

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

In the Matter of

Video Device Competition

MB Docket No. 10-91

Implementation of Section 304 of the
Telecommunications Act of 1996

Commercial Availability of Navigation
Devices

CS Docket No. 97-80

Compatibility Between Cable Systems
and Consumer Electronics Equipment

PP Docket No. 00-67

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

July 13, 2010

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I. INTRODUCTION AND SUMMARY

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., submits these comments in response to the Commission’s Notice of Inquiry seeking input on ways to assure the competitive availability of navigation devices.¹ The MPAA appreciates the Commission’s efforts to increase consumer choice; however, we are concerned that the Commission’s current proposal will not achieve its intended result, because technology and the marketplace are changing very rapidly. Moreover, adopting rules that do not take into account market-driven solutions and critical provisions in content distribution agreements will harm consumers in unforeseen ways. The MPAA is nevertheless committed to working with the Commission as it explores options to meet the goals of Section 629 of the Act.

¹ *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*, FCC 10-60 (Notice of Inquiry in MB Docket No. 10-91, CS Docket No. 97-80, and PP Docket No. 00-67, released April 21, 2010) (the “NOI”).

II. THE HOME ENTERTAINMENT INDUSTRY IS IN A PERIOD OF RAPID GROWTH

As the Commission notes in the *NOI*, a wide range of video devices and MVPD delivery platforms are continuing to evolve at a rapid pace.² Indeed, the transition to digital technology has resulted in dramatic changes throughout the entire entertainment industry, which have benefitted consumers. Motion picture and television production companies are constantly innovating and investing in sophisticated new technology to produce H-D and 3-D films, game-changing computer graphics, and spectacular special effects, which bring monsters, big blue people, and anthropomorphic toys to life.

Consumers today also enjoy greater access to content online than ever before,³ and there are numerous marketplace initiatives – such as Tru2Way, DECE,⁴ Keychest, the TV Everywhere initiative,⁵ iTunes, Netflix, Hulu, Xbox Live Marketplace, PlayStation Store, Amazon Video on Demand to name a few – that will increasingly provide consumers with greater access to content at the time and place, and on the device of their choice. These marketplace initiatives use vastly different approaches and technologies and are based on both MVPD as well as over-the-top content services. Some are private initiatives that use proprietary technologies, while others –

² *NOI*, note 2 (“Traditionally [smart video devices] have been cable or satellite set-top boxes, but have expanded to include video game systems, digital video recorders, and home theater personal computers...”); *NOI*, ¶ 13 (“[D]elivery platforms continue to evolve at a rapid pace.”).

³ For example, the Pew Internet and American Life Project found that the share of adults who watch video on the Internet had nearly doubled between 2006 and 2009. <http://arstechnica.com/media/news/2009/07/online-video-keeps-growing-with-help-of-broadband-mobile.ars>.

⁴ Digital Entertainment Content Ecosystem, a coalition with support from every industry involved in digital entertainment. See <http://decellc.com>.

⁵ TV Everywhere is a model that is designed to make MVPD content accessible to customers on a variety of devices. See, e.g., <http://www.timewarner.com/corp/newsroom/pr/0,20812,1906715,00.html> and <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=883>.

such as Tru2Way, DECE, and Keychest – are cross-industry initiatives among content providers, MVPDs, online content distributors, device manufacturers, and others who are working together to facilitate the creation of innovative service offerings and compelling consumer experiences.

Alternatives are also emerging to enable consumers to purchase retail navigation devices, a goal encouraged by the Commission in the NOI.⁶ Tru2Way allows device manufacturers to develop retail navigational devices and high-definition televisions that not only provide access to all interactive services offered by multiple cable operators but also provide access to content from Internet sources such as Netflix and Blockbuster. Furthermore, Tru2Way is an interoperable and open standard that provides effective content protection and can be adapted to advanced business models.⁷

The combination of next-generation content and new delivery platforms is also fostering tremendous growth in software and consumer electronics. Whereas the set-top box of 1996 had limited functionality, today's state-of-the-art MVPD boxes offer complex navigation capabilities, interactive program guides, support for video-on-demand and pay-per-view services, and other consumer-friendly functionality along with sophisticated content security systems. In order to keep pace with the rapidly-changing marketplace, content protection technologies will continue to evolve, and the regulatory environment needs to be flexible enough to accommodate new developments.

