

TESTIMONY OF

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PHILIPS ELECTRONICS NORTH AMERICA CORPORATION**

BEFORE THE

**COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
UNITED STATES SENATE**

**HEARING ON
“BROADCAST AND AUDIO FLAG”**

JANUARY 24, 2006

SUMMARY

Philips supports congressional ratification of the FCC's November 4, 2003 Video Broadcast Flag rules as well as its August 4, 2004 Order approving thirteen digital broadcast content technologies under the fair and transparent process established under those rules.

That Philips supports narrowly-crafted legislation ratifying the FCC's Broadcast Flag rules should not come as a surprise. In fact, almost all of the concerns raised by Philips throughout the FCC's rulemaking proceeding either were addressed in a thoughtful and reasonable fashion by the FCC or will be accomplished by this legislation:

- The Commission established an open and fair process for selecting technologies, yielding a set of objective criteria against which technologies would be judged and requiring technology proponents to prove that they fulfilled these criteria.
- The Commission's rules expressly limit the scope of protection to "indiscriminate redistribution over the Internet" and preserve consumers' home recording capabilities.
- The Commission adopted key safeguards, most importantly a requirement that all approved technologies be licensed on reasonable and non-discriminatory terms.

While virtually everyone recognizes that the Broadcast Flag is not a perfect content protection system, Philips believes it is a reasonable step along a longer path that balances appropriate content protection against consumer rights and product functionality, and helps to promote innovation and competition in the consumer electronics and digital content protection technology marketplaces. Of course, manufacturers must be given a commercially reasonable period of time to implement any newly-ratified rules, given that the old rules were invalidated prior to their effective date.

Notwithstanding the clarity of the broad FCC requirement that approved Broadcast Flag technologies be licensed on reasonable and non-discriminatory ("RAND") terms, and as FCC Chairman Martin has observed, the imposition of "non-assert" obligations on licensees of several FCC-approved Broadcast Flag technologies raises serious concerns. Non-assert obligations effectively require a licensee that owns essential intellectual property ("IP") to forego any compensation for that IP in exchange for taking the license. Especially where no alternative technology is available (as is the case with several of the technologies here) and where the technology must be implemented subject to a government mandate, the inevitable consequences of non-assert obligations are a stifling of innovation and suppression of competition in both the emerging digital content protection technology marketplace and the mature yet intensely competitive consumer electronics marketplace. That result is antithetical to consumer welfare.

To better ensure a fully competitive, pro-innovation marketplace environment, Philips believes that any Broadcast Flag legislation adopted by Congress should require that any approved Broadcast Flag technology that is publicly offered be licensed on reasonable and non-discriminatory terms, and to expressly clarify that such a requirement entails, at a minimum, offering potential licensees with an IP interest an opportunity to license their own intellectual property on reasonable and nondiscriminatory terms.

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INTRODUCTION

Co-Chairmen Stevens and Inouye and Members of the Committee, my name is Tom Patton, and I am Corporate Vice President for Government Relations with Philips Electronics North America Corporation. Philips greatly appreciates the opportunity to testify before the Committee today on the subject of the video Broadcast Flag.

Philips believes that Congress should enact legislation this year to ratify the FCC’s November 4, 2003 Video Broadcast Flag rules as well as its August 4, 2004 Order approving thirteen digital broadcast content technologies under the fair and transparent process established under those rules, and that manufacturers should be given a commercially reasonable period of time to implement the new rules. Additionally, to better ensure a fully competitive, pro-innovation marketplace environment under those rules, such legislation also should require that any approved Broadcast Flag technology that is publicly offered be licensed on reasonable and non-discriminatory terms. Such a requirement entails, at a minimum, offering potential licensees

with an IP interest an opportunity to license their own intellectual property on reasonable and nondiscriminatory terms and precludes the imposition of non-assert obligations on licensees.

In that regard, Philips commends Senator Smith for his leadership on the video Broadcast Flag issue, which is reflected in Title I of his draft bill, and wishes to express our support for his proposed ratification of the FCC's November 4, 2003 Report and Order and its August 4, 2004 technology approval Order. Philips looks forward to working with Senator Smith and all of the Members of the Committee, as well as all affected stakeholders, to enact video Broadcast Flag legislation this year. While Senator Smith's draft legislation does not presently address the anti-competitive effects of technology licenses that impose non-assert obligations on licensees, and while we believe expanding the scope of the rules to reach "indiscriminate redistribution over digital networks" requires further consideration, we are optimistic that these and other issues that may arise can be addressed and resolved expeditiously and satisfactorily.

