

Four years ago, the motion picture industry convinced the Senate Judiciary Committee to hold a hearing to explore what Hollywood studios claimed was rampant piracy of movies occurring through the so-called "analog hole." (For non-engineers, the "analog hole" is the movie industry's term for any content-playing device connected to a TV through the red, blue and green multi-use port on the back of millions of TV sets.) The industry's trade group, the Motion Picture Association of America (MPAA), argued that a great harm was devouring the motion picture industry: that consumers would export movies through the analog output, stealing content and sending it out over the Internet.

By the end of the hearing, Committee leaders did not appear convinced that such analog connections on TV sets were in fact leading to piracy. In fact, as the transcript of the hearing reveals, Committee Chairman Arlen Specter challenged the head of the MPAA, Dan Glickman, to provide evidence in support of the alleged problem:

Chairman Specter. Mr. Glickman, lots of information about piracy from you and from the Department of Justice, but can you quantify any direct connection between piracy and the analog hole?

Mr. Glickman. We have just completed a major study called the LE case study which estimates that our companies lose about \$6.1 billion a year in piracy, and as part of that--

Chairman Specter. OK. I mean from analog--I have only got 5 minutes.

Mr. Glickman. OK, \$1 to \$1.5 billion in what we call noncommercial copying of movies for family and friends. We believe a big part of that is due to the analog hole.

Chairman Specter. How do you arrive at the figure of \$1.5 billion?

Mr. Glickman. The firm did worldwide and national piracy study focus groups. The methodology we considered to be quite good.

Chairman Specter. Well, let me ask you to supplement your answer with the specifics as to how you come to that conclusion.

Mr. Glickman. Sure, be glad to.

Chairman Specter. We would like to see the methodology because before we really tackle the problem, we want to know--before we really look for a solution, we would like to have a specification of the problem.

Mr. Glickman. We will get you that, Senator.

And what of that methodology that MPAA's Glickman said was "quite good"? It turns out it wasn't quite so good. Rather than provide the evidence requested by Congress, the MPAA was forced to confess that due to "human error" they "got the math wrong" and were unable to properly quantify piracy "losses" from analog TV connections. Forced to admit the much-ballyhooed study exaggerated the losses due to piracy, the MPAA repudiated its own analysis.

Now, having failed to make its case to the Senate, the MPAA is back - this time, before the Federal Communications Commission (FCC) - asking permission to disable lawfully purchased HDTV-capable TVs. Using an obscure procedural mechanism, MPAA is asking the FCC for authority to use "selectable output control" (SOC) to shut off TVs that do not use the motion-picture industry's preferred digital connections. (Again for the non-engineers, SOC allows content providers to shut off the video stream to any TV that is receiving content over a non-favored connection, such as analog.)

The procedural vehicle may be different, but one thing remains the same - MPAA is still unable to show any evidence of piracy through analog outputs. That is because this type of piracy largely does not exist. Most movie piracy occurs before the studios release the movies on home video, much of it through the motion picture studios and their contractors - a fact that studios hide.

Indeed, some movie studio officials concede publicly that the biggest source of movie piracy is the old-fashioned video camera concealed by a movie patron under a coat. By the time a movie is being shown on cable TV, the file-sharing horse has left the barn. And so some forward-thinking studios, proving they don't agree with the industry's

piracy argument, have begun releasing some films to video-on-demand even before DVD.

Given that at least some in Hollywood acknowledge their piracy argument makes no sense, why is the MPAA focusing its vast lobbying resources on this issue and trying to get the FCC to give them the right to shut off millions of TVs? The reason is that this is not about piracy, but about control of your TV. With the ability to turn off your TV at will, the studios gain veto power over TV design and the viewer's TV experience. If they are successful, viewers will only be able to watch movies when, where and how Hollywood says.

If the MPAA gets its way and the FCC grants its wish, then 25 million lawful TV viewers who rely on analog interfaces would be subject to being shut off by Hollywood. Millions of Americans could no longer be sure the technology they purchased in good faith would continue to be fully functional.

If the FCC grants Hollywood the power to turn off analog inputs soon they will return asking for permission to unilaterally disable other features and functions. This is bad for anyone thinking of buying a new product, or who bought something in the past thinking it would work a certain way.

As flimsy as Hollywood's case appears, don't underestimate the power of the MPAA. They are a Washington powerhouse, and they have retained a fleet of DC's top lobbyists to walk the halls of the Commission on this very issue.

This approach has paid off for MPAA in the past, but things may be different this time. The new FCC Chair has declared that this

Commission's decisions would be guided by data, not which pleading industry had the most political heft.

Indeed, the FCC's new leader vowed to make this the most data-driven FCC in history. Now he faces his first test: a powerful, politically connected industry is asking for permission to inconvenience millions of consumers, without offering a shred of evidence that the result will reduce piracy.

We will soon learn whether the "new FCC" is a reality. We hope they understand that to take away the consumer's ability to shift lawfully acquired content based on the speculation and whims of the MPAA is bad policy. That is why every major consumer group is on record opposing it. That is why we oppose it.