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October 22, 2003

## **BY UPS NEXT DAY AIR**

Rick C. Chessen  
Associate Bureau Chief, Media Bureau  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: MB Docket No. 02-230 (Digital Broadcast Copy Protection)

Dear Mr. Chessen:

This letter responds further to questions that have recently arisen concerning the effective date of the Broadcast Flag regulations that have been proposed by the MPAA and others. I am attaching to this letter a comprehensive response that reflects comments already made by the MPAA in other ex parte communications. You will note that although the MPAA generally proposes an effective date of the eighteenth month from adoption of the regulation, we have provided that Plug & Play devices and devices subject to the DTV Tuner Mandate must be compliant with the Flag regulation by July 1, 2004, or by such other date as the Commission may designate as the first date for implementation of the DTV Tuner Mandate.

The reasons for urging this reasonably accelerated date are:

1. We understand and believe that this target can be readily met by manufacturers, as the Flag rules will simply require Plug & Play devices to behave as already required by their licenses regarding subscription content. As we have previously stated, no additional protection will be required under the Broadcast Flag scheme than is required for subscription content under the Commission's Plug & Play order. As Thomson's October 8 ex parte filing with the Commission attests, Plug & Play devices are expected to be introduced in Summer 2004, and Flag compliance in those devices is reasonably attainable. DTV tuner devices must also begin to be available by July 1, 2004. To directly deal with the possibility that particular manufacturers may have designed Plug & Play or DTV tuner devices for immediate manufacture that will not

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be compliant with the Broadcast Flag rules by July 1, 2004, we have proposed a waiver procedure.

2. A failure to require prompt Flag compliance in Plug & Play and DTV Tuner Mandate devices will create an immediate, substantial, and enduring legacy of devices that do not exist today and would not exist otherwise. An entire generation of consumer products, and perhaps even some later variations, will be enabled to process digital television and encouraged by the Commission's orders to enter the marketplace, but without providing a single iota of protection against unauthorized redistribution of those digital signals. The DTV market will be infected from the very outset, creating reasons for content owners to migrate content to other, more secure platforms. Broadcast content will be unjustifiably treated by the Commission as second-class content.

3. Manufacturers have known about the essential terms of the proposed Broadcast Flag regulation for quite some time. The current proposal, particularly in its technical aspects, was developed in the Broadcast Flag Discussion Group (in which the manufacturers were closely involved) and published by the BPDG in June 2002; and was publicly submitted to the FCC in December 2002. The manufacturers commenced design of Plug & Play products without any certainty whatsoever that their negotiations with the Cable Industry, and indeed, their own linchpin proposal for the *sine qua non* of Subpart W to the FCC, would bear fruit. They could have easily and rationally made the same decisions with respect to incorporating compliance with the proposed Broadcast Flag technical requirements, given their abundant foreknowledge of the such proposals.

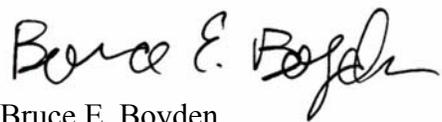
4. These points are amplified in the context of the manufacturers' actions in connection with the FCC's DTV tuner mandate. The manufacturers amply demonstrated their ability to soften the impact of the mandate by rushing to implement Plug & Play, even in advance of FCC adoption of the critical portion (Subpart W) of their Plug & Play negotiation and proposal. Had they not "found" a way to implement Plug & Play so quickly, the legacy they stand to create of non-Flag-compliant televisions and other devices would at least have been limited to over-the-air receivers. Instead, more than two-thirds of such newly created legacy devices will be the product of the manufacturers' unilateral and anticipatory extension of design decisions to Plug & Play devices.

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In accordance with Section 1.1206 of the Federal Communications Commission rules, one copy of this letter is being filed electronically with the Secretary for the Commission.

Sincerely,

A handwritten signature in black ink that reads "Bruce E. Boyden". The signature is written in a cursive style with a large, stylized "B" and "B".

Bruce E. Boyden

Enclosure

cc: Ms. Marlene Dortch  
Secretary, Federal Communications Commission