

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

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
)	

**OPPOSITION OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.
TO THE PETITION FOR RECONSIDERATION FILED BY
BROADCAST MUSIC, INC. AND THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS**

Jon A. Baumgarten
Bruce E. Boyden
Proskauer Rose LLP
1233 Twentieth Street NW, Suite 800
Washington, DC 20036
(202) 416-6800

*Counsel for The Motion Picture Association
of America, Inc.*

March 10, 2004

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

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
)	

**OPPOSITION OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.
TO THE PETITION FOR RECONSIDERATION FILED BY
BROADCAST MUSIC, INC. AND THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS**

INTRODUCTION AND SUMMARY

The Motion Picture Association of America, Inc. submits this opposition in response to the Joint Petition for Reconsideration of Broadcast Music, Inc., and the American Society of Composers, Authors and Publishers, filed in the above-captioned proceeding on December 24, 2003 (the “BMI/ASCAP Petition”). In their petition for reconsideration, BMI and ASCAP request that the Commission create an exemption for performing rights societies, requiring that such societies “not be prevented by the rules from decrypting any digital rights management method adopted and approved by the FCC under these rules,” and requiring “[t]he administrators of any approved DRM method” to make available “the ability to access any encrypted information” for the purpose of performance monitoring.¹ The Commission should reject the BMI/ASCAP Petition because the exception BMI and ASCAP propose is unnecessary and opens a serious loophole that would undermine technological efforts at content protection by

¹ BMI/ASCAP Petition at 3.

conditional access systems.

DISCUSSION

The exemption requested by BMI and ASCAP is unnecessary and harmful and should not be granted. In support of their request, BMI and ASCAP have expressed concern that “any copy-protection regime might restrict or inhibit the [performing rights organizations’] ability to conduct their customary business practices.”² That concern, however, is misplaced. Nothing in the Plug & Play regulation, or the DFAST license, or the protection technologies required by the Plug & Play regulation, would prevent performing rights organizations from obtaining content from the conditional access system as a subscriber, and then viewing such content for monitoring purposes. Performing rights organizations have long monitored conditional access and broadcast content in a similar fashion, and have also effectively monitored performances in bars and clubs by sending representatives to such places to listen to the music being performed. The Plug & Play regulation would not in any way undermine such activities.

BMI and ASCAP also express concern that content protection schemes may in the future interfere with “the adoption of automated tracking techniques that are becoming the new standard for cost-efficient performance monitoring and royalty distribution.”³ This is entirely speculative and thus cannot be the basis for the requested exemption. There is every reason to believe that technologies will be available that will, at a reasonable cost to performing rights organizations and others, be able to output conditional access content to a computer for real-time analysis, record Copy One Generation or protected broadcast content on digital media so that it can be subjected to computer analysis at a later time, compile information for unimpeded

² BMI/ASCAP Petition at 2.

³ *Id.* at 2.

regional or national dissemination, and perform other forms of commonplace and enhanced analysis. It may also be possible that solutions which permit limited recording of Copy Never content and protected redistribution,⁴ for the specific purpose of analysis and monitoring, will emerge in a reasonably timely manner. We have discussed these possibilities with BMI and ASCAP, and will continue to do so; in the interim and for some considerable time, of course, their activities will continue to utilize analog connections that will be unimpeded by the Commission's action. To the extent that BMI and ASCAP are asserting that their monitoring activities may not be as inexpensive or convenient using Plug & Play-compliant equipment as it would be in a world of noncompliant devices, performing rights organizations are not the only entities to bear such costs. Distribution is not as inexpensive or as convenient for *content owners* as it would be in a world where every subscriber could be relied upon not to record Copy Never content or redistribute content without authorization. However, the digital distribution of high-value content in a world without content protection is unfortunately unsustainable. Importantly, the BMI and ASCAP proposal risks that very result. It fundamentally breaches the security accorded by content protection technologies by mandating unauthorized decryption. As only one example, the dissemination or exercise of the means of decryption at the thousands of performing rights society monitoring sites nationwide will clearly leave content protection substantially impaired due to the increased risks from the loss of control. BMI and ASCAP have not demonstrated that, on balance, the benefits of the content protection required under Plug & Play are outweighed by the entirely speculative harms they are concerned with.

Furthermore, granting BMI and ASCAP a carve-out in the Plug & Play regulation will

⁴ It is possible that redistribution might come to be "protected" for these limited purposes by a highly secure form of encryption or the like, or by an arrangement that eliminates the utility of the recording or redistributed format for any purpose other than title and context analysis.

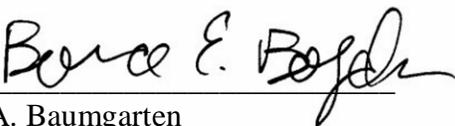
not solve their difficulties. For example, BMI and ASCAP will face similar difficulties obtaining and retransmitting protected digital works distributed over the Internet, where no regulatory framework exists. BMI and ASCAP will have to either use generally available technology to monitor such content or enter into license agreements to access the content in unprotected form, the same choices those organizations have with respect to conditional access content. Thus, adopting an exemption in the Plug & Play regulation will simply make conditional access distribution slightly less secure, while leaving the same monitoring issues untouched in other distribution channels.

CONCLUSION

For all of the foregoing reasons, the Commission should deny the Joint Petition for Reconsideration of Broadcast Music, Inc., and the American Society of Composers, Authors and Publishers.

Respectfully submitted,

MOTION PICTURE ASSOCIATION OF AMERICA, INC.

By: 

Jon A. Baumgarten

Bruce E. Boyden

Proskauer Rose LLP

1233 Twentieth Street NW, Suite 800

Washington, DC 20036

(202) 416-6800

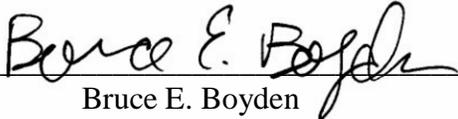
Counsel for The Motion Picture Association of America, Inc.

CERTIFICATE OF SERVICE

I, Bruce E. Boyden, hereby certify that a true and correct copy of the Opposition of the Motion Picture Association of America, Inc. to the Petition for Reconsideration Filed by Broadcast Music, Inc. and the American Society of Composers, Authors and Publishers was served on the following parties on March 10, 2004, by first-class mail, postage prepaid:

Marvin L. Berenson
General Counsel
Broadcast Music, Inc.
320 West 57th Street
New York, NY 10019

I. Fred Koenigsberg
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
*Counsel for the American Society of Composers,
Authors and Publishers*


Bruce E. Boyden