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

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JUN - 6 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Implementation of Section 304 of the)
Telecommunications Act of 1996)
)
Commercial Availability of)
Navigation Devices)

CS Docket No. 97-80

**RESPONSE OF DIGITAL TRANSMISSION LICENSING AUTHORITY
TO PHILA "HOEDOWN" QUESTIONS**

In response to the request of Media Bureau Chief Kenneth Feree during the May 10, 2002 PHILA "Hoedown" that roundtable participants provide written responses to the questions circulated by Commission staff in advance of the meeting, the Digital Transmission Licensing Administrator ("DTLA" or "5C") submits the following responses. Many of the questions solicit views on matters which do not directly apply to the DTLA's licensing activities and as to which the members of the DTLA consequently do not assert a collective viewpoint (e.g., the propriety of specific license provisions included in PHILA and the status of ongoing negotiations between individual manufacturers, content providers and Cable Labs). Where a question is not applicable to the DTLA's licensing activities we have so indicated.

Process issues

Has the issue of indemnification against 3rd party intellectual property infringement claims been resolved?

5C Response: The question is not applicable to DTLA's licensing activities.

Does the PHILA non-disclosure agreement prevent a party from filing a complaint with the Commission regarding the terms of either of the PHILAs filed in the navigation devices proceeding?

5C Response: The question is not applicable to DTLA's licensing activities.

Does the PHILA violate any of the Commission's navigation devices rules?

5C Response: The question is not applicable to DTLA's licensing activities.

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How many certification processes are there? Does signing a PHILA agreement require a set-top to be OpenCable/OCAP certified?

5C Response: The question is not applicable to DTLA's licensing activities.

Is there any reason for a cable operator to require additional testing from an OpenCable certified piece of equipment before it authorizes the box to receive service?

5C Response: The question is not applicable to DTLA's licensing activities.

Copy protection

Encoding Rules –

Should cable and satellite be operating under similar rules? Have manufacturers signed licensing agreements with satellite operators that contain copy protection standards that they oppose in the context of the PHILA?

5C Response: The question is not applicable to DTLA's licensing activities.

Could the affected industries live with the 5C encoding rules as a general policy? What about 5C encoding rules as a baseline that could be overridden for specific non-broadcast content with robust notice and customer express consent?

5C Response: The 5C encoding rules have won broad acceptance among the affected industries and, accordingly, the 5C companies believe that those rules should be agreeable as a general policy. Forty-eight (48) Consumer Electronics ("CE") and Information Technology ("IT") product manufacturers have signed the Digital Transmission Content Protection ("DTCP") Adopter/Evaluator Agreement. Two major motion picture studios, Warner Bros. and Sony Pictures Entertainment, have now signed the DTCP Content Participant Agreement, which expressly embodies the 5C encoding rules. It is DTLA's understanding, confirmed by Fritz Attaway, Senior VP, Government Relations of the Motion Picture Association of America ("MPAA") during the May 10, 2002 hoedown, that although the remaining five members of the MPAA have not yet become DTLA Content Participants, all seven members of the MPAA now agree to the 5C encoding rules.

By way of background, the encoding rules incorporated in the license for the DTCP technology were developed over the course of many years of negotiations with the members of the motion picture industry. They are based on rules which were first agreed to by members of the Consumer Electronics Association ("CEA") and the MPAA in 1992 as part of an (abandoned) effort to enact legislation referred to as the Digital Video Recording Act. A version of the rules was incorporated into requirements relating to analog video recorders (and other analog devices) in section 1201(k) of the Digital

Millennium Copyright Act. The rules enable Content Participants to protect copyrighted content while still allowing consumers to engage in traditional non-commercial home recording practices. The rules are designed to allow for flexibility in their application. Accordingly, the rules establish a baseline of non-commercial copying that must be permitted when the DTCP technology is employed, but enable content providers to allow consumers greater freedom in recording and using content at the content provider's discretion. Reduced to their simplest formulation, the 5C encoding rules grant content owners the ability to use DTCP technology to protect their content as follows—

- Retransmitted free, terrestrially-delivered television broadcasts are freely copiable, in accordance with the requirements of the DTCP licenses (i.e., they must be recorded securely), but, once having been protected by DTCP, such content may be restricted from unauthorized redistribution (such as via the Internet);
- one generation of copies must be permitted for pay television transmissions and non-premium subscription television transmissions and new business models that are comparable to such transmissions;
- copying, other than as part of a “pause” function as to which the content is periodically deleted, may be prohibited with respect to pre-recorded media, video-on demand, pay-per-view, subscription on demand, and new business models that are comparable to such transmissions.

The DTLA does not believe there is any reason to “override” the encoding rules in order to accommodate new “non-broadcast content” business models as the question suggests. As indicated, the 5C encoding rules apply to both broadcast and non-broadcast content (such as pre-recorded media). The DTCP Content Participant Agreement already incorporates provisions which determine how new business models are to be treated. Pursuant to the Content Participant Agreement, when a Content Participant determines to implement a new business model, the Content Participant may decide for itself which defined business model most closely approximates the Content Participant's new business model, and apply the encoding rules that correspond to the defined business model which most closely approximates the new business model. This determination is subject to challenge by the DTLA, and arbitration before arbitrator(s) selected from the National Panel of Commercial Arbitrators of the American Arbitration Society in the event the DTLA and the Content Participant cannot agree on the appropriate encoding rule that would apply to the defined business model which most closely approximates the Content Participant's new business model.

