

(c) With respect to cable system operators, this subpart shall apply only to cable services. This subpart shall not apply to cable modem services, whether or not provided by a cable system operator or affiliate.

§ 76.1902 Definitions.

(a) *Commercial advertising messages* shall mean, with respect to any service, program, or schedule or group of programs, commercial advertising messages other than:

(1) Advertising relating to such service itself or the programming contained therein,

(2) Interstitial programming relating to such service itself or the programming contained therein, or

(3) Any advertising which is displayed concurrently with the display of any part of such program(s), including but not limited to “bugs,” “frames” and “banners.”

(b) *Commercial audiovisual content* shall mean works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied, transmitted by a covered entity and that are:

(1) Not created by the user of a covered product, and

(2) Offered for transmission, either generally or on demand, to subscribers or purchasers or the public at large or otherwise for commercial purposes, not uniquely to an individual or a small, private group.

(c) *Commercially adopted access control method* shall mean any commercially adopted access control method including digitally controlled analog scrambling systems, whether now or hereafter in commercial use.

(d) *Copy never* shall mean, with respect to commercial audiovisual content, the encoding of such content so as to signal that such content may not be copied by a covered product.

(e) *Copy one generation* shall mean, with respect to commercial audiovisual content, the encoding of such content so as to permit a first generation of

copies to be made by a covered product but not copies of such first generation of copies.

(f) *Copy no more* shall mean, with respect to commercial audiovisual content, the encoding of such content so as to reflect that such content is a first generation copy of content encoded as copy one generation and no further copies are permitted.

(g) *Covered product* shall mean a device used by consumers to access commercial audiovisual content offered by a covered entity (excluding delivery via cable modem or the Internet); and any device to which commercial audiovisual content so delivered from such covered product may be passed, directly or indirectly.

(h) *Covered entity* shall mean any entity that is subject to this subpart.

(i) *Defined business model* shall mean video-on-demand, pay-per view, pay television transmission, non-premium subscription television, free conditional access delivery and unencrypted broadcast television.

(j) *Encode* shall mean, in the transmission of commercial audiovisual content, to pass, attach, embed, or otherwise apply to, associate with, or allow to persist in or remain associated with such content, data or information which when read or responded to in a covered device has the effect of preventing, pausing, or limiting copying, or constraining the resolution of a program when output from the covered device.

(k) *Encoding rules* shall mean the requirements or prohibitions describing or limiting encoding of audiovisual content as set forth in this subpart.

(l) *Free conditional access delivery* shall mean a delivery of a service, program, or schedule or group of programs via a commercially-adopted access control method, where viewers are not charged any fee (other than government-mandated fees) for the reception or viewing of the programming contained therein, other than unencrypted broadcast television.

(m) *Non-premium subscription television* shall mean a service, or schedule or group of programs (which may be offered for sale together with other services, or schedule or group of programs), for which subscribers are charged a

subscription fee for the reception or viewing of the programming contained therein, other than pay television, subscription-on-demand and unencrypted broadcast television. By way of example, “basic cable service” and “extended basic cable service” (other than unencrypted broadcast television) are “non-premium subscription television.”

(n) *Pay-per-view* shall mean a delivery of a single program or a specified group of programs, as to which each such single program is generally uninterrupted by commercial advertising messages and for which recipients are charged a separate fee for each program or specified group of programs. The term pay-per-view shall also include delivery of a single program for which multiple start times are made available at time intervals which are less than the running time of such program as a whole. If a given delivery qualifies both as pay-per-view and a pay television transmission, then, for purposes of this subpart, such delivery shall be deemed pay-per-view rather than a pay television transmission.

(o) *Pay television transmission* shall mean a transmission of a service or schedule of programs, as to which each individual program is generally uninterrupted by commercial advertising messages and for which service or schedule of programs subscribing viewers are charged a periodic subscription fee, such as on a monthly basis, for the reception of such programming delivered by such service whether separately or together with other services or programming, during the specified viewing period covered by such fee. If a given delivery qualifies both as a pay television transmission and pay-per-view, video-on-demand, or subscription-on-demand then, for purposes of this subpart, such delivery shall be deemed pay-per-view, video-on-demand or subscription-on-demand rather than a pay television transmission.

(p) *Program* shall mean any work of commercial audiovisual content.

