

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

In the Matter of)	
)	
Digital Output Protection Technology)	MB Docket Nos. 04-55, 04-56
and Recording Method Certifications)	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

**COMMENTS OF
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION
TO THE MOTION PICTURE ASSOCIATION OF AMERICA, INC., ET. AL.
PETITION FOR PARTIAL RECONSIDERATION AND CLARIFICATION**

Philips Electronics North America Corporation (“Philips”) respectfully submits these Comments in response to the Petition for Partial Reconsideration and Clarification filed by the Motion Picture Association of America, Inc., and its member studios (“MPAA”)¹ in the above-captioned proceeding.² Philips commends the Commission for its expeditious review and approval of an array of digital broadcast content protection technologies. Such swift Commission action was an important step in providing content producers with the certainty and security they deem essential in order to make high value digital content available for digital

¹ *In the Matter of Digital Output Protection Technology and Recording Method Certifications: All Technologies and Recording Methods*, 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 and 04-68, Petition for Partial Reconsideration and Clarification 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. (Sept. 13, 2004) (“MPAA Petition”).

² *In the Matter of Digital Output Protection Technology and Recording Method Certifications: All Technologies and Recording Methods*, 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 and 04-68, Order (rel. Aug. 12, 2004) (“Broadcast Flag Technology Certification Order”).

broadcast distribution. Therefore, the Commission's actions should speed the transition to digital television.

Philips urges the Commission to reaffirm the approach it adopted in the *Broadcast Flag Technology Certification Order* with respect to change management procedures. The Commission's decision to require approval of "any technical or legal changes that are material and substantial in nature, irrespective of whether a particular technology has formal change management procedures in place..."³ is a reasonable exercise of its authority and will help ensure a successful digital broadcast content protection regime. In fact, it is a central element of the *Broadcast Flag Technology Certification Order*, operating as a critical safeguard against potential overreaching and anticompetitive behavior by licensors over licensees, especially in circumstances where these parties are direct competitors.

The Commission's *Broadcast Flag Report and Order* required that certified technologies be licensed on reasonable and nondiscriminatory terms.⁴ As Philips and other parties have articulated previously, both with respect to specific technologies certified to the Commission and in the Broadcast Flag proceeding generally, some license terms included in various technology licensors' adopters agreements contained no meaningful opportunity for adopters to comment and participate fully in the adoption or rejection of proposed changes or to obtain an independent and objective resolution of disputes.⁵ The Commission, while declining to address specific change management provisions in adopters' agreements at this time, determined that its review

³ *Broadcast Flag Technology Certification Order* at ¶ 99.

⁴ See *In the Matter of Digital Broadcast Content Protection*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23550 (2003) ("*Broadcast Flag Report and Order*") at ¶ 53.

⁵ See e.g., Comments of Philips Electronics North America Corporation in MB Docket 02-230 (Feb. 13, 2004) at 25-27; Comments of the American Antitrust Institute in MB Docket No. 02-230 (Feb. 13, 2004) at 9-17; Comments of Hewlett-Packard Company in MB Docket No. 04-64 (Apr. 6, 2004) at 5.

and approval of material and substantial changes constitutes a meaningful safeguard to protect licensees from potential abuses by licensors in requiring changes.⁶ In doing so, the Commission vindicates a central tenet of its Broadcast Flag regime, which is to prevent “...one industry segment exercising a significant degree of control over decisions regarding the approval and use of content protection and recording technologies in DTV-related equipment.”⁷

Absent Commission oversight, approved technologies could be mapped to new technology platforms, dramatically altering the scope of the technology and its consequent effect on licensees. In addition, unfettered material and substantial changes can dramatically broaden or narrow the scope of protection the Commission intends the Broadcast Flag regime to provide to digital broadcast content.

Without such a regulatory role, there would be too great an opportunity for undue exercise of licensor power over licensees, especially where these parties are direct competitors, such as in the digital television equipment marketplace. Indeed, the *MPAA Petition* recognizes the need for regulation when it distinguishes between those license agreements that include effective change management provisions in content participant agreements and those that exclude them.⁸ The Commission’s *Broadcast Flag Technology Certification Order* simply takes MPAA’s reasoning one step further and provides a modicum of protection to licensees otherwise left unprotected by the change management provisions of adopter agreements. In this regard,

⁶ See *Broadcast Flag Technology Certification Order* at ¶ 99 (“[The Commission’s] oversight role [in approving material and substantial changes] strikes an appropriate balance that will assure the integrity of [the] certification process while at the same time preserving flexibility for technology proponents in routine management matters and providing content owners and adopters with adequate participation in change management.”)

⁷ *Broadcast Flag Report and Order* at ¶ 52.

⁸ See *MPAA Petition* at 13.

rather than constituting regulatory overlap or redundancy, the Commission's oversight of the change management process fills in gaps in the change management provisions in approved technologies' adopters agreements.

In sum, the Commission's requirement that it review and approve technical or legal changes that are material and substantial is a reasoned and restrained exercise of its regulatory authority incident to implementation of its *Broadcast Flag Report and Order*, and is essential for the protection of licensees and the public, both to safeguard against anticompetitive practices and to foster innovation in the digital broadcast content protection marketplace. The Commission's decision should be reaffirmed.

Respectfully submitted,

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September 23, 2004

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing were served on the following individuals on September 23, 2004, by first-class mail, postage pre-paid:

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A handwritten signature in black ink, appearing to read "Thomas B. Patton". The signature is written in a cursive style with a large, stylized initial "T".

September 23, 2004

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