

2001 DRAFTING REQUEST

Bill

Received: **05/18/2001**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **rkite**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Regulation of copy protection mechanisms used by the cable industry

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 02/22/2002	hhagen 02/25/2002		_____			
/1			jfrantze 02/26/2002	_____	lrb_docadmin 02/26/2002	lrb_docadmin 03/08/2002	lrb_docadmin 03/08/2002

FE Sent For:

<END>

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1?	rkite	1. hnh 2/25/02	[Signature]	[Signature]			

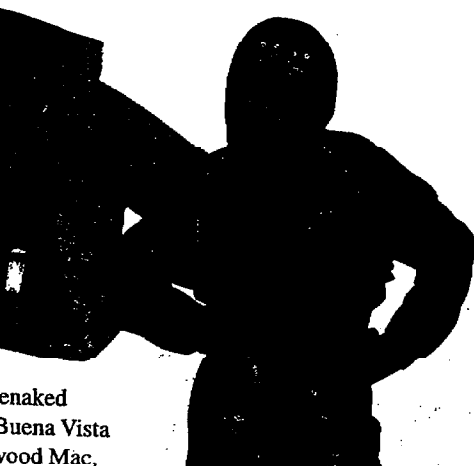
FE Sent For:

<END>

for Schneider

omplay

C. FENTON



in London said that once the electronics are detached, the garment can be washed.

The ICD+ line went on sale this past fall at some upscale shops in London, Paris, and Milan. There are no immediate plans, though, to bring the line to the U.S. — *Michael Antonoff*

Home Recording Rights Eroding?

Does the cable industry's proposed copy-protection scheme — known as the Dynamic Feedback Arrangement Scrambling Technique, or DFAST — give content owners too much control over consumer-electronics devices for home viewing and recording? Yes, says the consumer-electronics industry. But the FCC concluded that it saw no evidence "reasonable home copying would be impeded," so it allowed the cable industry to proceed with finalizing a license for DFAST. That's despite provisions in the draft license that would allow programs to be marked

⇒ Low Prohibiting Snatch Signals

for automatic erasure 90 minutes after being recorded.

We've been complaining about the lack of DTV cable standards. Maybe we'd be better off without them.

Storefront Broadband

Been in RadioShack lately? This fall 5,800 of its 7,100 stores sprouted Microsoft Internet Centers. Walk up to one of these kiosks, and you can experience for yourself the joy of near-instant Web access.

RadioShack hopes modem users will be so blown away that they'll sign up to have MSN HighSpeed, the Microsoft Network's broadband service, delivered via a digital subscriber line (DSL) or a two-way satellite link. For city dwellers, RadioShack will be handling DSL installation in alliance with NorthPoint DSL, and satellite subscribers will use StarBand Communications (formerly Gilat-to-Home).

DSL is typically priced at steeper rates for higher speeds, but NorthPoint claims a basic \$40 monthly connection provides a download speed of 284 kilobits per second. The price, which includes unlimited MSN usage, free installation, and a free DSL modem, is based on a one-year service agreement. NorthPoint plans to provide self-installation kits next year.

The StarBand satellite service will cost \$60 a month plus \$299 for dish setup, but unlike some other Internet satellite services, it doesn't require a phone line for uploads. According to StarBand, the service was already active in September for beta testers, among them many RadioShack stores that have installed the necessary 24 x 36-inch dishes. StarBand, which uses some of EchoStar's transponders, claims downlink speeds averaging between 300 and 400 kbps and uplink speeds of at least 56 kbps.

