (DA 08-91 and DA 08-92). MPAA is a trade association representing six of the world's largest producers and distributors of theatrical films, home video material, and television programming.¹

Summary of Comments

MPAA believes allowing Internet service providers ("ISPs") to address capacity and piracy abuses is the best way of providing consumers with a dynamic, content-rich broadband experience. As such, the Commission should not adopt any regulations that directly or indirectly restrict ISPs'

¹ MPAA members are Paramount Pictures; Sony Pictures Entertainment Inc.; The Twentieth Century Fox Film Corporation; Universal City Studios LLLP; Walt Disney Studios Motion Pictures; and Warner Bros. Entertainment Inc.

ability to manage their networks, particularly if such regulations would preclude ISPs' from addressing capacity and piracy abuses occurring over their networks.

All of the MPAA members companies are involved in online services that are legal, consumer-friendly alternative to online piracy.

Unfortunately, subscribers who consume large amounts of bandwidth to steal movies harm other online consumers who pay for that bandwidth to engage in legal online activities. If ISPs are unable to respond with appropriate network management tools, growing levels of capacity abuse and piracy will continue to degrade the consumer experience online and increase costs for all Internet users.

Discussion

MPAA members along with other U.S. copyright related industries contribute enormously to the strength of the U.S. economy.² MPAA members make their audiovisual material available to consumers in theaters, in packaged media such as DVDs, and through numerous in-home delivery systems such as broadcast, cable, satellite and the Internet. Internet content delivery services are expanding rapidly, providing new, convenient viewing options to consumers.

While the Internet has created new legal means of distribution, it has also spawned rampant growth in the illegal and infringing distribution

² According to the International Intellectual Property Alliance, the U.S. core copyright industries accounted for an estimated \$819.06 billion or 6.56 percent of the U.S. gross domestic product in 2005, employing more than 5 million workers in the same year.

of copyrighted content. Unfortunately, illegal trafficking of infringing content has become widespread on the Internet, and is inflicting substantial harm on: (1) consumers; (2) content creators; and (3) ISPs as well as the bulk of their customers.

In considering what action to take in response to the above-captioned petitions, MPAA urges the Commission not to adopt any regulations that directly or indirectly restrict network operators' ability to lawfully manage Internet traffic, particularly if such regulations would impair the ability of ISPs to address capacity abuses and piracy occurring over their networks. Government regulation is particularly inappropriate, given the desirability and need for network operators to continue to develop network management tools that respond to new network abuses, which harm content providers and the vast majority of broadband users.

MPAA contends that allowing ISPs to address capacity and piracy abuses is the best way of providing consumers with a dynamic, content-rich broadband experience. As such, it is vitally important that the Commission not impose prohibitions on network management techniques, as proposed by Free Press and others.

Previously in this Docket, MPAA submitted comments urging the Commission to avoid any action in pursuit of "Net Neutrality" that would impede the delivery of legal content over the Internet.³ MPAA's previous comments, appended hereto for easy reference, directly relate to the issues

³ Comment of Motion Picture Association of America, WC Docket No. 07-52, June 15, 2007.

raised by the petitions now under consideration. The MPAA's comments today will supplement that filing by focusing on the enormity of the online piracy problem and the urgent need for ISPs to take effective actions to control it and safeguard against bandwidth capacity abuses.

To better serve consumers, network operators must be able to manage their networks efficiently, including taking steps to decrease network congestion caused by capacity abusers and to reduce piracy, which limits the production and distribution of a rich variety of creative content online. Restricting the ability of ISPs to manage their networks will impair a legitimate online marketplace to the detriment of consumers.

Furthermore, it is essential that intellectual property rights are not cast aside in this online digital environment. ISPs must be able to use network management techniques to address the unauthorized distribution of copyrighted content taking place over their networks, for the benefit of legitimate consumers and subscribers.

