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April 18, 2005

Mr. Jonathan Katz  
Secretary  
U.S. Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549

FILED ELECTRONICALLY (rule-comments@sec.gov)

Dear Mr. Katz:

**Re: File No. 4-497**

We appreciate the opportunity to provide comments on the implementation of Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404") and Auditing Standard No. 2, An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements ("AS 2") issued by the Public Company Accounting Oversight Board ("PCAOB").

Macrovision Corporation is an accelerated filer that has completed the first year of SOX 404 implementation. Our independent registered public accounting firm's opinion, dated March 31, 2005, disclosed no material weaknesses in internal controls. We are a medium sized public software company (Nasdaq: MVSN) with annual 2004 revenues of \$182 million.

While we appreciate the overall intent of SOX 404 to enhance investor confidence, maintain quality controls and the integrity of public companies' financial reporting system and promote full disclosure, we believe that implementation of SOX 404 and the PCAOB has not achieved the objectives in a cost effective or sensible manner.

Our opinion of the problems with SOX 404 and the PCAOB:

- 1) *Costs Massively Outweigh the Benefits:* In connection with our implementation of SOX 404 from mid 2003 through March 31, 2005, we spent approximately \$1.1 million to hire outside consultants and approximately \$1.2 million to pay incremental audit costs to our independent registered public accounting firm. That equates to a cost of approximately \$0.03 cents per share over the relevant two-year period. In addition, after spending the \$1.2 million to our external accountants to test our controls, we were told that because we are being tested for an opinion for SOX and not for financial statement assurance, we will not see any decrease in our financial statement audit fees. This "hair splitting" seems to only expand the audit firms' fee generation process. For a company already operating with

ethical and experienced management and well-functioning internal controls, there have been little corresponding benefits to the company or its stockholders.

- 2) *Distraction of Management and Personnel.* In addition to the actual external costs paid, the company estimates that it has spent thousands of man hours to implement SOX 404. The time required of our Audit Committee, executives, finance, IT and legal staff and other key employees is overly burdensome and has led to distraction from important company projects. These distractions have resulted in delays in our investments in new projects and new technologies that would otherwise make our company more profitable and more competitive, which we believe our stockholders would rather have us focus on than creating massive amounts of paperwork to document SOX 404 compliance.
- 3) *Scarcity of Qualified Auditors.* The public accounting firms' non-reliance on work performed by others has artificially created an environment where the demand for their services well-exceeds their supply. The guidance in AS 2 and the increased penalties for inaccuracy in financial reporting imposed by SOX has led to accounting firms requiring an inordinate amount of documentation and testing without regard to cost/benefit considerations. This has led to accounting and consulting firms raising their fees while simultaneously cutting back on their ability to service all the needs of the market. This situation is most detrimental to smaller public companies which are in effect held hostage by the accounting firms, forced to pay ever-escalating fees or else not be able to obtain the personnel to timely complete the SOX 404 compliance work. These small to medium sized companies suffer in the capital markets because they are not able to demonstrate the profitability necessary to attract investors.
- 4) *No Common Sense Materiality Threshold.* We believe that a reasonable concept of materiality has been eroded from the process. Although materiality is addressed in AB 2 and is a component of the final analysis of deficiencies, in practice the requirements have led to an environment where common sense has all but been thrown out the window. As a result of the Enron, WorldCom, etc. outcomes, independent public accounting firms have significantly increased their aversion to risk to an unworkable degree. Certain testing falls well below what any company would deem material (for example: requiring us to produce job descriptions for all finance positions and then match them to the employees' resumes so they can assess whether our finance organization is competent). Again, this excessive reliance on implementing and testing a large number of inconsequential controls that do not have a realistic potential of creating a material misstatement to financial statements has translated into much higher than necessary audit costs as well as excessive internal costs in preparing or providing data for the accountants, and in diverting focus on building the business through investment and creativity.

