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Home Recording Rights Coalition

March 14, 2001

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The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Commercial Availability of Navigation Devices, CS Docket 97-80; Compatibility Between Cable Systems and Consumer Electronics Equipment, PP Docket No. 00-67

Dear Chairman Powell:

The Home Recording Rights Coalition (HRRC) was founded in October, 1981, in response to a court decision (later reversed by the U.S. Supreme Court) that would have declared private, noncommercial home recording by consumers of broadcast television, and the sale of products facilitating this practice, to be illegal. In the nearly two decades since, we have faced several challenges to customary consumer practices. But the HRRC did not expect that consumers' rights to receive and record free, terrestrially broadcast programming would again become an issue.

Recently you received a letter from several senior and respected Members of Congress asking you to pay attention to the prospect of technical impositions being placed on free, terrestrial broadcasts, to match those that may emerge from a conditional access, licensed cable environment. The letter suggests that, "[i]f program producers cannot be assured that programming licensed to broadcast television is protected as securely as programming licensed to cable and other subscription-based channels, these producers will inevitably move their programming over to such channels where protections are clearly stronger."

We are concerned that, if broadly applied, such a doctrine would contravene and nullify public policy as to the reasonable and customary practices of consumers, as formulated by the Congress as recently as 1998. In Section 1201(k) of the Digital Millennium Copyright Act (DMCA), Congress enacted a carefully balanced approach as to when impositions on analog consumer home recording might be tolerable, and when they would not be. This section provides that the mandated technology may not be applied so as to interfere, in any way, with consumer recording of free, over the air terrestrial broadcasts.

Some have argued that, in the case of DTV broadcasts, consumers should have diminished fair use rights. This would provide a poor incentive for consumers to enter the

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DTV world. It would also be a policy change without rationale -- analog copies of broadcasts, allowed by the DMCA, can always be digitized for Internet distribution. The real target of any new impositions would be consumers themselves, in their customary, private, and noncommercial practices.

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While the congressional letter did not urge specific impositions, HRRC believes certain boundaries should be established at the outset of consideration of this subject:

1. No consideration should be given to encryption of free, terrestrial television broadcasts. This would strand DTV receivers purchased to date, and would turn every American consumer into a licensee, restrained in his or her daily practices by a decryption contract.

2. No imposition, of any nature, should be placed on the ability to record free terrestrial broadcasts, for private, noncommercial use.

3. Redistribution of broadcast programming over the Internet raises issues extending beyond home recording. However, it would appear that any meaningful approach to these issues would require legislation to reach all products capable of storing and uploading broadcast signals. HRRC for several years has expressed a willingness to discuss such issues with anyone willing to consider an approach that recognizes and protects customary consumer usage rights. Rep. Boucher recently has urged motion picture producers, if they favor legislation, to come forward with an approach that recognizes such rights.

Finally, Mr. Chairman, we believe that recent developments show that the motion picture industry is not monolithic in its approach to licensing its product for broadcast television, or reaching agreements, with respect to cable services and technologies, that do not constrain free broadcasts. In any case, it would seem inappropriate for the FCC (or the Congress) to take steps based on an assumption that motion picture industry, but for such measures, would jointly withhold its product from the marketplace.

Sincerely,

Gary J. Shapiro
Chairman, HRRC
President & CEO
Consumer Electronics Association

cc: Senator Barbara Boxer
Senator John Breaux
Senator Conrad Burns
Senator Ernest Hollings
Senator Ted Stevens
Representative John Dingell
Representative Edward Markey

Representative Charles Pickering
Representative Cliff Stearns
Representative W. J. "Billy" Tauzin
Representative Edolphus Towns
Representative Fred Upton

Honorable Susan Ness
Honorable Gloria Tristani
Honorable Harold Furchtgott-Roth

Susan Eid, Legal Advisor to Chairman Powell
Deborah Lathen, Chief, Cable Services Bureau
William Johnson, Deputy Chief, Cable Services Bureau
Deborah Klein, Division Chief, Consumer Protection & Competition Division
Bruce Franca, Acting Chief, Office of Engineering & Technology
Robert M. Pepper, Chief, Office of Plans & Policy
Jonathan Levy, Economist, Office of Plans & Policy
Amy Nathan, Senior Legal Counsel, Office of Plans & Policy

Magalie R. Salas (re CS Docket No. 97-80 and PP Docket No. 00-67)