

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of )  
 )  
Digital Output Protection Technology )  
and Recording Method Certifications: ) MB Docket No. 04-60  
 )  
Vidi Recordable DVD Protection System )  
 )

**JOINT REPLY OF PHILIPS ELECTRONICS NORTH AMERICA CORPORATION  
AND HEWLETT-PACKARD COMPANY TO THE RESPONSE OF THE MOTION  
PICTURE ASSOCIATION OF AMERICA, INC., ET AL.**

David G. Isaacs  
Director, Government and Public Policy  
Hewlett-Packard Company  
900 17th Street, N.W.  
Suite 1100  
Washington, D.C. 20006  
(202) 884-7033

Thomas B. Patton  
Vice President, Government Relations  
Philips Electronics North America  
Corporation  
1300 Eye Street, N.W.  
Suite 1070 East  
Washington, D.C. 20005  
(202) 962-8550

Rick Dorl  
Vice President and General Counsel  
Philips Consumer Electronics North  
America, a division of Philips Electronics  
North America Corporation  
64 Perimeter Center, East  
Atlanta, GA 30346  
(770) 821-2232

April 16, 2004

## TABLE OF CONTENTS

I.	INTRODUCTION AND EXECUTIVE SUMMARY.....	2
II.	ASSERTION OF UPSTREAM CONTROLS OVER DOWNSTREAM HDCP FUNCTIONS.....	3
III.	CLARIFICATION REGARDING OBLIGATIONS ON CONTENT PROVIDERS, BROADCASTERS AND CONSUMERS.....	7
IV.	CHANGES MUST BE APPROVED IN AN APPROPRIATE CHANGE MANAGEMENT PROCESS THAT HAS MEANINGFUL PARTICIPATION BY CONTENT OWNERS.....	8
	A. Extensions Using Vidi Technology.....	10
	B. Commission Approval of Permitted Changes.....	10
V.	THE TERMS OF THE VIDY AGREEMENT APPLY TO VIDY APPLICANTS.....	14
VI.	THE MEANS OF HANDLING REVOCATION LISTS.....	15
VII.	CONCLUSION.....	16

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of )  
 )  
Digital Output Protection Technology )  
and Recording Method Certifications: ) MB Docket No. 04-60  
 )  
Vidi Recordable DVD Protection System )  
 )

**JOINT REPLY OF PHILIPS ELECTRONICS NORTH AMERICA CORPORATION  
AND HEWLETT-PACKARD COMPANY TO THE RESPONSE OF THE MOTION  
PICTURE ASSOCIATION OF AMERICA, INC., ET AL.**

Philips Electronics North America Corporation (“Philips”) and Hewlett-Packard Company (“Hewlett-Packard”) (collectively, “Vidi Applicants”) hereby reply to the Response filed by the Motion Picture Association of America, Inc. (“MPAA”) and its member studios<sup>1</sup> to the Certification of Vidi for approval by the Commission as an Authorized Recording Method.<sup>2</sup> Vidi Applicants appreciate the support for Vidi expressed by the MPAA and its members.

---

<sup>1</sup> *In the Matter of Digital Output Protection Technology and Recording Method Certifications: Vidi Recordable DVD Content Protection System*, Response to the Application of Philips Electronics North America Corp. and Hewlett-Packard Co. For Interim Authorization of Vidi Recordable DVD Protection System By 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., MB Docket No. 04-60 (April 6, 2004) (“*MPAA Response*”).

<sup>2</sup> *In the Matter of Digital Output Protection Technology and Recording Method Certifications: Vidi Recordable DVD Content Protection System*, MB Docket No. 04-60 (March 1, 2004) (“*Vidi Certification*”); Certifications for Digital Output Protection Technologies and Recording Methods to be Used in Covered Demodulator Products: Commission Announces Certifications Received and Opens Window for Comments and Oppositions, *Public Notice*, DA 04-715 (*rel.* March 17, 2004).

