

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

In the Matter of)
)
Framework for Broadband Internet Service) GN Docket No. 10-127
)

COMMENTS OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

The Motion Picture Association of America, Inc. (“MPAA”), on behalf of its member studios, 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, released June 17, 2010, relating to the legal framework within which the Commission seeks to oversee broadband Internet service.¹

I. INTRODUCTION AND SUMMARY

MPAA supports the Commission’s goals of promoting investment, competition, innovation, and consumer welfare with respect to the Internet and other communications technologies. In order to ensure that the Commission’s regulatory framework for broadband Internet service advances these goals, we urge the Commission to consider three principal points of vital concern to MPAA, as explained further below:

¹ See *In re Framework for Broadband Internet Service*, GN Docket No. 10-127, FCC 10-114 (Notice of Inquiry) (rel. June 17, 2010) (the “Notice”).

First, regardless of which regulatory strategy it adopts, the Commission should give ample guidance to broadband service providers to make clear (1) that good faith efforts to prevent, detect, and deter the transmission of unlawful content (as well as the unlawful transmission of content) are reasonable and do not violate open Internet principles or any of the obligations contained in Title II , and (2) that broadband providers and content owners are encouraged to work together to develop and deploy the best available technologies, tools and techniques to combat online content theft. MPAA shares the concerns of the Guilds and Unions that the Commission needs to “carefully evaluate the potential impact of Title II regulation on the ability to detect and prevent online infringement, and the possible implications of a strict non-discrimination principle on the jobs, incomes, benefits, and creative output of Americans employed in the creative and entertainment industries.”²

Second, the Commission should make clear that content owners will continue to have the flexibility to develop innovative business arrangements with broadband providers for the delivery of digital content, in order to provide the high quality viewing experience consumers demand.

Third, the Commission should ensure that the regulatory path it chooses does not chill investment in broadband deployment, which is imperative for content delivery and for America’s economic future.

² Comments of the American Federation of Television and Radio Artists, Directors Guild of America, International Alliance of Theatrical and Stage Employees, and Screen Actors Guild, GN Docket No. 10-127 (filed July 15, 2010), at 9.

II. DISCUSSION

A. The Commission Should State Unequivocally that Measures Undertaken to Combat Online Content Theft are Not Only Permissible, But Encouraged.

In the Open Internet NPRM, the Commission properly recognized that “open Internet principles” do not apply to “activities such as the unlawful distribution of copyrighted works, which has adverse consequences on the economy and the overall broadband ecosystem.”³ We appreciate the Commission’s recognition of the importance of combating the urgent problem of online piracy and content theft.

As the recent Joint Strategic Plan on IP Enforcement concluded, the transition to digital technology, combined with the rise of the Internet and other technological innovations, has facilitated copyright piracy and counterfeiting on a global scale.⁴ These illicit activities impose substantial costs. They hinder growth of the U.S. economy, compromise high-wage jobs, depress investment in new technologies, and put consumers, families and communities at risk.⁵ Theft of content fundamentally undermines the incentives to invest in the creation of digital content for consumers. Moreover, theft of such content is no longer limited to college students in their dorm rooms; trafficking in pirated content is a criminal enterprise.⁶ As the MPAA has explained in prior filings,

³ *In re Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, FCC 09-93 (Notice of Proposed Rulemaking) (rel. Oct. 22, 2009), at ¶ 139.

⁴ *See* 2010 Joint Strategic Plan on Intellectual Property Enforcement (available at http://www.whitehouse.gov/omb/assets/intellectualproperty/intellectualproperty_strategic_plan.pdf), at 5.

⁵ *See id.*

⁶ A recent study by the RAND Corporation addressing counterfeiting of film content in hard goods confirms the link between content theft and devastating effects on society beyond those strictly economic. According to Rand, “The case studies provide compelling evidence of a broad, geographically dispersed, and continuing connection between film piracy and organized crime, as well as evidence that terrorist groups have used the proceeds of film piracy to finance their activities.” *See (cont'd)*

protecting online content will safeguard the vitality of the Internet and also play a crucial role in America's economic recovery.⁷

Despite vigorous enforcement and numerous initiatives by the content community,⁸ content creators acting alone cannot meaningfully reduce the threat of online theft; rather, they must have the cooperation of broadband providers. Working together, content owners and broadband providers can help to design evolving strategies and technologies to address and adapt to ever more sophisticated schemes of online theft and piracy.

