



Summary of the IPR Policy of the DVB Project

The IPR policy of the DVB Project ensures that licences to DVB essential patents are available on terms which are fair, reasonable and non-discriminatory. The policy also fosters the creation of DVB patent pool. It has three principal elements:

- Members of the DVB Project have agreed that they will licence to third parties their patents essential to DVB specifications on terms that are fair, reasonable and non-discriminatory;
- The IPRs associated with the DVB Common Scrambling Algorithm are managed under a licensing scheme undertaken by ETSI, acting as custodian, and for a nominal royalty; and
- The DVB Project is fostering the creation of a voluntary agreed-upon joint licensing programme to include a critical mass of patents essential to DVB specifications.

This summary provides only an overview of the IPR policy. For further information please contact the DVB Project Office at the address indicated below.

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Background.

Issues raised by intellectual property rights were identified as a principal concern early in the work of the DVB Project. The concerns were two-fold: First, was there a risk that a patent holder could demand excessive royalties for its patents essential to DVB specifications? Second, if patents essential to DVB specifications were held by many patent holders, would there be a burden – both in cumulative royalties and licensee administration – to obtain licences to produce and exploit DVB specifications?

To respond to these concerns the DVB Project has adopted, in its Memorandum of Understanding, an explicit IPR policy, created a mechanism for licensing for the Common Scrambling Algorithm, and is fostering the creation of a patent pool. Within the DVB Project, work on these issues is led today by a Module on Intellectual Property Rights.

The IPR policy complements, and does not replace, the rules of standard-setting and other bodies.

Commitment to licence.

Each member of the DVB Project has undertaken, under article 14 (MoU), to grant

with respect to any IPRs, owned or controlled by the Member or any of its affiliated companies, [which are] necessarily infringed when implementing any specification approved by the Technical Module . . . , non-exclusive, non-transferable, world-wide licences on fair, reasonable and non-discriminatory terms and conditions under any of such IPR . . . to any third party . . .

(The full text of article 14 (MoU) is attached.) For the DVB Project, “essential patents” are those necessarily infringed – from a technical point of view – when the DVB specification is implemented.

The Memorandum of Understanding provides two mechanisms by which a member can give notice that it cannot provide a licence to its essential DVB patents. For example, if the IPR holder no longer has a free right to grant such a licence it can give notice with 90 days of a notification of approval of a specification by the Technical Module. The time periods specified in the MoU for these two forms of notice have expired for most DVB specifications. It is noteworthy that to date no notice has been given under either mechanism.

The IPR policy does not cover conditional access or the MPEG standard. An amendment to the MoU will extend the policy to interactive services.

Common Scrambling Algorithm

The IPRs associated with the specification for the DVB Common Scrambling Algorithm may be licensed by qualified third parties under an arrangement administered by the European Telecommunications Standards Institute. Some members of the DVB Project were concerned that these IPRs might constitute a barrier for those offering products and services for digital video broadcasting.

For this reason, the four companies developing the Common Scrambling Algorithm named ETSI to act their custodian for the licensing of the IPRs and for managing the grant of export control authorisation from French authorities. The companies also agreed to grant licences for a nominal royalty; ETSI charges a modest administrative fee. In an effort to avoid granting licences to pirates, the companies work with ETSI to vet potential licensees (but no one has been denied a licence on this basis). The scheme and its background are set out in a DVB Blue Book, *DVB Common Scrambling Algorithm: Distribution Agreements*, DVB Document A011 rev. 1 (Sept 96).

This arrangement has worked extremely well. As of September 1998, 81 companies from throughout the world have obtained licences for the Common Descrambling System and 35 for Scrambling Technology.

Fostering of patent pooling arrangements

As part of its IPR policy, the DVB Project is also fostering a process to create a voluntary agreed upon joint licensing programme. Article 14.9 of the Memorandum of Understanding calls for such a patent pool to be in place by 1 October 1998. Under that article, at least 70 percent of all DVB members identified as holding IPRs essential to a DVB specification should agree a joint licensing programme for those IPRs. As a practical matter, it is probable that several pools will be formed by rightsholders, each pool based on the DVB specifications for a means of transmission, such as satellite or terrestrial broadcast. The patent pooling process is intended to be completed within two years from 1 October 1996, but can be completed later for specifications notified by the Technical Module after such date.