## I. INTRODUCTION AND EXECUTIVE SUMMARY

In this Joint Reply, Vidi Applicants make certain clarifications and representations requested by MPAA and its members and propose certain changes to address the concerns expressed in the MPAA Response. Specifically:

- Vidi Applicants will work with the MPAA and its members and the Commission to resolve concerns regarding the assertion of upstream controls over downstream HDCP functions. Vidi Applicants believe it would be most appropriate to do so through a change to the HDCP Compliance Rules, but are prepared to implement an alternative approach through a change in Vidi's Compliance rules.
- Vidi Applicants will not assert the Vidi IP against content providers or broadcasters that are not Vidi Content Participants (or Affiliates of Content Participants) as a result of their triggering the use of Vidi in the U.S. by properly marking content with the Broadcast Flag, or against consumers as a result of their triggering the use of Vidi by making or playing a recording in the U.S. of content marked with the Broadcast Flag, if they are not asserting necessary intellectual property against Vidi Applicants or Vidi users.
- The only changes permitted by the Vidi Agreement that are relevant to broadcast content are for the clarification of ambiguities, correction of typographical errors and bug fixes that do not materially amend or alter Vidi, and changes necessary to comply with or qualify under government regulations. The change management procedures in the Vidi Agreement will be amended to further protect content owners from any clarifications or corrections that would have a material and adverse effect on the integrity or overall security of Vidi. Any other changes, including extensions of Vidi (*e.g.*, into new formats and new media) would be subject to Commission approval.
- The terms of the Vidi Agreement apply explicitly to Vidi Applicants, and Content Participants are granted enforcement rights as third-party beneficiaries.
- Vidi Applicants are prepared to work with the MPAA and all other affected stakeholders to develop an appropriate, standardized means of passing and handling revocation information in ATSC transmissions.

Vidi Applicants trust that this Joint Reply will resolve all issues addressed in the MPAA Response.

## II. ASSERTION OF UPSTREAM CONTROLS OVER DOWNSTREAM HDCP FUNCTIONS

In Part I of the MPAA Response, the MPAA and its members ask Vidi Applicants to include in the Vidi Compliance Rules certain obligations on Vidi playback functions before those functions may send Decrypted Vidi Data bearing the EPN content protection state over an HDCP output.<sup>3</sup> The requested obligations mirror the “associated obligation” proposed by Digital Content Protection, LLC (“DCP”), in its HDCP Certification to apply to Covered Demodulator Products.<sup>4</sup> MPAA and its members make a similar request with respect to each of the proposed technologies that may hand content to HDCP for which they have voiced support,<sup>5</sup> except for CPRM,<sup>6</sup> which already includes the requested obligations in its compliance rules.

As a general matter, the Vidi Compliance Rules do not provide for the separate approval of output protection technologies for EPN content or provide specific conditions on the use of such outputs. Rather, Vidi relies on the approval granted by the Commission and incorporates that approval by reference. Thus, if HDCP is approved for use by Covered Demodulator Products, it will be approved for use by Vidi players when they output Decrypted Audiovisual

---

<sup>3</sup> See *MPAA Response* at 3.

<sup>4</sup> See *In the Matter of Digital Content Protection Technologies and Recording Method Certifications: High Bandwidth Digital Content Protection*, MB Docket No. 04-61 (March 1, 2004) (“*HDCP Certification*”) at 15.

<sup>5</sup> See Response of MPAA to the MagicGate Certifications, MB Docket Nos. 04-55, 04-56, 04-57, 04-58 (April 6, 2004) (“*MPAA MagicGate Response*”) at 3-4; Response of MPAA to the D-VHS Certification, MB Docket No. 04-68; (April 6, 2004) (“*MPAA D-VHS Response*”) at 4-5; Response of MPAA to the DTCP Certification, MB Docket No. 04-64 (April 6, 2004) (“*MPAA DTCP Response*”) at 4-5.

