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March 12, 2004

**VIA ECFS**

Ms. Marlene H. Dortch  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**Re:** Ex Parte Communication in CS Docket No. 97-80 (Commercial Availability of Navigation Devices); PP Docket No. 00-67 (Compatibility Between Cable Systems and Consumer Electronics Equipment).

Dear Ms. Dortch:

The Home Recording Rights Coalition's March 10, 2004 Opposition To Petitions For Reconsideration at pp. 2-3 referred to and quoted from an Exhibit that constituted an "MP3" format recording from a webcast of a congressional hearing.<sup>1</sup> When the HRRC Opposition was filed via ECFS, only a reference to this Exhibit could be filed, as the MP3 format is not one of those accommodated by the ECFS system. Attempts at achieving a filing electronically were made on that date by other means, but counsel now understands that the only way to submit for the record the contents of the file in question is via a typed transcript. Accordingly, for the record, please find attached to this *ex parte* letter a typed transcript of the audio file in question. HRRC will make its copy of the MP3 file itself available to any party wishing to inspect it. Thank you for your courtesy in the handling of this matter.

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<sup>1</sup> Hearing on Protecting Content in a Digital Age - Promoting Broadband and the Digital Television Transition, Senate Commerce Committee, 107th Cong., oral testimony of Peter Chernin (Feb. 28, 2002).

This letter is being provided to your office in accordance with Section 1.1206 of the Federal Communications Commission rules. A copy of this letter has been delivered to the parties listed below.

Very truly yours,

***Robert S. Schwartz***

Robert S. Schwartz  
General Counsel  
Home Recording Rights Coalition

cc: Rick Chessen  
Susan Mort  
Amy Nathan

Attach.

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*Senator Burns:*

Looking at this whole thing from 30,000 feet, both are dependent on each other, both of you need each other. And I guess where I am coming from in this whole debate is that as dependant as you are on each other, why hasn't there been a solution up to now? Now I've just got a question here for Mr. Chernin. We have heard the concerns about Selectable Output Controls; can you tell me what that phrase means as injected into the public debate on this and I get the feeling -- that the other day we had a new term injected into another piece of legislation. We know what an Endangered Specie is; we know what a Threatened Specie is -- but a new term comes along and says Sensitive Specie. I don't want to spend the next 20 years trying to find the definition to a term, so would you enlighten me on Selectable Output Controls?

*Mr. Chernin:*

Yes. First of all Senator, I'm hardly a technologist, but I believe Selectable Output Control was a very early stage proposal to try and solve these things and I know that Fox and I believe all the other content companies have explicitly abandoned this proposal many years ago so it's a non-issue for us. I think it has been largely superceded by the 5C negotiations.

*Senator Burns:*

Ok, that's fine. Do you have any problem with consumers copying television programs on a digital VCR and then routing the copy to any other device in the home as long as it doesn't get uploaded to the internet?

*Mr. Chernin:*

No, I think in effect, you know, Mr. Vadasz sort of waived the flag of fair use and I think it's very clear that I know myself and Mr. Eisner believe that home copying is a legitimate usage and we do not seek to hinder home usage. It is the transmission of perfect digital copies to millions of people on the Internet illegally that we seek to halt.

*Senator Burns:*

In other words, therein lies the problem. We can narrow everything down to that problem then?

*Mr. Chernin:*

Yes sir, absolutely, we have no problems with people using our content in multiple ways inside their own home. It is the illegal transmission of that content to millions of other people potentially which causes us grave concern.

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