

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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| In the Matter of  | ) |                     |
|   | ) |                     |
| Implementation of Section 304 of the<br>Telecommunications Act of 1996    | ) | CS Docket No. 97-80 |
|   | ) |                     |
| Commercial Availability of Navigation<br>Devices                          | ) |                     |
|   | ) | PP Docket No. 00-67 |
| Compatibility Between Cable Systems and<br>Consumer Electronics Equipment | ) |                     |

**COMMENTS OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.**

The Motion Picture Association of America, Inc. (“MPAA”), on behalf of its member companies, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment, Inc., hereby respectfully submits these comments in response to the Commission’s Fourth Further Notice of Proposed Rulemaking seeking feedback on new rules designed to improve the operation of the CableCARD regime.<sup>1</sup>

MPAA appreciates the Commission’s continuing interest in developing a fully-competitive retail market for navigation devices (“set top boxes” or “STBs”) that consumers can use to access the services of multichannel video programming distributors (“MVPDs”). While the Commission is correct to point out that the CableCARD regime has not fully realized its intended purpose of creating a flourishing retail STB market, CableCARD technology has

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<sup>1</sup> See *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility between Cable Systems and Consumer Electronics Equipment*, Fourth Further Notice of Proposed Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67, FCC 10-61 (rel. Apr. 21, 2010) (“Fourth Further Notice”).

nonetheless proven highly effective in performing security and conditional access functions that help guard against content theft and unlawful distribution of intellectual property.

Consumers have been the ultimate beneficiaries of secure conditional access systems and effective content security, as robust content protection has allowed producers to give consumers an increasing variety of choices in how to access and enjoy content in their homes. This, in turn, has given producers the incentive and ability to continue investing in compelling, high quality creative works – a positive and beneficial circle. As the Commission considers alternatives that might better develop a retail market for set top boxes,<sup>2</sup> it is important to remember that effective content security has enabled the creation of such consumer-friendly, innovative offerings as video-on-demand and pay-per-view and will continue to be a key element in the development of new consumer offerings. Given its important content security functions, and in light of the considerable investment made to date in the CableCARD regime by multiple industries, the MPAA supports the Commission’s approach of making only relatively minor adjustments to the existing CableCARD rules.

MPAA submits these comments: (i) to stress the importance of hardware-based security features that have worked well to prevent unauthorized access, copying and redistribution of content; (ii) to support an approach that allows cable operators to select interface(s) based on marketplace demand rather than regulation, with the understanding that these outputs will continue to be equipped with robust content protection technology; and (iii) to encourage meaningful certification testing of new retail devices (or new features of an existing device) prior to their introduction into the marketplace.

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<sup>2</sup> See *Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility between Cable Systems and Consumer Electronics Equipment*, Notice of Inquiry, MB Docket No. 10-91, CS Docket No. 97-80, PP Docket No. 00-67, FCC 10-60 (rel. Apr. 21, 2010).

## **I. THE CABLECARD PLAYS A VITAL ROLE IN PROTECTING CONTENT AGAINST THEFT AND UNLAWFUL DISTRIBUTION**

The Commission has recognized that the MPAA member companies and other content providers have long relied upon and have a substantial interest in the existing CableCARD technology.<sup>3</sup> MPAA's members create and distribute some of the most compelling and high-quality audiovisual content available via MVPD platforms – intellectual property that lies at the heart of what President Obama has called one of the nation's "greatest asset[s] . . . the innovation and the ingenuity and creativity of the American people."<sup>4</sup> Theft and unlawful distribution of America's creative works have a pernicious effect on the American economy, consumers, and, of course, creators.<sup>5</sup> The creative industries have benefited from existing hardware-based security, and in turn have provided consumers with increased options with respect to both the variety of high quality audiovisual entertainment and ways to access and enjoy such content. Thus, as the Commission takes stock of the status of the CableCARD regime and looks to the future, it should keep at the forefront of its deliberations the vital importance of protecting the programming that is distributed by MVPDs.