<sup>6</sup> *In the Matter of Digital Output Protection Technology and Recording Method Certifications: Content Protection Recordable Media for Video Content*, MB Docket No. 04-62 (March 1, 2004) (“*CPRM Certification*”).

Data (as that term is used in the Vidi Content Protection Agreement<sup>7</sup>). The MPAA and its members do not object to this approach to output approval.

In establishing this structure, Vidi Applicants intended to incorporate not only the Commission's approval of a technology, but also any associated obligations that the Commission might decide to impose. If the Commission decides that a Covered Demodulator Product must take a certain associated action as a condition of using an approved output, the logic of Vidi Applicants' "approval by reference" structure requires that the same associated obligation be imposed on Vidi playback functions when they play back Decrypted Audiovisual Data and send it over the approved output. This requirement was inadvertently omitted from the Vidi Compliance Rules.

Vidi Applicants believe that this general point, and the MPAA's and its members' specific concerns with respect to HDCP, can be simply and fully addressed with the following change to the first paragraph of Section 1.2.2.1 of the Vidi Compliance Rules:

When transmitting Decrypted Audio Visual Data encoded with the EPN state to such a digital output technology, a Vidi Recorder/Player Product shall comply with any associated obligations imposed by the FCC under the Broadcast Flag regulation to the same extent as a Covered Demodulator Content passing Marked Content to such an output.

In addition to being consistent with the "approval by reference model," this generic approach, rather than the specific language suggested by the MPAA and its members, would permit greater flexibility if additional associated obligations are added by the Commission in the future.

---

<sup>7</sup> See *Vidi Certification*, App. B, Vidi Content Protection Agreement ("*Vidi Agreement*") at § 1.2 (the Vidi Compliance Rules are contained in Exhibit A of the *Vidi Agreement*).

That having been said, Vidi Applicants do not believe that the particular associated obligation proposed by HDCP and requested more generally of all approved technologies by the MPAA and its members, is appropriate. The specific request relates to the shutting off of HDCP encrypted content to devices that have had their HDCP credentials revoked. Vidi Applicants understand the importance of ensuring that HDCP remains a secure technology by shutting off content to revoked HDCP sink devices. However, Vidi Applicants respectfully suggest that this is a concern that is more properly addressed to DCP, the proponent of HDCP. Every other proposed technology takes responsibility for shutting off content to its own revoked devices. HDCP easily can do the same by a simple modification to its compliance rules to require any application (or any source of content) that wishes to send content over an HDCP-protected link to perform the tasks that MPAA seeks to impose on Vidi players, DTCP sinks, MagicGate players, D-VHS players and CPRM players on behalf of HDCP.

Specifically, the HDCP source function, or any application that wishes to send content over an HDCP-protected link, could easily be required to (a) test the HDCP sink with the latest HDCP SRM before sending protected content over an HDCP link and (b) confirm that HDCP sink has not been revoked. This may be achieved by adding the following text to the HDCP Compliance Rules for Source Devices<sup>8</sup> as an additional Section 4.5:

**4.5 Pre-condition For Use of HDCP.** Any Source Device, or function inside a Source Device, whether implemented in hardware or implemented in software (“Content Source Function”), may transmit content to an HDCP protected DVI or HDMI output, only if such Content Source Function (a) reads the received HDCP system renewability information, if present, and passes it to the HDCP Source Function as a System Renewability Message, and (b) verifies that the HDCP Source Function is engaged and able to deliver content in protected form, which means (i) HDCP

---

<sup>8</sup> See *HDCP Certification*, Ex. 3 (HDCP Component License Agreement) at Ex. 3.

encryption is operational on such output, (ii) processing of the valid received System Renewability Message associated with such content, if any, has occurred as defined in the HDCP Specification and (iii) there is no HDCP Display Device or Repeater on such output whose Key Selection Vector is in such System Renewability Message.

