Public Knowledge

August 15, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth St., SW
Washington, DC 20554

Re: *Notice of ex parte* presentation in: MB Docket No. 08-82

Dear Ms. Dortch:

On August 14, 2008, Gigi Sohn and Jef Pearlman of Public Knowledge met with Elizabeth Andrion, Acting Legal Advisor for Media Issues to Chairman Kevin J. Martin. The purpose of this meeting was to discuss the Motion Picture Association of America's (MPAA) *Petition for Expedited Relief and Petition for Waiver of 47 C.F.R. § 76.1903* in this docket.

First, we emphasized that the MPAA could change their release windows today if they chose to, even in the absence of a waiver. Second, we pointed out that no evidence has been presented in the record that analog or protected digital outputs are the source of copyright infringement or that the waiver would have any effect on infringement. We further noted that the fact that infringing copies of movie releases are available online before the current or proposed VoD release dates demonstrates that these outputs are not the source. Finally, we pointed out that any limited effect that granting the waiver would have on the DTV transition would be negative.

The remaining substance of our discussion is contained in our previously-filed comments and reply comments in this docket and the attached one-page informational sheet which was distributed at the meeting.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office today.

Respectfully submitted,

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Equal Justice Works Fellow and Staff Attorney

cc:
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Selectable Output Control

The Motion Picture Association of America (MPAA) has asked the Federal Communications Commission (FCC) for permission to use "selectable output control" (SOC). If the FCC agrees, the MPAA and the movie studios it is representing (Paramount, Sony, Fox, Universal, Disney, and Warner Brothers) would be able to turn off any output plug they choose, like those on the back of consumer electronics devices of an entertainment system, during certain video-on-demand movies on cable television.

What does this mean for me?

If you are one of the many millions who:

- Has a TV without a digital connection such as HDMI,
- Uses a DVR, a Slingbox, or a TV manufactured before 2004, or
- Connects your HDTV or home theater to your cable box with analog cables (either component or composite)

you will likely have to replace much if not all of your existing entertainment system to watch these movies.

Why would movie studios want to do that?

Today, the big movie studios release movies in theaters, then some months later on to DVD, and finally to Video on Demand (VoD). Traditionally, they wouldn't release the movies to VoD earlier because they were concerned about losing money from the higher-revenue DVD sales if people could already watch the movie at home.

Home viewers have always had the ability to record what they are watching. It is legal to make a copy in order to watch a movie at a different time or place, like on a Tivo or Slingbox. It's also legal to make short copies to educate, poke fun at, or criticize. In most cases, the only way to make copies at home for personal use is by using analog outputs because they don't have copy restrictions. However, most digital plugs, like HDMI, do have copy protection which restricts even lawful copying. The MPAA claims it will only give you the "privilege" of watching the movie at home before DVD release if the movie can't be viewed or copied over the analog output. SOC would empower the MPAA to turn off any outputs, including the analog outputs, and only let you use the plugs chosen by the MPAA.

How will I know whether I am affected?

You might not. The MPAA has made assurances that cable companies will warn its customers that certain programs can only be viewed if you have the correct equipment, but they have been very vague about how they will do this.

That doesn't sound so bad. I only watch movies live and I only use digital plugs.

The MPAA is requesting the ability to turn off all the existing plugs on your cable box. If they did, you would have to buy a new TV with an "MPAA-approved" output plug if you wanted to watch on-demand movies before they come out on DVD. Consumer electronics manufacturers wanting to support the plug would have to agree to any other functionality limitations dictated by the MPAA.

Although this may sound like a silly idea, Sony has already put into practice with their Bravia Internet Video Link product. Last month, they announced that you can use it to watch *Hancock* on VoD over the Internet before it comes out on DVD, but ***only*** if you use a Sony Bravia TV with a special Sony-only plug. Sony is a movie studio, a member of the MPAA, and a petitioner.

The MPAA should not be in the position to dictate how consumer electronics are made, whose televisions will view content, and how people lawfully use the content they have purchased.

For more info on the petition, go to: http://publicknowledge.org/issues/soc