



Issue

PIP

Recording Industry Association of America, Inc.

Office of the  
General Counsel

December 22, 1988

BY HAND

Charles F. Rule, Esquire  
Assistant Attorney General  
Antitrust Division  
Department of Justice  
10th and Constitution Avenue, N.W.  
Room 3107  
Washington, D.C. 20530

Dear Mr. Rule:

This letter is submitted to you pursuant to the Business Review Procedures set forth in 28 C.F.R. Section 50.6.

The Recording Industry Association of America, Inc. ("RIAA"), for itself and its member companies, intends shortly to enter into a joint research and development venture to identify and develop a copyright protection and identification system with Bolt, Beranek & Newman Systems and Technologies Corporation ("BBN"). A copy of the agreement to be executed is attached hereto as Exhibit A. RIAA and its member companies will enter into the agreement pursuant to approval received from the RIAA Board of Directors on December 13, 1988.

The RIAA is the non-profit trade association representing the United States sound recording industry whose members are listed in the attached Exhibit B. Currently RIAA member companies create, manufacture, and market slightly in excess of 90% of all legitimate recordings produced and sold in the United States.

In furtherance of the venture, the parties contemplate a two-phase effort:

Phase I - Compilation of all existing or partially developed copyright protection and/or identification systems to be followed by a comparative evaluation of all systems and recommendations as to which one or ones should be pursued. The cost of this phase is currently estimated at \$80,000.

Charles F. Rule, Esquire  
December 22, 1988  
Page Two

Phase II - Development of a technology to protect and identify copyrights, and, secondarily, to provide for specific identification of each copyright track in order to permit future development of a system to account for and collect fees for copying and/or permit limited or controlled copying. The cost of this phase is currently estimated at \$900,000.

Additional documents setting forth the proposed venture are attached and incorporated herein.

RIAA and its member companies intend to retain BBN, an independent third party, to compile the information from each company on a confidential basis and, if the parties thereafter determine to proceed, to develop a technology. Members of the association would not be precluded from engaging in related independent research or utilizing other technology developed outside the proposed joint venture.

Under terms of the Domestic Professional Services Agreement appended hereto, BBN would retain title to the products of all work and all intellectual property produced under the Agreement but grant to RIAA and its member companies a royalty free, worldwide, non-exclusive transferable, perpetual and irrevocable right and license (i) to make, transfer, use or sublicense each invention or improvement thereto, which is or may be patentable under U.S. law and is conceived or first reduced to practice by BBN in the performance of the Statement of Work, and (ii) to use, duplicate, or disclose either internally or to member companies all computer software and all other recorded information (such as reports or data tables) delivered to it in the performance of the Statement of Work.

RIAA, for itself and its member companies, also would retain for four years from the date of the Agreement, an exclusive, royalty-free, worldwide, transferable, irrevocable right and license (1) to make, transfer, use or sublicense each invention or improvement thereto, which is or may be patentable under U.S. law and is conceived or first reduced to practice by BBN and (2) to use, duplicate,

Charles F. Rule, Esquire  
December 22, 1988  
Page Three

or disclose either internally or to member companies all computer software and all other recorded information (such as reports or data tables) on and in connection with the identification and protection of copyrighted works in the home entertainment industry, as defined within the Agreement. During this four-year period of exclusivity, BBN would also grant 50% of all royalty revenues flowing from the licensed use of products of its work by parties other than the Government to RIAA and its member companies, net of costs. The duration of this royalty-sharing agreement would be subject to renegotiation at the completion of Phase I.

To the extent that BBN would develop improvements to the technology or products contemplated herein applicable to the identification and protection of copyrighted works in the home entertainment industry, during the four-year period of exclusivity RIAA and its member companies would receive a royalty-free, worldwide, non-exclusive, transferable, perpetual and irrevocable right and license to use those inventions and products on and in connection with the identification and protection of copyright in the home entertainment industry. This right and license would also be subject to renegotiation at the completion of Phase I.

While the scope of the project is not limited to existing technology, the planned research venture does come in the wake of the prospective introduction of new rotary-digital audio tape (R-DAT) recorders by the hardware industry.

By way of background, DAT is the tape version of compact disc ("CD") technology which (1) makes possible for the first time digital-to-digital copying and (2) vastly improves the quality of analog-to-digital home copying. With DAT or any other digital recording technology, the industry expects the displacement of sales caused by home taping to experience a quantum leap.

During the most recent session of Congress, RIAA and its member companies supported a legislative solution embodied in the Digital Audio Recorder Copycode Act of 1987 (S.506 and H.R.1384 enclosed) which would have mandated that R-DAT machines transported in interstate commerce contain a "copycode" scanner chip that could prevent the unauthorized duplication of copyrighted recordings. Music creators would have had the option of encoding their music

Charles F. Rule, Esquire  
December 22, 1988  
Page Four

with a "notch" to prevent unauthorized copying. Under the terms of the bills, consumers and retailers would have been subject to fines of no less than \$50,000 and jail terms of up to two years if convicted of knowingly and willfully importing DAT machines in violation of the copycode prohibition.

To support the requested legislation, CBS Inc. developed a technology known as Copycode. The technology involved an embedded code in the software and a code scanner in the hardware and was offered to any interested companies royalty free. EMI Music also began to develop a copy-code type system.

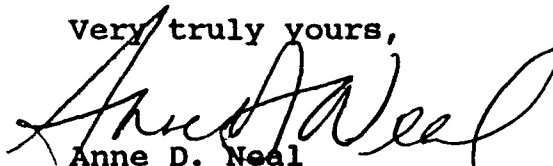
On August 3, 1987, the Commerce, Consumer Protection and Competitiveness Subcommittee of the House Energy and Commerce Committee passed H.R. 1384. At the same time, however, it requested that the National Bureau of Standards ("NBS") undertake a study of the effectiveness of the Copycode system in response to manufacturers of DAT machines who contended that the system degraded music quality. In recognition of the upcoming test, the Subcommittee adopted an amendment which allowed the Secretary of Commerce to withdraw the Copycode system if it were determined by the NBS audibly to degrade the sound quality of music or be easily bypassed. On March 1, 1988, the NBS determined that the Copycode system failed to meet those tests.

This joint venture is designed to develop an identification and protection system which will address the shortcomings outlined by NBS and be applicable to existing as well as any future digital technology.

This information is submitted for Department review and guidance as to its present enforcement intentions.

Please call me or Joel Schoenfeld, Esquire, at the above-referenced number if we may supply any additional information regarding the attached.

Very truly yours,



Anne D. Neal  
Deputy General Counsel

**Enclosures**