

In June 2008, the Motion Pictures Association of America asked the FCC to waive its prohibition on selectable output controls to allow them to selectively block the copying of HD movies via cable set-top boxes. They say in order to move up the multichannel video HD window while still protecting the DVD window, they need to be able to prevent their being copied.

Faced with that prospect, groups including Public Knowledge, Media Access Project and Consumer Federation of America, sent a letter to the FCC warning it not to respond to the "whims of industry" by granting a waiver that would result in substantial harm to consumers by blocking outputs to TiVo's or Sling Boxes.

They argued that MPAA has not offered up "a shred of relevant data in the record to support its claim that the ability to turn off video outputs on common consumer electronics could be used to effectively combat piracy." The FCC said Friday that while it agreed with Public Knowledge that loosening the ban would not prevent piracy, "the commission said it would impede it enough to allow the studios to provide what it argued was a valuable service.

Representatives of the MPAA met with FCC staffers in late summer of 2009 to urge them to grant the waiver, saying it would "enable millions of Americans to obtain access in their homes to high-value content that MPAA member studios intend to distribute."

One of MPAA's initial arguments was that the waiver could help speed the DTV transition by increasing the demand for HDTV, but the FCC has already missed that boat.

The National Cable & Telecommunications Association, which supported the FCC ban on selectable output controls, also backs the waiver.

"We are disappointed in the Bureau's Selectable Output Control decision effectively allowing any video copyright owner to unilaterally shut off video outputs on consumers' televisions," said the Consumer Electronics Association. "We appreciate, however, that the waiver is limited to analog-only outputs, has a 90-day duration, and that the Commission will review all waivers that are implemented. Nonetheless, we are unsure when the FCC has ever before given private entities the right to disable consumers' products in their homes. The fact that the motion picture studios want to create a new business model does not mean that functioning products should be disabled by them. The decision is not in the public interest, and harms the very consumers that the Commission is in place to protect."

Public Knowledge and others had argued that consumers had the right to expect to access any MVPD content through the equipment they had purchased, but the FCC agreed with MPAA that people currently could not and should not have any expectation to see a just-released theatrical on their TV's or via the Internet, at least not legally.

But just to make sure there was no confusion, the Commission warned that it would revoke the waiver if the service were marketed deceptively or consumers not clearly told what their options were.

Also opposed is the Independent Film & Television Alliance, which said not long after the waiver request was made that, allowing the major studios to "remotely shut off a particular output on a program-by-program basis" would harm program diversity by diminishing access to independent films like those of their members. Theater owners were also concerned that the studios are shortening their distribution windows and migrating their movies to other distribution platforms -- like cable and satellite--that they can more easily control.