⁶ NOI, ¶ 14.

⁷ More than twenty manufacturers have signed Tru2Way licenses, and MVPDs have announced pilot rollouts of Tru2Way. *See, e.g.*, <http://www.tru2way.com> and http://www.cablelabs.com/news/pr/2008/08_pr_tru2wayMOU_060908.htm.

III. ADOPTING TECHNICAL STANDARDS DURING A TIME OF RAPID INNOVATION HARMS CONSUMERS AND THE PUBLIC INTEREST

In light of this dynamic and innovative environment, mandating nationwide standards at this time, as proposed in the *NOI*, would not serve the public interest. As a practical matter, technology is still evolving so rapidly in this area that any standard the Commission chooses will be quickly outdated,⁸ and consumers will be saddled with outmoded devices. Furthermore, we are concerned that locking standards in place would restrain innovation and hinder future business models.

In fact, members of Congress cautioned against the adoption of standards during early deliberations that led to Section 629. According to the Report of the House Committee on Energy and Commerce, “The Committee does not believe that a Commission standard-setting process is necessary to achieve these goals. The Committee believes standards are, in most cases, best set by the marketplace or by industry standard-setting organizations, particularly in dynamic and growing industries.”⁹ The Commission should heed this sage advice.

A. Selecting a Particular Content Protection Technology Hinders Future Business Models.

The Commission suggests in the *NOI* that digital transmission content protection over Internet protocol (“DTCP-IP”) would be a logical choice for downstream content encryption and device authentication.¹⁰ While DTCP-IP has been approved for use to protect digital outputs in

⁸ The analogy to opening up consumer choice in the telephone industry through mandating RJ-11 connectors for CPE is misleading. Telephone operation standardized on 48 volts with pulse and tone dialing was a mature technology long before adoption of the RJ-11 connector. RJ-11 served only as the tipping point to enable consumer owned handsets.

⁹ H.R. Rep. 103-560, at 91 (1994).

¹⁰ *NOI*, ¶ 28.

various content distribution ecosystems,¹¹ it would not be appropriate to use as the sole standard in an AllVid-type architecture.¹² In the CableCARD context, for example, MVPD content is initially descrambled and authenticated by the conditional access technology housed in a CableCARD, and DTCP only protects the authenticated unidirectional content flowing out from the retail device. In the AllVid proposal advanced in the NOI, the content protection and encryption system would need to protect all aspects of a subscriber's interaction with the MVPD, including but not limited to, the functions currently protected by the DFAST scrambling technology in the CableCARD context.¹³ Thus, the interface would need to protect communication of control information, such as the list of channels available to a subscriber to allow the display device to present the electronic programming guide in accordance with the user's subscription, and user selection so as to enable interactive features such as video-on-demand. DTCP-IP does not have the capability to perform these or other system functions.

Further, DTCP-IP does not carry content usage information beyond that for copy and move, redistribution, and image constraints. Thus, consumers would not be able to receive innovative services that require more robust usage information, such as the electronic sell-through model that allows a group of devices belonging to a household's "domain" to share content.¹⁴ In short, selection of a particular technology, such as DTCP-IP, to protect the

¹¹ See, e.g., CableLabs, the DVD protection standard (DVD CSS), and the Blu-Ray content protection standard (BIAACS).

¹² In the NOI, the FCC states that the MPAA and CableLabs have approved DTCP as an acceptable method of content encryption to prevent content theft. NOI, ¶ 28. That approval, however, was conditional and was limited to downstream output protection. Moreover, more than a single output protection technology has been approved in the CableCARD context.

¹³ The DFAST scrambling technology is the standardized encryption technology that protects the already-authenticated content as it travels between the CableCARD and the host device.

¹⁴ The domain concept, first defined in DVB's Content Protection Copy Management (DVB-CPCM) standard, links the collection of devices belonging to members of a household. In advanced content distribution models,
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interface between the AllVid adaptor and the smart video device would hinder the deployment of new business models.

