

June 15, 2007

**A motion by Utah to amend Article III of the Agreement relating to the use of specified digital products:**

**New Section [Sec. 332]. Specified Digital Products:**

A. For purposes of this section

1. an "end user" includes any person other than a person who receives by contract a specified digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the specified digital product, in whole or in part, to another person or persons, and
2. "permanent" means perpetual or for an indefinite or unspecified length of time.

B. A statute imposing a tax on "specified digital products," "digital audio-visual works," "digital audio works" or "digital books" shall be construed as only imposing tax on a sale with the right of permanent use granted by the seller which is not conditioned upon continued payment from the purchaser to a purchaser who is an end user.

C. A tax on sales of "specified digital products," "digital audio-visual works," "digital audio works" or "digital books" where the right of use granted by the seller is less than permanent ,which are conditioned upon continued payment from the purchaser or to a purchaser who is not an end user must be specifically imposed and separately enumerated.

D. A statute imposing a tax on any other product transferred electronically must be specifically imposed and separately enumerated.

E. For purpose of Section 327(C) and the taxability matrix, "Digital Audio-Visual Works", "Digital Audio Works", and "Digital books" are separate definitions.

F. A member state imposing a sales or use tax on "specified digital products," "digital audio-visual works," "digital audio works" or "digital books" shall use those terms in its imposition statutes and shall enact or adopt the definition of those terms set forth in the Library of Definitions, in Appendix C of this Agreement. Nothing in this section or the definition of "specified digital products" shall limit a state's right to impose a sales or use tax or exempt from sales or use tax any products or services that are outside the definition of "specified digital products" so long as the imposition statute otherwise meets the requirements of this section

G. A state may treat a subscription to "specified digital products" differently than a non-subscription purchase of such product. For purposes of this section, "subscription" means an agreement with a seller that grants a consumer the right to obtain "specified digital products" from within a single specific specified digital product category under either Section B(i), (ii) or (iii), above, having the same tax treatment in a fixed quantity or for a fixed period of time, or both.

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- H. The tax treatment of a “Digital Code” shall be the same as the tax treatment of the “Specified Digital Product” to which the “Digital Code” relates. The retail sale of the “Digital Code” shall be considered the transaction for purposes of the Agreement. For purposes of this section, “digital code” means a code, which provides a purchaser with a right to obtain one or more specified digital product(s) within a single specific specified digital product category under either Section B(i), (ii) or (iii), below. having the same tax treatment. A digital code may be obtained by any means, including email or by tangible means regardless of its designation as “song code”, “video code”, or “book code”.
- I. Notwithstanding the provisions of Section 316 of this Agreement, a member state may provide a product based exemption for specific items within the definition of “specified digital products”, provided such items which are not transferred electronically must also be granted a product based exemption by the member state.