Based on our experience with SOX 404 during 2004, we would suggest the SEC make the following changes to help make implementation of SOX 404 more practical and cost-effective for companies and increase the benefits for the stockholders:

- 1) *Continue Cost-Effective Improvements for Stockholder Benefits.* The SEC has made many other cost-effective changes which public companies have been required to make that actually lead to higher quality and quantity of disclosure. Changes such as the new requirement for whistle-blower hotlines, director independence, senior management's required certification of the periodic reports and other control environment enhancements are cost-effective and easily sustainable with reasonable incremental costs.

- 2) *Revise Guidance to Be Practical.* The PCAOB standards establish reporting requirements for material weaknesses and significant deficiencies. The definitions are overly broad and have led to companies effectively being forced to detect misstatements at levels which are neither practical nor relevant. Instead of leading to an outcome of effective internal control processes, current interpretations of the standards by accounting firms are that an absence of documentation leads to a presumption that the control is ineffective. This leads to a form-over-substance situation where the test assures a document was signed, but does little to assure that an important process or review actually occurred properly. This effectively requires companies to create complex internal control structures that are more concerned with superfluous documentation and inconsequential or remote chance of occurrence. We believe establishing a pragmatic threshold for material weakness and significant deficiency (and clearly defining what constitutes each of these) and creating acceptable alternatives for evidence of controls would be a welcome change for both companies and auditors alike. SOX compliance guidelines should be streamlined to focus on fewer, important substantive processes. This would go a long way toward a much more effective and efficient use of resources to meet SOX 404 objectives.
- 3) *Eliminate Duplicative Work.* We believe the requirement that the public company and its independent registered public accounting firm each opine separately on the adequacy of internal control over financial reporting is unnecessarily duplicative. We believe the accountants should have the ability to rely on work performed by others after considering their competence, objectivity and independence and performing tests to corroborate results rather than wholesale duplication of testing.
- 4) *Allow Interim or Rotational Testing.* The auditor should be allowed to place reliance on work performed in prior years where such work is still relevant. So if the auditor has satisfactorily tested the control in Year 1, it would only be necessary to test changes to the control or new controls in subsequent periods. This type of “baseline” testing is a long-established and widely-accepted practice in the auditing profession. Alternatively, internal control testing could be changed from annually to once every two or three years if a company were successfully tested in the first year of implementation.
- 5) *Eliminate Impractical Limits on External Accountant Guidance.* Accounting firms are precluded from giving any guidance to their clients or forming any part of client internal control. In an over-interpretation of rules seeking to reserve independence of external accountants, the firms refuse to give official guidance on accounting treatments that will satisfy SOX compliance. If the firm later disagrees or changes their earlier interpretation, any resulting adjustment can be interpreted as a deficiency or even a material weakness. The unintended result of the rules is to render the considerable expertise of U.S. accounting firms unusable to their clients. Also, the inability of the external accountants to advise a company about control weaknesses they have found before the company informs the accountants of any weaknesses they have found (potentially months apart) seems artificial and actually something that would lead to an inability to improve internal controls.

It is difficult to truly comprehend the inefficiency of the process as implemented in 2004 and convey our frustration with the process we have had to endure to comply with this law. We have received very negative feedback from many of our stockholders who are extremely upset over the SOX 404 expense, and the misdirection of resources within our company. We believe that if SOX 404 is not changed, the current guidelines will dictate an unsustainable long term model, both from

an inability of public accounting firms to recruit enough talented individuals to do the work and from a company cost perspective. We believe the internal control rules mandated by SOX 404 have fallen far short of delivering on the intent of the law to prevent repetitions of the frauds at Enron, WorldCom, etc. Rather, we agree with the sentiments of other companies that the majority of the internal control effort resulting from SOX 404 is essentially “punishing the innocent for the sins of the guilty.”

In view of the overwhelming costs and burden on our business and economy, we would hope that the SEC and PCAOB take concerted and immediate action to rectify the situation as it currently stands. We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions you may have.

Sincerely yours,

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

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