DECE Content Protection

First let me say that content protection is a priority for SPE. Unless we protect our content against unauthorized copying, we run the risk of travelling the same road as the music industry. I have no interest in that route, a route that lead to the delivery of unencrypted music downloads and a 50% decline in revenues.

While I can certainly describe the wrong path, I can only make an educated guess as to the right path, a path that will protect our content against systematic copying and unauthorized distribution by the masses. We all have our opinions as to the right path based on our own experiences, and I thought that the best way to understand SPE's comments is to understand why we believe that the level of security necessary to protect against unauthorized distribution is somewhat less than what Fox and WB are proposing. SPE believes that many factors weigh against a lengthy copy protection negotiation and we should come to the table with a more reasonable position. These include:

- Time to Market
- Launching a Competitive Product
- Regulatory Issues
- An Ever Increasing Fragmented Market
- DMCA protections Against Circumvention
- Efficacy of point-of-play anti-piracy strategies on open platforms
- The Supply of Pirated Content, and
- Risk of Failure to Launch

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Getting to Market - Time is not our friend. We cannot afford We have already engaged in a lengthy negotiation that has resulted in deadlock. And it will be lengthy. The more robust version of content protection and anti-piracy measures we demand carries carry with it them substantial risk to implementers. We need to take that risk into consideration if we want implementers to be motivated to design and manufacture devices that play DECE protected content. Our industry has never succeeded in getting everything we want. I doWe should not expect it here either. So we canWe started the negotiation asking for everything and begin what will behave been engaged in a lengthy negotiation that has not converged. To orlt is time we can cut to the chase, protect our content in a similar way that existing services are rolling out and cut years out of the negotiationscreate an EST market place that is not dominated by a single provider. There are other timing factors that work against us as the market continues down a path of siloed fragmentation. Consumers' habits for pirated digital content will harden in the event we do not solve the format/platform shifting issues. If we have learned anything from the music industry we know that as the pirate market continues to grow, implementers will build products that meet consumers' demand for pirated content.

SPE suggests that for SD content, the market has moved. We should focus on HD content protection considering that in 2-4 years all content will be 720p and greater. And, just to be clear, we need to be cognizant of the market in connection with HD content also. I am not suggesting that we simply go into these negotiations and give away our content, but if other [?] HD services launch with major studio content, we need to take that into consideration.

I think we need to be very careful about taking this "time to market" risk especially since it's not clear that we actually benefit that much, on a net basis, from the more-robust version of CP and

<u>anti-piracy</u> proposals. I strongly suggest we chose the fast-to-market approach and focus on what other types of pragmatic "roadmap" protections we can get.

DECE must launch a competitive product - This begs the question, what is the product? From a DECE (Content Provider) perspective, the product is 12 domain devices, 3 simultaneous streams, open rights locker, and a DVD burn. We view the DECE ecosystem from a macro level. From a consumer perspective, however, I do not believe they see the same ecosystem we see. A consumer views ecosystems from a micro or device level. I know that DECE offers a much better consumer proposition that other silo'd services. But consumers will not view the benefits of the entire ecosystem all at once. Today, a consumer currently buys content from many services, and downloads content on their Mac or PC, either views it or copies it to a portable device. The worst thing DECE can do is to create a new consumer facing digital product that has less functionality (from a micro or device perspective) than other digital services.

If we go down this path we seriously impair the very consumer proposition we are trying to create. Our goal of making digital distribution more valuable could suffer if consumers see they can do things via other services that DECE won't let them do. I understand that we want better content protection, but if we create a fatal birth defect for DECE then we will never get DECE off the ground.

Another point that we must take into consideration is that consumer confusion because of playability issues significantly increases service calls to services and implementers.

<u>Pressure from international territories</u> - Now that music services have launched unencrypted music downloads, and music is no longer locked to a platform, we are the next target. While DECE is not the "be all and end all" and we will not answer all the attacks on copyright, it does answer many of our critics' call for interoperability. Just some of the attacks from those who would like to do away with technological protection measures:

• WIPO Development Agenda: At the WIPO Standing Committee on Copyright and Related Rights ("SCCR") meeting held from May 25 to May 29, a treaty drafted by the World Blind Union ("WBU") was introduced by Brazil, Ecuador and Paraguay, which would define and expand the "limitations and exceptions" to the rights of copyright holders While the WBU is primarily interested in "printed matter," the complaints of the visually impaired are being used as a "stalking horse" by those whose interests are to denigrate the rights of copyright owners.

Among the treaty proposals are:

- Technological protection measures can be circumvented to enable production of accessible formats of copyrighted works without authorization of the copyright owner; that accessible format can be supplied to the visually impaired by any means
- o Pricing requirements for developing country readers would be imposed coupled with an ability to circumvent technological protection measures.
- Global copyright exception would be created for cases where publishers do not create accessible versions

- o Compulsory license/royalty for commercial use; no license/royalty for personal
- Canada: Treaty should "allow multiple approaches for domestic production of accessible formats" enabled by a compulsory license or conditional exception.
- European Union: An exception for format shifting is currently under consideration.
- France: While the MPA/Content Owners were successful in defeating a proposed legislative enactment that would have created an exception to the rights of copyright holders for format shifting, the decision is currently under challenge in the courts.
- United Kingdom: Consideration currently being given in Parliament to an exception for format shifting.

