

**INFORMATION TECHNOLOGY
INDUSTRY COUNCIL**

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The Honorable Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

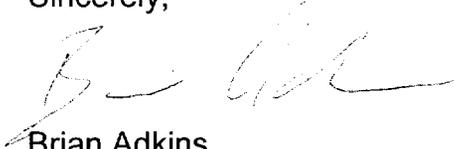
Re: Ex Parte Presentation in PP Docket No. 00-67

Dear Secretary Salas,

Pursuant to Section 1.1206(b)(1) of the Commission's Rules, 47 C.F.R. 1.1206(b)(1), please find attached two copies of the written *ex parte* presentation made by the Information Technology Industry Council ("ITI") in the above-captioned docket.

If you have any questions about this filing, please call me at the 202-626-5744.

Sincerely,


Brian Adkins
Director of Government Relations

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The Honorable William Kennard, Chairman
Federal Communications Commission
445 12th Street, SW – Room 8B-201
Washington, DC 20554

RE: NPRM on Compatibility Between Cable Systems and Consumer Electronics Equipment (PP Docket No. 00-67)

Dear Chairman Kennard:

I am writing on behalf of ITI's members to raise several additional issues with regard to the Commission's April 24 NPRM on the matter of Compatibility Between Cable Systems and Consumer Electronics Equipment (PP Docket No. 00-67). ITI represents the leading U.S. providers of information technology (IT) products and services. We support free market policies and advocate growing the economy through innovation. ITI member companies employed more than 1.3 million people in the United States and exceeded \$633 billion in worldwide revenues in 1999.

ITI's May 24 comments on the NPRM expressed our opposition to copy protection licensing terms that required degradation of system performance or failed to include suitable "encoding rules" to guard against the abuse of copy protection technologies. The additional concerns we address today relate to motion picture industry proposals on "robustness" of copy protection in IT and electronics equipment as well as the labeling recommendation submitted to the Commission by the Consumer Electronics Association (CEA) and the National Cable Television Association (NCTA).¹

COPY PROTECTION: PRE-CERTIFICATION OF "ROBUSTNESS"

ITI urges the Commission to reject any copy protection license agreement that calls for pre-certification of IT and electronics equipment by motion picture industry representatives for its "robustness" in implementing copy protection license requirements. Such a pre-certification regime would work against the Commission's stated goal of enhancing the availability of new interactive services,² creating a *bottleneck on the market for new digital devices*. For the IT industry, handing "veto power" over new products to another industry with self-perceived adverse interests is unthinkable. We address it today only because it has been broached repeatedly in DTV

¹ Letter from Robert Sachs and Gary Shapiro to William Kennard, PP Docket No. 00-67 (filed May 24, 2000).

² NPRM at Page 2.

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copy protection discussions by the motion picture industry and in other contexts by the music recording industry.³

ITI's member companies have spent years working with the content industries on detailed copy protection licensing agreements that address "robustness" through special requirements for software implementations, conditions for digital outputs and numerous other requirements. As new technologies and piracy threats have emerged, ITI's members have engaged in extensive discussions to understand content industry concerns and develop technological and business solutions that protect copyrighted digital material without interfering with the consumer experience. By signing the resulting agreements and licensing copy protection technology that allows IT equipment to display premium content, ITI's members are contractually binding themselves to these provisions.

What the IT industry cannot do, however, is put the motion picture industry in the role of "gatekeeper" over new digital technologies by submitting IT and electronics to a pre-certification process. The motion picture industry, like many others, is in the midst of reevaluating and exploring new business models to adapt itself to the Internet age.⁴ As such, MPAA and its members are involved in a heavy litigation docket⁵ and lobbying efforts⁶ to shape the legal intersection between copyright and new digital technologies. They are also evaluating each new digital technology for the challenges it presents, both to copyright enforcement and to current business models and legacy distribution systems. Giving the motion picture industry veto power over the same new products, even for the purpose of certifying compliance with agreed licensing terms, would present an untenable conflict of interest.⁷

Even pre-certification by a neutral party without a perceived adverse interest would create an unacceptable bottleneck on new IT products. For many years, the product cycle of the IT industry has been in the range of 18 months. Now some isolated segments are reaching product cycles as fast as 10 months – a window of less than a year before new competing products are introduced and a product is considered "obsolete." In such a hyper-competitive environment, a delay of even a few weeks while

³ The Recording Industry Association of America (RIAA) has advanced robustness "pre-certification" proposals as part of its Secure Digital Music Initiative (SDMI).

⁴ MPAA press release on formation of the Copyright Assembly to deal with challenges to copyright presented by new technologies, February 14, 2000.

http://www.mpa.org/legislation/press/2000/00_02_14.htm

⁵ *Universal City Studios et.al. v. Reimerdes., Twentieth Century Fox Film Corp. v. ICRAVETV , MGM et.al. v. RecordTV.com, etc.*

⁶ Statement of Disney CEO Michael Eisner before the Joint Economic Committee, High-Tech Summit "Removing Barriers to the New Economy," June 6, 2000.