B. The Commission Should Avoid Selecting a Particular Physical Interface.

The Commission should not mandate a physical layer technology to serve as a bridge between AllVid adapters and retail navigation devices.¹⁵ The 100-BASE-TX Ethernet suggested in the NOI is not an optimal solution for video delivery within the home, because Internet Protocol (“IP”) was designed for carrying data reliably across different transport streams, not for carrying video content. While IP is increasingly used by MVPDs as well as online services, a vibrant marketplace exists today for a host of other wired and wireless video delivery technologies (such as HDMI, WirelessHD, HDBaseT, and WHDI), many of which are widely deployed in the marketplace and support better-quality video delivery within the home than IP.

C. An Enhanced Security Model is Essential for Robust MVPD Content Protection.

Valuable content is generally secured through robust and effective security models, such as the one currently provided by the hardware-based CableCARD and Tru2way regimes. The protection provided by software-based technologies for critical conditional access functions is far inferior to the protection offered by hardware-based technologies utilized by existing conditional access systems such as the CableCARD technology. As the MPAA noted in its comments to the Fourth Further Notice, the hardware-based security model has proven highly effective in

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content is not managed by counting copies. Rather, it is managed by binding copies to a single domain. This ability limits distribution to devices outside the domain while enabling the consumer to enjoy the content on any device registered to his or her domain.

¹⁵ See NOI, ¶ 26.

protecting content against unauthorized access, copying and redistribution.¹⁶ In fact, a number of market-driven devices such as the PlayStation 3 and Xbox 360, as well as a wide variety of other industries, rely on hardware-based security systems to minimize security breaches. The need for an enhanced security model is becoming even more important now that some MVPDs are moving forward with proposals to offer subscribers access to the highest-value, early-release movies, given the Commission’s recent waiver of the prohibition on the use of selectable output control on MVPD set top boxes.¹⁷

IV. THE COMMISSION’S PROPOSAL DOES NOT TAKE INTO ACCOUNT CRITICAL TERMS IN MARKETPLACE AGREEMENTS.

A. Industry and Private Agreements are Critical to Content Protection.

In the *NOI*, the Commission appears to assert that device manufacturers should be able to develop and introduce innovative navigation devices without the need to consult with MVPDs or sign “restrictive” license agreements.¹⁸ This position does not, however, take into account that device manufacturers are just one part of an interrelated chain of how content is accessed by consumers, which necessarily also involves MVPDs and content suppliers. In essence, we must all work together collaboratively to ensure an optimal consumer experience – one that sustains investment in high-quality, compelling productions and provides consumers with market-driven options for consuming content on high-definition televisions and navigation devices.

¹⁶ See MPAA Comments to the Fourth Further Notice in CS Docket No. 97-80, PP Docket No. 00-67, filed June 14, 2010, p. 4. (“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.”).

¹⁷ *Motion Picture Association of America Petition for Special Relief; Petition for Waiver of the Commission’s Prohibition on the Use of Selectable Output Control*, DA 10-795 (released May 7, 2010).

¹⁸ *NOI*, ¶ 16.

Content suppliers today enter into private bilateral agreements with MVPDs to license their content for distribution on MVPD platforms. These bilateral agreements set forth the terms under which content is made available, including terms concerning content security. MVPDs give effect to these obligations through either direct contractual relationships with consumer electronics manufacturers or similar arrangements through industry standards bodies, which in turn approve technologies to protect content downstream within the home environment. The chain of privity in this ecosystem is essential to ensure consistent content presentation, and to protect MVPD content from theft and unauthorized redistribution.

Private contracts and licensing agreements play an even more important role in a digital world. The transition to digital technology, combined with the rise of the Internet and other technological innovations, has facilitated piracy and counterfeiting on a global scale. In response, the U.S. Government has developed a 2010 Joint Strategic Plan on Intellectual Property Enforcement, which commits to strong and decisive government action to combat copyright infringement.¹⁹ Given the value and importance of intellectual property to the US economy – including the creation of good jobs with high wages and strong benefits coupled with a positive balance of payments with trading partners – we encourage the Commission to ensure that this complex system of licensing agreements and marketplace negotiations is not compromised.

