

March 2009

FCC Launches Inquiry Into New Technologies to Protect Children from Harmful Content: Comments are due April 16, 2009

The Federal Communications Commission (“FCC”) has opened an examination of the manner in which it can regulate content providers, content deliverers and the manufacturers of devices that deliver content so that parents can selectively block indecent, objectionable and otherwise undesired content across all platforms and communications services. Although the FCC may recommend some measures for content providers, ultimately, any recommendations to deploy advanced blocking technologies would most likely fall on the facility through which the content is accessed.

Pursuant to Congressional mandate implementing the Child Safe Viewing act of 2007 (“Act”), on March 2, 2009, the FCC released a Notice of Inquiry (“NOI”) (FCC 09-14). The Act mandates the FCC to issue a report to Congress based on its findings no later than August 29, 2009. Based upon the comments sought in the NOI, this report may include recommendations that touch on all forms of content and media delivery. Specifically, the FCC was tasked to examine the following:

- the existence and availability of advanced blocking technologies that are compatible with various communications devices or platforms;
- the methods of encouraging the development, deployment, and use of such technology by parents that do not affect the packaging or pricing of a content provider’s offering; and
- the existence, availability, and use of parental empowerment tools and initiatives already in the market.

The NOI seeks comment on developing consumer-friendly advanced blocking technologies and the current use of such measures across several platforms, including: Broadcast Television; Cable & Satellite Television; Wireless Devices; the Internet; Non-networked Devices (such as DVRs and VCRs). And, the NOI seeks comment on whether these measures can operate seamlessly across platforms and whether there are blocking technologies in existence or in development that are capable of operating across multiple platforms.

With respect to each individual platform, the FCC seeks comment on the following:

Television

The growth and diversity of media devices available, including portable devices and devices that simultaneously transmit audio and video programming, and the increased media exposure to children, makes direct parental supervision of the content to which children are exposed increasingly difficult. While Congress already requires most televisions to be equipped with blocking technology and mandates parental ratings guidelines based on age and content, both of these protection measures are severely underutilized. The FCC seeks comment on:

- Whether any improvement can be made in the V-Chip technology and ratings systems, and welcomes suggestions on any other mechanism to effectively encourage increased use of the V-Chip by parents as advanced blocking technologies are deployed;
- Whether current intellectual property laws inhibit implementation of new technologies; and
- Whether closed captioning is a proper basis for screening content, especially since it often lags the accompanying video.

Cable and Satellite

Like the V-Chip in televisions, set top boxes and satellite receivers are capable of filtering content by program, and in some cases, an entire channel. Furthermore, many set top boxes and receivers also have a built-in recording capability. The FCC seeks comment on:

- Whether the additional parental controls available to cable and satellite subscribers facilitate parental use; and
- Whether the parental controls on recording devices built-in to cable set top boxes and satellite receivers are more effective than stand-alone recording devices.

Wireless Devices

The availability of content available on wireless devices is growing exponentially and is typically viewed by children outside the purview of parents. Further, the available content can originate from either the service provider or any one of millions of independent, third-party content originators. While the FCC recognizes that the industry has taken several self-regulatory steps (including adopting voluntary content control guidelines and content filtration by age category), the FCC seeks comment on whether these mechanisms to control content should be adopted, with potential for cross-over between different content platforms. Specifically, the FCC seeks comment on:

- Whether these guidelines and technologies are effectively utilized by parents and the steps that can be taken to encourage parents to utilize blocking technologies;
- Whether the wireless industry content ratings are similar to those utilized by the video and audio content industries;
- Whether additional and more effective blocking or filtering technologies can be developed; and
- What impact will open platforms have on advanced blocking technologies.

Non-Network Devices

Although non-networked devices, such as DVD players and VCRs, are not capable of transmitting or receiving audio or video content, these devices are prevalent in American households. Parents have greater control over the content that is played using these devices because a physical disc or tape must be inserted to access content. However, parents are unable to control children who can purchase their own content and know how to operate these devices. The FCC seeks comment on whether any blocking technologies exist, or are in development, for these devices as well as other non-networked devices, such as MP3 players, and other portable media players.

The Internet

Internet has become a pervasive source of content which is available for free, downloadable on demand and can be stored, and is available live or interactive. Currently, parents may block objectionable content by placing it on a blacklist (by domain name or IP number of the content source). Oftentimes children are more knowledgeable than their parents when navigating the Internet and can circumvent such protections when content is available from multiple sources. For these reasons, the online safety of children has become a Congressional priority. To facilitate the Congressional goal of protecting children online, the FCC seeks comment on:

- The advanced blocking technologies that are currently available;
- How blacklisted content should be generated: by parents, automated analysis, or human review;
- Whether content rating or labeling is an effective tool available to educate parents on whether content may be inappropriate for children;
- Whether the creation of child “safe zones” which automatically block unwanted content are effective;
- Whether technology exists to prevent objectionable content obtained outside the home (either via download or email) to be viewed within the home.

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Other Considerations

In addition to comments on the specific platform technologies, the FCC also seeks comment on several broad areas including:

- The broad statutory definition of “advanced blocking technologies,” and whether the Act leaves the determination of what is “indecent” or “objectionable” to parents;
- Whether Congress intended that the FCC examine blocking technologies for audio or video only content or for content which combines both;
- Whether the definition of “video programming” found in Section 602(2) of the Communications Act is the appropriate definition to use for purposes of the Act;
- Strategies to encourage the development and use of advanced blocking technologies and the role of industry, Government, trade organizations, consumer groups and others; and
- Whether the FCC should examine blocking technology for video games.

Comments are due on **April 16, 2009** and Reply Comments are due on **May 18, 2009**.

If you would like to file comments or if you have any questions regarding this proceeding, please contact [Eric Breisach](#), [Lisa Cordell](#), [Mark Palchick](#), [Danielle Benoit](#) or the WCSR attorney with whom you regularly work.

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