

109th CONGRESS
1ST SESSION

S. _____

To authorize the Federal Communications Commission to limit the unauthorized copying and indiscriminate redistribution of digital audio and video broadcast content over digital networks.

IN THE SENATE OF THE UNITED STATES

Mr. Smith (for himself and _____) introduced the following bill; which was read twice and referred to the Committee on _____.

A BILL

To authorize the Federal Communications Commission to limit the unauthorized copying and indiscriminate redistribution of digital audio and video broadcast content over digital networks.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

This Act may be cited as the “Digital Content Protection Act of 2006.”

TITLE I. FEDERAL COMMUNICATIONS COMMISSION AUTHORITY REGARDING DIGITAL VIDEO BROADCASTING

AUTHORITY.— 47 U.S.C. Section 303 is amended by adding a new subsection (z), as follows:

“(z) Have authority to adopt regulations governing digital television receivers to the extent necessary to implement redistribution control as signaled by the Redistribution Control Descriptor set forth in ATSC Standard A/65 adopted on April 2, 2002, with the sole goal of limiting the indiscriminate unauthorized redistribution of digital television broadcast content over digital networks.

(i) RATIFICATION.— The Report and Order in the matter of Digital Broadcast Content Protection (18 FCCR 23,550 (2003)) which was adopted by the Commission on November 4, 2003, effective January 20, 2004, and the Order in the matter of Digital

Output Protection Technology and Recording Method Certifications (19 FCCR 15,876 (2004)) which was adopted by the Commission on August 4, 2004, are ratified.

(ii) The Commission may reconsider, amend, repeal, supplement, and otherwise modify any regulations, including those identified in paragraph (i) of this section, in whole or in part only for the purposes set forth in this Section (z).”

TITLE II. FEDERAL COMMUNICATIONS COMMISSION AUTHORITY REGARDING DIGITAL AUDIO BROADCASTING

AUTHORITY.— 47 U.S.C. Section 303 is amended by adding a new subsection (aa), as follows:

“(aa)(1)(a) has authority to adopt such regulations governing digital audio broadcast and satellite digital audio radio transmissions and digital audio receiving devices that are appropriate to prevent the indiscriminate unauthorized copying of copyrighted digital audio content transmitted by its licensees and the redistribution of such copyrighted content over digital networks. The adoption of any digital audio regulations pursuant to this section shall not delay the adoption of final operational rules for digital audio broadcasting; and

(b) may reconsider, amend, repeal, supplement and otherwise modify any regulations adopted pursuant to paragraph (a) of this section in order solely to further the purposes of this section, provided, however, that any change in such regulations shall incorporate Broadcast Flag technology as the primary means to achieve those purposes.

(2) CRITERIA FOR CONTENT OF REGULATIONS – In achieving the goal of preventing the indiscriminate unauthorized copying and redistribution of certain digital audio content over digital networks, any proposed regulations to govern digital audio broadcast transmissions and digital audio receiving devices shall –

(a) require Commission licensees that transmit digital audio broadcast signals or that manufacture digital audio receiving devices to implement a Broadcast Flag technology to protect digital audio content;

(b) permit customary historic use of broadcast content by consumers to the extent such use is consistent with applicable law;

(c) not interfere with the deployment and spread of digital audio broadcasting to the maximum extent possible; and,

(d) to the extent that such regulations cover devices, cover only devices that are capable, without any hardware alterations or additions, of receiving digital audio signals when such devices are sold by a manufacturer.

(e) not interfere with the monitoring of or gaining access to musical works contained in broadcasts by performing rights organizations for the purpose of collecting or distributing royalties.

(3) ADOPTION OF REGULATIONS GOVERNING DIGITAL AUDIO BROADCAST TRANSMISSIONS AND DIGITAL AUDIO RECEIVING DEVICES.

(a) PRIVATE SECTOR EFFORTS.

(1) Prior to the initiation of any rulemaking process pursuant to the authority granted to the Federal Communications Commission under section 1(a), the Commission shall establish within 60 days of the enactment of this Act a federal advisory committee consisting of representatives of affected groups from the private sector which shall be given the opportunity to draft and submit a proposal regarding the content of any regulations proposed in such rulemaking process.

(2) The groups from the private sector that must be provided an opportunity to draft and submit a proposal pursuant to section 3(a)(1) must include, but are not limited to:

(A) the information technology industry;

(B) the software industry,

(C) the consumer electronics industry;

(D) the radio broadcasting industry;

(E) the satellite radio broadcasting industry;

(F) the cable industry;

(G) the audio recording industry;

(H) the music publishing industry;

(I) Performing Rights Organizations

(J) public interest organizations; and,

(K) representatives of any other groups that the Commission determines will be directly affected by adoption of Broadcast Flag regulations.

