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**Consolidation of DVD royalties collection is goal of MPEG LA** (digital video disk; licensing administrator) *Seth Goldstein*.

**Abstract:** **MPEG LA**, a newly formed royalty collection agency, has set its goals on consolidating digital video disk (DVD) royalties collection in an all-in-one fee from program suppliers and disc replicators to make DVD prices within consumer range. However, its plan to charge 40 cents for each DVD title for rent and 4 cents for each title for sale has been criticized for its impracticality, considering the separate tracking requirements of rental and sell-through inventories. However, **MPEG LA** believes that separate tracking is possible and the proposed rates are reasonable.

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NEW YORK - The movers and shakers in DVD, including Hollywood heavyweights, are about to be jostled by a well-heeled new company with five employees. **MPEG LA** has set itself up as a collection agency for the holders of about 80% of the MPEG-2 patents that made possible the home entertainment format.

**MPEG LA** - "LA" stands for "licensing administrator" - is just now contacting program suppliers, including Hollywood studios and disc replicators, about an all-in-one fee that would avoid the expense of multiple royalties paid to CD licensors. Without **MPEG LA**, according to one replicator, DVD could be priced beyond the reach of the mass-market consumer.

But, unless it changes course, **MPEG LA** will bump up against one of the pillars of the home video trade and reignite a controversy the industry thought it settled 15 years ago: recognition that the First Sale Doctrine permits retailers to rent or sell prerecorded videocassettes as they wish.

Program suppliers lose control once the cassettes are in distribution. **MPEG LA** seeks to turn back the clock, in the view of several observers. Its plan is to charge 40 cents for each DVD title priced to rent and 4 cents for each priced to sell. Differentiating between the two, never easy, has become increasingly difficult as more video stores stock up on \$20-\$25 cassettes to build inexpensive rental inventories.

"I can't see how anyone could propose a system of what was going to rent and what was going to sell through. There's no way anyone could tell," says a veteran movie industry source. "And if anyone did propose such a thing, the Video Software Dealers Assn. [VSDA] would be up in arms."

As a fledgling trade group, VSDA earned its stripes defeating studio attempts in 1982 to rewrite the First Sale Doctrine to give them a share of rental revenue.

DVD inventories likely will be built along similar lines since the majority of releases are priced at \$24.98 suggested list. Indeed, at least one distributor, Major Video Concepts in Indianapolis, has already instituted a rental program for its accounts, based on sell-through pricing (Picture This, *Billboard*, Aug. 2).

But **MPEG LA** manager/CEO Baryn Futa, who owns a piece of the venture, disputes the argument that rental and sell-through can't be tracked separately at retail. "It's an element of folklore" that he maintains won't survive close examination. Futa says that conversations with some of the licensors

supporting **MPEG LA** indicate the trade can support his two-tiered royalties.

"I'm not an expert in that area," Futa acknowledges. "We're going to ask a lot of questions. We're not dogmatic, and I'm here to listen. I want to find out for myself whether nobody knows." If the royalties "can't be implemented," he said during a meeting in New York last month, "we won't implement them."

Nonetheless, in a subsequent conversation, Futa maintained that the proposed rates are "awfully reasonable" and claimed that **MPEG LA** will "absolutely" pursue royalties on the 1 million-1.2 million DVDs estimated to have been shipped to stores. (The 130,000 DVD players on the market would be subject to a proposed fee of \$4 per unit.)

Futa believes a set amount is "fair, reasonable, and non-discriminatory," in contrast to a percentage of the wholesale or retail price "where some people pay more than others."

His next step is determining who to pursue. "Our orientation is either the replicator or the content provider." Licensers, meanwhile, are responsible for enforcing the contracts. "We're not creating the MPEG police," Futa emphasizes. "I would find it ironic if [content providers] who respect intellectual copyrights ignored this. MPEG-2 investment is a total crapshoot, so the inventors deserve something."

Hollywood is slow getting the message. Because of the broad scope of MPEG-2 patents, which deal with various aspects of the data-compression technology integral to DVD, in computers, and direct broadcast satellite, home video has received scant attention thus far. Futa says he's held informal talks with the studios and replicators "but nothing since July 8," when a road show introducing **MPEG LA** got under way.

Only one of numerous industry executives contacted by Billboard admitted to knowing anything about the company or its charter. That executive is Richard Marquardt, head of Warner Advanced Media Operations (WAMO) in Olyphant, Pa., which replicates discs for Warner Home Video, its distributed labels, and several DVD independents.

Marquardt would not comment directly on **MPEG LA**, but says that WAMO has already taken steps to make sure it complies with a payment schedule. "We're accruing reserves based on my personal estimate of what the royalty will be," he notes.

Fees paid to various CD patent holders are "exorbitant," Marquardt maintains. "We need to avoid that situation in DVD if the consumer is going to benefit from low-cost mass media. Otherwise, it has got laserdisc written all over it." Royalties are a big reason for the high cost of laserdisc production, hampering acceptance of the format.

Futa thinks the **MPEG LA** approach eventually will limit the royalties paid to a single check, smaller in total than ones written to a bevy of licensers. That is, once word gets out.

**MPEG LA**, which Futa says he conceived several years ago while at Cable Television Laboratories, an R&D company, only emerged from its cocoon early last month. It took flight after the Department of Justice approved the proposal of nine companies and one university - Columbia - to pool their MPEG-2 patents to create "a one-stop-shopping clearinghouse" for Fujitsu, General Instrument, Matsushita, Mitsubishi, Philips Electronics N.V., Scientific-Atlanta, and Sony.

With a government green light, Futa and outside attorney Kenneth Rubenstein, who researched 8,000 patents, began a series of informational meetings in July that began in Tokyo and ended in Amsterdam. There were sessions in California and New York, as well. Handouts included a 25-page MPEG-2 patent portfolio license, with an attachment listing the holdings of the **MPEG LA** pool.

The list is incomplete, Futa acknowledges. Although mentioned in **MPEG LA** press materials as a likely participant, Lucent Technologies (formerly AT&T subsidiary Western Electric) has elected to stay independent. So has Thomson Consumer Electronics, representing the GE/RCA patents. "I find it disappointing they're not coming in now," Futa says. "I don't know why."

Thus far, **MPEG LA** is closest to signing contracts with the replication and player manufacturing arms of licensors such as Sony and Matsushita. The hope is those agreements will set the precedents - and a rate card - for the rest of the trade Futa expects other discussions to begin in earnest this fall.

**MPEG LA**, which has begun life with \$3 million from Cable Labs and the licensors, takes a 10% cut of annual revenue during the start-up phase on a scale that slides to 2.5% at maturity. "The slope of the curve is fairly clear," Futa says. "When it starts is the issue."

He's anticipating rapid growth. MPEG opens a Washington, D.C., office in August, under the direction of a new licensing VP, Larry Horn, and will have 10-15 staffers "at full trot."

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