



The American
Antitrust Institute

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**AAI Files Reply Comments in the
FCC's "Broadcast Flag" Proceeding**

The American Antitrust Institute filed Reply Comments on February 19, 2003 in the "Broadcast Flag" rulemaking proceeding now pending before the Federal Communications Commission.

In this proceeding, the FCC is considering whether to mandate technology to protect copyrighted digital television (DTV) broadcasts from unauthorized redistribution, particularly over the internet. One approach employs an indicator signal already embedded in DTV broadcasts which may be used to mark whether programming may be copied freely, may be copied only once, or may not be copied at all---the so-called "broadcast flag."

A proposal made jointly by film and television producers and the "5C" group of consumer electronics manufacturers would require all DTV receivers, video recorders, and home video networks to recognize and obey the broadcast flag. Digital outputs on all such devices would have to utilize an authorized technology that prevents consumers from gaining access to any un-encrypted digital program information that has not been screened for the flag and found to be marked "copy freely."

In its Reply Comments, the AAI urged the FCC not to adopt a technological mandate---and the widespread regulation of consumer and computer devices that would result---unless it first determines that a market-driven, privately negotiated



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solution, or some less pervasive regulatory scheme, is infeasible.

If a less intrusive solution is infeasible, the AAI cautioned the FCC against the anticompetitive effects of adopting the joint proposal. In particular, consumers may be "locked-in" to a "chain" of products that employ a particular proprietary input-output technology, and competing copy-protection technologies may be locked-out as incompatible.

To guard against such lock-in/lock-out effects, the AAI advocated permitting DTV devices to include either consumer modulators (i.e., outputs that mimic the signal as it was initially received over-the-air), competing "authorized" digital outputs, or both.

Also of concern to the AAI is the potential for 5C members to enjoy a first mover advantage by virtue of being both the licensors of proprietary copy-protection technology and competitors in the DTV device markets. AAI urged the FCC to ensure that licensing of any "authorized" proprietary copy-protection technology is administered in an impartial and non-discriminatory manner.

The Reply Comments were authored by AAI Research Fellow Jonathan L. Rubin, J.D., Ph.D. He can be reached at (202) 415-0616 or by e-mail at: jrubin@antitrustinstitute.org.

The American Antitrust Institute is an independent Washington-based non-profit education, research, and advocacy organization. Further information is available on the AAI's home page: www.antitrustinstitute.org.

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