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<sup>3</sup> See, e.g., *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, Third Further Notice of Proposed Rulemaking, 22 FCC Rcd 12024, 12028 (2007).

<sup>4</sup> President Barack Obama, *Remarks at the National Export Initiative* (Mar. 11, 2010), available at <http://www.whitehouse.gov/the-press-office/remarks-president-export-import-banks-annual-conference> (last visited June 14, 2010).

<sup>5</sup> See, e.g., *United States Government Accountability Office Report to Congressional Committees: Observations on Efforts to Quantify the Economic Effects of Counterfeit and Pirated Goods*, GAO-10-423, April 2010 (finding that although no government agency systematically collects or tracks data on the extent of copyright infringement, it is widely recognized as a threat to the music, motion picture, television, publishing, and software industries; direct damages to these industries include lost sales (*citing* a report of motion picture studio losses of \$6.1 billion in 2005), damage to the public image of industry participants, and increased costs of intellectual property protection).

**A. The CableCARD, With Its Hardware-Based Security Model, Has Proven Effective for Content Security**

In the Fourth Further Notice, the Commission observed that some industry participants have called into question the future utility of the hardware-based security model.<sup>6</sup>

Notwithstanding the limited retail availability of navigation devices based on the CableCARD regime, the hardware-based security model employed by the CableCARD technology has proven highly effective in protecting content against unauthorized access, copying and redistribution.

Indeed, the hardware-based security model has been one of the most effective elements of the CableCARD technology. For decades, pay TV systems the world over have relied on hardware-based security to supply a higher level of content security than software alone can provide. This is true not just for MVPDs, but also for a wide array of other consumer-focused commercial services. Industries as varied as the banking and telecommunications sectors, for example, rely on hardware-based security (and not software-based security) to minimize the frequency and the impact of security breaches.<sup>7</sup> The need for a hardware-based security model in connection with MVPD services is becoming even more important now that distributors are expected to make available premium, early release content via STBs, as contemplated by the Commission's waiver of the prohibition on the use of selectable output control.<sup>8</sup>

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<sup>6</sup> See Fourth Further Notice, at ¶ 12.

<sup>7</sup> Many industries depend on hardware-based security models that are based on government-specified security standards, which utilize features such as secure key storage, tamper resistance and secure execution. See Federal Information Processing Standard (FIPS) guidelines, available at <http://www.itl.nist.gov/fipspubs/by-num.htm> (last visited June 14, 2010).

<sup>8</sup> See *Motion Picture Association of America Petition for Expedited Special Relief; Petition for Waiver of the Commission's Prohibition on the Use of Selectable Output Control* (47 C.F.R. § 76.1903), Memorandum Opinion and Order, MB Docket No. 08-82, DA 10-795 (rel. May 7, 2010).

In light of the valuable security role of hardware-based content protection, the successful components of the existing CableCARD regime, including protections against content theft, should remain in place.

**B. Greater Choice Among New Interfaces Could Substantially Enhance Consumers' Experience With Set Top Boxes**

The Commission has proposed to modify the interface requirement for STBs as follows:

Section 76.640(b)(4)(ii)

All digital cable systems shall . . . [i]nclude both: (A) a DVI or HDMI interface; and (B) an IEEE 1394, **Ethernet, or USB 3.0 interface, or WiFi connectivity** on all high definition set-top boxes acquired by a cable operator for distribution to customers.<sup>9</sup>

The MPAA welcomes broadening the choices of digital outputs that can satisfy the Commission's baseline requirement for STB connectivity, as additional interfaces could help enable the content industry's development of a greater number of choices for consumers to enjoy content in the home. To maximize this development, MPAA suggests that instead of mandating additional interfaces from which a cable operator must choose, the Commission should pursue a simpler and more market-friendly approach by: (i) removing the requirement that IEEE 1394 be included in every leased STB; and (ii) allowing cable operators to select the most appropriate networking interface(s) for inclusion in their leased STBs based on marketplace demand. If the Commission nonetheless elects to require that all leased STBs include a home networking interface, MPAA requests that – at the very least – the Commission refrain from mandating the specific interfaces to be included.