ABOUT PHILIPS

Philips is a diversified global technology company employing more than 160,000 people worldwide, including roughly 20,000 throughout the United States. Philips is a company focused on improving, through technological innovation, the lifestyle and physical and emotional well-being of consumers, manufacturing products as varied as home use defibrillators and medical diagnostic equipment such as MRI, CT and ultrasound scanning, electric toothbrushes, electric shavers, lighting products and a full range of video and audio entertainment products ranging from digital television receivers to the Jukebox MP3 player. Philips has been and continues to be a global leader in digital television technologies and products and related consumer electronics products, including DVD players and recorders, personal video recorders, and Direct Broadcast Satellite systems. It is also a leader in video compression, storage and

optical products, as well as in semiconductor technology. Philips is well-known as the inventor of mass market entertainment standards, such as the Compact Disc and audio cassette, and Philips has been and continues to be a main contributor to many broadcast, disc, content distribution standards such as DVD and, more recently, Blu-ray.

Philips also has been an active participant in the development of content protection technologies that serve both the needs of the content industry as well as the consumer. Philips invented the Serial Copy Management System, or SCMS, preventing the unauthorized reproduction of multiple generations of copies of digital audio works from a copyright-protected original (while permitting a single generation of copies). Philips continues to provide content protection systems for the industry such as: the Video Content Protection System, or VCPS, system to protect recordable DVDs; DisplayPort, a protected digital technology to replace existing analog systems; and forensic watermarking systems to find and prosecute those who provide content to illicit producers of DVDs.

Philips is one of the largest users of the patent systems in the United States and other industrialized countries. In 2004, we filed U.S. patent applications for about three thousand new inventions. Scientists and engineers at our U.S. laboratories have made pioneering advances that revolutionized and revitalized the electronics industry with innovations that led to high definition television, optical CD and DVD recording, digital cellular telephones, medical imaging and digital rights management.

Philips has been a constructive participant in inter-industry content protection activities, including the Broadcast Protection Discussion Group (BPDG), the Copy Protection Technical Working Group (CPTWG), the Secure Digital Music Initiative (SDMI), and, most recently, the

Analog Reconversion Discussion Group (ARDG), co-chaired by one of Philips' most accomplished technologists.

PHILIPS SUPPORTS LEGISLATION RATIFYING THE FCC'S VIDEO BROADCAST FLAG RULES AND ITS DIGITAL CONTENT PROTECTION TECHNOLOGIES APPROVAL ORDER

As stated above, Philips supports legislation ratifying the FCC's November 4, 2003 Video Broadcast Flag rules as well as its August 4, 2004 technology approval Order. Some observers who followed the FCC's Video Broadcast Flag proceeding might be surprised that Philips now supports legislation ratifying the FCC's rules. They should not be.

Throughout the FCC's rulemaking proceeding, Philips expressed several major concerns, which are discussed below. The type of narrowly tailored legislation we support today, together with the open, transparent, thoughtful and balanced rulemaking the FCC conducted, addresses all of them.

So often, the Congress hears criticism of the FCC. In the Broadcast Flag rulemaking, the FCC got it right. And while virtually everyone recognizes that the Broadcast Flag is not a perfect system, it is a reasonable step along a longer path that balances appropriate content protection against consumer rights and product functionality, and helps to promote innovation and competition in the consumer electronics and digital content protection technology marketplaces. For these reasons, ratification of the FCC rules is an appropriate action for Congress to take.

FCC Authority

The threshold concern Philips expressed was that the Commission lacked authority to impose a requirement that all digital television receivers, digital VCRs, DVD players/recorders, PVRs, and a host of other digital products recognize and respond to a set of digital bits

transmitted by broadcasters, conveniently referred to as the Video Broadcast Flag. Historically, because manufacturers of consumer electronics products are not licensees, the Commission's regulation of such devices has not been permitted absent an explicit grant of statutory power by the Congress. That was the case with the All Channel Receiver Act, the V-chip, and closed captioning. Such a targeted and tightly constrained approach to regulation of consumer electronics products has served the nation well. The consumer electronics product market is perhaps the most competitive and innovative of all sectors of the American economy. A seemingly endless stream of new products and consistently falling consumer prices are the defining characteristics of this market.