In addition to assigning to each technology the appropriate responsibility for its own security, such an approach would have the benefit of simplicity: instead of multiple changes in the rules for multiple technologies, an issue raised in comments on seven technologies could be solved by a change in the rules applicable to only one. Further, this approach would be most consistent with the general model of the Commission's encryption-based Broadcast Flag regulation, which contemplates that the control of content is passed *downstream* from Covered Demodulator Products to approved technologies, to other approved technologies. By contrast, the proposal in the MPAA Response would impose an *upstream* obligation. Further, it would set a troubling precedent under which any new proposed technology could require changes in the compliance rules of all (or most) of the other approved technologies.

Accordingly, Vidi Applicants respectfully request the Commission to impose the condition requested by the MPAA on HDCP source devices rather than on every other technology's sink and playback devices.

If, however, the Commission does not require HDCP to change its Compliance Rules, but instead adopts an "associated obligation" for Covered Demodulator Products using HDCP, Vidi's incorporation by reference of associated obligations discussed above would automatically

incorporate this rule for Vidi players.<sup>9</sup>

### **III. CLARIFICATION REGARDING OBLIGATIONS ON CONTENT PROVIDERS, BROADCASTERS AND CONSUMERS**

The MPAA Response asks Vidi Applicants to clarify that broadcasters, content providers and others who do not enter into the Vidi Agreement but who mark content with a Broadcast Flag that triggers the Vidi technology are not subject to any obligations to Vidi Applicants “including but not limited to intellectual property licensing obligations.”<sup>10</sup> The MPAA and its members make a similar request of all of the proposed technologies for which they have voiced support.<sup>11</sup>

Vidi Applicants can allay any concerns the MPAA and its members may have with respect to the identified intellectual property issue. Vidi Applicants hereby represent to the

---

<sup>9</sup> Presumably, the Commission will either: (i) adopt the associated obligation proposed by HDCP and require all other approved technologies that allow the use of HDCP to impose a similar obligation; or (ii) require a change in the HDCP Compliance Rules. Failure to do one or the other would apparently leave a hole in the use of HDCP by Covered Demodulator Products. Should the Commission decline to do either, Vidi Applicants would be willing to discuss any other approach to resolving this question that the Commission may deem appropriate. One such approach might include the addition of a provision in the Vidi Compliance Rules such as that suggested by MPAA and its members. Such a provision might read:

HDCP. A Vidi Recorder/Player Product may pass Decrypted Audiovisual Data to an HDCP protected DVI or HDMI output only if such Vidi Product (a) reads the received HDCP system renewability information, if present, and passes it to the HDCP Source Function as a system renewability message, and (b) verifies that the HDCP Source Function is engaged and able to deliver Decrypted Audiovisual Content in protected form, which means (i) HDCP encryption is operational on such output; (ii) processing of the valid received system renewability message associated with such output, if any, has occurred as defined in the HDCP Specification and (iii) there is no HDCP Display Device or Repeater on such output whose Key Selection Vector is in such system renewability message.

<sup>10</sup> See *MPAA Response* at 5.

<sup>11</sup> See Response of MPAA to HDCP Certification, MB Docket No. 04-61 (April 6, 2003) (“*MPAA HDCP Response*”) at 4; Response of MPAA to CPRM Certification, MB Docket No. 02-62 (April 6, 2003) (“*MPAA CPRM Response*”) at 3-4; *MPAA MagicGate Response* at 4-5; *MPAA D-VHS Response* at 3-4; *MPAA DTCP Response* at 3-4.

Commission that they will not assert the Vidi Intellectual Property against: (i) content providers or broadcasters that are not Vidi Content Participants (or Affiliates of Content Participants) as a result of their triggering the use of Vidi in the United States by marking with the Broadcast Flag content entitled under the Commission's rules to be marked with the Broadcast Flag, or (ii) consumers as a result of their triggering the use of Vidi by making or playing a recording in the United States of content marked with the Broadcast Flag or EPN encoding. The foregoing representation shall not apply to any person or entity, or its Affiliate, that asserts a claim of infringement under any patent claim that would be a Necessary Claim if that person or entity were a signatory to the Vidi Agreement. Capitalized terms in the foregoing representation have the meaning defined in the Vidi Agreement.

