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

In the Matter of)	
)	
Digital Output Protection Technology and Recording Method Certifications)	MB Docket Nos. 04-55, 04-56, 04-57, 04-58, 04-59, 04-60, 04-61, 04-62, 04-63, 04-64, 04-65, 04-66,
All Technologies and Recording Methods)	04-68

MOTION TO ACCEPT LATE-FILED COMMENTS AS TIMELY

The Motion Picture Association of America, Inc., Metro-Goldwyn-Mayer Studios Inc., Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, The Walt Disney Company, and Warner Bros. Entertainment Inc. (collectively, “the MPAA Parties”) hereby move the Commission to accept as timely the late-filed comments and oppositions filed by the MPAA Parties in the above-captioned dockets on April 7.

As demonstrated below, the MPAA Parties commenced filing their comments and oppositions within five minutes of the deadline for filing, and completed their filings within an hour after that. Thus, the comments and oppositions were late only by a small amount of time. No party has been prejudiced by this delay, and, for the reasons stated below, the Commission’s

review of the applications for certification filed in these proceedings would be aided by consideration of the comments, questions, and objections posed by the MPAA Parties. Acceptance of the MPAA Parties' comments and oppositions as timely filed is therefore in the public interest.

In support of their motion, the MPAA Parties state:

1. The thirteen dockets referenced above involve complex technical, legal, and policy questions raised by or in connection with lengthy submissions that became available only on March 17, while proceedings with respect to 10 petitions for reconsideration in related dockets were still pending.¹ These thirteen proceedings have been scheduled by the Commission for an accelerated review of only twenty days for comments, oppositions, or requests for clarification.

2. Given the importance of these proceedings in ensuring the viability of the digital transition for broadcast television, it was essential that content owners such as the MPAA Parties conduct a detailed and thorough review of each of the proposed technologies. All told, ten different technologies have been proposed in thirteen separate dockets. Many of the technology submissions raise similar issues in different contexts, which produced a need for the MPAA Parties to file ten individualized responses that were consistent in several respects, but not identical. In addition, the MPAA Parties filed one comment that applied to all proceedings, for a total of eleven distinct documents.

3. The MPAA Parties and their counsel attempted in good faith to conduct their review of the proposed technologies in a timely fashion, and to give each technology the attention it merited. A number of inopportune and unforeseen circumstances, however,

¹ Replies to the many oppositions filed in response to the MPAA's two petitions for reconsideration, in the Broadcast Flag and Plug & Play proceedings, were due, at the latest, on March 23.

prevented timely filing of the MPAA Parties' comments. One of the attorneys at Proskauer Rose familiar with the complex issues raised by this proceeding and who was involved in drafting and editing the oppositions was unavoidably absent on April 6, the filing deadline for the oppositions, due to his having been summoned for grand jury duty. Although significant efforts were made to complete drafts of the filings prior to April 6, due to the number of filings and the compressed time period for comment, it was not feasible to do so. Arrangements were therefore made to have other persons assist counsel in the drafting and revising effort. Unfortunately, due to the number of documents and the number of comments on each, an important e-mail to counsel containing several revisions to the documents was overlooked, resulting in an unforeseen need for a last-minute duplication of effort to harmonize many of the documents. Had any one of these events not occurred, the oppositions would have been timely filed.

4. The deadline for electronic submission of comments through ECFS is midnight on the day that comments are due. *See* 47 C.F.R. § 1.4(f). The ten individualized submissions were filed with the Commission's Electronic Comment Filing System beginning at approximately 12:05am Eastern Daylight Time on April 7, and concluding at approximately 12:35am EDT. The omnibus comment was then filed in all thirteen dockets, beginning at approximately 12:45am EDT and concluding approximately 1:05am EDT. Thus, each of the individualized comments was submitted within approximately 35 minutes of the midnight filing deadline, and all of the comments were submitted within approximately one hour and five minutes of the deadline.

5. As of the morning of April 7, all comments filed by the MPAA Parties are available through ECFS, apparently no later than any of the comments filed on April 6. In addition, courtesy copies of the ten individualized submissions and the omnibus comment were

sent by electronic mail to counsel or other individuals associated with each of the technology proponents.

6. No party was prejudiced by the late filing. The delay in submitting most of the individualized comments was less than half an hour in the middle of the night, and the delay in submitting all of the documents was slightly more than an hour. All parties have had access to the comments through ECFS as if they had been submitted by midnight EDT April 6; in addition, most parties received e-mail copies of the submissions well before they were even available through ECFS. (An e-mail to RealNetworks was sent on the afternoon of April 7.)

7. It is in the public interest for the Commission to accept the late-filed oppositions. As noted, no party was prejudiced by the late filing, nor has the Commission's work in reviewing the filings been materially delayed. Furthermore, no other parties that own or distribute audio-visual television content have commented on the applications for certification. The views of content owners on the ability of the proposed technology to protect high-quality content distributed via over-the-air digital broadcast television are critical in evaluating the efficacy of those technologies. While other parties have commented on aspects of the applications, none have engaged in a thorough analysis of the strengths and weaknesses of each proposed technology and its license terms. Without the late-filed comments of the MPAA Parties, and any replies thereto by technology proponents, the Commission will not have before it a detailed discussion of the many important issues and questions raised in those comments. The public interest would be harmed by this absence of debate over this critical stage of the adoption of the Broadcast Flag regulation.

For the above reasons, the MPAA Parties respectfully request that their motion to accept their comments in the above-captioned dockets as timely filed be granted.

Dated: April 12, 2004

Respectfully submitted,

THE MOTION PICTURE ASSOCIATION OF
AMERICA, INC.

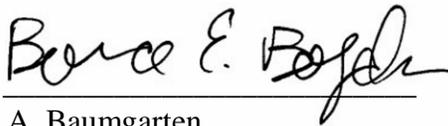
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THE WALT DISNEY COMPANY

WARNER BROS. ENTERTAINMENT INC.

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