Philips believed that FCC regulation of all digital products containing demodulators – the partial list I just cited – without an express grant of authority by the Congress represented a dangerous and radical departure from wise policy and legal precedent militating against FCC regulation of consumer electronics products except where Congress required it.

The reason we are assembled here today, of course, is that the United States Court of Appeals for the D.C. Circuit agreed with the position Philips and others took. It struck down the Video Broadcast Flag rules solely on the ground that the FCC lacked the statutory authority to promulgate them.

The type of legislation Philips supports today rectifies this problem. It is narrowly tailored to address a specific area of public policy concern following years of study and the open and fair public process conducted by the FCC. It reaffirms the proposition that the Commission's regulatory authority over television receiver manufacturers and other non-licensees is not plenary or inherent, but must derive from a specific grant from Congress.

Competition and Innovation

The second major concern that Philips had when the FCC commenced its Video Broadcast Flag rulemaking was that the issues were being framed too narrowly and the likely result would be a set of rules that would suppress rather than foster competition and innovation in the digital content protection technology marketplace. As discussed in greater detail below, Philips believes very strongly in the importance of creating a global mindset in which content protection is an integral part of the value proposition of the digital age for industry participants and consumers alike. For this concept to take root, however, the rules that apply to any government mandated or sanctioned digital content protection technology must not inhibit competition and innovation in this market.

As a consequence of the vigorous participation of many diverse parties and the public and the extremely careful and insightful approach adopted by the FCC, the rules adopted by the Commission are, subject to one significant clarification discussed below, conducive to a competitive digital content protection technology marketplace. The Commission established an open and fair process for selecting technologies, yielding a set of objective criteria against which technologies would be judged and requiring technology proponents to prove that they fulfilled these criteria. In its August 4, 2004 Order, the Commission approved thirteen digital output and recording protection technologies, including a recording protection technology proposed jointly by Philips and Hewlett-Packard. Of course, even that number of approvals does not necessarily mean that there will be robust competition throughout this market; in certain instances there is only a single technology approved for a particular interface or format, and in other instances the need to interoperate effectively forces manufacturers to use certain technologies. But the process established by the Commission certainly is a promising start. That is why Philips also supports

legislation that would expressly ratify the Commission's August 12, 2004 technology approval Order.

Scope

Finally, Philips was concerned about the potential scope of any Video Broadcast Flag rules. Regulations that swept too broadly inevitably would undermine consumer acceptance of digital content protection technologies, the very opposite of the result sought by content providers. Once again, the FCC got it right. It defined the scope of its rules as being the prevention of indiscriminate redistribution of digital broadcast television over the Internet. The Commission elaborated:

This goal will not (1) interfere with or preclude consumers from copying broadcast programming and using or redistributing it within the home or similar personal environment as consistent with copyright law, or (2) foreclose use of the Internet to send digital broadcast content where it can be adequately protected from indiscriminate redistribution. (FCC Report and Order, FCC 03-273, November 4, 2003, ¶ 10).

This clearly defined and limited scope strikes the necessary and appropriate balance to encourage consumer-friendly innovation in the digital content protection technology marketplace. Indeed, it can be viewed as a precursor and a complement to the United States Supreme Court's Grokster decision last year that made clear that companies whose business model was predicated upon actively and intentionally inducing copyright violations, *e.g.*, by facilitating indiscriminate redistribution of copyrighted works over the Internet, would be held liable for copyright violation. Just as the Court did nearly 16 months later, the Commission sought to strike a delicate balance that would safeguard copyrighted content without harming innovation in technology and digital consumer products.

ANY BROADCAST FLAG LEGISLATION ENACTED BY THE CONGRESS SHOULD REQUIRE THAT LICENSING OF THE TECHNOLOGY CONCERNED MUST BE ON A REASONABLE AND NON-DISCRIMINATORY BASIS, AND CLARIFY THAT REQUIRING LICENSEES TO GIVE AWAY THEIR INTELLECTUAL PROPERTY WITHOUT COMPENSATION AS A CONDITION OF THAT LICENSE IS INCONSISTENT WITH THAT REQUIREMENT

Another key aspect of the FCC’s Video Broadcast Flag Order was the reaffirmation of the Commission’s policy, announced nearly 45 years ago, that licensing of technologies must be on reasonable and non-discriminatory (“RAND”) terms and conditions. Specifically, the Commission, in describing the process and criteria by which it would review and approve digital broadcast content protection technologies, stated:

Where a content protection technology or recording method is to be publicly offered, we expect that it will be licensed on a reasonable and non-discriminatory basis. We also expect that publicly offered licenses will not be unreasonably withheld from parties. (FCC Report and Order No. 03-273, November 4, 2003, ¶ 55)

To implement that principle, the Commission required each technology proponent to submit a copy of its licensing terms and fees, as well as evidence “demonstrating that the technology will be licensed on a reasonable, non-discriminatory basis.” 47 C.F.R. § 73.9008(a)(4).

