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October 24, 2003

VIA ELECTRONIC MAIL

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

Re: MB Docket 02-230, Digital Broadcast Copy Protection

Dear Mr. Chessen:

This letter is in response to the assertions made by the Motion Picture Association of America ("MPAA") in a letter to you of October 22, 2003 regarding the effective date of Broadcast Flag regulation (if adopted). We note that the MPAA and its member studios, as noted in their letter, have generally been cognizant of the lead times for consumer electronics and have typically supported 18-month phase-in periods. However, in advocating for abandoning this previously-recognized constraint dictated by design cycle, the MPAA makes several assertions that are either incorrect or are based on further, incorrect, assumptions as to antecedents.

There are now only eight months before July 1, 2004. Products that are to be introduced as of that date are nearly completely through the design stages. Generally speaking, printed circuit boards have been finalized, mechanical design is complete, enclosure designs are nearly complete, software is being debugged, and manufacturing lines and processes are being readied. It is long past time when new features can be added.

The suggested waiver process for manufacturers unable to comply by July 1 would not provide any substantial relief. New products designed for sale in 2004 must be built as samples and prototypes in December and January, and such activity has lead time requirements of its own. Components acquisition and manufacturing capacity planning and allocation needs to proceed well in advance of any waiver determination. As the outcome cannot be known, an application for a waiver is simply a suspension of the ability to go to market with a product, at a time when there is simply no time left for any such suspension.

In stark contrast to the Plug & Play actions taken recently by the Commission, it is by no means clear precisely what action (if any) the Commission is likely to take with respect to the Broadcast Flag. In Plug & Play, the various technical standards were generally agreed and not at issue. Those aspects that were at issue were mostly confined to policy matters (e.g., encoding rules) which, however resolved, would not affect hardware design. Even in light of the foregoing, manufacturers took on significant risk by designing products in anticipation of a Plug & Play ruling.

In the case of the Broadcast Flag, one need only cast a cursory glance at the BPDG Final Report to note that there was more disagreement than agreement on many items.¹ The Commission has indicated when it might vote on any item; it has not indicated what, among the several competing ideas and objections, the outcome may be. There were several alternatives proposed in the Report that the Commission could choose from, or mix and match, in making rules. A manufacturer simply is not in a position to place guess or place bets about specific outcomes. He would truly be risking a great deal by assuming that the Commission will adopt some particular blend of the outcomes before it, or would rule in one way or another. And if this is the case now, it was

¹ See The Final Report of the BPDG Co-Chairs, notably §5, §2.10.2, §2.12. See also Tab D vs. Tab E.

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certainly the case when product planning was being done, in the Winter of 2003. The volume of disparate comments and objections - including some from senior Members of Congress - were such that nobody - not even, presumably an FCC Commissioner - could predict with any reliability what the outcome would be. (And, prior to any vote, one must still assume that this is the case today.)

The MPAA claims that the Broadcast Flag regulations require no different behavior than to "behave as already required by their licenses regarding subscription content". If this were true, then the Commission need only adopt rules requiring that content marked with the Broadcast Flag be treated as subscription content. However, as the BPDG report and filings in MB 02-230 show, the proposed regulation casts a wider net. Nevertheless, even if product changes necessary for compliance with the additional requirement of a possible Report and Order required only software changes, it is still likely too late for such changes to be implemented for products introduced in 2004.²

The claim that delaying Broadcast Flag compliance past July 2004 would *create* an "immediate, substantial, and enduring legacy" such that content owners are forced to non-over-the-air broadcast distribution is hyperbole. The fact is that digital broadcast receivers have been available without Broadcast Flag processing for years, and even if this were not so, the protection afforded by the Broadcast Flag is neither particularly robust nor secure - an axiom of security is that the hacker attacks the weakest point in the system, in this case, the unencrypted and unprotected broadcast signal.

Whether technically "compliant" with particulars that the Commission may choose to adopt, the Plug & Play televisions are likely to be the *most* secure digital products available in 2004. The least secure will be PCs with broadcast tuner cards, connected to a variety of secure and insecure interfaces. It would be ironic indeed if the introduction of integrated digital cable television receivers, with secure digital interfaces, were frustrated or delayed, while such PC accessory products were given the normal, industry-standard lead times (as they should be) to comply. The digital television receivers to be introduced in 2004 - unless the Commission agrees with this MPAA interposition - will be the most secure products built to date. If the Commission should now decide to impose further requirements on them in the name of the Broadcast Flag, this may delay the introduction of such receivers until 2005 - forcing consumers to continue to use much more insecure Set-Top Boxes that are subject to Analog Hole vulnerabilities. The "waiver" approach is no solution at all. Common sense and consumer, as well as broadcaster, welfare dictate rejection of this last-minute MPAA proposal.

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1206, one copy of this letter is being filed electronically via ECFS.

Regards,



Adam Goldberg
Director, Television Standards and Policy Development
Sharp Laboratories of America

Cc: Kenneth Ferree
Bill Johnson
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² It is, of course, difficult to say for certain as an Order has not yet been adopted.

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