

October 15, 2009

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St. SW  
Washington, DC 20554

RE: Notice of *Ex Parte* presentation in: MB Docket No. 08-82

Dear Ms. Dortch:

On behalf of Public Knowledge, this letter is to provide information relating to discussions between Public Knowledge and a member of the Commission's staff on October 14, 2009.

Present at the meeting were: Gigi Sohn, President of Public Knowledge; Harold Feld, Legal Director of Public Knowledge; Jef Pearlman, Equal Justice Works Fellow, Public Knowledge; Michael Weinberg, Law Clerk, Public Knowledge; and Sherrese Smith, Legal Advisor for Media, Consumer and Enforcement Issues, Office of Chairman Genachowski, FCC.

Public Knowledge repeated its objections to the MPAA's request for a waiver to allow for Selectable Output Control (SOC) on consumer devices. Public Knowledge pointed out that the MPAA has failed to present any evidence to justify its waiver request, and that it certainly has not met its burden of proof on the Commission's standard of "special circumstances" to create a deviation in policy to "serve the public interest."<sup>1</sup>

More generally, Public Knowledge pointed out that the request is yet another example of policy-by-waiver that has largely undermined the Commission's rules in this area.

Finally, Public Knowledge drew attention to the millions of consumers who would be hurt by SOC. In addition to the approximately 25 million analog only HD television sets, SOC would render analog only audio/video receivers obsolete. Not only would SOC not bring any benefit to the owners of these devices, but it would force them to "upgrade" equipment at great cost that is perfectly capable of playing the highest quality video currently available.

In accordance with the FCC's *ex parte* rules this document, as well as a one page summary of Public Knowledge's objections to SOC first drafted in 2008, is being electronically filed in the above-referenced docket today.

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<sup>1</sup> *Centennial Cellular Tristate Operating Partnership*, 21 FCC Rec 9170, 9172 (2006).

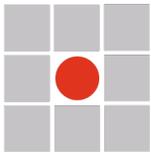
Sincerely,

/s/

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Michael Weinberg  
Law Clerk  
Public Knowledge

CC: Sherrese Smith



# 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.

## Is this really a new business model?

No. Movie studios have been releasing feature films in theaters, VoD, and DVD on the same day for some time *without* selectable output control. Magnolia Pictures is even releasing films on VoD before theater release and has committed to doing so without copy protection. It is only MPAA's claim that moving up the release date is a new consideration for its member studios.

## 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.