

United States Senate  
WASHINGTON, DC 20510-1604

October 27, 2003

The Honorable Michael Powell  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Chairman Powell:

It is my understanding that the Federal Communications Commission is poised to vote as early as Tuesday, October 28, 2003 on a proposal by the Motion Picture Association of America (MPAA) to require the inclusion of the "broadcast flag" content protection scheme in all new digital television appliances – television sets, recording devices, personal computers, and any other device that can demodulate a digital television signal. I am writing today out of concern that the Commission's consideration of this matter "on circulation," as opposed to holding an open Commission meeting, would be a disservice to the public and call into question the transparency in government in such a critical consumer issue.

The Commission has received voluminous comments in regards to the MPAA broadcast flag proposal from industry stakeholders, as well as over 6000 members of the public opposed to such a regulation. As a result, I would like to associate myself with the concerns stated by Senate Commerce Committee Chairman McCain in his recent letter to you.

According to the content industry the broadcast flag will merely serve as a speed bump, establishing a content protection scheme that will create disincentives for consumers to pirate digital television content, *i.e.* keeping "honest people honest." Filings by the consumer electronics and information technology sectors indicate that the broadcast flag as proposed by the MPAA is a far more intrusive technology that, if implemented in accordance with the MPAA proposal, would amount to *invasive* regulation of home electronics and computing appliances. Adoption of the MPAA proposal could seriously limit the functionality of countless current and future hardware products that may legally view, manipulate, and distribute digital television signals.

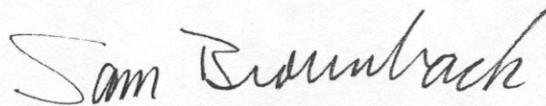
As a result of the incredible contrast between the stakeholders for and against the MPAA broadcast flag proposal, and given that a Commission regulation in this matter will ultimately affect every single U.S. television household – including every room in those homes in which a television is located – I urge you to delay a Commission vote at this time. Instead, I urge the Commission to schedule an En Banc hearing on this issue,

giving the opposing sides an opportunity for public debate on the merits of the MPAA broadcast flag proposal, and the consequences of FCC action for American consumers.

An En Banc hearing at this time would be invaluable for enabling the Commission to serve the public interest in this matter, as well as the Commission's understanding of how a broadcast flag regulation may affect consumers. Recently the Commission has come under fire for not permitting maximum public involvement in its regulatory processes in the context of its media ownership proceeding. While I disagree with such an assessment in that context, I fear that suggestions of this nature in regards to the broadcast flag proceeding may be more appropriate absent an En Banc hearing. At the very least the Commission should go to great lengths to explain why it is necessary to implement the broadcast flag at this time, and in a non-public manner.

Additionally, and important for judicial proceedings that would almost certainly follow Commission adoption of a broadcast flag regulation, an En Banc hearing would be invaluable for the Commission to gain a greater understanding of how *any* action it takes to adopt a uniform content protection scheme such as the MPAA's broadcast flag proposal necessarily involves the Copyright Act, a statute under which the Commission has no authority.

Sincerely,

A handwritten signature in black ink that reads "Sam Brownback". The signature is written in a cursive, slightly slanted style.

SAM BROWNBACK  
United States Senator

cc:

Commissioner Abernathy  
Commissioner Adelstein  
Commissioner Copps  
Commissioner Martin