

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Section 304 of the Telecommunications Act of 1996	)	CS Docket No. 97-80
	)	
Commercial Availability of Navigation Devices	)	
	)	
Compatibility Between Cable Systems and Consumer Electronics Equipment	)	PP Docket No. 00-67
	)	

To: The Commission

**JOINT PETITION FOR RECONSIDERATION OF  
BROADCAST MUSIC, INC. AND THE AMERICAN SOCIETY OF  
COMPOSERS, AUTHORS AND PUBLISHERS**

Broadcast Music, Inc. and the American Society of Composers, Authors and Publishers (“Petitioners”) hereby request reconsideration of the Second Report and Order in the above-referenced docket released on October 9, 2003, *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Second Report and Order and Second Further Notice of Proposed RuleMaking, CS Docket 97-80 and PP Docket 00-67, FCC 03-225 (“Second Report and Order”). Specifically, Petitioners propose that the Commission add a new section to its rules to allow performing rights organizations (“PROs”) and entities working on their behalf to decrypt any digital rights management method adopted by the Commission solely for the purpose of performance monitoring and copyright royalty distribution.

Petitioners are performing rights organizations which protect the rights of their affiliates and members by licensing and distributing royalties of copyrighted works. The music performing right licensing organizations such as Petitioners have for decades monitored the performance of audiovisual works by local television stations, broadcast networks, and cable and satellite networks for purposes of distributing royalties to their respective affiliates and members, who are the creators and copyright owners of musical works contained in such transmissions. In their joint Reply Comments to the Commission in this proceeding, Petitioners identified their concern to the Commission that any copy-protection regime might restrict or inhibit the PROs' ability to conduct their customary business practices. This includes the adoption of automated-tracking techniques that are becoming the new standard for cost-efficient performance monitoring and royalty distribution.

Petitioners contended that the proposed regime "must offer an adequate and reasonable opportunity for PROs, in connection with their automated royalty compliance processes, to decrypt, monitor and copy audiovisual works using their computer systems, which may include devices in the category of personal computers" and that "[a]ny additional DFAST license terms for such public performance royalty compliance use must be reasonable." See Joint Reply Comments of NMPA, ASCAP, SGA and BMI dated April 28, 2003, at p. 11 n. 25. The Commission does not appear to have addressed Petitioners' concern, although the Commission has issued a Second Notice of Proposed Rulemaking concerning the use of personal computers as authorized devices under the plug and play regime.

In order to enable PROs to fulfill their obligations under the new technologies, Petitioners hereby propose that the Commission adopt the following regulation:

**76.1904(c) Performing rights societies as defined in Section 101 of the Copyright Act and their agents engaged in the monitoring and tracking of transmissions of audiovisual works by cable systems and satellite carriers (and other similar entities to whom the plug and play rules may be extended in the future) shall not be prevented by the rules from decrypting any digital rights management method adopted and approved by the FCC under these rules; provided, however, that any such decryption and or transmission of such programs shall be conducted solely for the purpose of performance monitoring and royalty distribution in the ordinary course of their businesses. The administrators of any approved DRM method must make available to the performing rights societies on reasonable and non-discriminatory license terms the ability to access any encrypted information for this purpose.**

This regulation will protect the PROs traditional-business practice from encryption and/or overly restrictive licensing terms that would have the effect of preventing them from distributing royalties in a cost-efficient manner in the future.

Respectfully submitted,

BROADCAST MUSIC, INC.

AMERICAN SOCIETY OF COMPOSERS,  
AUTHORS AND PUBLISHERS

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