



Digital Transmission  
Licensing Administrator

# DTCP: Pro-Competitive Licensing Strategy for Broadcast Flag

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# Overview

- The DTLA license follows a well-accepted structure that benefits adopters, content owners and consumers by minimizing license costs.
- Licenses for DTCP are offered on reasonable and nondiscriminatory terms that provide for meaningful Adopter input and limit future changes by DTLA.
- More than 90 licensees have agreed to these license terms for DTCP; hundreds more accept the same structure for other content protection technologies.

# DTLA Philosophy

- Content protection is most effective when reasonable and balanced
  - Provides incentives for studios
  - “Keep honest people honest”
  - Encoding Rules secure reasonable consumer expectations
- But, consumers are not willing to pay extra for content protection

# DTLA Philosophy

Therefore:

- DTLA makes DTCP available to all at low cost and shared low risk.
- License fees support development and administration, are not a “profit center.”

# DTCP Basics

- Jointly-developed technology Specification
- Protects digital entertainment content traversing home and personal networks
- Available for several popular interfaces (including 1394, USB, 802.11, Ethernet)
- Can interoperate with other output and recording protection technologies

# Structure of DTCP Agreement

- DTLA licenses the DTCP Specification to Adopters; Content Participants receive license to protect content with DTCP
- Administration Fee, small per key fee
  - DTLA does NOT charge commercial royalty rates
  - Pricing options for small and large Adopters
  - Fees may be lowered if costs decrease

# Structure of DTCP Agreement

- DTLA grants licenses to Necessary Claims
- Licensees covenant not to sue other licensees on their Necessary Claims
- License from DTLA and covenant from licensees have the same, narrow scope
- “Necessary Claims” are IP rights necessarily infringed by use of the Specification
  - Narrowly drawn, explicitly excludes technologies not specific to DTCP itself (e.g., MPEG, 1394, USB)

# Structure of DTCP Agreement

- Why include the Licensee covenant?
  - Eliminates risk of IP litigation from other DTCP licensees
  - Minimizes unanticipated costs for all licensees
  - Unfair if Licensees could charge commercial royalty rates when DTLA charges cost recovery fees for its (and the 5C companies') DTCP technology

# Structure of DTCP Agreement

- No prejudice from the Licensee covenant
  - Nondiscriminatory and narrow
  - Licensee has right to evaluate the Specification, and understand any potential effect of the covenant, before agreeing to it
  - No licensee has identified any actual affected necessary claim

# Structure of DTCP Agreement

- DTLA cannot make material mandatory Specification changes (§ 3.3)
  - Can map DTCP to other Interfaces
  - Optional changes have been beneficial, and are voluntary
- Licensees Participate in Change Process
  - Adopters have right to comment and propose amendments to any draft Specification change
  - Content Participants may object if change has a material and adverse effect on protection

# FCC Interest – Promoting Competition

- Approval of many technologies enables marketplace competition
- Six proposed technologies for output protection
  - DTCP, HDCP, Microsoft, RealNetworks, Thomson and TiVo
  - All effective marketplace competitors
  - Well-positioned for “convergent” CE/IT devices

# Scope of License Review

- Technologies are to be licensed on a reasonable and non-discriminatory basis.
  - Report and Order ¶¶ 53, 55
- No single, standard definition
- Typically, in FCC precedents:
  - “Reasonable” means reasonable cost
  - “Nondiscriminatory” means making the same terms available to all similarly situated parties

# DTLA Agreements are Reasonable

- Minimize cost of license
  - Cost recovery, not higher commercial royalty
  - Good faith efforts to reduce fees if costs drop
- Minimize IP risks
  - “Necessary claims” from all Adopters, including 5C companies, and Content Participants
  - Avoids costly litigation, patent identification or defensive review

# DTLA Agreements are Reasonable

- No Impact on Innovation
  - License and Covenant narrowly circumscribed to “Necessary Claims”
  - Freedom to use IP for other purposes
    - Complementary technologies
    - Competitive technologies
  - Adopters review full DTCP Specification before accepting Covenant obligations

# DTLA Agreements are Nondiscriminatory

- All licensees, including the 5C Companies, in each class receive same license terms
  - Including Adopter, Content Participant, Reseller, Tester agreements
  - Any beneficial terms from subsequent agreements will be offered to all earlier adopters

# DTCP is One of Many Competing Technologies

- Already six capable competitors
  - Proven track records
  - Established distribution networks
  - Well positioned for CE, IT and convergent products
- Low barriers to new entry
  - FCC Certification eases new entry
  - Use of technology for early-window content (cable, satellite, Internet) eases entry for broadcast protection
  - Interoperability promotes competition
- Robust Competition means No Market Power