— *Michael Antonoff*

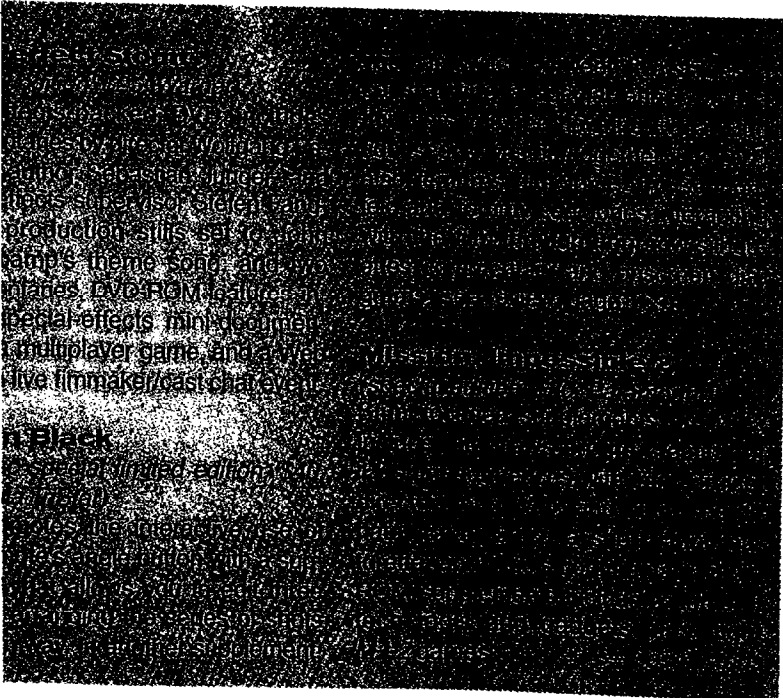
Role Reversal

You'd figure the copyright infringement suit against Napster would be occupying all of its lawyers' time. So imagine how surprised No Oliveau was when he received a cease-and-desist letter from Napster lawyers charging trademark infringement. Oliveau is the owner of napcrap.com, a pro-Napster site. His problems started when Metallica — the outspokenly anti-Napster band — was

enaked Buena Vista wood Mac, Cooper, ng others. e, you can , Off's nd y No. 2. able at y indica- 25 a disc. ael Gaughn nics like 3 players re running y all the son Philips i Strauss

have launched a line of "electronic jackets" in Europe called Industrial Clothing Design, or ICD+. Each of the four jackets contains a "body area network" using wires integrated into the design. The network enables the wearer to control the supplied Philips Xenium GSM mobile phone and Rush MP3 player. Ear-phones and a microphone nest in the collar.

Made from a nylon blend, the jackets range from \$600 to \$900, depending on fabric quality and amount of detailing. A Levi's spokesman



2001

Date (time) needed noon

Rm not seen
LRB - 3332, 1

BILL

D-Note

RNK: hnh

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to: *prohibiting broadcast and cable television services from transmitting programming that is encrypted in a certain manner.*

persons who provide

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

- If titles are needed in the analysis, in the component bar:
- For the main heading, execute: create → anal: → title: → head
 - For the subheading, execute: create → anal: → title: → sub
 - For the sub-subheading, execute: create → anal: → title: → sub-sub
- For the analysis text, in the component bar:
- For the text paragraph, execute: create → anal: → text

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION #.



If a customer consents, the bill requires that the telecommunications provider separate the bill between the billing for telecommunication services and the billing for the other goods or services. ~~Finally, if requested to do so by a customer who has consented to being billed for the other goods or services, the telecommunications provider shall provide a detailed itemized listing of the charges for those goods or services.~~

Other changes

~~The~~ bill ^{this} prohibits the provider of any broadcast audio or video service or any cable television telecommunications service from transmitting from this state any programming that is encrypted in such a manner that the programming may not be recorded by the recipient of the programming for the recipient's personal use. Current federal law specifies the extent to which a recipient may record programming for personal use.

~~An analysis of other changes will be included in a subsequent version of this bill.~~

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

~~SECTION 1. 20.155 (1) (Ls) of the statutes is created to read:
20.155 (1) (Ls) *Telecommunications provider payments.* All moneys received from payments by telecommunications providers under s. 196.37 (2) for purposes determined by the commission under s. 196.37 (2).~~

SECTION 2. 100.2065 of the statutes is created to read:

100.2065 Encryption of audio and video programming prohibited. (1)

In this section:

(a) "Broadcast service" has the meaning given in s. 196.01 (1m).

(b) "Cable television service" has the meaning given s. 196.01 (1p).

(2) No person who provides a broadcast service or a cable television telecommunications service may transmit from this state programming that is encrypted in such a manner that the programming may not be recorded by a recipient

1 of the programming for the recipient's personal use, unless the personal use is
2 prohibited under federal law.

