

Advertising Technology & Media Alert

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FCC Issues Parental Controls' Inquiry for Video and Audio Programming: Proceeding is a Likely Litmus Test for Genachowski's Regulation of Converged Media

Comments Due: April 16, 2009

Reply Comments Due: May 18, 2009

On March 3, 2009, the Federal Communications Commission ("FCC") released a Notice of Inquiry to implement the Child Safe Viewing Act of 2007 ("CSVA"), which directs the FCC to examine advanced parental control technologies that would be compatible with various communications devices and platforms.

Congress drafted the CSVA because of its "severe concern" about the existing parental controls on the market for broadcast television—the V-Chip and corresponding TV Parental Guidelines.¹ But, ultimately, the reach of the CSVA (and the FCC's notice) extends far beyond broadcast television programs. The FCC's notice invites comments regarding whether advanced parental control technologies would be appropriate for:

- Wireless devices (wireless telephones and other hand-held devices)
- The Internet (on video hosting sites or vodcasts)²
- Broadcast and satellite radio
- Cable and broadcast television
- Non-networked devices (such as, DVRs, VCRs, and MP3 players)
- Video game players and/or video games

Coincidentally, the notice was released the same day that the Obama administration formally nominated Julius Genachowski to chair the FCC. Genachowski understands the converged media environment well, and many in the industry expect this proceeding to be a "litmus test" for new media regulation. Most recently, Chairman Designate Genachowski worked in the private sector as a technology executive and entrepreneur (he was co-founder and managing director of LaunchBox Digital and Rock Creek Ventures, and a special adviser at General Atlantic. Before these positions, Genachowski was a senior executive for eight years at IAC/InterActiveCorp).

In addition to the multi-platform nature of this proceeding, other substantive issues may be of concern to your organization. The most prominent of these include:

- **"Indecent" and "Objectionable" Programming (¶ 5):** The CSVA requires the FCC to examine "advanced blocking technologies" that can enhance or improve a parent's ability to block "indecent or objectionable programming." Although, the term "indecent" has been defined in other contexts, the CSVA appears to leave determination of what is "indecent" or "objectionable" entirely to the individual discretion of the parents. The FCC invites comments on this interpretation.
- **Audio and/or Video Programming (¶ 6):** The FCC seeks comment on whether the CSVA intended examination of content that is audio only (e.g., music) or technologies appropriate for content that combines audio and video (e.g., television programs), or both.
- **Trade Associations and Consumer Groups (¶ 9):** The FCC seeks comment on what role trade associations and consumer groups should have in encouraging the development, deployment and use of advanced blocking technologies in the industry.
- **Programming Packaging or Pricing (¶ 9):** The CSVA requires examination of blocking methods that will not "affect the packaging or pricing of a content provider's offering." The FCC requires

comments on how this provision will be interpreted, because, ultimately, a rating will shape a target audience and likely ad revenue.

- **Using Existing Technology (¶ 16):** Many studies have shown that the V-Chip and the TV Parental Guidelines are not widely used, and many parents remain unaware of them. The FCC invites comments on these studies and any improvements that could be made to the V-Chip and existing ratings system to increase their use and effectiveness.
- **Ratings for Commercials (¶ 19):** Currently, commercials are not rated under the TV Parental Guidelines. The FCC seeks comment on the extent to which inappropriate commercials are aired during programming viewed by children, and whether commercials should be rated for blocking purposes by the V-Chip or other technologies.
- **Non-Creator Ratings (¶ 20):** The FCC invites comments on whether ratings should be established by any entity other than the creator of the programming. For example, the TV Parental Guidelines do not allow parents to block programs that highlight smoking, alcohol abuse, or illegal drug use. Perhaps other associations or industries could develop ratings lists that could be used by a blocking device?
- **Filters Based on Closed Captioning (¶ 24):** The product TV Guardian operates by scanning closed captioning and muting the audio part of the programming when offensive phrases appear. The FCC notes that closed captioning is not always synchronized with the audio and seeks comment on the use of this technology.
- **Wireless Content (¶¶ 27-33):** The FCC understands that wireless devices aggregate content and applications from multiple sources. (Content on wireless devices can come from an application installed on the phone, seen via an in-phone browser window or downloaded from a user's computer). As such, the FCC recognizes that it may be difficult to place parental blocking requirements on wireless carriers. Children could download third-party mobile applications, unbeknownst to the carrier. Thus, the FCC seeks comments on what extent content controls need to be placed on a carrier's network, or the individual user device, to be effective.
- **Internet Programming (¶ 38):** The FCC identifies that there are many different types of programming on the Internet. Programming ranges from video that was first aired on traditional television, to interactive video gaming systems or virtual worlds. The FCC seeks comment on what types of Internet programming should be considered "video programming" for purposes of the CSVA.
- **Effectiveness of Existing Internet Parental Controls (¶¶ 39-41):** The notice identifies that Internet filter technologies are already prevalent in the market—many services give content creators, viewers and third parties the ability to label content and block it appropriately. The FCC seeks comments on how effective these technologies are. The FCC also recognizes that "child safe zones" exist on the Internet and identifies the [.Kids.US](#) and [Teen Second Life](#) websites. The FCC seeks further comments on whether the child safe zone strategy has been effective and if parents are aware of these options.
- **Parental Control Implementation (¶¶ 42-43):** The FCC acknowledges that parental control solutions for video and audio programming can be implemented in a variety of ways. Some controls are deployed on the Internet Service Provider network-level, on a specific application on the user's computer (for example, some web filters act as a component to the web browser), or in an intermediary location. Are end-user device mechanisms preferable for parental control or are parental controls necessary at an ISP or website host level? When parties comment on these implementation methods, the FCC has also asked them to consider the extent to which children can circumvent the blocking technologies.

¹ All television sets with picture screens 33 centimeters (13 inches) or larger built after the year Jan. 1, 2000 must be equipped with features to block the display of television programming based upon its rating. This internal blocking technology is known as the "V-Chip." The "TV Parental Guidelines," constitute the voluntary ratings system established for use by the V-Chip.

² Internet video hosting sites aggregate video content, and individuals may pull content from the site for viewing (e.g., [YouTube](#), [Google Video](#) or [Hulu](#)). Vodcasts, on the other hand, are a series of video recordings that can be subscribed to by individuals where content is automatically pushed to the user from the content provider's website (e.g., it is common for news websites such as CNN or the BBC to have vodcasts available).

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