# Myth of “First Mover Advantage”

- Early stages of a rapidly-changing field
  - Robust competition
  - Ease of entry
  - Improvement in DRM technologies
- FCC should not penalize innovators for being “first”
  - Would create disincentives for inter-industry cooperation and future innovation

# Covenants Do Not Deter Innovation

- Licensees remain free to exploit their IP for complementary, or even competing, technologies

# Covenants are Not Discriminatory

- Licensees knowingly accept DTCP license and covenant obligations
- All Licensees obtain the same freedom from IP risk, and have the same obligations

# DTCP Covenant was Accepted in DFAST License

- Covenant Not “Rejected” in DFAST
  - DFAST license expressly requires use of DTCP for passing Controlled Content over any 1394 output
  - PHILA similarly permits use of DTCP over any digital output for passing Controlled Content
  - No company raised any complaint about the DTLA license in Plug and Play

# Covenant Benefits

- Low Costs and Risks, Enabled by the Covenant, Benefit Consumers
  - Minimal impact on cost of devices
  - Licensees do not have to absorb high costs for content protections (for which consumers will not willingly pay extra)
- Covenant is a standard feature in numerous content protection licenses

# Licensees Lose if License is Changed

- Cannot retroactively change 90+ licenses
- Changing the DTCP License would foist higher costs and greater risks on all other licensees
  - Costs of evaluating and licensing own portfolio
  - Costs of evaluating, licensing or defending against licensee IP claims
  - Commercial royalty charges by DTLA
- Offering Adopters a “choice” between a Covenant and Royalty is illusory

# Context for Philips' Contentions

- Of more than 90 licensees, only Philips complains to the Commission
- Philips has shown no actual harm resulting from the Covenant (though DTCP has been licensed for 5+ years)
- Philips is a licensor in technology licenses (e.g., for the HDMI interface) that contain such a Covenant as the only option
- Philips argues a lack of competition to DTCP, but did not submit its own link digital output protection technology, OCPS, which it did submit to BPDG

# Requiring Interoperability is Bad Policy

- Interoperability may not be technically possible, or may not be desired by a technology proponent of a closed system
- Downstream interoperability could impair the value of the technology
  - E.g., HDCP is point-to-terminus technology
  - Linking to less robust downstream technology eliminates competitive advantages of the upstream technology
- For DTCP, could deter the use of “EPN” encoding for earlier window content

# Requiring Interoperability is Unnecessary

- The marketplace will drive interoperability
- DTLA works assiduously to facilitate approval for interoperable systems
  - DTLA has never rejected any request to interoperate with downstream technologies
  - Four have been approved, three more in process

# Unfounded Concerns with Change Management

- Any mandatory changes to the Specification (the DTCP technology itself) will not be material
- Mapping DTCP to other interfaces does not change DTCP, just as a car remains the same on a superhighway or country road

# Unfounded Concerns with Change Management

- Adopters have a right to comment and raise objections to any proposed Specification change
  - “Implementers Forum” to explain and discuss proposed changes
  - No Adopter ever has objected to a DTLA proposed change
  - Any comments received were addressed to the Adopter’s satisfaction before a change became final
  - Minimum comment period is 30 days
  - Specification Changes take effect no sooner than 18 months later

# Unfounded Concerns with Change Management

- Changes made to the Compliance Rules will not materially increase the cost or complexity of implementing DTCP
  - Changes have benefited Adopters -- enabling interaction with PVRs, redundant server copies, etc.
  - Narrow exception (necessity to preserve integrity of protections offered by DTCP) enables response to technological threats, but has never been used

# Unfounded Concerns with Change Management

- Changes to the Specification will not materially and adversely affect Content Participant rights
  - Necessary to ensure protection for existing content on future devices
- DTLA assured Adopters that, despite Change Management, porting DTCP to common interfaces could easily be accomplished

# Differences in Rights Underlie Different Processes

- Content Participants' right to oppose changes (vs. Adopter comment and objection) reflects ability to respond to unacceptable changes
  - Adopters that object to license changes can cease, within 18 months, further implementation of DTCP
  - 5C companies are also Adopters, so have powerful incentives not to make changes that would harm Adopter interests
  - By contrast, even if Content Participants stop using DTCP, all content already in the market would remain exposed forever when played on future devices that incorporate the objectionable change

# Fair Treatment for All Adopters

- “Lead time” is inherent – those who develop the technology know of it first – but is minimal
- Advance notice to Adopters of proposed changes
- Adopter input into draft proposal
- No change is implemented by anyone, including Founders, until after the Specification is finalized
- 18 month minimum implementation period

# Competition Among License Terms Promotes Choice

- DTCP licenses are reasonable and nondiscriminatory
- Philips notes that other agreements, such as SmartRight, Vidi, Microsoft WMDRM, have provisions that Philips prefers
- If the market agrees, those technologies should succeed
- No need for FCC to homogenize all license terms and approaches