

**TERM SHEET FOR OCPS LICENSE**  
**Proposed May 7, 2002**

**1. PURPOSE AND SCOPE**

This Term Sheet describes the proposed terms and conditions for licensing Philips' proposed Open Copy Protection System ("OCPS") within a defined "Broadcast Protection Field of Use." The Broadcast Protection Field of Use is limited to use of OCPS for preventing Internet retransmission<sup>1</sup> of unencrypted terrestrial broadcast digital content that contains the Broadcast Flag or is Unscreened Content (as those terms are used in the BPDG Draft Requirements Document), in accordance with the OCPS Specification and Compliance Rules. Licenses will be offered on fair, reasonable, non-discriminatory terms to all Implementers (product manufacturers and component manufacturers) and Content Participants. Although this term sheet contemplates that Philips will administer the license agreements, Philips is open to having administration taken over by a neutral third party License Administrator.

**2. LICENSES AND RECIPROCAL OBLIGATIONS**

**2.1 Licenses.** Implementer licensees will receive a worldwide license to make, have made, use, import, distribute, offer to sell, sell, and develop licensed products and components, using authorized OCPS keys. Content Participant licensees will receive a worldwide license to use and cause to be used authorized OCPS keys to protect unencrypted terrestrial broadcast digital content. Both licenses will be limited to activities within the defined Broadcast Protection Field of Use (referenced above), and the Implementer license also will require compliance with the Specification and Compliance Rules. The licenses will be offered for a nominal fee (discussed below). Philips also contemplates offering a limited "development-only" license (for, e.g., open source hobbyists) under appropriate limitations to ensure continued security of the system, for a reduced fee.

**2.2 Reciprocal Non-Assertion Agreement.** Implementer and Content Participant licensees will be required to grant fellow licensees (and Philips or the License Administrator) a narrow reciprocal non-assert for necessary patent claims (excluding claims for which there are noninfringing alternatives), and for trade secrets and copyright in the device certificates and device keys. The non-assert will be limited to the Broadcast Protection Field of Use and will not apply to product features not required by the Specification.

**3. FEES.**

**3.1 Administrative Fee.** Philips will offer the OCPS licenses for broadcast protection at cost. Implementer and Content Participant licensees each will be charged an annual fee of \$3000 to cover Philips' administrative costs. This fee will entitle licensees (and their Affiliates) to 100,000 device certificates and device keys. The fee will be adjusted for inflation every third year.

**3.2 Ordering Keys.** Additional device certificates and device keys will be available in increments of 100,000 at \$3000 per increment. Philips will provide order forms. As a security precaution, licensees placing large orders may be asked to verify production plans.

**4. SPECIFICATION AND COMPLIANCE RULES.**

**4.1 Compliance.** Implementer licensees must comply with the Specification and Compliance Rules (and the Compliance Rules require compliance with the BPDG Compliance and Robustness Requirements).

**4.2 Changes.** The licenses, Specification, Compliance Rules, and OCPS technology will be defined in detail and finalized prior to the earlier of the following events ("Finalization Date"): (a) final inclusion of OCPS as an authorized "Table A" technology in a binding statute or regulation, or (b) execution of the first OCPS broadcast protection license. Subsequent changes to the license, Compliance Rules, Specification, or the OCPS technology which do any of the following will not be permitted: (i) alter the scope of the Broadcast Protection Field of Use, (ii) cause compatibility problems with devices previously manufactured under an OCPS broadcast protection license, or (iii) add new functionality other than simply improving the functions specified in the Specification in effect on the Finalization Date. The permitted changes are limited to repairing technical defects, bugs, or system hacks. The

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<sup>1</sup> This limitation will be changed, if necessary, to match the final scope of the BPDG Compliance requirements as adopted by statute or regulation.

licenses will require that any proposed change must be announced to all licensees, with a ninety day period for licensees to review and comment on the proposed changes. If any licensee disagrees with the proposed change, and such disagreement cannot be resolved by the parties within thirty days, the issue will go to a neutral arbitrator with sufficient technical knowledge to evaluate the effect of the proposed change and to make a determination. Licensees shall be given one year to implement any changes, from the date the change is adopted or determined by arbitration. An expedited process will be provided for changes necessary to preserve the security of content protected using OCPS.

## **5. REVOCATION.**

**5.1 Revocation.** Keys will be revocable in only three circumstances: (i) The private key becomes public knowledge; (ii) two or more devices have the same public key even if the private key is not known; and (iii) Philips is ordered by an appropriate government body or court to revoke the key.

**5.2 Procedure.** To initiate revocation under criterion (i) of 5.1, the party seeking revocation must present the actual private key to both the device manufacturer and to Philips. To initiate revocation under criterion (ii), the two devices with identical public keys must be presented to the manufacturer and to Philips. To initiate revocation under criterion (iii), Philips must be served with such order pursuant to the applicable legal procedures. Philips will then notify the Implementer against whom the revocation is requested, and that Implementer will have the opportunity to respond to the request. If the revocation is disputed and the parties cannot reach agreement, the issue will be referred to a neutral arbitrator with sufficient technical knowledge to make a determination. Any party requesting revocation must indemnify Philips and Content Participants that carry the revocation information from all claims, damages, and expenses arising out of the revocation.

**5.3 Rescission and Remedies Arising From Revocation.** Philips will not rescind a mistaken revocation. Instead, Philips will replace the device that contains the improperly revoked certificate. This offer is limited to the *first* device containing the particular revoked certificate which is brought to Philips' attention. Subsequent replacements are the responsibility of the manufacturer. Philips and Content Participants will have no other liability related to revocation.

