



U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 14 1991

Anne D. Neal
Deputy General Counsel
Recording Industry Association
of America, Inc.
1020 Nineteenth Street, N.W.
Suite 200
Washington, D.C. 20036

Dear Ms. Neal:

This letter responds to your request for a statement by the Department of Justice of its present enforcement intentions regarding a proposed research and development (R&D) joint venture in audio recording technology between the Recording Industry Association of America, Inc. (RIAA) and Bolt, Beranek and Newman Systems and Technologies Corporation (BBN). Based on the information you supplied to us and our own investigation, we have no present intention to challenge the proposed joint venture.

We understand the relevant facts to be as follows. RIAA is a non-profit trade association of nearly 50 members representing the United States sound recording industry and accounting for over 90 percent of all legitimate recordings produced and sold in the United States. BBN is a research firm that has no involvement in the recording industry outside this joint venture.

The joint venturers intend to develop technology that, among other things, will prevent or control the unauthorized duplication of copyrighted work from analog sources (e.g., phonograph records and prerecorded cassettes) by digital audio tape (DAT) recorders recently introduced into the United States market. DAT is a taped version of compact disc (CD) technology which promises greatly to enhance the quality of sound achieved on home recording equipment. Because the quality of DAT home recordings will be so high, however, some fear the technology

will cause a significant decline in sales of originally recorded material. Foreign hardware and domestic software manufacturers in the DAT industry recently agreed to support legislation that would require all DAT recorders imported into or sold in the United States to contain an anticopying device incorporating performance standards known as the Serial Copy Management System (SCMS), which would control digital to digital copying. No set of anticopying performance standards comparable to SCMS currently exists for controlling analog to digital copying, however. Any identification and protection system developed through this joint venture is expected to address this shortcoming and be applicable to existing as well as any future digital technology.

The venture has two phases: (1) to gather information on all existing or partially developed copyright protection/identification systems, evaluate them and then decide which to pursue; and (2) to develop or perfect a signalling system which will prevent or control duplication of copyrighted works as described above and enable specific identification of individual music selections by title, artist and number, so as to facilitate an accounting of copying fees. Overall, the project is estimated to cost about \$1 million. Work on the second phase is expected to take about a year. We understand that the information gathering phase is virtually complete and that RIAA seeks a business review only of the conduct embraced by the remaining phase, as set forth in the joint-venture agreement executed by RIAA and BBN on January 30, 1990, and the June 23, 1989, proposal referenced therein. 1/

The joint-venture agreement provides that BBN will be principally responsible for the R&D. RIAA's involvement in the venture will be limited essentially to reviewing BBN's progress and ultimate results. RIAA members generally will not have any role in the planned research or development of new signalling and identification systems. While BBN will retain title to the products of its work and all intellectual property rights, it

1/ You submitted draft joint-venture agreements on December 22, 1988, December 6, 1989, and January 10, 1990. The requested views expressed in this letter, however, are limited to the terms of the January 30, 1990, joint-venture agreement and your explanations of the proposed joint venture.

will grant to RIAA (1) ten-year exclusive, royalty-free licenses for all products and intellectual property rights relating to the identification and protection of copyrighted works in the home entertainment industry, with perpetual, nonexclusive, royalty-free licenses thereafter; (2) perpetual, nonexclusive, royalty-free licenses for all products and related intellectual property rights developed in connection with the joint venture but not relating to the home entertainment industry; and (3) exclusive, royalty-free licenses, not to exceed the ten-year exclusivity period, for any improvements to the joint venture products and technology for use in the home entertainment industry that BBN develops outside the joint venture and perpetual, nonexclusive, royalty-free licenses thereafter. Under both the nonexclusive and exclusive licenses, RIAA will have the right to sublicense both members and nonmembers of RIAA. The joint-venture agreement also provides for royalty sharing between RIAA and BBN.

Based upon the foregoing and information currently available to us, the Department of Justice has no present intention to challenge RIAA's proposed joint venture with BBN. The joint venture offers the possibility of benefits and efficiencies in undertaking expensive and risky new product development without any significant diminution of competition in either the market in which the venture proposes to operate or in other markets where RIAA members compete or might compete.

With respect to the market in which the venture proposes to operate, it is unlikely that individual RIAA members, with or without the joint venture, will incur the substantial costs and risks of developing this technology. ^{2/} On the other hand, the joint venture does not prohibit RIAA members from using or developing competing technologies or otherwise restrict R&D competition among RIAA members. Nor does the joint venture foreclose access of RIAA members or other firms to existing related technology or impose any other collateral restraints.

In analyzing the joint venture's effect on other markets in which RIAA members compete or might compete, we have concluded that the joint venture does not increase the opportunity for collusion in these markets or otherwise affect the incentives of RIAA members or any other firms to compete. The joint venture does not involve the exchange or dissemination of

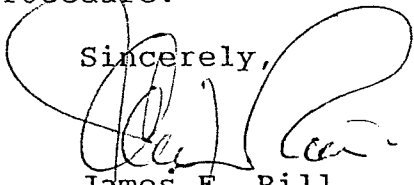
^{2/} Apparently, one RIAA member, CBS Records, Inc., has already tried and failed.

prices, costs or other competitively sensitive information. 3/ Also, the fact that the venture's activities are to be carried out through two separate, independent entities--RIAA and BBN--is an additional safeguard to ensure that such information is not exchanged by RIAA members.

In accordance with our normal practices, however, the Department remains free to bring an enforcement action in the future if actual operation of any aspect of the joint venture proves anticompetitive in purpose or effect.

This statement of the Department's enforcement intentions is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made available to the public immediately. Your supporting documents will be made publicly available within 30 days of the date of this letter unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,



James F. Rill
Assistant Attorney General

Enclosure

3/ In fact, only two RIAA members provided any technical information to BBN during Phase I of the venture.