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November 25, 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 November 24th, 2008, Brian Markwalter, Vice President, Technology and Standards, Consumer Electronics Association (CEA); Robert Schwartz, Constantine Cannon LLP, counsel to CEA and the undersigned met with Alan Stillwell, Deputy Chief, Office of Engineering and Technology. We discussed CEA's opposition to the Motion Picture Association of America's (MPAA) Petition for Expedited Relief and Petition for Waiver of 47 C.F.R. § 76.1903. We also reviewed the attached chart to address conflicting ex parte submissions regarding the number of HDTV units that would be adversely affected by a grant of MPAA's waiver¹ and provided the attached article.²

Since 1998 and through September 2008, manufacturers shipped nearly 86 million HDTVs to U.S. retailers.³ Of that total, more than 25 million, or 29 percent, of those HDTVs could display HDTV content only through inputs via the component video, or "component analog" connections. These sets lack any other interface capable of accepting an HDTV signal. Grant of MPAA's waiver would render these 25 million HDTVs permanently incapable of receiving and displaying programming accessed via set-top boxes for which a content owner or distributor invokes Selectable Output Control (SOC).⁴ Reducing the total number of HDTVs by 20 percent

¹ See Letter from Jef Pearlman, Counsel to Public Knowledge, to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 08-82 (dated Sept. 17, 2008), at 1; and Letter from Maureen A. O'Connell, Senior Vice President, Regulatory and Governmental Affairs, News Corporation to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 08-82 (dated Oct. 3, 2008) at 1, 2.

² Available at <http://arstechnica.com/news/ars/post/20081123-trade-group-video-output-limits-will-hit-millions-of-hdtvs.html>

³ CEA compiled the data used in the attached chart through its Market Activity Reports and Analysis (MARA) data program and interviews with CEA manufacturer members. The CEA MARA data program tracks factory-to-U.S. dealer shipments of consumer electronics products in more than 30 product categories.

⁴ This figure underestimates the adverse impact on consumers because it does not include those units included in the large number of home theatre systems that were installed using only analog connections. These systems would have to be rewired, often at considerable cost to the consumer, to replace the analog connections with HDMI/HDCP or DVI/HDCP connections. Nor does the 25 million figure take into account the large number of HDTVs with an insufficient number of digital interfaces to support multiple HD devices (e.g., monitor, set-top box, DVR). Consumers who purchased these HDTVs may be forced to buy expensive splitters in order to view SOC-triggered content.

Ms. Marlene Dortch

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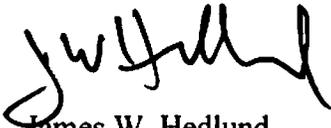
to account for replaced or inactive units still leaves more than 20 million HDTVs that would no longer function as they did when originally purchased by U.S. consumers.

The MPAA has not demonstrated why content owners and distributors should be permitted to disable the features and functionality of a consumer's lawfully-purchased HDTV set. Nor has it met the burden of demonstrating why these entities should be entitled to disable more than 20 million HDTV sets long after U.S. consumers have brought them home. Before they are granted this extraordinary power, the MPAA must demonstrate that grant of their request would achieve an important public purpose and that the relief they seek is narrowly tailored.

MPAA's petition fails on both counts. If granted a waiver, petitioners promise vaguely to distribute some unspecified type and amount of programming, somewhat earlier (but how much earlier they refuse to specify) than they are able to do so now. This promise hardly amounts to an important public purpose. They claim that due to the potential but wholly unsubstantiated threat of piracy arising from HDTVs lacking Hollywood-approved inputs, they must be given unfettered control over all inputs on lawfully-purchased HDTV sets. Petitioners request for broad authority over the design and performance of lawful technology and products is the opposite of narrowly tailored.

Given the enormous and highly-specific negative impact that grant of petitioners' waiver would have on U.S. consumers, the lack of a compelling justification for the requested relief, and the steadfast refusal of MPAA to agree to any limitations on the power that it seeks, CEA urges the Commission to deny MPAA's waiver request.

Respectfully submitted,



James W. Hedlund
Vice President, Regulatory Affairs

cc: Alan Stillwell

CEA DTV Shipment History

Source: MARA program

Note: Unit volumes in 000s

Analog Connection Analysis

Year	DTV UNITS	HDTV UNITS	% of HDTV DVI/HDCP	% of HDTV with HDMI	Number of Units with ANALOG-ONLY INPUTS ¹
1998	14	14	0%	0%	14
1999	121	121	0%	0%	121
2000	625	625	5%	0%	594
2001	1,460	1,460	10%	0%	1,314
2002	2,535	2,535	20%	0%	2,028
2003	5,532	4,702	20%	10%	3,292
2004	8,002	6,802	10%	25%	4,421
2005	11,369	9,664	0%	50%	4,832
2006	23,504	19,978	0%	75%	4,995
2007	26,409	22,448	0%	90%	2,245
2008	18,357	17,439	0%	92%	1,395
Total Shipments²	97,928	85,788			25,250
HDTVs Currently In Use with Analog-only Connections ³					20,200
Percentage of HDTVs Currently in Use with Analog-only Connections ³					24%

¹: Figures based on manufacturer shipment data (CEA MARA data program) and CEA estimates

²: Total shipments through September 2008

³: Assumes that 20% of total units shipped have been replaced or are otherwise no longer being used

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Trade group: video output limits will hit millions of HDTVs

By [Matthew Lasar](#) | Published: November 23, 2008 - 06:44PM CT

The Consumer Electronics Association ([CEA](#)) says that, if the Federal Communications Commission gives Hollywood a waiver on Selectable Output Control, 20 million HDTV sets will cease to function as they did when they were bought by U.S. consumers. These controls limit the ability of consumers to send a broadcast to both their sets and other devices, but current FCC policy prohibits SOC use. The request for a waiver from that policy comes from the Motion Picture Association of America ([MPAA](#)).

