



October 8, 2003

W. Kenneth Ferree, Chief
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: MB Docket No. 02-230

Dear Mr. Ferree:

As the Commission considers whether it will adopt rules for digital television copy protection, the Association of Public Television Stations (“APTS”), the Corporation for Public Broadcasting (“CPB”) and the Public Broadcasting Service (“PBS”) (collectively “Public Television”) urge the Commission that it should not adopt an exemption from any proposed “broadcast flag” for news, public affairs and/or educational programming broadcast on digital stations. As discussed in our reply comments, which were submitted on February 19, 2003, Public Television opposes such an exemption while supporting a reasonable and effective means of protecting all digital programming from unauthorized and unfair copying and distribution on the Internet or by other means.

Any exemption from copy protection for news, public affairs and/or educational programming would seriously impair the efforts of public broadcasters to produce and distribute high-quality public service digital broadcast programming. Because public television programming is rarely funded in full by either CPB or PBS, public television producers typically depend on their ability to hold and develop various non-broadcast “after-market” rights in their programming. Without adequate digital copy protections, the value of these non-broadcast rights would decrease, as would the ability of producers to fund their programming. Moreover, in the absence of reasonable digital copy protection standards, producers would find it more difficult to clear the use of copyrighted material (e.g. music, film clips, photographs) for inclusion in original productions, making production even more difficult.

Current law already includes adequate copy protections while at the same time ensuring the fair distribution of educational or public interest programming. One important example is the copyright doctrine of “fair use,” which allows for the limited educational use of protected material while simultaneously protecting intellectual property from theft. Additionally, public broadcasters have contractually allowed additional but limited off-air use of some of their material for educational purposes. Accordingly, there is no reason to

believe that the public interest will be harmed by simply extending the current rules to digital television.

Moreover, Public Television is concerned that, should the Commission approve of a rule whereby news, public affairs or educational programming is exempt from the broadcast flag, the Commission would be unnecessarily injecting content analysis into what should be a content-neutral technological rule. This would create severe administrative burdens, as the Commission would be called upon to review and adjudicate whether to classify certain kinds of programming as protected or exempt from the broadcast flag requirements.

For the foregoing reasons, Public Television urges the Commission to reject an exemption from the “broadcast flag” rule that singles out news, public affairs or educational programming for lesser protection.

Respectfully submitted,

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