

June 13, 2008

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street  
Washington, D.C. 20554

FILED VIA ELECTRONIC COMMENT  
FILING SYSTEM

Lee Spangler  
4005 Callabero Cove  
Round Rock, Texas 78681

Re: CSR-7947-Z, MB Docket No. 08-82; MPAA PETITION FOR WAIVER OF THE PROHIBITION ON THE USE OF SELECTABLE OUTPUT CONTROLS (47 C.F.R. § 76.1903)

Dear Ms. Dortch,

I am writing to comment and oppose the MPAA filing/petition referenced above. The Association request to utilize Selectable Output Control (SOC) is premature by decades, primarily benefits only Association members, harms the public, and will harm the digital transition. The MPAA Petition for Waiver should be denied.

The MPAA proposal results in considerable consumer harm.

Multi-Channel Video Programming Distributors (MVPD) are generally subscription based services that deliver programming to consumers. The Association request would essentially permit large studios to require the MVPDs to dilute the value of programming subscriptions or pay per view offerings as the cost to the consumer would remain unchanged, yet the ability of the consumer to utilize purchased equipment would be greatly diminished. In other words, the unilateral selection of output is placed in the hands of MPAA members, leaving the consumer to pay the same subscription price without additional value. This is consumer harm.

Many homes built in the last few years utilize the "home-run" method to wiring for video and audio distribution within the home. The "home-run" method of home wiring brings all services to a single location within the home where all of the video equipment is maintained. The video signal is then distributed to televisions in the home either by analog coaxial cable or by analog component signal. The digital alternative requires both expensive remodeling/rewiring and expensive technical solutions.<sup>1</sup> It is impractical. The cost burden imposed on video consumers is too high in comparison to the minute benefit that only Association members would reap. This is consumer harm.

Further, a large number of households do not have televisions or monitors that can support the copy protection connection the Association seeks. If an Association member is able to prevent use of analog component output, consumers would then be required to use the HDMI output (if it is available at all) which uses HDCP copy protection (which is not supported by all HDMI connections). Just two years ago articles appeared in the press discussing the conundrum where consumers purchased televisions and monitors that would not support the HDCP copy protection preferred by the MPAA. It is called a

---

<sup>1</sup> The Gefen HDMI splitter device retails for almost \$1300 and does not include the cost of rewiring. See [http://www.gefen.com/kvm/product.jsp?prod\\_id=3239](http://www.gefen.com/kvm/product.jsp?prod_id=3239) [last accessed June 13, 2008].

nightmare by those familiar with consumer habits and video consumption.<sup>2</sup> The problem also occurs in homes with new high definition DVDs.<sup>3</sup> Many of the televisions sold and purchased by American consumers just one or two years ago do not have the HDCP copy protection that will permit viewing of the already released movies sold by Association members. **The lifespan of a plasma television is about 18 years (assuming 4 hours of viewing a day).<sup>4</sup> The implementation of SOC should not be permitted for at least another 20 years if at all.** Plasma televisions purchased just a few years ago were much more expensive than today and those consumers are entitled to receive the **full benefit of their purchase for the longest period possible.** To permit the Association to implement the SOC will result in consumer harm.

The MPAA request will hamper continued adoption of digital services.

If the MPAA request is granted great harm will be imposed on the continued adoption of digital services. As the SOC is implemented at the MPAA member's instruction, complaints will no doubt increase as consumers find they cannot utilize the equipment they have purchased as they intend. It can be expected that consumers will share their adverse experience with others and such "word of mouth" complaints are powerful market motivators. Keep in mind the consumers who have, and will, experience the "nightmare" discussed above. In this case, the negative word of mouth will hamper digital services.

MPAA assertion that bringing current content "earlier" is a consumer "benefit" and "innovation" has no merit.

The only parties that benefit from the proposed SOC waiver are members of the MPAA. "Early" performance of motion pictures through MVPDs acts either as a new premium revenue stream for Association members (to the detriment of local theater owners) or as a method of advertising for Blu-Ray discs and DVD releases.