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<sup>9</sup> Fourth Further Notice, Appendix A "Proposed Rules", at 13.

Regardless of which approach it pursues, the Commission should continue its practice of not disturbing private agreements that require STB digital interfaces to be equipped with a content protection technology and to abide by appropriate usage signals associated with the content (including copy control and redistribution control signals).

In short, MPAA supports cable operators having the ability to select new digital interfaces for leased STBs based on marketplace demand, rather than an FCC output mandate, with the understanding that such interfaces will remain subject to content protection requirements set forth in private agreements.

### **C. Meaningful Certification Testing Is Critical to the Commercial Success and Consumer Acceptance of New Technologies**

While the MPAA does not oppose the Commission's proposal to clarify the certification rules for unidirectional navigational devices,<sup>10</sup> the MPAA emphasizes as a general principle that robust and rigorous certification testing before any technology is deployed in the marketplace benefits all relevant constituents, including consumers, device manufacturers, MVPDs, and content providers.

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<sup>10</sup> The Commission has proposed the clarification that CableLabs and other testing facilities may only require compliance with the procedures set forth in UNi-Dir-PICS-I01-030903 and that additional compliance testing would be at the discretion of the manufacturer or importer. *See* proposed revision to 47 C.F.R. § 15.123(c)(1), Fourth Further Notice, Appendix A (*citing* Uni-Dir-PICS-I01-030903 PICS: "Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma"). In the Fourth Further Notice, the Commission referred to the reply comments of Sage TV LLC ("Sage TV"), in which Sage TV described the CableCARD certification process as having limited the capabilities of the SiliconDust HDHomeRun CableCARD tuner, a device that can send cable content throughout the home using Ethernet. *See* Sage TV submission in response to NBP Public Notice #27; GN Docket Nos. 09-47, 09-51, 09-137; CS Docket No. 97-80. However, the Commission's clarification to the unidirectional certificate testing requirements is inapplicable to the SiliconDust HDHomeRun CableCARD tuner, as the tuner would be tested using the test suites available for an "OCUR" device that feeds into a personal computer, not a unidirectional device. The NCTA raises many legitimate concerns about the Sage TV comments. The MPAA shares the NCTA's concerns and further notes that the Sage TV reply comments are irrelevant to the Commission's decision-making in this proceeding. *See* NCTA submission dated Feb 26, 2010 in response to NBP Public Notice #27; GN Docket Nos. 09-47, 09-51, 09-137; CS Docket No. 97-80.

Comprehensive certification of retail consumer electronics devices to enable compliance with industry standards minimizes the risk of device incompatibility and thus decreases the likelihood that consumers will experience confusion and frustration when they purchase and attempt to use such equipment. A recent example of the value that comprehensive certification testing provides comes from the deployment of the High-Definition Multimedia Interface (“HDMI”) in various devices. The HDMI licensor initially deployed this technology without requiring rigorous certification and interoperability testing, resulting in numerous interoperability issues in the retail market. The interoperability issues were not fixed until the HDMI licensor implemented a rigorous compliance testing program and required all licensees to participate in the program. As a result, the HDMI interface has become an effective and ubiquitous interface on many retail consumer electronic devices.

The HDMI experience is but one example of the benefits that can be realized by industry participation in rigorous certification testing, and the MPAA requests that the Commission continue to recognize the essential value of comprehensive certification testing in the context of the CableCARD regime.

## **II. CONCLUSION**

Given that the hardware-based security model of the CableCARD technology provides effective content protection, the MPAA supports the Commission's proposal to make only minor modifications to the CableCARD regime. Moreover, while it investigates the benefits of additional digital outputs from HD set top boxes provided by cable operators, the Commission should consider allowing the marketplace to determine the most desirable interfaces in lieu of imposing a mandate for baseline connectivity. Finally, the Commission should continue to recognize the benefits of meaningful certification testing prior to the introduction of any new

consumer electronic technologies. These principles would go a long way in encouraging innovation, ingenuity and creativity in the content offerings provided by MVPD services and set the stage for more consumer choice.

Respectfully submitted,

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