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The CEA is not pleased. "The MPAA has not demonstrated why it should be permitted to disable the features and functionality of a consumer's lawfully-purchased HDTV set," three CEA Vice Presidents told the FCC in a meeting on Tuesday.

Might the 20 million figure be alarmist? [Public Knowledge](#) says the estimate is not high enough. The advocacy group's Gigi Sohn, Alex Curtis, and Jef Pearlman also met with the FCC this week, arguing that CEA's figures don't get at the extent of the impact.

"This number actually underestimates the size of the problem," PK's representatives charge, "because while none of those 20 million HDTVs will work if SOC is used to turn off analog outputs, an unknown number of additional home entertainment systems, DVRs, and other consumer electronics devices that rely on analog connections will also be effectively turned off, even if the TVs also have digital inputs."

We're too valuable

As Ars Technica has [reported](#), the FCC launched a proceeding in June to decide whether to let video program distributors employ SOC, which the agency currently forbids, on behalf of the big movie studios. The MPAA wants an exemption on that restriction for high-definition movies that are broadcast prior to their release on DVD.

Selectable Output Control allows a cable or satellite programming distributor to shut off analog and/or digital output on selected broadcasts, an option that MPAA says it wants studios to have if they begin to distribute early-run movies on cable. The studios want to be able to close down the analog route and offer only digital content, which they see as more secure.

"The Petitioners' theatrical movies are too valuable in this early distribution window to risk their exposure to unauthorized copying," MPAA wrote to the FCC in May. "Distribution over insecure outputs would facilitate the illegal copying and redistribution of this high value content, causing untold damage to the DVD and other 'downstream'



markets."

Since then dozens of companies, content providers, and public interest groups have [weighed in](#) on the question—many charging that waiver request is vague and will give Hollywood and their cable partners too much power over home video equipment. Meanwhile PK and CEA have been having a sort of statistical competition over how many consumer devices they think that this proposal will affect in some way.

Here's how CEA gets its figures. Its Market Activity Reports and Analysis (MARA) follows 30 product categories, in which it tracks factory-to-U.S. dealer consumer gadget shipments. By this means, the trade group says manufacturers delivered almost 86 million HDTVs to U.S. stores from 1998 through September of 2008. 29 percent of those receivers displayed HDTV content via a "component analog" connection alone; that adds up to about 25 million sets.

CEA sets aside a fifth of those HDTVs to account for unused or dumped units. That still leaves more than 20 million HDTVs affected by SOC—that is, "permanently incapable of receiving and displaying programming accessed via set-top boxes for which a content owner or distributor invokes Selectable Output Control."

But wait, says Public Knowledge. CEA's estimate does not include DVRs and other devices that depend exclusively on analog connections. "Further, because the waiver seeks the ability to turn off all existing analog and digital outputs, no current equipment is immune," the group warns.

CEA recognizes some of this in a footnote to their filing. Its 25 million figure doesn't include home systems installed with analog connections, the trade group acknowledges. Nor does it factor in "the large number of HDTVs with an insufficient number of digital interfaces to support multiple HD devices (e.g. monitor, set-top box, DVR). Consumers who purchased these HDTVs may be forced to buy expensive splitters in order to view SOC-triggered content."

Beyond the question of how many devices will be affected by an SOC waiver, there seems to be a trust problem here, as evident from CEA's concluding remarks.

MPAA promises "vaguely to distribute some unspecified type and amount of programming, somewhat earlier (but how much earlier they refuse to specify) than they are able to do so now," CEA writes. "This promise hardly amounts to an important public purpose."

Cheaper than a babysitter

Ars Technica contacted various MPAA staffers about these concerns and got a bunch of e-mail auto-responder replies. The intent of the studios is stated as being only to use SOC for the limited purpose of controlling the output for early run, pre-DVD release movies. MPAA filings have argued that early run, pre-DVD release films will benefit consumers who can't afford or can't physically go to the movies.

"Consumers would be able to order from the comfort of their homes movies that are recently released in theaters," the MPAA wrote to the FCC in its original [Petition for Expedited Relief](#). "At least some segment of nearly every demographic would find this option attractive when unable to go to the movie theater. For example, physically challenged or elderly consumers who have limited mobility would have greater choice in movie viewing options. It would similarly benefit parents who want to see a new movie, but who cannot find or afford a babysitter."

It's unclear when the FCC will decide this issue. The formal deadline for comments and replies on the proceeding expired months ago. Although the agency granted the MPAA's request for an expedited comment period, making a call on this question doesn't seem very high on the Kevin Martin administration's list of priorities. Ars can't predict what the next FCC will do with this potato.

Further reading

- The Consumer Electronics Association's [filing](#)
- Public Knowledge's [filing](#)

Filed under: [Selectable Output Control](#), [MPAA](#), [FCC](#), [Consumer Electronics Association](#), [more...](#)

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