At the May 10, 2002 PHILA Hoedown, Cable Labs representatives stated that they do not object to including 5C encoding rules in the PHILA context, provided a means could be developed by which to bind the MPAA members to the rules. DTLA reiterates its offer, extended at the Hoedown, that the DTCP Content Participant Agreement could be used as a model for this purpose.

Down resolution – Is there an alternative to down resolution to address the analog hole issue?

5C Response: The DTCP license incorporates a provision which allows Content Participants to encode or direct that their content be encoded using an “Image Constraint Token” so as to prevent a DTCP-enabled “sink device” from outputting in unprotected high definition analog form (or the digital equivalent thereof) content that such device had received via DTCP. When the Image Constraint Token is present, the resolution of the image that such device outputs must be reduced to no more than 520,000 pixels per frame (e.g., an image with resolution of 960 pixels by 540 pixels for a 16:9 aspect ratio) if the image is to be output via an unprotected analog or unprotected digital connection. The use of the Image Constraint Token is subject to encoding rules in order to ensure that consumers retain the benefit of the HDTV products they have purchased. Accordingly, the Image Constraint Token may only be used with prerecorded media, pay television transmissions, video-on-demand transmissions, subscription-on-demand transmissions, pay-per-view transmissions and programs which had a theatrical or direct to video release and are transmitted via conditional access delivery uninterrupted by commercial advertising messages. Moreover, to ensure parity with other delivery platforms, Content Participants may not encode content with the Image Constraint Token if the Content Participant permits a device that incorporates the 5C source function to send content substantially simultaneously and in full resolution to an unprotected high definition analog or digital connection (other than via a digital connection licensed solely for display purposes, i.e., DVI, or via a computer video output).

DTLA does not believe that down resolution of content as a means of copy protection is an optimal approach to the analog hole issue.

DVI Outputs - Is DVI spec something CE manufacturers can build-to, or does a decision need to be made between DVI and HDMI? If a choice needs to be made, how and when will it happen?

5C Response: The question is not applicable to 5C’s licensing activities.

Selectable Output Controls

Should specific PHILA/OCAP limitations regarding selectable output controls be established such as only an interface that has been compromised may be disabled?

5C Response: The DTLA believes that there is no reason to ever enable selectable output controls for protected digital interfaces such as IEEE 1394 protected by DTCP. To do so would be to violate the entire premise upon which companies such as the members of DTLA have labored to devise copy protection technologies. The DTCP technology was developed by multi-industry efforts at the request of the motion picture industry. It was designed to meet particular security concerns identified by that industry, and it has been deemed an acceptable technological protection measure by the motion picture industry based on an understanding of its technical strengths and limitations.

Significantly, the DTCP technology enables home networking of digital devices. Consequently, disabling the interface would disable entire home networks and affect many different products within a consumer's home. DTLA believes such an action would be met with justifiable outrage by consumers who have invested in products which incorporate the interface with the expectation that they will be able to reliably receive content via those interfaces.

Moreover, it bears noting that the 5C technology already incorporates means by which compromised devices (e.g., devices which have cloned device certificates) could be disabled, subject to proper notice and due process provisions.

Do cable operators or the studios have any interest in selectable output controls beyond a security breach?

5C Response: The question is not applicable to 5C's licensing activities.

How likely is it that the next generation set-top box will have two different digital outputs, a 1394 and a DVI?

5C Response: The question is not applicable to 5C's licensing activities.

Are the OCAP specifications regarding selectable output control and down resolution similar to the licensing requirements for DBS boxes?

5C Response: The question is not applicable to DTLA's licensing activities.

OCAP ("OpenCable Application Platform" or Middleware)

Status of development - Is OCAP close to completion? What is the timetable for completion? What is the timetable for operator implementation? Will OCAP support be "turnkey" or will it be phased in through operator support of specific modules?

5C Response: The question is not applicable to 5C's licensing activities.

Have applications developers (i.e. software vendors) expressed a willingness to design products that will run on OCAP? Would any developer take issue with converting their program into the OCAP format? Have any started the task of porting their applications to OCAP? Do any operators require that applications be written to OCAP?

5C Response: The question is not applicable to 5C's licensing activities.

CERC complains that OCAP contains a "monitor" application that restricts or disallows functions or features resident in the device – Given that the Commission's

rules prohibit MVPDs from precluding the addition of features or functions in the boxes (76.1204(c)) why is this requirement in the specification?

5C Response: The question is not applicable to 5C's licensing activities.

IPPV – There area has been covered in previous hoedowns, but CERCs latest ex parte maintains that it cannot be done under the existing specification – Is OCAP implementation required for IPPV?

5C Response: The question is not applicable to DTLA's licensing activities.