



NATIONAL ASSOCIATION
OF THEATRE OWNERS

Re: CSR-7947-Z / MB Docket No. 08-82, MPAA Petition for Waiver of the Prohibition on the Use of Selectable Output Control

Purpose of Petition

- MPAA's petition seeks a waiver from the FCC's regulations prohibiting the use of selectable output control (SOC) on set-top boxes to disable unprotected analog connections.
- Essentially, the use of SOC would limit high-definition content to digital outputs by blocking any outputs that are not encrypted and copy-protected to prevent the unauthorized copying of movies being delivered to consumers' homes prior to their release on DVD.

Movie Theft

- NATO shares the concerns of MPAA with theft of movies and agrees with MPAA that movie content during the window of initial release to movie theaters is extremely valuable — precisely because it is exclusively in theaters for a period sufficient to drive a national conversation about the movie and stimulate demand, after a suitable period, in ancillary markets.
 - For that reason, a business model that threatens to collapse the theatrical window — whether by selling DVDs, or streaming movies into the home, too near theatrical release — imperils a sequenced distribution system that has well served consumers of movies and the movie industry.

What is the Business Model?

- NATO and its members do not take issue with the use of SOC or other forms of copy protection. Instead, we are concerned that the “new business model” proposed by MPAA in their petition — to make it possible to offer movies to the home shortly after or concurrently with their theatrical debut — could have a significant impact on the cinema industry and the movie-going public.
- MPAA bears a substantial burden of proof for an SOC waiver, and must establish that the specific manner in which it intends to use SOC is in the public interest.¹ NATO agrees with

¹ Section 76.7 (a)(4), 47 C.F.R. § 76.7(a)(4): “Statement of relief requested. (i) The petition or complaint shall state the relief requested. It shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest.”

the public interest group community that MPAA's substantial request would be properly addressed with an FCC rulemaking proceeding, and not a waiver.

- MPAA has failed to answer basic questions about how its “new business model” would operate to preserve the cultural, aesthetic and financial value of movies. MPAA describes its “new business model” as “movies in high definition digital format provided to consumers for enjoyment in their homes prior to the date of their release on prerecorded media (e.g., DVDs) for general in-home viewing.”
- Studios have suggested that limited HD distribution at high price points between theatrical release and DVD release would generate additional revenues without negatively affecting cinema sales. The computer age has taught us that technology always gets cheaper and more ubiquitous. NATO is concerned about the likelihood of commoditization and that studios would be risking successful partnerships and business models on a technology and business model with a built-in expiration date.
- In its reply comments, MPAA says the FCC should refrain from imposing a limited time window, such as 120 days, for the use of SOC. MPAA notes all movies do not experience the same release pattern, and an arbitrary time window could artificially exclude content.
 - In a November 5th meeting, FCC Media Bureau Chief William Lake said it would not be possible for the FCC to dictate when MPAA-member studios could distribute high-value movies on VOD at home. Lake, however, said the FCC could impose a limited time window, such as 120 days, for the use of SOC. Why can the FCC dictate the length of time the studios can use SOC to release high-value movies to the home during an early release window, but cannot dictate when the use of SOC technology begins?
- The chief concern for NATO's members is the collapse of windows for movies with commercial potential — which is to say, the economic engine of the movie industry. For example, content that MPAA's members send straight to the home market, bypassing cinemas, because it lacks big screen appeal, would raise no red flags in this proceeding.
- MPAA appears uninterested, however, in preserving a theatrical-VOD window commensurate with the theatrical-DVD window. Quite the contrary, in one of the few instances of specificity, MPAA assures the FCC that it would no longer need or seek the SOC power as of the time a movie is or would be released on DVD. MPAA seeks the SOC power only before the DVD window — though exactly how much before is never detailed.

NATO Request

MPAA's petition raises many unanswered questions, but it is clear that at least some manifestations of its “new business model” could operate against the public interest by having a devastating impact on movie theaters and their patrons. Prior to loosening SOC restrictions, it is imperative that the Commission undertake a rulemaking proceeding to better understand the

purposes behind MPAA's petition, including more specificity on the release model contemplated by studios, and allowable by the FCC, for early VOD distribution.

Respectfully submitted,

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