<u>Lesser of two evils</u> - As Bill Rosenblatt observed in his Copyright and Technology blog, "choosing between market fragmentation and single-vendor domination is truly a choice of the lesser of two evils." As you can imagine, I agree. DECE was formed to create an open ecosystem from what is today, best case, a fragmented marketplace. Downward pressure of the perceived value of premium content will continue if consumers are forced to make technology decisions before buying content. If we have learned anything from DVD, it is that ubiquity enhances consumer's perceived value of content.

CSS is hacked, but not broken - The DMCA prohibits the commercial sale of circumvention software. As such, the CSS hack will not be sold in a legitimate commercial product. I am not minimizing the impact of DeCSS, but unlike CD ripping, DVDs are not subject to mass market copying. No device, legitimately distributed, allows a consumer to copy a DVD movie onto the HDD nor insert a DVD in one drive and a DVD-R in another drive and simply drag and drop a copy.

We must assure in DECE that consumers cannot easily make unauthorized copies and that they have little motivation to do so. Since we are allowing multiple copies in the domain, format and platform shifting, and streaming, we have marginalized the functional utility of a DeCSS-like hack. Please do not misunderstand what I am saying here. I do not want to find us in the position of having to live with a compromised DRM. We will require that DRMs have appropriate breach management and renewability. What I am saying though is that in the event a DRM is compromised we should not assume that such a compromise is fatal to the DECE ecosystem_lbecause the approved DRMs all have a mechanism to renew the protection].

Lastly, since it is very costly for a DRM vendor to respond to breaches after the fact, there is a huge commercial incentive for DRM vendors to take proactive measures to harden their DRM and increase the overall level of robustness.

Watermark (WM) Detection - As you know, all Blu-ray players will be required to detect the WM by the end of the year. The WM is detected in the AACS licensed media player (just as a reminder, AACS is the content protection for Blu-ray). In a "traditional" standalone device, like a Blu-ray player from a consumer electronics company or the PS3, Verance WM works well. This is because it is a closed system with only the AACS licensed media player and consumers cannot download a non-AACS media player in this type of Blu-ray player. However, on any device built on an open platform (such as a PC, smart phone or even new "traditional" devices that use

an open OS like Android can potentially download apps), Verance WM does not work because the user will simply launch a non-AACS media player.

This is even more the case with DECE. Devices are increasingly open, and it is likely that many, if not most, DECE devices will be built on open platforms. Effective watermark detection has to be in all operating systems and that means convincing Apple (OSX, iPhone/iPod), Microsoft (Windows) and Google (Android, the new Chrome OS that will be found many netbooks coming out this year). That is outside the reach of DECE.

Thus, even if the studios are successful in getting Verance WM as a requirement in DECE, it will have little impact as an anti-piracy tool because, as with open platforms and AACS, consumers can just open a non-DECE media player. Also, in the case of Blu-ray there is a motivation for professional pirates to package pirated format in the Blu-ray-compatible format, while with digital downloads there is no reason for anyone to package pirated content in any DECE format. Thus, Verance WM has its limitations.

Focus on reducing supply of unauthorized content - To preserve a home entertainment market, we must focus on reducing supply of unauthorized content that is available before the home entertainment window (e.g. via legislation enabling ISP filtering). - The point here is simply that a user (consumer) who wants to download our content without paying for it is highly unlikely to wait until the movie is distributed on DECE and copy the real-time streaming output. The supply is readily available. Again, I am not suggesting that we abandon content protection; I'm just not sure that the benefits we get from protecting all legacy outputs outweigh the potential adverse consumer experience and necessarily increase overall revenues to our industry.

<u>DECE breaks new ground in content protection</u> – DECE already has new features which enable consumers' desire for content to play anywhere, any time on any of their devices while protecting content from unauthorized use:

- Secure digital outputs (no exceptions for PCs)
- Hardware root of trust
- HD analog sunset
- Limitation on number of devices
- Devices can only play content from a single domain
- Fraud detection and heuristics

Should we throw all this away for a watermarking solution that will do little to stem the flow of unlicensed content?

Reasonable minds may disagree, but I know of no implementers who have DECE on their product roadmap or in their mid-range plans such that failure of DECE to launch will detrimentally impact their forecasted revenues. What I do know, however, is that our industry is facing a significant downturn in DVD revenues and digital distribution is not making up the losses. Adams Media Research recently predicted that digital sales will reach 900 million by 2013. We lost over 2 billion in DVD sales in 2008. The math does not work for me. I've seen this movie before and know how it ends. It is not a happy ending!! DECE has the potential to jumpstart a market that has been slow to materialize. As such, we must determine the best path forward in connection with content protection and move as quickly as we can.

While I acknowledge that there are counter arguments here, reasonable minds can differ and no one has a crystal ball. However, it is for these reasons that I believe a practical approach to content protection is warranted. We have redlined the Content Protection proposal consistent with these principles.