

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of Section 505 of)	CS Docket No. 96-40
the Telecommunications Act of 1996)	
)	
Scrambling of Sexually Explicit Adult Video)	
Service Programming)	

ORDER

Adopted: April 17, 1997

Released: April 17, 1997

By the Commission:

1. On February 8, 1996, the Telecommunications Act of 1996 ("1996 Act") was enacted.¹ Section 505 of the 1996 Act² amends the Communications Act³ by adding a new Section 641, entitled "Scrambling of Sexually Explicit Adult Video Service Programming."⁴ Section 641(a) requires that

[i]n providing sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming, a multichannel video programming distributor⁵ shall fully scramble or otherwise fully block the video and audio portion of such channel so that one not a subscriber to such channel or programming does not receive it.

Section 641(b) provides that

[u]ntil a multichannel video programming distributor complies with the

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

² *Id.*, Section 505.

³ 47 U.S.C. § 151, *et seq.*

⁴ Codified as 47 U.S.C. § 561.

⁵ Section 602(13) of the Communications Act defines a multichannel video programming distributor as "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming." 47 U.S.C. § 522(13).

requirement set forth in subsection (a), the distributor shall limit the access of children to the programming referred to in that subsection by not providing such programming during the hours of the day (as determined by the Commission) when a significant number of children are likely to view it.⁶

2. The Commission adopted an Order and Notice of Proposed Rulemaking implementing Section 505 and defining, on an interim basis, the hours of 6:00 am to 10:00 pm as those hours when a significant number of children are likely to view such programming.⁷ Section 505 provides that these provisions take effect 30 days after the date of enactment of the 1996 Act, i.e., March 9, 1996.⁸ The Commission has not enforced Section 505 due to a temporary restraining order and a number of stays that were granted by the United States District Court for the District of Delaware.⁹

⁶ Section 641(c) also provides a definition of "scramble:" "to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner." Section 641(c), Communications Act.

⁷ Order and Notice of Proposed Rulemaking in CS Docket No. 96-40, Implementation of Section 505 of the Telecommunications Act of 1996: Scrambling of Sexually Explicit Adult Video Service Programming, 11 FCC Rcd 5386 (released March 5, 1996).

⁸ Section 505(b), 1996 Act ("The amendment made by subsection (a) shall take effect 30 days after the date of enactment of this Act.").

⁹ Prior to the statute becoming effective the United States District Court for the District of Delaware issued a temporary restraining order enjoining the United States Government, including the Commission, from "enforcing or implementing Section 505 of the Telecommunications Act of 1996 in any manner." The court's order stated that the temporary restraining order "shall remain in force only until the hearing and determination by the district court of three judges of Plaintiff's Motion for Preliminary Injunction." *Playboy Entertainment Group, Inc. v. United States*, 918 F. Supp. 813 (D. Del. 1996). The Cable Services Bureau ("Bureau") by public notice announced that the Commission would not enforce or implement Section 505 while the temporary restraining order was in effect. Public Notice, Report No. CS 96-17, DA 96-354 (Cable Services Bureau), released March 13, 1996, 11 FCC Rcd 10336 (1996).

On November 8, 1996, a three judge panel of the United States District Court for the District of Delaware issued an order denying petitions for a preliminary injunction regarding Section 505, and thus lifted the temporary restraining order that was in effect. *Playboy Entertainment Group, Inc. v. United States*, 945 F. Supp. 772 (D. Del. 1996). Thereafter, the Bureau issued a public notice announcing that Section 505 of the Telecommunications Act, and its associated rules, were in effect. Public Notice, DA 96-1906 (Cable Services Bureau), released November 15, 1996.

The court, however, ordered that any enforcement of Section 505 was "stayed pending the decision of the Court on plaintiffs' pending Motions to Stay" the opinion of the court pending review by the Supreme Court. *Playboy Entertainment Group, Inc. v. United States*, Civil Action Nos. 96-94/96-107, November 15, 1996. The Bureau announced by public notice that the Commission would not enforce Section 505. Public Notice, DA 96-1915, (Cable Services Bureau), released November 18, 1996.

The three judge panel, on December 5, 1996, granted plaintiffs' motion to stay and ordered that any enforcement of Section 505 was "stayed during the pendency of the [parties'] appeal" to the Supreme Court. *Playboy Entertainment Group, Inc. v. United States*, Civil Action Nos. 96-94/96-107, December 5, 1996. On December 9, 1996, the Bureau issued a public notice announcing the court's decision and stating that Section 505 would remain

3. On November 8, 1996, a three judge panel of the District Court for the District of Delaware denied a request for a preliminary injunction of Section 505. On March 24, 1997, the Supreme Court affirmed the District Court's denial of the preliminary injunction.¹⁰ The time to seek rehearing of the Supreme Court's decision expires on April 18, 1997. Congress, prior to the above referenced judicial proceedings, provided that Section 641 would become effective with 30 days advance notice. Consistent with that initial schedule, the rules implementing Section 505 will become effective on May 18, 1997. We believe that this amount of time is reasonable given any previous uncertainty with respect to enforcement of this provision and that it will permit operators to comply, to the maximum extent feasible, with any relevant subscriber notice requirements.

4. Accordingly, IT IS ORDERED THAT, pursuant to Sections 4(i) and 641 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 561, and Section 505 of the Telecommunications Act of 1996, 47 C.F.R. § 76.227 is effective on May 18, 1997.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

unenforceable pending appeal to the Supreme Court. Public Notice, DA 96-2064 (Cable Services Bureau), released December 9, 1996.

¹⁰ *Playboy Entertainment Group, Inc. v. United States*, 65 U.S.L.W. 3644, 3647, 1997 WL 128706 U.S. (Mar. 24, 1997).