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Sent: Wednesday, May 29, 2002 10:50 PM
To: bpdg-tech@list.lmicp.com
Subject: BPDG: 5C comments regarding MPAA proposal

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Dear fellow BPDG participants:

The 5C companies submit these comments in response to the MPAA companies' May 15 and May 24 proposed changes to the draft BPDG Compliance and Robustness Requirements. The MPAA companies proposed two significant changes in the form of (a) proposed obligations on consumer modulators and (b) the proposed deletion of the provisions that allow the use of Table A technologies in connection with Unscreened Content. Given these substantial changes from the prior drafts of the Compliance and Robustness Requirements (including from the draft Compliance and Robustness Requirements jointly proposed to the BPDG by MPAA, CIG and 5C companies on April 25), several of the 5C companies have not had sufficient time to complete their review of the various implications of the MPAA companies' proposed changes and must therefore reserve comment on the studios' proposal at this time. Nevertheless, in order to be responsive to today's BPDG deadline, we offer these initial reactions to the two proposals.

First, as to the modulator proposal in X.3(2) and X.4(2), the 5C companies support the inclusion of consumer modulator outputs among the list of permitted outputs for Unscreened Content and Marked Content. As to the MPAA companies' proposal that obligations be imposed on consumer modulators with respect to the modulation of content other than broadcast content, we note the following:

1. Based on comments made by MPAA representatives during the May 23 conference call and in footnote 2 proposed by the MPAA companies, we understand that the MPAA companies seek a governmental mandate requiring that all consumer modulators (a) screen "non-trusted source" content (i.e., content received via in-the-clear digital inputs) for the Broadcast Flag; (b) not output "non-trusted source" content that contains the Broadcast Flag and (c) not insert the Broadcast Flag in "non-trusted-source" content. If such obligations are to be imposed on consumer modulators, we do not think that Sections X.3(a)(2) or X.4(b)(2) (whose scope is limited to requirements imposed on Covered Products with respect to Unscreened Content and Marked Content) are appropriate provisions to address such obligations. Rather, those sections need only specify that a Covered Product may output Unscreened Content and Marked Content "to an 8-VSB, [16-VSB,] 64-QAM or 256-QAM modulated output." Additional or collateral proposals relating to obligations imposed on consumer modulators with respect to non-broadcast content could be addressed as a footnote reference to a paragraph in the BPDG Final Report that describes the MPAA proposal.

2. The "proposed principles regarding consumer modulators" posted to the BPDG reflector by Fox on May 1 state that "[i]f content is delivered from a 'trusted source' (such as a 5C sink, or conditional access) then the modulator need not check for any label or have any other feature of compliance." The text of the May 24 draft from Fox, however, would extend the proposed obligations so as to require modulators to screen for the Broadcast Flag in all content other than Unscreened Content and Marked Content, regardless of whether such other content is received via DTCP, conditional access or other any other "trusted source." If it is ultimately decided that obligations should be imposed on consumer modulators, they should not extend beyond the MPAA companies' original concept of "non-trusted source" content, and any provision imposing such obligation should clearly define what content would be subject to screening obligations. In that regard, we would expect that "non-trusted source" or "Unknown" content would be defined as content (other than Unscreened Content and Marked Content) received via in-the-clear digital inputs.

Second, the 5C companies believe that the MPAA companies' proposal to delete the provisions of Sections X.3 and X.6 that allow for the use of Table A technologies in connection with Unscreened Content, represents a substantial change from prior drafts (including from the joint MPAA-CIG-5C proposal) and therefore requires careful consideration of the implications of such a change. In that regard, several of the 5C

companies have not had sufficient time to complete their review of the new proposal. We believe further consideration should be given to the necessity of restricting use of Table A technologies in connection with Unscreened Content as well as consideration of less restrictive means to address the MPAA companies' concerns, including, for example, consideration of whether Table A technologies can be used for Unscreened Content (a) where such technologies also satisfy the definition of a "Robust Method" or (b) under other specified circumstances.

Best regards,

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President
Digital Transmission Licensing Administrator, LLC