#### **IV. CHANGES MUST BE APPROVED IN AN APPROPRIATE CHANGE MANAGEMENT PROCESS THAT HAS MEANINGFUL PARTICIPATION BY CONTENT OWNERS**

In Parts III and IV of the MPAA Response, MPAA and its members raise closely related issues regarding the Vidi change management process, set forth in Article 6 of the Vidi Agreement.<sup>12</sup> Vidi Applicants understand the desire of the MPAA and its members to ensure that their interests are properly protected in a change management procedure that includes “meaningful participation” and a neutral third party decision maker.<sup>13</sup> Further, Vidi Applicants agree with the MPAA and its members that “the Commission must retain jurisdiction over all changes to the technologies it authorizes,” except when those changes are in the nature of bug fixes or the correction of minor errors or omissions.<sup>14</sup>

---

<sup>12</sup> *MPAA Response at 5-8.*

<sup>13</sup> *Id. at 7.*

<sup>14</sup> *Id. at 5-6.*

Indeed, Vidi Applicants believe these concerns and interests are equally important to other participants in the DTV transition (including notably manufacturers that expend millions of dollars to develop products that implement the approved technologies). Further, they must apply equally to all approved technologies. Thus, both Philips and Hewlett-Packard have expressed opposition to other technology certifications that do not include change management processes that grant “meaningful participation” to licensees or provide appropriate Commission supervision.<sup>15</sup>

In light of their strongly-held concerns, Vidi Applicants took great care to develop a change process that permitted only very limited changes, an approach far more restrictive than other technologies for which the MPAA and its members have expressed support. The only changes permitted by the Vidi Agreement that are relevant to broadcast (and other EPN encoded) content, are (i) correction of typographical errors and similar mistakes and bug fixes that do not materially amend or alter Vidi, and (ii) changes necessary to comply with or qualify under government regulations. Even for these very limited changes, Vidi Applicants attempted to develop a change management process that fully protected *all* affected interests.

Other changes are not permitted. Extensions of Vidi, for example into new formats and new media (as discussed in Section 6.5 of the Vidi Agreement) would not be treated as changes but instead would be subject to the Commission’s technology approval process in effect at the time such extensions are proposed. Vidi Applicants believe that the concerns expressed by the MPAA and its members can be allayed with the clarifications set forth in this Joint Reply.

---

<sup>15</sup> See Opposition of Philips to HDCP Certification, MB Docket No. 04-61 (April 6, 2004) at 17-20; Opposition of Philips to CPRM Certification, MB Docket No. 04-62 (April 6, 2004) at 25-31; Opposition of Philips to DTCP Certification, MB Docket No. 04-64 (April 6, 2004) at 28-33; Comments of Hewlett-Packard to DTCP Certification, MB Docket No. 04-64 (April 6, 2004) at 5.

### **A. Extensions Using Vidi Technology**

Parts III and IV of the MPAA Response reflect concern that extensions of Vidi using the same technology could circumvent the change management procedures of the Vidi Agreement.<sup>16</sup> As discussed below, the Vidi Applicants' approach to extensions of Vidi should eliminate this concern. The extensions cited in Section 6.5 of the Vidi Agreement include examples of new video formats, media other than DVD+RW discs, encryption of audio and the use of extended CCI. These extensions are outside of the scope of the Vidi Agreement and, therefore, are outside of the scope of the approval sought here by Vidi Applicants.

If Vidi Applicants propose such an extension, and the extension will be applicable to broadcast content in the United States, that technology will be fully subject to the Commission's technology authorization process then in effect. For instance, if the Commission continues the current interim process, Vidi Applicants would submit the extended technology, and any new agreement to the Commission for approval as an Authorized Recording Method. It may be that this construction was not clear to the MPAA from the language of Section 6.5. In, short, the "circumvention of change management" feared by the MPAA and its members<sup>17</sup> simply is not possible.