Association members may choose to use the "new early release window" as either a pay per view service or presented on a subsidiary network to advertise the upcoming disc release.<sup>5</sup>

In the pay per view model, consumers would pay for the privilege to view the motion picture at home rather than attending a show at a theatre. The Association member profits from charging for the performance. Of course, this can be accomplished now and there is no need for SOC to allow the performance. It is merely the *preference* of Association members to refuse to offer the performance because they believe the American MVPD customer seeks to infringe on their copyright. However, there is very little consumer benefit – and maybe none at all - as the motion picture is likely available for viewing at a nearby local theatre.

Simply, Association members are free to forego the possible profit. The FCC should not accept or adopt the Association's paranoia of Americans and incorrect assessment of risk from infringement.<sup>6</sup>

---

<sup>2</sup> The Worst Consumer Nightmare ...or the best Digital Content Protection? <http://www.practical-home-theater-guide.com/hdcp-1.html> [last accessed June 13, 2008].

<sup>3</sup> New DVDs already sparking copy-protection confusion, [http://news.cnet.com/New-DVDs-already-sparking-copy-protection-confusion/2100-1025\\_3-6040261.html](http://news.cnet.com/New-DVDs-already-sparking-copy-protection-confusion/2100-1025_3-6040261.html) [last accessed June 13, 2008].

<sup>4</sup> See, How Long Do Plasma TVs last? <http://www.dtvcity.com/plasmatv/plasmatv-lifespan.html> [last accessed June 13, 2008].

<sup>5</sup> It should be noted that the release is "early" only because it is so characterized by the Association. The timing of a motion picture performance through MVPDs is entirely at the discretion of Association members.

In the advertising model, Association members would make their motion picture available through a MVDP for the purpose of increasing demand for physical disc releases. The Association members profit because of disc sales and may even share a portion of the commercial revenues with the network. Here, again, the Association members primarily benefit with only a marginal benefit in that consumers are informed of a product they may purchase in the near future. Of course, advertising is not an innovation nor is it a service. It is a method to make consumers aware of a product for purchase. Again, this performance could be provided without the SOC, but it is merely the preference of the Association to use SOC.

Pay per view and advertising are not new or innovative. Furthermore, as the MPAA discusses in its letter and brief, the intention is to present previously released motion pictures which are, by definition, not original programming. Finally, there is nothing whatsoever to show that using SOC offers more favorable terms to consumers.

There is no such thing as "Copyright Theft" - only infringement for which there is appropriate civil and criminal penalties.

As a small point, the letter accompanying the MPAA filing refers to "copyright theft." United States copyright law recognizes infringement, see 17 USC §501, et seq. The Association's exaggeration is an indication its extreme irrational distrust of the American consumer. This incorrect perception is the genesis of this request. The request should be denied.

In any event, the Congress has expressed in law the appropriate method of addressing the concerns of the industry. The FCC need not provide any additional protections.

Conclusion

The issue of whether the benefit to consumers of the "early" performance of motion pictures outweighs the limitation on the consumers' control over their consumer electronics can be answered with a simple – No. There is considerable consumer harm in permitting SOC. I respectfully request the FCC deny the MPAA demand for waiver on the prohibition on the use of selectable output controls. Furthermore, I respectfully request the Commission to make an affirmative statement that the SOC prohibition will remain unchanged for at least 20 years.

Sincerely,



Lee Spangler

This opposition/comment has been served on Petitioner.

---

<sup>6</sup> It should not be lost on the members of the Commission that the former president of the MPAA said, "I say to you that the VCR is to the American film producer and the American public as the Boston Strangler is to the woman home alone." Home Recording of Copyrighted Works: Hearing on H.R. 4783, H.R. 4794 H.R. 4808, H.R. 5250, H.R. 5488, and H.R. 5705 Before the Subcomm. on Courts, Civil Liberties, and the Admin. of Justice, of the H. Comm. on the Judiciary, 97th Cong. (1982) (statement of Jack Valenti, President, Motion Picture Association of America). **Yet it is now common knowledge that the VCR and the ability of homeowners to time-shift performances have led to great profits to the movie industry.** If the industry merely got over its fear and began large scale HD distribution (even with analog connections between the set-top and television) it would make many more millions in profits.