## **6. DISPOSITION OF LICENSED PRODUCTS AND COMPONENTS**

**6.1 Broadcast Protection Licensed Products.** Licensed products may be sold, distributed, or otherwise disposed of in any manner permitted by the license or otherwise permitted by law.

**6.2 Broadcast Protection Licensed Components.** Licensed components may only be furnished to other Implementer licensees (that have signed this license) and "have made" suppliers. The Implementer must contractually bind any "have made" party to dispose of such licensed components only to the Implementer.

## **7. CONFIDENTIALITY AND EXPORT**

Licensees must keep the device keys confidential and will be required to take adequate steps to ensure such confidentiality, including destruction of the original key once a copy is installed on a device. No other confidential information is utilized in OCPS, so at present no NDA is contemplated. Licensees also will be required to comply with applicable export laws.

## **8. TERM/TERMINATION.**

**8.1 Termination.** Each license will continue until terminated due to a breach (as set forth below) or until voluntarily terminated by one of the parties. Licensees may voluntarily terminate at any time by providing 90 days notice, but no fees will be refunded. Philips may voluntarily cease issuing new keys and cease offering to enter into new licenses, by providing one-year advance notice to all licensees. However, Philips may not exercise this right until five years have passed from the Finalization Date (see section 4.2). In the case of breach, parties will be given thirty days after notification to cure the breach, except in the case of a non-curable breach (in which case no advance notice or cure period is required).

**8.2 Effect of Termination.** Upon termination, a licensee must immediately cease using any device keys and device certificates, and return those keys and certificates to Philips within thirty days. In the case of termination for breach, the licensee must also immediately cease manufacturing and selling licensed products.

## **9. WARRANTS, DISCLAIMERS AND LIMITATION OF LIABILITY.**

**9.1 Warranties.** Philips will warrant that (i) as of the Finalization Date, Philips is not aware of any intellectual property that restricts or otherwise interferes with the use and enjoyment of OCPS within the Broadcast Protection Field of Use, (ii) OCPS will perform substantially in accordance with the Specification; (iii) if Philips uses OCPS for the purpose of Broadcast Protection it will be subject to the restrictions imposed on Implementers for use within the Broadcast Protection Field of Use; and (iv) all Implementer licensees will be subject to the Compliance Rules.

**9.2 Limitation of Liability.** No warranties of merchantability or fitness for particular purpose are provided, and Philips shall not be liable for incidental, consequential, special, or punitive damages. Philips' and fellow licensees' aggregate liability to any licensee claimant (including liability under the representations and warranties in 9.1) shall be limited to the amount in fees under the license that Philips received from that claimant in the one-year period immediately preceding the filing of the claim.

## **10. DAMAGES AND OTHER REMEDIES.**

**10.1 Licensee Indemnification.** Each licensee will indemnify Philips against claims in connection with the licensee's use of the Licensed Products or Licensed Components not in compliance with the Specification or Compliance Rules, other unauthorized uses thereof by the licensee, claims caused by the licensee's failure to install error corrections made available by Philips, the licensee's modifications not authorized by Philips, any material breach of the license, and the licensee's use of the technology in violation of law (except for claims that OCPS used in accordance with the broadcast protection license infringes any third party intellectual property).

**10.2 Records Audit and Inspection.** Philips will have a limited audit right, for purposes of policing use of the keys. The audit right will apply only in the event that Philips has a good faith, reasonable belief that a licensee is in breach of the license, and only once per year unless and until the licensee is found in breach.

**10.3 Damages Measure.** In the event of a material breach by a licensee that (1) involves the manufacture or distribution of devices or software that fail to protect Device Keys and Device Certificates as provided by the applicable Compliance Rules and the license, licensee will be liable in an amount equal to its total profits on such devices or software, and in no event less than one million dollars and no more than eight million dollars; and (2) that involves any other provision of the license, licensee will be liable in an amount equal to its profits on the affected devices or software, and in no event more than eight million dollars. For purposes of this provision, a series of substantially related events will constitute a single material breach. A breach shall be "material" only if (a) it is willful or has occurred repeatedly, and (b) has resulted in or would be likely to result in commercially significant harm to other users of OCPS, including but not limited to fellow licensees (including Content Participants) or constitute a threat to the integrity or security of OCPS.

**10.4 Third-Party-Beneficiary Rights.** Implementer and Content Participant licensees will have third party beneficiary rights to obtain injunctive relief within the Broadcast Protection Field of Use. The license will include a fair and efficient procedure for noticing such claims and consolidating the claims of multiple parties.

## **11. MISCELLANEOUS.**

**11.1 Assignment.** The licenses may be assigned with the written approval of Philips, which shall not be unreasonably withheld, or without such approval in the case of corporate mergers or business combinations.

**11.2 Ownership.** The licenses grant licensees no ownership rights in any intellectual property in OCPS or the Specification; such ownership is retained by Philips.

**11.3 Governing Law; Jurisdiction.** The licenses and all third party claims will be governed by the law of New York and the United States. Exclusive jurisdiction of all disputes under the licenses will be in New York, and the United States District Court, Southern District of New York, except that third party claims can be brought in Los Angeles.

**11.4 Most Favored Status.** Philips will offer the licenses to all entities on fair, non-discriminatory, and equal terms. Should Philips be required (by operation of law, court order, or otherwise) to change any provision such that

the provision is materially different than the corresponding term in an existing OCPS broadcast protection license, existing licensees will be given the opportunity to upgrade to such revised license.