

CARY H. SHERMAN  
PRESIDENT



April 14, 2004

Mr. Gary Shapiro  
Consumer Electronics Association  
2500 Wilson Boulevard  
Arlington, VA 22201

Dear Gary,

We understand that CEA has asked the FCC to deny interested parties the opportunity to address the very important issue of content protection as part of the upcoming consideration of final rules for the adoption of a transmission standard for digital radio. We are disappointed that CEA has taken this position. We thought it might be helpful to clarify our position on this issue generally, and to respond briefly to several arguments you have made. More importantly, we want to reiterate what we have said before -- that we hope to work together with you and your members, along with other interested parties, to find common ground on these issues and to ensure that digital radio becomes an exciting new way for consumers to enjoy music.

RIAA has not asked the FCC or otherwise proposed any limits on the current ability of consumers to copy over-the-air radio programming. Setting aside the legal issues associated with such copying, our concerns about unprotected digital radio transmissions are not about consumers who may push a record button to tape a recording as it is broadcast by a terrestrial radio station.

Rather, we are concerned that new devices manufactured by your members will enable radio listeners to become owners and worldwide distributors of a personalized collection of sound recordings. Specifically, our understanding is that the next generation of digital radio receivers would grant the unfettered ability (1) to redistribute recordings widely, whether on the Internet or digital media and (2) to automatically copy and disaggregate from a broadcast particular recordings of the user's choice, thereby transforming a passive listening experience into a personal music library -- in many cases without the user even listening to the original broadcast. These features, especially when combined with inexpensive storage devices, would fundamentally change the character of broadcast radio from a listening service to a distribution and on-demand reproduction system, displacing the sales on which the entire music industry relies.



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CEA has set forth a number of arguments to forestall discussion of our very real concerns. Let me briefly respond to those arguments:

1. Our ability to propose a "licensing structure" or technical solution on our own is precluded by the fact that Ibiquity is a private company with a proprietary technology. We do not have access to the proprietary technology owned by Ibiquity, and therefore are not in a position to offer licensing or technical proposals. Only Ibiquity can license its proprietary transmission standard. Precisely for this reason, we contacted Ibiquity last year to request that it include content protection in its digital radio transmission technology. Ibiquity told us that *it could easily accommodate content protection*, but that it would like regulatory approval before doing so. That is why we have asked the FCC to address the issue. Contrary to your assertion that content providers have not made a "request" on the subject of content protection, we have done so repeatedly and at the roundtable discussion specifically referenced in your letter.
2. A "multi-industry process" has not taken place because CEA and other parties have made clear their desire not to participate absent FCC action. We would very much like to engage in a multi-industry process with your organization, its members, and other interested parties to discuss the contours of content protection for digital radio, and to jointly propose rules to the FCC for adoption. Unfortunately, you have made clear that you oppose content protection, as you did at the roundtable discussion. Further, because of the anomaly that copyright owners do not have rights with regard to the public performance of sound recordings by radio broadcasters, record companies and artists cannot compel you to participate – unlike the DTV situation where content owners could demand protection of their content before licensing their programming for digital broadcast. Again, if your point is that you would participate in a multi-industry discussion, we would very much like to begin that process.
3. The threat to the recording industry of unlimited redistribution and automated copying of recordings chosen by listeners is obvious and should be addressed now. Your argument that the FCC should not even consider the issue of content protection because injury has not yet occurred would illogically require us idly to wait by until the moment of impact instead of preventing that injury now. Ibiquity has told us that device manufacturers themselves are requesting guidance on the parameters of functionality relevant to our concerns. Wouldn't it be better to avoid the legacy device issues that complicated other content protection efforts and provide certainty to the marketplace sooner rather than later?

We also point out that a lack of content protection will forever preclude a myriad of new business models that could benefit your members as well as other interested



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parties. For example, device manufacturers could provide "buy buttons" that would offer consumers the ability to quickly and easily purchase music that they hear on the radio. Indeed, iBiquity has said that it would like to offer to consumers, for a fee, on demand weather and traffic reports. The same opportunity could and should exist for music, the bread and butter of radio broadcasts.

### Conclusion

We very much would like to work with you and your members to find ways to ensure that creative works are protected and new market opportunities preserved, while consumers enjoy digital radio. We propose that we begin the multi-industry discussions that you lamented have not yet begun. We stand ready to begin that process now so that the rollout of digital radio is not delayed. We hope that you will consider the benefits of a new, collaborative approach to these issues, rather than the confrontational tactics of the past.