Non-assert Obligations Are Inconsistent With RAND Licensing

Notwithstanding the clarity of the broad FCC requirement that licensing of these digital broadcast content protection technologies be on reasonable and non-discriminatory terms, a number of the technologies approved by the FCC impose so-called “non-assert” obligations on licensees. When included in a license agreement, a non-assert obligation requires a licensee that may own patents or other intellectual property deemed “essential” to the technology being licensed (but sometimes non-essential technology, as well), to agree that it will not assert those

IP rights against the licensors or any other licensee of the technology concerned, as a condition of taking that license. The result is that the licensee that owns IP must pay for the technology and the IP being licensed, but must forgo any compensation or other consideration – either from the licensors or other adopters – for its own IP. For reasons set out fully below, non-assert obligations on licensees are inherently inconsistent with the RAND requirement prescribed by the Commission. In fact, in Philips’ view, it is hardly an exaggeration to qualify this as “IP theft.”

Now-FCC Chairman Martin succinctly captured the danger posed by non-assert obligations when the Commission adopted its August 4, 2004 technology approval Order. In a separate statement issued in connection with that Order, he wrote:

First, I fear that the “non-assert” clause in the DTCP adopter agreement could hinder competition and suppress innovation. We acknowledge in the Order that DTCP is the only publicly-offered output protection technology we approve that permits copying, and is “therefore likely to become the primary” standard for the foreseeable future. As a result, anyone who wants to build products for this market must sign the DTCP license. Yet, the license requires that companies give up any intellectual property rights they have in the DTCP technology before signing. Therefore a party may have to choose between the lesser of two evils: either don’t participate in the relevant product market, or compete, but give up your intellectual property rights. I am concerned this result may be anti-competitive, may discourage future investment in intellectual property, and may generally be counter to good public policy. (Statement of Commissioner Kevin J. Martin in FCC Order In the Matter of: Digital Output Protection Technology and Recording Method Certification, FCC 04-193, August 12, 2004).

Chairman Martin was right on target. Non-assert obligations have no place in licenses for technologies to be used pursuant to government mandate such as the Video Broadcast Flag rules. Although the rest of the Commission expressed similar concerns about the “potential for

anticompetitive or discriminatory conduct”¹ stemming from the use of non-assert obligations, it was not prepared to resolve the issue definitively. Congress should take this opportunity to clarify the law.

Non-assert Obligations, Particularly In Licenses Subject To A Government Mandate, Are Not Reasonable

The very essence of the constitutionally protected system of patents is the expectation that an individual or company that invests in research and development resulting in patents will be able to realize value from those patents in the form of reasonable royalties. As the Founders recognized, if that expectation is not realized, the incentive to innovate is destroyed. The effect of imposing a non-assert obligation on licensees, because it denies a licensee that owns IP from realizing the value of that IP, is essentially to suspend this core constitutional protection, making it unreasonable on its face.

The irony is especially great here, where the entire purpose of the Video Broadcast Flag rules is to protect the intellectual property of one party – a content creator – and yet the mechanism for doing so requires another party – a consumer electronics manufacturer that is also a technology innovator and contributes to the technology that enables content producers to protect *its* content – to surrender its own intellectual property rights in that technology and, often, in improvements. Particularly in this context, the notion that a non-assert obligation is “reasonable” defies all common sense.

The “reasonable” alternative to imposing a non-assert obligation on licensees is to subject licensees to the same obligation that the FCC seeks to impose on the technology proponent – an

¹ In the Matter of Digital Output Protection Technology and Recording Method Certifications, *Order*, 19 FCC Rcd 15917(2004).

obligation to license its intellectual property on reasonable and non-discriminatory (“RAND”) terms. Under a RAND obligation, licensees agree not to use their IP to block the technology licensed, but are not required, in doing so, to sign away their own intellectual property without compensation. The reasonableness of a RAND obligation on licensees has made it commonplace in the technology marketplace. In fact, the entire consumer electronics industry rejected a non-assert obligation in favor of a RAND requirement in the DFAST license that is employed for licensing content protection technologies used with unidirectional digital cable-ready devices.

