

DTLA Statement upon Release of May 2005 Adopter Agreement

In connection with the release of the Adopter Agreement issued by DTLA in May, 2005, (the "Agreement"), DTLA is issuing the following statement setting forth its understanding and interpretation of certain terms of the Agreement, and DTLA intends this statement to be admissible in interpreting the terms of the Agreement. Capitalized terms used but not defined in this letter shall have the respective meanings given in the Agreement. All section references in this letter are references to sections of the Agreement.

For the avoidance of doubt, the requirements of Section 3.3 shall not apply with respect to individual units or copies of Robust Licensed Components, Robust Inactive Products or of Licensed Products that have been shipped by Adopter prior to the effective date of an amendment to the Compliance Rules or Specification (*i.e.*, the date upon which Adopter must comply with such amendment).

With respect to Section 4.2.1(b) of the Agreement, circumstances in which the Common Device Key and corresponding Common Device Certificate may not be "authorized by the Fellow Adopter that ordered such Common Device Key" include, but are not limited to: (i) circumstances in which the Common Device Key and corresponding Common Device Certificate have been inserted, without the authority of the Fellow Adopter, into a unit or copy of a product or component that is distributed by the Fellow Adopter; or, (ii) circumstances in which the Common Device Key and corresponding Common Device Certificate have been inserted with the authority of the Fellow Adopter into a unit or copy of a product or component that is distributed by the Fellow Adopter and such unit or copy continues to function, using the same Common Device Key and Common Device Certificate, where the DTCP functions of such unit or copy that had been activated with that Common Device Key and Common Device Certificate should have ceased, consistent with the provisions of Section 2.2(i)(y) of the Procedural Appendix.

Subject to Adopter's compliance with the provisions of Section 8.2, it is the view of DTLA that, an "extraordinary circumstance" as contemplated in Section 8.2 would exist where: (a) Adopter can demonstrate that the cost of removing DTCP from a Robust Inactive Product would be substantial, (b) the continued shipment of the Robust Inactive Product would not perpetuate a breach of the Agreement that would affect the security of DTCP and (c) there have not been repeated breaches of the Agreement by Adopter.

Nothing in Section 10.3 of the Agreement shall grant a license or permission for DTLA to decompile or disassemble Adopter's products. Nothing in Section 10.3 shall constitute a license or permission for DTLA to take any actions or make use of information resulting from such examination or evaluation for any purpose other than for verifying compliance with the terms of the Agreement. DTLA or any Founder that may participate in the examination of one or more of Adopter's products may otherwise use and disclose in its business the increased or enhanced knowledge retained in the unaided memories of its directors, employees, agents, or contractors as a result of exposure to such products of Adopter and any increased experience that results from such exposure. Neither party shall, as a result of the Agreement, have any rights in

any business endeavors of the other party that may use such knowledge and experience, and Adopter shall not have any right to compensation related to DTLA's or a Founder's use of such knowledge and experience.

DTLA agrees that systemic failures of DTCP, or of any aspect of DTCP, that are not caused by one or more breaches by Adopter shall not trigger application of the provisions of Section 10.4 to Adopter and/or its products. DTLA's Content Participants have informed DTLA that they interpret the Agreement to mean that systemic failures of DTCP, or of any aspect of DTCP, that are not caused by one or more breaches by Adopter shall not trigger application of the provisions of Section 10.6 to Adopter and/or its products.

For the avoidance of doubt, in the event that Adopter pays the amounts designated in Section 10.5 in connection with a material breach by Adopter of the Agreement, Adopter shall have no liability to DTLA for additional monetary damages (regardless of legal theory (*e.g.*, negligence) based in whole or in part on the act(s) or omission(s) of Adopter that gave rise to such material breach). DTLA agrees that systemic failures of DTCP, or of any aspect of DTCP, that are not caused by one or more breaches by Adopter shall not trigger application of the provisions of Section 10.5 to Adopter and/or its products.

For purposes of clarification, DTLA provides the following examples with respect to Section 2.2 of the Robustness Rules, which examples are illustrative but not exclusive:

- it is presumed “technically feasible” for Adopter to first activate the DTCP functions of a version of a Licensed Product that protects uncompressed Decrypted DT Data over a User Accessible Bus (as set forth in Section 2.2) in a product, such as a personal computer, whose hardware and/or software systems (to the extent both systems would be necessary to support the protection functions) are known by Adopter to be capable of supporting such protection functions;
- it is presumed “commercially reasonable” for Adopter to first activate the DTCP functions of a version of a Licensed Product that protects uncompressed Decrypted DT Data over a User Accessible Bus (as set forth in Section 2.2) where Adopter has actual knowledge that the product or component requesting activation is capable of providing such protection, regardless of whether such product or component has requested activation of a unit or copy of a product or component that does not provide such protection; and,
- it would be presumed to not be “commercially reasonable” for Adopter to distribute a Licensed Product that so protects uncompressed Decrypted Data over a User Accessible Bus to a product whose hardware and software systems are not known to be capable of supporting such Licensed Product; or for Adopter to revise a previously-distributed Licensed Product to include such User Accessible Bus protection where the expense of making such a revision would be highly disproportionate to the number of units or copies of such Licensed Product that have not yet been activated.

[End]