While MPAA intends to convey the enormity of the online piracy problem, it does not intend to denigrate any particular technology. In fact, MPAA member companies use a wide range of technologies, including distributed peer-to-peer technologies, to provide legitimate movie services to consumers.⁴ The problem remains the use of these technologies in ways that materially impair network performance, violate the law, or

⁴ "Paramount, Fox embrace BitTorrent," by Greg Sandoval, CNET News.com, November 29, 2006.

otherwise run afoul of the provider's terms of service. It is critically important that network operators retain the ability to manage their networks to deal with these problems in a way that limits network abuse and ensures a consistent and quality broadband experience for its law-abiding subscribers.

All this infringing and abusive activity harms content owners and creators who are denied an opportunity to realize the fruit of their labor and investments in accordance with the purposes of the copyright laws of the United States and elsewhere. It might be less obvious, but no less a fact, that Internet consumers are also harmed. All MPAA members, as well as many other content companies, are involved in online services that attempt to provide a legal, consumer-friendly alternative to online piracy.⁵ These new services, however, cannot survive in an environment where piracy smothers legal entrepreneurship.⁶ Moreover, siphoning off profits diminishes the incentive to create new works for consumers to enjoy in any medium.

Subscribers who consume large amounts of bandwidth to steal movies also harm other online consumers who pay for that bandwidth to engage in legal online activities. Bret Swanson and George Gilder estimate that the U.S. Internet will be at least 50 times larger in 2015 than it was in

⁵ MPAA's latest count revealed 31 legal online movie and TV program services, including Apple, BitTorrent, Cflix, CinemaNow, Hulu, In2TV, Joost, Microsoft, MovieFlix, Movielink, MySpace, Vuze and many others.

⁶ See Comments of MPAA, footnote 2, *supra*, at page 6.

2006, and more than \$100 billion in new network investment will required in the U.S. by 2012.⁷

"From YouTube, IPTV, and high-definition images, to 'cloud computing' and ubiquitous mobile cameras -- to 3D games, virtual worlds, and photorealistic telepresence -- the new wave is swelling into an *exaflood* of Internet and IP traffic. ... We estimate that by 2015, U.S. IP traffic could reach an annual total of one zettabyte (10 to the 21st power bytes), or one million million billion bytes."⁸

In the face of this flood of new Internet traffic and the massive investments required to meet the demand for bandwidth, the government should not be removing sound network management techniques from the arsenal of weapons against widespread network abuse, including piracy. As stated recently by prominent network architect, Richard Bennett,

"the internet's traditional method of ensuring fairness doesn't work any more -- not for Comcast, not for BT, not for any network that hosts peer-to-peer file-sharing applications designed to grab all the bandwidth they can get. ... Home network providers have to provide some measure of fair access to each user they serve, and they can only do so with mechanisms that actually produce a result."⁹

It is imperative that the Commission recognize that if ISPs are unable to respond with appropriate network management tools, growing levels of

⁷ "Estimating the Exaflood," by Bret Swanson and George Gilder, Discovery Institute, January, 2008, at page 3.

⁸ Id, at page 2.

⁹ "Dismantling a Religion: The EFF's Faith-Based Internet," by Richard Bennett, The Register, December 13, 2007.

capacity abuse and piracy will continue to degrade the consumer experience and increase costs for lawful Internet users while threatening the growth of legal content distribution channels available online.

Conclusion

In considering whether to act on the instant petitions, the Commission should not impose any regulations or ban any network management techniques that would impair the ability of ISPs to manage effectively and efficiently their networks, particularly if such regulations would inhibit their ability to address capacity abuse and piracy occurring over their networks.

It is essential that intellectual property rights be preserved and protected over the Internet. Today, online piracy is taking place on massive and unprecedented levels. It is undermining the economic base of legal online applications that serve all consumers. ISPs should be able to respond to the unauthorized distribution of copyrighted content taking place on their networks to enhance the Internet experience for consumers engaging in legal online activity.

MPAA respectfully urges the Commission to give the most serious weight to these considerations in fashioning its response to the instant petitions.

RESPECTFULLY SUBMITTED,

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