Whatever regulatory path it selects, the Commission should state clearly and unequivocally that measures undertaken by broadband providers to combat online content theft are not only permissible, but encouraged. The need for direct and unequivocal regulatory guidance and forbearance would be particularly essential if the Commission were to adopt a Title II approach. Much of existing Title II precedent involves questions of rates, cost allocation, and pricing, rather than network management issues of congestion, unlawful content, and other questions faced by broadband providers in addressing pirated content. The absence of clear guidance on this question will create uncertainty that will chill, rather than encourage, the implementation of anti-piracy

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Film Piracy, Organized Crime, and Terrorism, The RAND Corporation (2009) (available at http://www.rand.org/pubs/monographs/2009/RAND_MG742.pdf). See also *A to Z of Online Piracy*, CNN.com (Apr. 22, 2009) ("International recording industry organization, IFPI and Interpol say there are links between online piracy and organized crime and terrorism, citing examples from South America to South Africa and Eastern Europe to East Asia.").

⁷ See Comments of MPAA, GN Docket No. 09-191, WC Docket No. 07-52 (filed Jan. 14, 2010), at 4-5.

⁸ MPAA has made clear that the creative industries are engaged in a wide range of anti-theft efforts to address this pernicious threat. See Comments of MPAA in Response to the Workshop on the Role of Content in the Broadband Ecosystem (filed Oct. 30, 2009), at 21-22.

measures, which the Commission itself has acknowledged needs to be part of any national broadband policy.

In particular, the Commission should make plain: (1) that good faith efforts to prevent, detect, and deter the transmission of unlawful content and the unlawful transmission of content are reasonable and do not violate open Internet principles and, if applicable, would not violate the provisions of Title II and, in particular, the nondiscrimination obligation contained in Section 202(a) of the Communications Act⁹, and (2) that broadband providers and content owners are encouraged to work together to develop and deploy the best available technologies, tools and techniques to combat online content theft and distribution.

In sum, the public interest would not be served if regulatory uncertainty undermines the willingness of broadband providers to take the measures necessary to address the online theft of creative works.

B. The Commission Should Make Clear that Content Owners Will Have the Flexibility to Enter into Innovative Business Arrangements with Broadband Providers.

MPAA's member studios have embraced the opportunities presented by online digital distribution by making substantial private investments in new technology and production facilities and creating innovative viewing experiences for consumers, such as HD and 3D films. While still nascent, the business of online distribution promises enormous benefits for the public and the nation's economy. Consumers are the ultimate beneficiaries when content creators are incentivized to invest in new technologies and to

⁹ 47 U.S.C. § 202(a).

find new ways to make compelling, high-quality content more readily available to consumers over whatever device they prefer.

When broadband networks suffer from congestion, however, consumers of video content experience degraded service quality, including frame freezing, pixilation, interruption for buffering, or flutter of video. Consumers demand a high-quality viewing experience and content creators must have the ability develop innovative new models for online distribution to meet this demand. Again, the absence of clear and direct guidance on this question – particularly under a Title II approach – will create a level of regulatory uncertainty that will chill investment in the development of new and innovative services for consumers, which the Commission has rightly acknowledged it should seek to foster.

Therefore, whatever regulatory approach it takes, the Commission needs to make clear that content owners will have the flexibility to enter into innovative business arrangements with broadband providers for the online delivery of digital content, in order to provide the high quality of service that consumers demand.

C. The Commission Should Ensure that the Regulatory Path it Chooses Does Not Chill Investment in Broadband Deployment.

Under the current deregulatory environment, private investment in broadband deployment has flourished, enabling exciting opportunities for both consumers and content creators. The creative industries, including MPAA's member studios, have been a key driving force behind the rapid increase in broadband adoption in the United States. In fact, studies have concluded that video entertainment is a key driver of broadband

deployment today.¹⁰ Furthermore, expanded on-line video distribution will require expanded broadband capacity, or delivery quality will be significantly degraded.

Because content creators rely on broadband pipes to stream high quality video, we would be concerned if changes in the regulatory environment were to reduce the incentive of broadband providers either to deploy additional facilities or to invest in content-protection technology or equipment. Accordingly, the Commission should ensure that the regulatory path it chooses does not chill investment in broadband deployment.

¹⁰ See, e.g., *Broadband Plays Catch-Up in Rural Areas, Outpaces Growth in Big Cities*, comScore (Aug. 19, 2009) (“Across the country we have witnessed growth in broadband adoption driven by greater price competition and increased consumer demand, as bandwidth-intense activities like video streaming and peer-to-peer sharing continue to grow . . .”).

