

January 11, 2006

Mr. Mitch Bainwol  
Chairman and CEO  
Recording Industry Association of America  
1330 Connecticut Avenue, NW  
Suite 300  
Washington, DC 20036

Dear Mitch:

I am writing to express the broadcast industry's strong interest in collaborating to find a workable solution to content protection issues associated with terrestrial digital radio broadcasting. As you know, the transition to HD Radio is well underway and local radio broadcasters have a great deal invested in a timely and successful rollout of this new technology. The goal for our industry is to find a resolution that balances protection of copyrighted works against the important objective of ensuring the continued and rapid expansion of digital audio broadcasts. Such a balanced approach could, in fact, aid the HD Radio rollout by removing regulatory and legislative uncertainty from the marketplace.

As a matter of initial discussion, NAB questions the degree to which HD Radio threatens copyright or will facilitate unauthorized, digital distribution of sound recordings. Those desiring to obtain and listen to pure, uninterrupted performances of sound recording in lieu of radio already have an abundant number of means to do so. Peer-to-peer file sharing and the hours of uninterrupted music that can be stored on CDs and discs are but a few such means. iPod uploads and digital music on the Internet would seem to present much larger and more immediate threats to copyright holders.

As such, NAB believes the scope of any piracy risk associated with HD Radio is likely more limited than RIAA has previously asserted. However, as content creators ourselves, radio broadcasters oppose piracy in all its forms and therefore hope that we can find an amicable solution to this issue.

We understand from previous conversations that the RIAA has advocated a number of proposals that would set back the HD Radio rollout and be unacceptable to broadcasters. For instance, RIAA has previously suggested broadly empowering the FCC to mandate that all radio broadcasters encrypt their digital content at the source. This approach is

antithetical to the concept of free, over-the-air broadcasting. No U.S. free, over-the-air broadcast service, analog or digital, has ever been required to encrypt its transmissions.

An encryption proposal would also likely obsolete HD Radio units already on the market and millions more currently in the manufacturing pipeline. By making obsolete receivers already installed in automobiles, an encryption proposal could increase automakers' frustration and potentially imperil the future integration of HD Radio units into automobiles.

Moreover, mandatory encryption could set back the hundreds of broadcasters who have already licensed and are deploying (or have deployed) HD Radio transmission equipment. An overly broad encryption system would risk making these stations' broadcast transmission equipment obsolete. Broadcasters simply cannot allow an overly broad encryption system to scuttle the progress made to date and turn back the clock on the digital radio revolution.

Not only would encryption at the source have severe unintended consequences, such an approach would not reflect the careful balancing act that Congress has undertaken in considering copyright issues. In crafting the Digital Performance Right in Sound Recordings Act, Congress essentially established a three-tier system for protecting and/or compensating the copyright owners of sound recordings. This system was based, in large part, on the threat level Congress felt various services presented to copyright holders. Interactive services, perceived to present the greatest threat, were subjected to the most rigorous levels of protection.

Other types of non-interactive subscription services were deemed to pose an intermediate threat level. Protection with respect to these services was provided through a compulsory license accompanied by numerous conditions such as a prohibition against pre-announcing music and limits on the consecutive cuts from one album or by one artist that could be performed.

The third in the three-tier system of protection established in the Act related to analog and digital broadcasting. Congress found they "often promote, and appear to pose no threat, to the distribution of sound recordings." Accordingly, "by contrast" with the other types of services, Congress concluded "not to include free over-the-air broadcasting in this legislation."

Legislation empowering the FCC with overly broad authority to create an "encryption at the source" standard would abandon this longstanding Congressional paradigm.

For these many reasons, we believe that RIAA's encryption proposal is not viable and we strongly oppose such an initiative. However, despite our objections to encryption at the source approaches, we do believe that there are possibilities for technical solutions that would offer effective content protection without slowing digital radio's advancement.

We hope to continue dialogue with you as the radio and recording industries keep working towards mutually acceptable resolution of this issue. We therefore think it would be beneficial for members of NAB's Audio Broadcast Flag Taskforce to meet with counterparts at the RIAA and in the recording industry. Such formal discussions could move the industries forward aggressively, rather than relying on a congressional mandate.

Should you have questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "David K. Rehr". The signature is written in a cursive, flowing style with a large initial 'D'.

David K. Rehr