### **B. Commission Approval of Permitted Changes**

MPAA expresses a number of additional concerns regarding the efficacy of the change management procedures in the Vidi Agreement in safeguarding content participants' interests. With the clarification provided in this Joint Reply, Vidi Applicants believe that they address these concerns in a manner that should satisfy MPAA.

---

<sup>16</sup> See *MPAA Response* at 5-8.

<sup>17</sup> *Id.* at 6.

MPAA requests that the Commission “should require, as a condition of authorization of Vidi” that the Commission approve changes in the Vidi Compliance Rules that allow “additional approved output or recording technologies for use in downstream devices” from Vidi. Such Commission approval already is built into Vidi’s Compliance Rules.<sup>18</sup> Vidi allows the use of only those downstream output or recording technologies that have been *previously approved* by the Commission. Indeed, the Vidi Compliance Rules incorporate the Commission’s rules by reference. Thus, there is no need for further approval.<sup>19</sup>

The Vidi Agreement also allows changes mandated by the Commission or needed to qualify under Commission rules. These changes relate to issues on which the Commission or Congress will already have spoken (e.g., addressing analog reversion). Thus, the Commission oversight sought by MPAA already is present with regard to this category of changes.

The remaining category of permitted changes under the Vidi Agreement are those clarifying ambiguities, correcting typographical errors or similar mistakes or fixing bugs, provided, however, that any such corrections or clarifications not materially alter or expand Vidi, its functionality or that of Vidi Compliant Products or materially increase the cost of implementing Vidi.<sup>20</sup> Clearly, it would not be an efficient use of Commission resources to approve the correction of every typographical error or every bug fix to the Vidi technology or

---

<sup>18</sup> *Id.*

<sup>19</sup> Other technologies supported by the MPAA and its members do provide for independent approval of output and recording technologies. It is not clear why MPAA and its members did not express concern about these technologies. As Vidi Applicants have made clear in separate filings with the Commission—the Vidi model of incorporation by reference of Commission approvals is far superior both in protecting content owners interests and ensuring a level competitive playing field without private gate keepers.

<sup>20</sup> *See Vidi Agreement* at § 6.2.1.

rule, and the Vidi Applicants assume that MPAA did not have such micromanagement in mind in its Response.

To the extent, however, that MPAA has a concern about the potential for a “bug fix,” mistake correction or clarification of an ambiguity adversely impacting Vidi’s ability to protect content, the Vidi Applicants are absolutely committed to ensuring that such minor corrections not reduce the overall security level provided by Vidi. To provide added comfort to MPAA and its members and to ensure that result, Vidi Applicants are prepared to add a new proviso (d) to Section 6.2.1 of the Vidi Agreement whereby any correction or clarification shall not “have a material and adverse effect on the integrity or overall security of Vidi.”

Content participants would have the right to object to a proposed change and avail themselves of the change management procedures in Section 6.3 of the Vidi Agreement upon a showing that such changes would have a material adverse effect on the integrity or overall security of Vidi. The Vidi Applicants have drafted these change management procedures to afford all parties the fullest opportunity to participate in and contest changes. In that regard, these provisions afford far more protection for content participants (and adopters) than comparable provisions in other digital content protection technology agreements.

MPAA also raises a concern about the 180-day arbitration period in the change management procedures.<sup>21</sup> The Vidi Applicants submit that within the totality of the change management procedures and the very limited scope of permitted changes, that provision will afford content participants a full and fair opportunity to resolve their concerns about any changes. As described above, major or material changes to the Vidi Specification or Compliance

---

<sup>21</sup> See *MPAA Response* at 6-8. The 180-day period was patterned after a comparable provision in the DFAST license providing for a change to be deemed approved if the FCC failed to rule on it within 180 days. See DFAST License, § 6.2(e) (governing unidirectional digital cable ready products).