3 ~~SECTION 3. 100.207 (1) of the statutes is renumbered 100.207 (1) (intro.) and~~
4 ~~amended to read:~~

5 ~~100.207 (1) DEFINITION. In this section, "telecommunications:~~

6 ~~(b) "Telecommunications service" has the meaning given in s. 196.01 (9m).~~

7 ~~SECTION 4. 100.207 (1) (a) of the statutes is created to read:~~

8 ~~100.207 (1) (a) "Telecommunications provider" has the meaning given in s.~~
9 ~~196.01 (8p).~~

10 ~~SECTION 5. 100.207 (3g) of the statutes is created to read:~~

11 ~~100.207 (3g) BILLING FOR OTHER SERVICES. (a) A telecommunications provider~~
12 ~~may not bill a customer for any goods or services, other than telecommunications~~
13 ~~service provided by the telecommunications provider, unless all of the following~~
14 ~~apply:~~

15 ~~1. The telecommunications provider reasonably believes that the person~~
16 ~~knowingly consented to the billing.~~

17 ~~2. The telecommunications provider confirms with the person, before providing~~
18 ~~the telecommunications service, that the person knowingly consented to the billing.~~

19 ~~(b) If a customer consents to being billed under par. (a), all of the following shall~~
20 ~~apply:~~

21 ~~1. The telecommunications provider shall provide the billing for the other goods~~
22 ~~or services in a separate document from the billing for the telecommunications~~
23 ~~service or shall otherwise separate the 2 billings in a manner approved by the~~
24 ~~department.~~

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

3332/1dn
LRB-4065/P1dn
RNK/MDK/MCC/ld:pg
hnh

Date

to have DATCP
administer this prohibition

That chapter is generally
created in this draft
of the statutes. it

~~With regard to the instruction concerning encryption, I have placed the encryption prohibition in chapter 100 because I have assumed that you intended that this prohibition be administered by DATCP. If this was not your intention, please let me know and I will redraft accordingly.~~

It is possible that a court might conclude that the ^{encryption} prohibition created in this draft ~~relating to encryption~~ is preempted by federal law. Generally, federal law preempts state law if Congress has expressed an intent to occupy a given field. The encryption issue concerns the fields of radio and television broadcasting and of copyright. Both of these complicated areas are heavily regulated under federal law. Furthermore, the FCC has been involved in the proposed license for an encryption technology for digital television known as DFAST (Dynamic Feedback Arrangement Scrambling Technique). This technology would enable the program provider to mark a given program with instructions about whether the program may be recorded. The recording device will not be able to record a program for which a "no copy" instruction is given. Because the FCC appears to support the right of a content provider to scramble or encrypt its programming, and because the broadcasting and copyright fields are heavily regulated under federal law, it is possible that a challenge to the prohibition created in this draft on preemption grounds might be successful. If you would like me to research this area in greater depth, please let me know.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3332/1dn
RNK:hmh:jf

February 26, 2002

I have placed the encryption prohibition created in this draft in chapter 100 of the statutes. That chapter is generally administered by DATCP. If it was not your intention to have DATCP administer this prohibition, please let me know and I will redraft accordingly.

It is possible that a court might conclude that the encryption prohibition created in this draft is preempted by federal law. Generally, federal law preempts state law if Congress has expressed an intent to occupy a given field. The encryption issue concerns the fields of radio and television broadcasting and of copyright. Both of these complicated areas are heavily regulated under federal law. Furthermore, the FCC has been involved in the proposed license for an encryption technology for digital television known as DFAST (Dynamic Feedback Arrangement Scrambling Technique). This technology would enable the program provider to mark a given program with instructions about whether the program may be recorded. The recording device will not be able to record a program for which a "no copy" instruction is given. Because the FCC appears to support the right of a content provider to scramble or encrypt its programming, and because the broadcasting and copyright fields are heavily regulated under federal law, it is possible that a challenge to the prohibition created in this draft on preemption grounds might be successful. If you would like me to research this area in greater depth, please let me know.

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Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

Basford, Sarah

From: Basford, Sarah
Sent: Monday, March 04, 2002 2:05 PM
To: Frydenlund, Judy
Subject: LRB -3332/1 & dn (attached)



01-3332/1



01-3332/1dn

Sarah Basford
Program Assistant
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Legislative Reference Bureau
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State of Wisconsin

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February 26, 2002

MEMORANDUM

RECEIVED

To: Representative Schneider

MAR 06 2002

From: Robin N. Kite, Legislative Attorney *MRK*

Legislative Fiscal Bureau

Re: LRB-3332/1 Regulation of copy protection mechanisms used by the cable industry

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-7291 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.