(3) The representatives of groups from the private sector that must be provided an opportunity to draft and submit a proposal pursuant to section 3(a)(1) may design their own procedures to determine the content of such proposal.

(b) DETERMINATION BY THE COMMISSION REGARDING PRIVATE SECTOR EFFORTS.

(1) IN GENERAL – The Commission shall make a determination, not later than 12 months after the date of the enactment of this Act, as to whether representatives from the private sector groups described in section 3(a)(2) have drafted and submitted to the Commission a proposal that represents a consensus of the private sector groups and meets the criteria described in section 2 for the content of proposed regulations.

(2) EXTENSION OF THE 12 MONTH PERIOD – The Commission may, for good cause shown, extend the 12-month period described in section 3(b)(1) for a period of not more than 6 months if the Commission determines that –

(A) substantial progress has been made by the representatives from the private sector groups described in section 3(a)(2) toward development of a proposal for usage rules for digital audio content;

(B) those representatives are continuing to negotiate in good faith; and

(C) there is a reasonable expectation that those representatives will draft and submit a final proposal before the expiration of the extended period of time.

(c) AFFIRMATIVE DETERMINATION – If the Commission makes a determination under section 3(b)(1) that the representatives from the private sector groups described in section 3(a)(2) have submitted a final proposal that represents a consensus of the private sector groups and that meets the criteria described in section 2 for the content of proposed regulations, then the Commission shall –

(1) initiate a rulemaking within 30 days after the date on which the determination is made that the representatives from the private sector groups have submitted a final proposal;

(2) propose regulations in the rulemaking described in section 3(c)(1) that implement the proposed regulations contained in the final proposal submitted to the Commission by the representatives of the private sector groups if such proposal includes proposed regulations;

(3) propose regulations in the rulemaking described in section 3(c)(1) that will represent the proposed regulatory structure suggested in the final proposal

submitted to the Commission by the representatives of the private sector groups if such proposal does not include proposed regulations;

(4) give substantial weight to the recommendations contained in the proposal submitted to the Commission by the representatives of the private sector groups when drafting final regulations pursuant to the rulemaking described in section 3(c)(1); and

(5) publish final regulations pursuant to the rulemaking described in section 3(c)(1) not later than six months after initiating such rulemaking.

(d) **NEGATIVE DETERMINATION** – If the Commission makes a determination under section 3(b)(1) that the representatives from the private sector groups described in section 3(a)(2) have not submitted a final proposal that represents a consensus of the private sector groups and that meets the criteria described in section 2 for the content of proposed regulations, then the Commission shall –

(1) initiate a rulemaking within 30 days after the date on which the determination is made that the representatives from the private sector groups have not submitted a final proposal that represents a consensus of the private sector groups and that meets the criteria described in section 2 for the content of proposed regulations;

(2) draft and propose regulations pursuant to the rulemaking described in section 3(d)(1) that meet the criteria described in section 2 for the content of proposed regulations and shall also consider the following:

(A) any Broadcast Flag technology included in the final rule shall not require device or software manufacturers to pay an incremental royalty for the base Broadcast Flag technology over any royalty it may have to pay to the patent or copyright owner to manufacture digital audio radio equipment;

(B) objective criteria for approval by the Commission of methods of recording and Secure Moving Technology for material covered by the Broadcast Flag;

(C) no rule shall go into effect until at least one widely available recording technology and one widely available Secure Moving Technology has been approved by the Commission and the Commission shall be encouraged to approve as many such technologies that provide reasonable protection against the indiscriminate unauthorized copying and redistribution of copyrighted content over digital networks;

(D) in promulgating the regulations and rules for approving technologies, including robustness requirements, the Commission shall

take into account the fact that most digital audio broadcast transmissions are distributed in the clear and that any additions or modifications to digital radio and associated technology shall not add significant cost to such radios and technology;

(3) publish final regulations pursuant to the rulemaking described in section 3(d)(1) not later than six months after initiating such rulemaking.

(4) DEFINITIONS.

(a) “Broadcast Flag technology” means digital code inserted into digital audio content of material transmitted by a Commission licensee to indicate that such copyrighted digital audio content is to be protected against indiscriminate unauthorized copying and redistribution over digital networks

(b) “Secure Moving Technology” is a technology that permits content covered by the Broadcast Flag to be transferred from a broadcast receiver to another device for rendering in accordance with customary historic use of broadcast content by consumers to the extent such use is consistent with applicable law and that prevents redistribution of copyrighted content over digital networks. ”