Rules are prohibited. The type of allowed changes, such as clarifications of ambiguity, bug fixes, etc. will not produce a level of complexity that would require an arbitration longer than 180 days.

Moreover, arbitration is a last resort. Under the Vidi Agreement's change management procedures, there are multiple opportunities for consultation and resolution of concerns of content participants prior to arbitration. Under Section 6.3.1, there is a mandatory minimum period of 90 days between announcement of a "Proposed Change" and a "Draft Change" during which content participants could express any concerns they might have. Section 6.3.3 expressly contemplates consultation on the Proposed Change and the Draft Change with content participants. Only if these consultations prove fruitless would arbitration be necessary. Since the 180 day period is not triggered until an arbitration request is submitted, which may be as late as 30 days after announcement of the Draft Change, in fact content participants have at least 300 days and probably more from the announcement of a Proposed Change to resolve their concerns. The Vidi Applicants pledge that they will take very seriously concerns raised by content participants regarding potential adverse consequences of permitted changes on the security or integrity of Vidi.

MPAA seeks clarification of the Vidi Applicants' intent regarding the 100 million euro annual revenue threshold for eligible content participants to avail themselves of third party beneficiary rights to seek injunctive relief.<sup>22</sup> The Vidi Applicants included this provision simply to ensure the bona fides of the content participants.<sup>23</sup> The threshold applies to all revenues from

---

<sup>22</sup> See *MPAA Response* at 7-8.

<sup>23</sup> See *Vidi Agreement* at § 9.3.2. The Vidi Applicants note that the DTCP certification contains an even more restrictive threshold for eligibility regarding comparable enforcement rights, namely a limitation to MPAA member companies or a non-MPAA company that has generated revenues during the prior year at least as great as the MPAA company with the lowest US box office revenues from theatrical releases.

the production, distribution and transmission of any audiovisual content (including both television programming and motion pictures). In the business of content production and distribution, it is a low hurdle to overcome. The Vidi Applicants are certain that all MPAA member companies far surpass that level of revenue, as would any company likely to be offering content for broadcast distribution that would be subject to the Broadcast Flag regulations. The threshold is necessary to protect the Vidi Applicants and all Vidi Adopters from companies that are not bona fide and seek only to profit from the opportunities afforded by these third party beneficiary rights.

Finally, Vidi would not object to a general rule requiring Commission approval of material changes, if it were applied equally to all approved technologies. Indeed, changes beyond those that fix bugs, correct typographical errors, or are needed to comply with or qualify under Commission rules should be subject to Commission review and approval. That is the model incorporated in the Vidi Agreement. It should apply generally.

## **V. THE TERMS OF THE VIDY AGREEMENT APPLY TO VIDY APPLICANTS**

The MPAA and its members seek to ensure that Vidi Applicants comply with the compliance and robustness rules of the Vidi Agreement when they use Vidi to protect audiovisual content.<sup>24</sup> In fact, the Vidi Agreement contains just such an obligation. Section 2.4 of the Vidi Agreement provides that if Philips or Hewlett-Packard engage in any Implementer activity, they shall be bound by the provision of the Vidi Agreement (§ 2.4) that obligates Implementers to comply with the Specification and with the Compliance Rules (including the

---

See, DTCP Content Participant Agreement, § 1, Definition of “Major AV Content Participant.” This limitation was considered acceptable by the MPAA and its members.

<sup>24</sup> See *MPAA Response* at 8.

Robustness Rules). Further, Vidi Applicants grant Content Participants the right to enforce this obligation as third party beneficiaries.

The MPAA Response also seeks clarification that any license to decrypt Vidi-protected content that may be granted by Philips or Hewlett-Packard independently of the Vidi Agreement would include obligations on licensees to comply with the Compliance and Robustness Rules included in the Vidi Agreement. For purposes of this proceeding, Vidi Applicants represent that any such license that permits the sale, transfer or other disposition of Vidi decryption within the scope of the submitted Specification and Compliance Rules (and permitted changes) will include such an obligation.

