

## Memorandum

TO: ARDG Members and Technology Submitters

FROM: Center for Democracy and Technology, Public Knowledge

RE: General Comments on ARDG Submissions

DATE: November 24, 2003

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The Center for Democracy and Technology (CDT) and Public Knowledge (PK) welcome the opportunity to ask further questions and seek clarifications from those proposing technologies to ARDG. Our additional questions for each submission are included in the requisite Excel spreadsheet file, but this short memo adds some additional explanation of the questions applicable to most of the participants.

CDT and PK believe that the technology choices made to convey rights information through analog conversion and reconversion will invariably have impacts – both positive and negative – on consumers and public policy. While assessing these policy impacts is outside the scope of ARDG, we do seek further clarification on the effects of the technology choices being offered.

Our questions or requests for clarification fall into the following main categories:

- **The scheme's reliance on regulation** – Question 2.5 in the criteria matrix asks respondents to comment on the extent to which government regulation is required in order to achieve technical protection goals. In most cases the answer to the question was that regulation is required. We seek clarification of the few responses that seemed to imply that regulation was not required, but where it appears that – *as a technical matter* – the approach cannot be effective without a government requirement of some sort being placed on devices, usually at the analog-digital converter or sink. To clarify, we ask each respondent as a follow-up:

“**2.5** - For those who have indicated that a regulatory mandate is not required, please explain how your approach would guarantee that content usage rights would be signaled, detected, and appropriately interpreted if individuals are legally free to build A-to-D converters, digital sinks, and other devices that do not detect and interpret those rights.”

- **The scheme’s technical impact on content usage** - We believe nearly every submitter misread the intent of Question 4.1 on the “side effects” of approaches. Our understanding is that the question was fairly meant to include a greater understanding of the impact of each scheme on otherwise lawful uses of content controlled under the scheme. To clarify, we ask each submitter as a follow-up:

“4.1 - To what extent does this technology support and to what extent does it preclude, as a technical matter and independent of the rights-allocation choices made by the content owner and distributor, otherwise lawful uses – including fair uses and first sale – of analog works? For example, as a technical matter, does this approach allow for –

- The digital capture of an excerpt of a work marked as “copy never” when it otherwise be permitted under copyright law; or
- The digital copying or use of work for an educational, political, or other purpose that would otherwise be permitted under copyright law.”

Our understanding is that, under most proposed schemes, otherwise legal uses of content could be technically precluded by the adoption of the scheme.

- **Rights conversion** – Most submitters were silent about how digital rights packages would be converted into analog rights sets. For all submitters, we ask:

“2.4 - How does the scheme map detailed digital rights into the necessarily smaller set of rights that can be conveyed in the analog form of the content? Will users automatically have rights “rounded up” or “rounded down” to the closest approximation in the analog rights space?”

- **Privacy** – We have been concerned about the potential collection of personally identifiable information in the context of submitted schemes. While it appears that most schemes would not collect such information, we are concerned that some submitters may not be fully cognizant of the kinds of information that can be collected simply through the creation of transactional records in seemingly straightforward communications, such as inquiries about revocation lists. Therefore, we seek clarification as follows:

“6.1 - To what extent does a digital device complying with the scheme need to send communications to any central authority or other device outside of the personal digital environment? For example, do devices ever need to request a revocation list?”

We would be happy to answer any further questions or provide further clarifications about these additional questions if they would help. Please feel free to contact Alan Davidson, CDT <abd@cdt.org>, or Mike Godwin, Public Knowledge <godwin@well.com>