

DRAFT 1/4/06 (for discussion purposes only)

Digital Goods

- 1) Adopt a set of definitions for selected digital products.

A new Agreement definition category (such as “Defined Digital Products”) will be adopted. Specific products (such as movies and books) will be defined and included in this new category of definitions. Additional product definitions can be added at a later date. All of the product definitions in this section will only be applicable when the products are delivered electronically and this section would have no application to any products that are sold in a tangible form. Any products that are delivered electronically that are not specifically defined will be specifically excluded from the definition of Defined Digital Product.

- 2) Exclude this new category of items from the definition of TPP.

The Agreement definition of TPP will be amended to specifically exclude this new category of products (Defined Digital Products). Each state would be required to conform to this change pursuant to the requirements of Section 327 of the Agreement.

- 3) Products not specifically defined are not impacted by this proposal.

Products delivered electronically that are not specifically defined will not be impacted by the adoption of the definition of Defined Digital Products or the adoption of specific product definitions. A state is free to treat undefined products as it wishes, e.g., as within the Streamlined definition of TPP, pursuant to a court decision in their state.

- 4) Each product definition will be a separate definition.

Each individual product definition will act as a “toggle” and a state can tax or not tax the product as it determines.

- 5) Separate treatment for subscriptions.

A definition of “subscription” will be adopted and states may tax or not tax a product depending on whether or not it is purchased through a subscription.

- 6) The definitions will distinguish between “accessing” and “acquiring”.

The definitions will include the product only if a threshold of possession is acquired. For example, purchasing the right to listen to a song for less than a set period of time would be excluded from the definition while purchasing the song and acquiring the right to possess the song beyond that period would be included. A state is free to treat the purchase of the song that is outside the definition as it wishes.