(q) *Subscription-on-demand* shall mean the delivery of a single program or a specified group of programs for which:

(1) A subscriber is able, at his or her discretion, to select the time for commencement of exhibition thereof,

(2) Where each such single program is generally uninterrupted by commercial advertising messages; and

(3) For which program or specified group of programs subscribing viewers are charged a periodic subscription fee for the reception of programming delivered by such service during the specified viewing period covered by the fee. In the event a given delivery of a program qualifies both as a pay television transmission and subscription-on-demand, then for purposes of this subpart, such delivery shall be deemed subscription-on-demand rather than a pay television transmission.

(r) *Undefined business model* shall mean a business model that does not fall within the definition of a defined business model.

(s) *Unencrypted broadcast television* means any service, program, or schedule or group of programs, that is a substantially simultaneous retransmission of a broadcast transmission (*i.e.*, an over-the-air transmission for reception by the general public using radio frequencies allocated for that purpose) that is made by a terrestrial television broadcast station located within the country or territory in which the entity retransmitting such broadcast transmission also is located, where such broadcast transmission is not subject to a commercially-adopted access control method (*e.g.*, is broadcast in the clear to members of the public receiving such broadcasts), regardless of whether such entity subjects such retransmission to an access control method.

(t) *Video-on-demand* shall mean a delivery of a single program or a specified group of programs for which:

(1) Each such individual program is generally uninterrupted by commercial advertising messages;

(2) Recipients are charged a separate fee for each such single program or specified group of programs; and

(3) A recipient is able, at his or her discretion, to select the time for commencement of exhibition of such individual program or specified group of programs. In the event a delivery qualifies as both video-on-demand and a pay television transmission, then for

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purposes of this subpart, such delivery shall be deemed video-on-demand.

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§ 76.1903 Interfaces.

A covered entity shall not attach or embed data or information with commercial audiovisual content, or otherwise apply to, associate with, or allow such data to persist in or remain associated with such content, so as to prevent its output through any analog or digital output authorized or permitted under license, law or regulation governing such covered product.

§ 76.1904 Encoding rules for defined business models.

(a) Commercial audiovisual content delivered as unencrypted broadcast television shall not be encoded so as to prevent or limit copying thereof by covered products or, to constrain the resolution of the image when output from a covered product.

(b) Except for a specific determination made by the Commission pursuant to a petition with respect to a defined business model other than unencrypted broadcast television, or an undefined business model subject to the procedures set forth in § 76.1906:

(1) Commercial audiovisual content shall not be encoded so as to prevent or limit copying thereof except as follows:

(i) To prevent or limit copying of video-on-demand or pay-per-view transmissions, subject to the requirements of paragraph (b)(2) of this section; and

(ii) To prevent or limit copying, other than first generation of copies, of pay television transmissions, non-premium subscription television, and free conditional access delivery transmissions; and

(2) With respect to any commercial audiovisual content delivered or transmitted in form of a video-on-demand or pay-per-view transmission, a covered entity shall not encode such content so as to prevent a covered product, without further authorization, from pausing such content up to 90 minutes from initial transmission by the covered entity (e.g., frame-by-frame, minute-by-minute, megabyte by megabyte).

§ 76.1905 Petitions to modify encoding rules for new services within defined business models.

(a) The encoding rules for defined business models in § 76.1904 reflect the conventional methods for packaging programs in the MVPD market as of December 31, 2002, and are presumed to be the appropriate rules for defined business models. A covered entity may petition the Commission for approval to allow within a defined business model, other than unencrypted broadcast television, the encoding of a new service in a manner different from the encoding rules set forth in § 76.1904(b)(1) and (2). No such petition will be approved under the public interest test set forth in paragraph (c)(4) of this section unless the new service differs from existing services provided by any covered entity under the applicable defined business model prior to December 31, 2002.

(b) *Petitions.* A petition to encode a new service within a defined business model other than as permitted by the encoding rules set forth in § 76.1904(b)(1) and (2) shall describe:

(1) The defined business model, the new service, and the proposed encoding terms, including the use of copy never and copy one generation encoding, and the encoding of content with respect to “pause” set forth in § 76.1904(b)(2).

(2) Whether the claimed benefit to consumers of the new service, including, but not limited to, the availability of content in earlier release windows, more favorable terms, innovation or original programming, outweighs the limitation on the consumers’ control over the new service;

(3) The ways in which the new service differs from existing services offered by any covered entity within the applicable defined business model prior to December 31, 2002;

(4) All other pertinent facts and considerations relied on to support a determination that grant of the petition would serve the public interest.

(5) Factual allegations shall be supported by affidavit or declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.