Sincerely,

A handwritten signature in black ink, appearing to be "Cary Sherman", written over a light blue rectangular background.

Cary Sherman





**RECORDING INDUSTRY ASSOCIATION OF AMERICA**  
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**DATE:** *April 14, 2004*

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**NOTES:**

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April 15, 2004

Mr. Cary H. Sherman  
President  
Recording Industry Association of America  
1330 Connecticut Ave NW  
Suite 300  
Washington DC 20036

Dear Cary,

Thank you for your letter of April 14.

We always look to work in partnership with RIAA, but are puzzled by a number of statements in your letter, as well as your belief that longstanding and legitimate consumer recording practices suddenly pose a threat to your industry.

First, contrary to what you claim, CEA has never refused to meet with the RIAA in a multi-industry context. No such offer has been extended. In fact, I am unaware of any RIAA expression of interest in digital radio, or its technologies, before the January 30 FCC roundtable, although the standard setting process has been underway for over a decade.

Second, you claim that you have "repeatedly" asked the FCC to address the digital radio content protection issue. I was particularly surprised by this, since there is no record of any such communication having been filed in the pertinent FCC docket, which has been open for a long time.

There is also no indication in the docket that you provided the FCC with any basis for jurisdiction over this issue, despite your counsel's suggestion at the roundtable that he might do so. Also, as noted in your letter, there is no content "license" at issue because RIAA members have no licensable right that could be a basis for imposing limitations on free broadcasts.

Finally, you state that you do not wish to limit the ability of consumers to record over-the-air radio broadcasts. Instead, you apparently want to force them to buy what they have received for free since Fleming and Marconi first made it possible for consumers to hear news and music over the public airwaves.



As you know, we have long been concerned about content owners seeking to change the "play" button on our devices to a "pay" button. At least you have addressed the semantics by suggesting new devices come equipped with a "buy" button.

Based on your letter as well as your industry's statements at the FCC roundtable, you appear to be seeking a government mandate precluding, limiting, or charging for the private, noncommercial home recording of digital radio programs. Among other troubling issues, this approach directly contradicts RIAA's January 14, 2003 "Policy Principles on Digital Content" which read in part:

Technology and record companies believe that technical protection measures dictated by the government (legislation or regulations mandating how these technologies should be designed, function and deployed, and what devices must do to respond to them) are not practical. The imposition of technical mandates is not the best way to serve the long-term interests of record companies, technology companies, and consumers...The role of government, if needed at all, should be limited to enforcing compliance with voluntarily developed functional specifications reflecting consensus among affected interests.

Little more than a year after this statement, you are not only seeking government intervention to limit noncommercial home recording rights, but you are doing so without having met even the most minimal burden of showing that an actionable problem exists.

As you are aware, hundreds of thousands of digital radios have already been sold in Great Britain, yet you offer no proof of harm to the recording industry. Indeed, the various consumer recording practices your letter warns of could be easily accomplished today using commonplace analog radio data service (RDS) technology combined with the digitization of FM broadcasts, but there is no evidence this is occurring. The FCC docket is also devoid of any showing linking digital radio to the unauthorized peer-to-peer file sharing of music.

If you are seeking a consensus technical specification or standard with respect to digital radio copy protection, instead of calling for federal mandates the appropriate course would be to devise a technical proposal and work with the appropriate standards bodies.

Where, as here, proposals are preliminary and unfocused, issues often are first aired at the multi-industry Copy Protection Technical Working Group. (CPTWG). You will recall that RIAA initially was a co-chair of this open forum, which is always attended by members of CEA, representatives of HRRC, consumer advocates, and other interested groups and their members.

After establishing the Secure Digital Music Initiative – which apparently did not produce any proposal relevant to your digital radio concerns – RIAA ceased attending the regular CPTWG meetings and has not returned. In fact, the CPTWG was meeting at the very moment you sent your letter, but to my knowledge no one from your organization was in attendance.



In closing, let me again reinforce that non-commercial recording of freely broadcast over the air radio programming is a fundamental consumer right, and one that has consistently been given great deference by Congress. Any discussion of curtailing that right, prior to even the most minimal showing of harm, is ill conceived and premature.

Sincerely,

A handwritten signature in dark ink, appearing to read "G. Shapiro", written in a cursive style.

Gary Shapiro  
President and CEO