

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

In the matter of)
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Digital Broadcast Content Protection) MB Docket No. 02-230
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**Opposition Of The Home Recording Rights Coalition
To Petition For Reconsideration**

The Home Recording Rights Coalition opposes the Petition for Reconsideration filed by NMPA, *et al.* that would open a “new front” in this proceeding.¹ These Music Publisher parties assert that, but do not fully explain how, two aspects of the Commission’s Report and Order arbitrarily would disadvantage the owners of copyright in musical works that make up the audio portion of audiovisual content of broadcast television programs. Nor do they offer a basis for the Commission to assert jurisdiction over musical works in this docket, or any specific proposal.

First, the Music Publishers generally argue that the Commission’s rules will result in “arbitrary” and “inferior” treatment of legitimate Internet music delivery services and other modes of legally authorized modes of music distribution, as if this were the subject of this rulemaking. In fact, they seem to admit that these modes of music distribution occur “well outside the ‘ancillary’ jurisdiction of the Commission.”² Nonetheless, they beseech the Commission to step in and provide parity with the treatment of unscreened and marked audiovisual content. More specifically, the Music Publishers argue that the Commission should

¹ *In the Matter of Digital Broadcast Content Protection*, MB Docket No. 02-230, Joint Petition for Reconsideration of NMPA, ASCAP, SGA, and BMI (Dec. 31, 2003) (The “Music Publishers”).

² *Id.* at 2.

amend Section 73.9005 (Compliance Requirements for Covered Demodulator Products) to eliminate the exceptions contained therein for certain forms of audio output. Without this, they say, “music piracy [will] continue and worsen.” Here too, they apparently recognize the Commission may have no jurisdiction to write regulations governing pure audio content, as they urge the Commission to adopt their suggestion simply to “further ... goals enunciated by the Commission.”³

The final report of the Broadcast Flag Discussion Group (“BPDG”), as referenced by the Commission in its November 4 Report & Order,⁴ does not reflect any contribution or proposal by any Music Publisher or allied party. Nor does any representative of HRRC, which did participate, recall any contribution or proposal on their behalf. Nor does the record in this proceeding, including the parties’ Petition for Reconsideration, reflect any specific proposal that the Commission could have erred by failing to adopt. Accordingly, there is no basis for HRRC or other parties concerned over any diminution of consumer lawful rights and expectations to judge the merits of any particular Music Publisher proposal, or what its consequence would be for consumers. In particular, the music publishers have not explained what effect any proposed recommendation would have on reasonable and customary consumer expectations and whether and to what extent a rule would be consistent with the principle articulated by Congress in adopting the Audio Home Recording Act (“AHRA”),⁵ which specifically preserves the ability of consumers to make widespread use of audio content they legitimately have acquired.

The petitioners suggest that a fuller explanation of their position can be found in the filing they made in the “Plug and Play proceeding,” and incorporate their comments by

³ *Id.* at 3-4.

⁴ *In the Matter of Digital Broadcast Content Protection*, MB Docket No. 02-230, Report and Order and Further Notice of Proposed Rulemaking (Rel. Nov. 4, 2003).

⁵ 17 U.S.C. §§ 1001 *et seq.*

reference.⁶ That filing addresses a very different environment and includes arguments and criticisms of the Commission specific to (but not valid as to) that environment. HRRC incorporates by reference its response, also filed today, in that proceeding.⁷ That filing also lacks a specific proposal. But, as HRRC observes in its Opposition, apparently implicit in the Music Publisher’s proposed regime would be the stranding and devaluation of millions of lawful, “legacy” consumer electronics products that were purchased in good faith.

In the absence of any specific proposal, it is not possible to judge whether the Music Publishers’ regime, as enacted in the Plug & Play or Broadcast Flag Docket, would prevent recording on royalty-paid digital audio recorders under the Audio Home Recording Act, and hence could violate that Act. However, HRRC notes that the protection given to transmissions, in Section 73.9005 of the Compliance Requirements for Covered Demodulator Products, to which the Music Publishers object, refers to the “Linear PCM format in which the transmitted information is sampled at no more than 48 KHz and no more than 16 bits/sample.” This formulation describes or approximates the digital audio format employed in digital inputs to consumer disc and tape digital audio recorders and media on which royalties are paid under the AHRA.⁸

Given the absence of any record made by the Music Publisher Parties in the BPDG or in the Commission’s proceedings to date, the lack of any apparent Commission jurisdiction or

⁶ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, Joint Petition for Reconsideration of NMPA, ASCAP, SGA, and BMI at 11-13 (Dec. 29, 2003).

⁷ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, Opposition of the Home Recording Rights Coalition To Petitions For Reconsideration (Mar. 10, 2004).

⁸ The recipients of royalties on recorders and blank media covered by the AHRA include members of all of the Music Publisher parties. HRRC is not aware that any of these parties has proposed repeal of the AHRA or of its royalty provisions.

congressional guidance, and the inability of any commenting party to gauge the consequence of granting the Petition, HRRC urges the Commission to deny this Petition For Reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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