

A motion by Oklahoma for an interpretive rules related to Digital Products.

CHAPTER __

**DIGITAL PRODUCTS
RULES**

The provisions of this Chapter have been adopted to interpret or describe the general applicability of the provisions of the section contained within the Library of Definitions entitled “**Digital Products**”. In particular, the Chapter describes applicability of defined terms within the section.

1. **A. Defined Digital Products**

The following examples describe the application of the definition of the term “defined digital products”:

The term shall include the following:

1. **Facts:** An internet-based business sells music online. For a fixed fee per song, customers are authorized to download a song and store it on a portable music playing device and to play the song as many times as they want. There is no time restriction with respect to how long the customer can keep the song.

Application: The downloaded songs are defined digital products because music is specifically included within the definition of “Audio Works”, and the transaction meets all of the conditions of a defined digital product because the song is delivered electronically to an end user and the customer has the right to make a copy of the song, keep it, and listen to it permanently.

2. **Facts:** A company inaugurates a new movie downloading product for all of its customers. For an additional fee per movie, paid in addition to a monthly fee, a customer can download a movie to a device. Once downloaded, the customer is authorized to keep the movie permanently.

Application: The movie is a defined digital product because a movie falls within the definition of an “Audio Visual Work” and the transaction meets all of the conditions of a defined digital product because the movie is delivered electronically to an end user and the end user is authorized to keep the movie and to view it permanently.

3. **Facts:** The owner of a bar purchases music online to play for his customers. For a fixed fee per group of songs, the owner is authorized to download the songs and store it on a hard drive and play the songs in his establishment. There is no fee charged to his customers. There is no time restriction with respect to how long the owner can keep the songs.

Application: The downloaded songs are defined digital products because music is specifically included within the definition of “Audio Works”, and the transaction meets all of the conditions of a defined digital product because the songs are delivered electronically and the owner has the permanent right to use the songs. The owner is an end user because he has the expressly granted right to broadcast the songs to other persons and there is no consideration paid by his customers.

The term shall not include:

1. **Facts:** A company inaugurates a new movie downloading product for all of its customers. For an additional fee per movie, paid in addition to a monthly fee, a customer can download a movie to a device. Once downloaded, the customer is only able to watch the movie for 24 hours. After the 24 hours period lapses, even though the copy of the movie remains on the customer’s device, the customer has lost the right to view it.

Application: The movie is not a defined digital product because the customer is unable to use the copy of the movie for more than 24 hours. The fact that the copy remains on the customer’s recording device is not relevant because the customer does not have the right of permanent use of the movie.

2. **Facts:** A music download service provides a subscriber the right to download a song for a set price and copy that song to a portable music playing device. The subscriber can continue to use that song as long as they continue to pay a monthly fee. If the subscriber fails to pay the required fee, the song is disabled and can no longer be used.

Application: The song is not a defined digital product because the right of permanent use is conditioned upon continued payment from the purchaser to the seller.

B. Digital Code

The following examples describe the application of the definition of the term “digital code”:

The term shall include, but is not limited to, the following:

1. A code given to a customer who purchases an “e-book” on the Internet. At the time of purchase, the customer is given the code which the

customer may use at a later time to access or obtain the previously purchased item.

2. A customer purchases a book in a brick and mortar retail store. The customer does not take possession of the book in the store. The customer is given a receipt which contains a code. The customer may use the code at a later time to access or obtain the previously purchased item electronically.

3. Promotion codes purchased by a retailer which will be given away during a promotion period by the retailer to its customers. When a customer receives the coupon, they may log onto a website and enter their code number to receive a free song.