Non-Assert Obligations Are Discriminatory

Non-assert obligations on licensees discriminate against certain classes of companies, particularly those companies that have invested extensively in research and development of content protection technology, and that themselves also develop or manufacture products that must use the licensed technologies that are commonly used by others in order to permit product interaction.

Indeed, with a non-assert obligation, companies that undertake little or no R&D – often called “imitators” – for whom the non-assert has no implications, are held harmless; whereas the very companies that drive new innovation through aggressive investment in R&D – companies such as Philips – may suffer substantial economic harm because their IP is used without compensation and may be rendered valueless. Put another way, a non-assert obligation requires those implementers with IP to “pay twice” – once for the technology being licensed, and once more for the loss of their IP; while others, potentially its competitors, pay only once. That is clearly discriminatory.

It's worth noting, as well, that a non-assert obligation is powerless to prevent a third party who does not manufacture a product requiring a license, but who owns IP in that technology, from asserting their IP against all licensees.

Non-Assert Obligations Raise Fifth Amendment Concerns

The coupling of a non-assert obligation on licensees with a technology subject to a government mandate raises very serious questions as to whether such action would constitute a taking under the Fifth Amendment for which the government would be liable to provide just and reasonable compensation. Especially in circumstances where a technology holds a monopoly or even duopoly position in the marketplace (as is the case with respect to several approved Broadcast Flag technologies), a regulatory mandate to take a license for that technology, coupled with a license requirement to surrender the value of one's IP that reads on that technology, would appear to fall within the prohibition of the Fifth Amendment's Takings Clause.

The Negative Public Policy Outcomes Flowing From the Use of Non-Assert Obligations Make Them All The More Objectionable

Not surprisingly, given their unreasonableness and discriminatory nature, non-assert obligations on licensees also have multiple and extremely negative implications for core public policy objectives of this Committee – most notably the need to foster innovation and robust competition in both digital content protection and consumer electronics technologies. These effects harm not only companies that invest aggressively in innovative technologies, but content owners and, most importantly, consumers.

Non-Assert Obligations Stifle Innovation and Competition

One need not be a patent attorney to recognize how a non-assert obligation can dampen investment in new technologies. Because it forces licensees with intellectual property to forfeit the value of their IP as a condition of taking the license, it discourages investments in research

and development, which in turn stifles further innovation. Again, the protection afforded patents in the Constitution says it all: those who cannot realize value for their innovations will lose their incentive to innovate.

The anticompetitive effects of non-assert obligations on licensees become immediately apparent in cases where licensors and licensees of a particular technology are *direct competitors* and where there is no competitive alternative to that technology for the specific area of protection it covers. Such is the case with the Broadcast Flag, where several approved technologies that employ a non-assert in their license agreements, and for which there is no marketplace alternative, are controlled by direct competitors of Philips (both in the consumer electronics and digital content protection technology spaces). In such cases, non-assert obligations enable one competitor, the licensor – backed by a government mandate – to dampen investment by its competitors, the licensees, that otherwise might result in bringing to market alternative, superior technologies (or improvements) and/or devices.

Moreover, the anticompetitive effects of non-assert obligations on licensees are compounded in instances where the technology's license agreement also permits changes to that technology. In such cases, a non-assert obligation can expand to cover not just the original "essential" IP that a licensee was required to forfeit, but future innovations the licensee might develop, as well.

A simple example illustrates the alarmingly anti-competitive effect at work here. Suppose Philips signs a license, which includes a non-assert obligation, to implement the only government-approved Broadcast Flag technology that protects content passed over Interface A. Let's call the technology "RED." Philips then creates a competitive content protection system for Interface A, we'll call it "GREEN," which includes a new, patented, feature that makes it

more attractive than RED, both for content distributors and for consumers. One would expect this new and improved technology to be a successful competitor. However, the RED license expressly permits changes to that technology – including the addition of the very new feature found in GREEN – and the non-assert obligation precludes Philips from suing for patent infringement. As a result, while GREEN can still be introduced as an alternative, it is left without any distinguishing superior feature, which makes its chances of competing effectively with RED virtually nil.

