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June 23, 2004

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *Ex Parte* Presentation in MB Docket 04-59, In the Matter of Digital Output Protection Technology and Recording Method Certifications: SmartRight.

Dear Ms. Dortch:

This letter offers clarification regarding the scope of a potential approval of SmartRight<sup>1</sup> in light of SmartRight Applicants' commitment to implement SmartRight initially with local proximity controls specified in a May 28, 2004 letter to the Commission.<sup>2</sup>

As the Commission is aware, the SmartRight digital content protection system (including the Specification and the SmartRight Adopter Agreement), as certified by SmartRight Applicants, includes a "local proximity control" feature which, when enabled, can restrict, on a geographic basis, redistribution of Marked and Unscreened content.<sup>3</sup> These local proximity controls can be calibrated to limit redistribution to a very tightly circumscribed network of devices within the home. Conversely, SmartRight's local proximity controls also can be calibrated, or disabled entirely, to permit more permissive (yet always secure and discriminate) redistribution of Marked and Unscreened content to remote devices within a consumer's Personal Private Network.

<sup>1</sup> *In the Matter of* Digital Output Protection Technology and Recording Method Certifications: SmartRight, MB Docket No. 04-59 (March 1, 2004) ("*SmartRight Certification*").

<sup>2</sup> *See* Letter of David H. Arland, Thomson, and Brad Hunt, MPAA, to W. Kenneth Ferree (May 28, 2004) in MB Docket 04-59 ("*May 28, 2004 Letter*") at 3.

<sup>3</sup> *See SmartRight Certification* at 2, §§ 5.4 (technical Specification description) and 9.12 (SmartRight license description). *See also* Reply of SmartRight Applicants to the Opposition of the Motion Picture Association of America, Inc., et al in MB Docket 04-59 (April 16, 2004), Appendix A ("*SmartRight Adopter Agreement*") at § 7.1



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After extensive and constructive discussions with representatives of the content community, and recognizing that the issue of remote access raises complex business, legal and technological issues that require the Commission's careful consideration, SmartRight Applicants and the MPAA agreed that, assuming Commission approval, SmartRight's initial implementation would limit redistribution of Marked and Unscreened digital broadcast content to networking within the proximity of the home. Indeed, SmartRight Applicants and the MPAA negotiated specific technical parameters that would effectuate this agreement. These parameters, as well as SmartRight Applicants' voluntary commitment to implement them on an interim basis, and the MPAA's resulting support for SmartRight's approval, were communicated to the Commission in the *May 28, 2004 Letter*.<sup>4</sup>

Having so committed, SmartRight Applicants wish to clarify that we seek the Commission's approval of SmartRight as certified to the Commission on March 1, 2004, with the express understanding that SmartRight will be implemented initially with its local proximity controls calibrated consistent with the *May 28, 2004 Letter*. To the extent it becomes appropriate to relax SmartRight's local proximity control settings – either pursuant to an agreement with content owners or FCC rules – such action can be achieved through the change management provisions in SmartRight's License and Content Participant Agreements.<sup>5</sup>

This approach has two important benefits. First, it allows the Commission to adopt SmartRight, as certified under its interim process rules, without the delay entailed in a re-certification, and without further burdening the Commission's resources, in the event that local proximity controls are relaxed in the future. Second, it would provide greater flexibility to permit market-based implementation of SmartRight's remote access feature, based especially on content owners' needs, and subject to their rights as SmartRight Content Participants.

It is important to note that an initial implementation of SmartRight using more stringent local proximity controls would not result in a legacy issue for consumers in the event that these controls are relaxed or eliminated at some point in the future. Indeed, SmartRight devices sold to consumers with pre-set local proximity controls will be able to have these controls reset remotely – and invisibly to the consumer – through the use of a triggering command sent in an ATSC data field (which also will be used to carry revocation lists).

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<sup>4</sup> See *May 28, 2004 Letter* at 3.

<sup>5</sup> See *SmartRight Adopter Agreement* at § 3.3; See also Reply of SmartRight Applicants to the Opposition of the Motion Picture Association of America, Inc., et al in MB Docket 04-59 (April 16, 2004), Appendix B ("*SmartRight Content Participant Agreement*") at § 3.6.



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SmartRight Applicants are 100% committed to offering its state-of-the-art digital content protection technology in a manner that is capable of adapting to the ever-changing state of technology and the evolving needs of content owners and consumers alike. We appreciate the Commission's consideration of SmartRight and request its expeditious approval, as certified.

Sincerely,

David H. Arland

cc: Jon Cody  
Stacy Fuller  
Jordan Goldstein  
Catherine Bohigian  
Johanna Shelton  
Kenneth Ferree  
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