⁷ It is worth noting that the motion picture industry's reactions to new technologies have been misguided in the past, most notably when Universal Studios and Walt Disney Productions sued Sony Corporation of America to stop the introduction of the Betamax video tape recorder in 1976. Eight years later, the Supreme Court ruled that such devices were legal and did not amount to contributory copyright infringement. *Sony Corporation of America v. Universal Studios, Inc.*, 464 U.S. 417 (1984). The motion picture industry now makes as much money on home video releases as it does on original theater releases.

a third party examines a device for its technical implementation of copy protection license terms would put licensees at a disruptive disadvantage vis-à-vis competing substitute products. Worse yet, the examining organization would be in a position to make or break new IT products based on the time it took to complete the “pre-certification” process.

The IT, electronics and motion picture industries have a mutual interest in creating a flourishing, profitable market for legal, authorized digital video programming. ITI’s members are leaders of the global economy and can be trusted to implement copy protection licenses faithfully without the necessity for “trust but verify” licensing terms. Even at this late date, ITI continues to remain optimistic that copy protection license terms can ultimately be negotiated without the intervention of the Commission, although we consider the Commission’s interest and continued monitoring of this issue to be constructive in reaching such a solution.

THE CEA / NCTA LABELING AGREEMENT.

While ITI did not comment on labeling of “cable ready” DTV receivers in our original comments are compelled to comment on the labeling agreement recently submitted by CEA and NCTA for Commission approval.⁸ ITI has an interest in the labeling of cable-ready DTV receivers insofar as it affects the methods by which interactive and enhanced features of DTV over cable will be delivered to consumers. ITI’s member companies make the microprocessors, connectors, routers, networking equipment and numerous other components and products used to deliver interactive digital programming in a full range of formats.

We agree with the cable operators that interactivity will become an integral part of digital cable service,⁹ and we believe such trends should be encouraged. We disagree, however, with the basic premise of the current labeling agreement – that such interactive features can only be delivered by equipment that contains an IEEE 1394 connector. The CEA / NCTA labeling agreement states that DTV receivers with an IEEE 1394 connector will be labeled “Digital TV – Cable Interactive,” and that receivers without such a connector must be labeled “Digital TV – Cable Connect” and contain a warning that some advanced and interactive services from cable operators may not be available to consumers who purchase such receivers.

Under the agreement, a DTV receiver that contained all the necessary electronics and software to deliver every advanced and interactive service offered by the local cable operator would be labeled “cable connect” with the accompanying warning. At the same time, a DTV receiver with no interactive, navigational or other features – essentially a “dumb monitor” – would be labeled “cable interactive” if it contained an IEEE 1394 connector, even though the consumer would also be required to purchase or

⁸ Letter from Robert Sachs and Gary Shapiro to William Kennard, PP Docket No. 00-67 (filed May 24, 2000).

⁹ NPRM at Page 8.

receive from the cable operator a set-top box with the appropriate software and electronics.

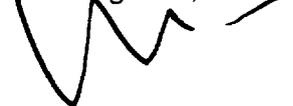
ITI finds the argument that DTV interactivity can only exist when the receiver is connected to another device disturbing because it implies that competitive equipment providers will never have the ability to supply the appropriate software and electronics themselves. After all, if the necessary software and electronics could be supplied by a competitive equipment provider in a set-top box, surely it could also be incorporated into the DTV receiver. By assuming that a DTV receiver without an IEEE 1394 connector can never be "interactive," the labeling agreement implies that the components and software necessary for interactivity cannot be provided competitively.

The real issue is whether the necessary software will be proprietary and vary from operator to operator or whether an industry standard can be developed that facilitates competitive provision of navigation devices with fully interactive features. If such a bi-directional interface standard can be reached, a process that has already begun under Cable Labs' Open Cable initiative, DTV receivers and competitive navigation devices can receive the necessary software updates as new interactive services are rolled out by cable operators. The FCC should encourage parties to reach consensus on the interactive Open Cable specification or some other standard as soon as possible so DTV receiver makers can incorporate the necessary interface software in their products and integrated DTV receivers can be made available to consumers without having to make adjustments for the proprietary interactive standards of each individual cable system.

On the labeling issue we recommend amending the CEA / NCTA agreement to allow for accurate labeling of DTV receivers with integrated interactive features or with other secure data interfaces similar in function to IEEE 1394. CEA and NCTA state in their joint letter to the Commission that negotiations over remaining labeling issues are still ongoing, referring specifically to labeling requirements for digital set-top boxes that will work with the "Digital TV – Cable Interactive" receivers. We suggest that an additional remaining issue is terminology for a DTV receiver with interactive features integrated into it. The appropriate label for such a device should acknowledge its interactive features and should not equate interactivity to connection with another device.

By encouraging accurate labeling of "cable ready" DTV receivers and discouraging counterproductive copy protection licensing terms, the Commission can ultimately facilitate an expeditious transition to DTV on terms that are clear, fair and advantageous to consumers. ITI appreciates the opportunity to comment on this proceeding. Please do not hesitate contact us if we can be of additional assistance.

Best regards,

A handwritten signature in black ink, appearing to read 'Rhett Dawson', with a stylized flourish at the end.

Rhett Dawson
President