This is extremely significant for Philips. Philips invests approximately \$3 billion per year in research and development, including significant R&D programs in the area of digital content protection and Digital Rights Management (“DRM”) technologies and improvements. We simply cannot justify further investment of this kind or extent if we are deprived of the ability to receive reasonable compensation for our resulting innovations. And if we are deprived of the value of our IP, it directly harms our ability to compete.

Imposing non-assert obligations on licensees of Broadcast Flag technologies should also concern the content industry. Just consider that, ironically, the very innovations that may be stifled by non-assert obligations in Broadcast Flag technology licenses are new and improved digital content protection technologies or improvements in existing systems! For example, research projects to achieve advances in localization of protected content – a key goal of the content community – are directly implicated by the non-asserts in several of the content protection systems approved by the Commission. These and similar efforts could be put off or abandoned altogether if investments by companies seeking to innovate in these areas risk being stranded by non-asserts that preclude a return on those investments.

Moreover, the prospect of having only one or two entities essentially controlling the methods and terms by which all protected digital broadcast content flows across and among virtually every digital television receiving device is distressing. That is hardly an environment in which further digital content protection innovation will be sparked, or where costs will remain competitive. In short, content owners should be equally – if not even more – concerned about the negative consequences – both from a technological and economic perspective – of non-assert obligations in the digital content protection technologies.

Accordingly, any legislation enacted by Congress reinstating the Video Broadcast Flag rules should expressly require that licensing of publicly-offered digital broadcast content protection technologies approved by the Commission pursuant to the rules must be on reasonable and non-discriminatory terms and conditions. Such a requirement entails, at a minimum, offering potential licensees of that technology who own essential IP, an opportunity to license that intellectual property on reasonable and nondiscriminatory terms. By requiring that a *choice* be offered, a choice unreasonably and discriminatorily denied by non-assert obligations, Congress will ensure that it is neither directly or indirectly depriving any person or entity of the ability to realize the value of their patented inventions.

LEGISLATION REINSTATING THE VIDEO BROADCAST FLAG RULES COULD SERVE AS THE FOUNDATION FOR A NEW DIGITAL CONTENT PROTECTION PARADIGM

As the United States and the rest of the world migrate to digital broadcast transmissions and as broadband networks develop into the dominant means of distributing or accessing video content, there is an imperative to create a new paradigm that values digital content protection as an integral part of the digital video experience. We need a new way of thinking about digital content protection, one that can form the basis of a consensus among copyright holders,

technology companies, consumer electronics manufacturers, and, most importantly, global consumers. The creation of this new paradigm will require unprecedented cooperation among parties that have frequently and historically been at loggerheads, reinforced, as needed, by government action.

All stakeholders have a responsibility to underscore the fundamental message of the content community that electronic theft of copyrighted video content is wrong. Indeed, last year, Philips launched a consumer education campaign to highlight that most basic principle. Aggressive law enforcement targeted at the professional thieves who make a business out of copyright infringement is essential. Global acceptance of this proposition is a critical starting point. But it is not an ending point.

The content community should understand that the creation, development, and deployment of evermore innovative and effective digital content protection technologies is indispensable to the creation of a new mindset that values more fully the IP rights in video content. This does not necessarily mean that studios must fund directly the development of such technologies, but they should support a digital content ecosystem that permits technology companies and consumer electronics manufacturers to realize a reasonable return on their own intellectual property research and development investments. Again, this is why RAND licensing is so critical (and why non-assert obligations are so harmful). Without RAND, more effective digital content protection technologies which also enable enhanced personal, non-commercial use of the content by consumers simply will not come to market.

The new value proposition supporting enhanced digital content protection succeeds, however, only if consumers have the opportunity to purchase new digital products that enable them to make more creative and satisfying uses of the digital content they receive than was true

in the analog world. The enormous popularity of TiVo and similar home recording devices is an example of the investments that consumers will make if they believe that they are receiving tangible benefits in enjoying video content. Consumers view digital technology as liberating. They will only accept the fences that content producers may view as essential if they can be assured that they will be able to enjoy a richer experience within those boundaries.

Philips views reinstatement of the video Broadcast Flag rules, with clarification of the requirement of RAND licensing, as a promising first step in creating this new digital content protection paradigm.

I thank you again for the opportunity to testify. I would be pleased to answer any questions that you may wish to ask.