

May 22, 2002

The Honorable W. J. Tauzin
Chairman, Committee on Energy and Commerce
House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Fred Upton
Chairman, Subcommittee on Telecommunications and the Internet
House of Representatives
2333 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Tauzin and Chairman Upton:

We've appreciated the opportunity to participate in the DTV roundtables that you assembled this year. As you know, CableLabs' POD-Host interface specification and the POD-Host Interface License Agreement ("PHILA") require that certain encryption and copy-protection mechanisms be built into OpenCable-certified "host" devices, such as a set-top box. At the roundtable discussion you conducted on April 9, 2002, you raised a question concerning the relationship between provisions in the PHILA and the "encoding rules" in the "5C" licenses that govern copy protection of programming transmitted over IEEE 1394 digital interfaces. You also asked about the PHILA requirement that set-top boxes have the capability of "down-resing" high-definition programming provided over component analog outputs.

In answer to your first question, as a practical matter, the 5C encoding rules will apply to all content provided by MPAA studios that will be output from a PHILA-licensed device into a home recording device via a 1394/5C digital connector. With respect to your second question, "down-resing" capability has been included in PHILA at the request of content providers to assure against unconstrained copying and Internet redistribution of high-value, "copy never" programming. However, in an effort to resolve concerns that have been raised about this capability, CableLabs is willing to remove the "down-resing" requirement from PHILA if DBS providers, consumer electronics and computer manufacturers, and program owners agree to comparable copy protection requirements across other distribution media. These points are discussed in detail below.

Background

CableLabs designed its POD-Host interface specification, PHILA, and the rest of its OpenCable efforts, to enhance the cable customer experience — by delivering new

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forms of programming, high value programming such as newly-released motion pictures in early release windows, and new services yet to be developed in the digital world. At the specific request of the Motion Picture Association of America ("MPAA") — representing owners of the type of high-value programming that our customers desire — CableLabs requires that certain encryption and copy protection tools be built into OpenCable-certified devices. We were told that these provisions were required before content providers would provide such high-value content to cable operators. Therefore, we viewed such requirements as essential to obtaining the content our customers want, as well as to be fully competitive with Direct Broadcast Satellite ("DBS") providers who have installed similar tools, and future distribution technologies, such as Internet "streaming," which may develop similar tools affording them access to such programming.

PHILA Licenses and "5C" Encoding Rules

The "5C" license covers use of the Digital Transmission Copy Protection ("DTCP") encryption technology over a 1394 digital interface. The 5C license is negotiated between the Digital Transmission Licensing Administrator, LLC ("DTLA") (the 5C licensing authority) and equipment manufacturers. Each content provider, as owner of the programming, controls the rights granted in its programming. A separate 5C "Content Participant" Agreement contains "encoding rules" that classify program material in certain ways so that, for example, current premium programs may not be classified as "copy never," but video-on-demand programs may be so classified. To our knowledge, only two studios have signed on to the "Content Participant" Agreement, but MPAA has informed us that its other members agree with the encoding rules in principle, and according to DTLA, any content provider may use the DTCP technology so long as it abides by the encoding rules.

PHILA is structured differently from 5C but dovetails with 5C when OpenCable-certified "host" devices are connected with 1394/5C digital connectors to digital home recording devices. The PHILA license covers use of the Dynamic Feedback Arrangement Scrambling Technique ("DFAST") encryption technology for passing digital programming over a POD-Host interface into a "host" device such as a set-top box. PHILA grants a DFAST technology license from CableLabs to equipment manufacturers. Many separate programming agreements, negotiated between individual content providers and individual cable operators, determine what copy control instructions will be inserted into the programming sent to cable subscribers. CableLabs does not have the authority to impose encoding rules on content and we did not include "encoding rules" in PHILA. However, MPAA has informed us that all of its members consider themselves obligated, in each of the programming agreements they enter with cable operators, to require that the copy control instructions inserted into digital programming for output over a 1394 interface be consistent with the 5C encoding rules. As a practical matter, therefore, through this "contractual chain," the studio-cable operator agreements will reflect the studio-5C encoding rules agreements. In turn,

PHILA provides a toolbox that will respond to the copy control information that may be inserted into programming content, pursuant to the terms of those programming agreements. Simply stated, MPAA members inform us that they will follow the 5C encoding rules for all of their content that will be output from a PHILA-licensed device into a home recording device through a 1394 interface. Thus, the 5C encoding rules will apply as a practical matter.

“Down-res”

PHILA requires a manufacturer to include in its products the capability of “down-resing” high-definition programming marked for this protection when provided over component analog outputs, which unlike digital interfaces, are not copy protected. “Down-resing” allows high-definition programming to flow to DTVs with greater than standard definition resolution, but without inviting widespread copying. According to press reports,¹ Echostar and DirecTV had already agreed to include within their set-top boxes the capability of “down-resing” high-definition television programming provided over component analog outputs. Content providers had informed CableLabs that programming would not be made available to cable without this same capability. PHILA does not “down-res” programming by default, nor does it require that any particular program be *marked* to “down-res;” but it does require that the device be able to recognize such signals if required for cable carriage of a particular program.

Cable operators do not have any business incentive to impede their customers’ reception of high-definition or other programs and thereby reduce customers’ satisfaction and their own subscribership and revenue. Obviously, the better long-term solution would be for CE manufacturers to include digital connectors on all digital television sets, because digital connectors may utilize standard copy protection tools in order to assure program owners that high-value programming will not be subject to unconstrained copying or retransmitted onto the Internet. In the interim, however, because DTV set manufacturers chose not to include digital inputs, installing this “down-res” capability was the only available means for assuring that high-value programming could be obtained and delivered to cable customers.

In the interest of addressing the concerns raised, however, I would like to make an offer to resolve this technology/copy protection question. CableLabs will remove the “down-resing” requirement from PHILA if: (1) the capability to “down-res” is likewise removed from DBS set-top box license agreements which CE manufacturers have entered into; (2) consumer electronics and computer manufacturers commit not to build devices for DBS or other types of distribution networks with the capability of “down-resing” high-definition programming provided over component analog outputs; and (3) program providers agree not to require the “down-resing” of any content delivered over any other

¹ E.g., “HDTV Insider” Perfect Vision, November/December 2001, pp. 19-20, filed Nov. 29, 2001 in FCC PP Docket 00-67.

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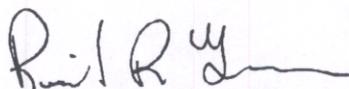
video distribution platform. Under such a regime, cable could compete on equal footing with other distribution media for access to high value content to provide consumers.

Conclusion

The cable industry wants to provide its customers with choice and flexibility.

I hope that this letter helps to clarify the PHILA/5C relationship; that CableLabs' offer to remove "down-resing" requirements from PHILA will lead to multi-industry agreements; and that our offer will help all consumers to gain access to high-value programming which in turn will help drive the digital transition.

Sincerely,



Richard R. Green
President and Chief Executive Officer
Cable Television Laboratories, Inc.

cc: Hon. John D. Dingell, Ranking Democrat, House Committee on Energy and
Commerce
Hon. Edward J. Markey, Ranking Democrat, Subcommittee on
Telecommunications and the Internet
Jack Valenti, President and CEO, MPAA
Gary Shapiro, President and CEO, CEA