## **VI. THE MEANS OF HANDLING REVOCATION LISTS**

The MPAA inquires how the Vidi Applicants will address the need for a standardized means for delivering revocation information in the ATSC transport stream and ensuring that approved technologies properly receive, preserve, process and convey that information downstream.<sup>25</sup> MPAA and its members make a similar request of all of the proposed technologies for which they have voiced support.

Vidi Applicants do not understand this to be a concern related to Vidi revocation information. Vidi revocation information is carried in blank Vidi discs and is always available to Vidi Player/Recorder Products. Rather, Vidi Applicants understand this to be a systemic issue relating to certain technologies that need support from all of the other digital content protection technologies that seek to be approved.

Vidi Applicants have informed MPAA that they are prepared to work with MPAA and with all other affected stakeholders to develop an appropriate, standardized means of passing and

---

<sup>25</sup> *Id.*

handling revocation information in ATSC transmissions. Such an approach would require (i) developing a standardized means for delivery of the relevant information via ATSC, (ii) a commitment by broadcasters and cable system operators to carry this information, as it would make no sense to develop a system that is not used, (iii) an FCC requirement that all approved technologies carry such information, subject to appropriate limitations to ensure that the amount of information does not become burdensome or impair the functionality of the technology, and (iv) regulations protecting technology providers from liability for carrying SRMs that revoke the wrong equipment or cause any other form of injury.

As can be seen from the foregoing, this activity will require cooperation by all stakeholders, including all approved technologies, broadcasters and cable system operators, and adoption of appropriate rules by the Commission. The Vidi Applicants will be pleased to participate in that effort. We note, however, the issue is not a proper basis to deny or condition the Certification of Vidi as an Authorized Recording Method. When the Commission adopts an appropriate requirement, Vidi Applicants will modify the Vidi Compliance Rules and, if necessary, the Vidi Specifications (subject to an appropriate change management process) to comply.

## **VII. CONCLUSION**

In this Joint Reply, the Vidi Applicants have sought to address directly and comprehensively concerns or inquiries raised by MPAA, the vast majority of which were common to all of the certified digital broadcast content protection technologies conditionally supported by MPAA. We believe that the Certification made to the Commission on March 1, 2004, as amplified and clarified in this Joint Reply, should provide the requisite level of comfort to the content community that the Vidi technology and license will provide robust security. In

all respects, the Vidi system fulfills the Commission's requirements pursuant to Section 73.9008 of its regulations, and the Vidi Applicants look forward to prompt Commission approval of this technology.

Respectfully submitted,

**HEWLETT-PACKARD COMPANY**



---

David G. Isaacs  
Director, Government and Public Policy  
Hewlett-Packard Company  
900 17th Street, N.W.  
Suite 1100  
Washington, D.C. 20006  
(202) 884-7033

**PHILIPS ELECTRONICS NORTH  
AMERICA CORPORATION**



---

Thomas B. Patton  
Vice President, Government Relations  
Philips Electronics North America Corp.  
1300 Eye Street, N.W.  
Suite 1070 East  
Washington, D.C. 20005  
(202) 962-8550

Rick Dorl  
Vice President and General Counsel  
Philips Consumer Electronics North  
America, a division of Philips Electronics  
North America Corporation  
64 Perimeter Center, East  
Atlanta, GA 30346  
(770) 821-2232

April 16, 2004

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the foregoing were served on the following individuals on April 16, 2004, by first-class mail, postage pre-paid:

Jon A. Baumgarten  
Proskauer Rose LLP  
1233 Twentieth Street, N.W.  
Suite 800  
Washington, D.C. 20036

Bruce Boyden  
Proskauer Rose LLP  
1233 Twentieth Street, N.W.  
Suite 800  
Washington, D.C. 20036

A handwritten signature in black ink, appearing to read "T. B. Patton", written in a cursive style.

---

Thomas B. Patton