B. Market-Driven Agreements Serve Critical Consumer and Industry Purposes.

Private agreements between MVPDs and content providers also cover a wide range of content terms, such as placement of channel in the electronic programming guide (EPG), tier placement of the channel, content description in the EPG, and advertising conditions associated with the content. Among other purposes, these requirements ensure a uniform nationwide

¹⁹ http://www.whitehouse.gov/omb/assets/intellectualproperty/intellectualproperty_strategic_plan.pdf

presentation, and provide consumers with a consistent experience that they value. For example, consumers know what type of content to expect when they access a certain branded channel. This allows parents to manage the access that their children have to certain types of content. As proposed in the NOI, the AllVid approach would disregard all of these market-based provisions serving critical consumer and industry purposes and could result in consumer confusion and disappointment. This approach could, among other things, permit disaggregation of program networks, or allow commercials or inappropriate content to be overlaid onto programming (*e.g.*, children’s television where the perceived tie-in or overlay would be objectionable). Disrupting market-driven agreements and consumer expectations does not serve the public interest.

V. THE COMMISSION SHOULD AVOID FACILITATING ACCESS TO UNAUTHORIZED SOURCES OF CONTENT.

The AllVid concept envisions a user interface with numerous content services and outlets side-by-side.²⁰ One of the potential functionalities that this might enable is the ability for a consumer to, for instance, search for a movie from among an MVPD’s available channels, video-on-demand options, home-archived materials, and Internet offerings. While this scenario initially sounds appealing, it presents risks that legitimate MVPD and online content sources will be presented in user interfaces alongside illegitimate sources (such as sites featuring pirated content). In essence, this “shopping mall” approach could enable the purveyor of counterfeit goods to set up shop alongside respected brand-name retailers, causing consumer confusion.

This result harms the public interest, because it would lend the illusion of legitimacy to illegitimate online sources. It could also expose unsuspecting consumers²¹ and their children to

²⁰ “Statement of Chairman Julius Genachowski,” NOI, ¶ 20.

²¹ Consumers accessing sites offering illegal content are also at risk of identity theft.

undesirable content, such as spam, viruses, and pornography. Currently, viewers can be assured that if they are watching a channel distributed by an MVPD, they are enjoying legitimate, licensed content. The Commission should not erode consumer confidence by enabling an arrangement that could lead viewers to access stolen content unwittingly, particularly because so many illegitimate online sources are becoming increasingly sophisticated in their appearance, allowing them to deceive consumers into thinking they are legitimate.

Trafficking in pirated content has become big business. U.S. Immigration and Customs Enforcement (“ICE”) officers recently targeted websites that made millions by unlawfully selling access to blockbuster Hollywood hits, sometimes within hours of their theatrical release.²² As the federal government strives to reduce intellectual property theft, it should not inadvertently bless this type of illegal activity or consumer fraud. Rather, government policy should favor and promote legitimate content and business models.

²² The ICE initiative, “Operation In Our Sites,” was intended to protect the American film and TV business, “the bedrock of our economy.” “Its creativity and imagination has made American entertainment one of our greatest exports over the decades.” ICE Assistant Secretary John Morton, on announcing the seizure of nine Internet domain names along with assets from bank, Paypal, investment, and advertising accounts. *See* <http://www.ice.gov/pi/nr/1006/100630losangeles.htm> and <http://www.ice.gov/pi/nr/1007/100702hollywood.htm>.

VI. CONCLUSION

In this period of rapid change and innovation, consumers have been the ultimate beneficiaries of high-quality creative works that have been made possible through private negotiations and industry cooperation. The MPAA looks forward to working with the Commission to ensure that consumers continue to benefit from collaborative efforts to promote continued innovation in video distribution.

Respectfully submitted,

MOTION PICTURE ASSOCIATION
OF AMERICA, INC.

Michael O'Leary
Executive Vice President, Government
Relations and Chief Counsel

Linda I. Kinney
Vice President, Regulatory Affairs
Motion Picture Association of America,
Inc.
1600 Eye Street, N.W.
Washington, DC 20006

Krishnan Rajagopalan
Vice President, Technology

Anna Joo Gunning
Vice President, Sr. Technology Counsel
Motion Picture Association of America,
Inc.
15301 Ventura Blvd., Bldg. E
Sherman Oaks, CA 91403

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