The formation of the DVB patent pool is a multistep process which the DVB Project is fostering. The structure of the pooling arrangement, the royalties and other terms of licensing will be set by the patent and other rightsholders which participate in the pool.

To date, the DVB Project has called for declarations, by DVB members and other rightsholders, of patents essential to DVB specifications. Based on these submissions, the DVB Patent Pool Coordinator, together with an evaluation team formed by technical experts in the DVB Project Office, evaluate the declarations and forms a view on whether the patents submitted are essential, that is, necessarily infringed – from a technical view – when implementing a DVB specification. As noted, the IPR policy of the DVB Project does not cover the IPR arising from the MPEG standard itself.

As a result of an assessment of declarations presented in respect of specifications adopted on or before October 1996,

- 19 patents have been found to be essential/potentially essential and are distributed across eight DVB specifications;
- No declared patent rights have been found to be essential/potentially essential for two basic DVB specifications on framing structure, channel coding and modulation for DVB-S (ETS 300 421) and DVB-C (ETS 300 429);
- Nine patent rights have been found to be essential/potentially essential for the DVB specifications on frame structure, channel coding and modulation for DVB-T (ETS 300 744).

The rights are held by four companies who have stated their intention to form a patent pool.

IPR Module

The work of the DVB Project on questions concerning intellectual property rights is undertaken by the IPR Module comprised of DVB members. In addition to the activities described, the IPR Module has also worked extensively on the proposal of legal measures to combat the piracy caused by illicit decoding devices.

October 1998

Declarations on patents essential to DVB specifications, in connection with the voluntary agreed upon joint licensing programme, should be delivered to

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email: iprcons@btinternet.com

The Chairman of the IPRM of the DVB Project can be contacted on

fax: (32 2) 627 1100
email: celtzroth@ssd.com

Information on the licensing arrangements for the DVB Common Scrambling Algorithm may be obtained from the Custodian:

European Telecommunications
Standards Institute
as Custodian for DVB Common
Scrambling Algorithm
Route des Lucioles
F-06921 Sophia Antipolis
France

fax: (33) 4 93 65 47 16

and copies of the DVB Blue Book,
*DVB Common Scrambling Algorithm:
Distribution Agreements*, DVB
Document A011 rev. 1 (Sept 96) from
the DVB Project Office.

Article 14 - INTELLECTUAL PROPERTY RIGHTS

Recognising that the DVB Project is not a standards body, the DVB Project takes the basic position that if specifications made by the DVB group are being adopted as standard by a recognised standards body the IPR policy of that standards body should apply to such standards.

In order to expedite and to support the standardisation process Members commit themselves to the following policy.

- 14.1 Within 90 days from notification of approval of a specification by the Technical Module, each Member shall, on behalf of itself and its affiliated companies, submit to the chairman of the Steering Board a list of all the IPRs owned or controlled by the Member or any of its affiliated companies, to the extent that the Member knows that such IPRs will be necessarily infringed when implementing such specification and for which it will not or has no free right to make licences available.
- 14.2 With respect to any IPRs, owned or controlled by the Member or any of its affiliated companies, under which it or any such affiliated company has the free right to grant or to cause the grant of licences and to the extent that such IPRs will be necessarily infringed when implementing any specification approved by the Technical Module, other than those that are notified under clause 14.1 hereof, each Member hereby undertakes, on its behalf and on behalf of its affiliated companies, that it is willing to grant or to cause the

grant of non-exclusive, non-transferrable, world-wide licences on fair, reasonable and non-discriminatory terms and conditions under any of such IPRs for use in or of equipment fully complying with such specification to any third party which has or will submit an equivalent undertaking with respect to any relevant IPRs it may have or obtain with respect to such specification.

- 14.3 A Member shall have the right up until the time of final adoption as a standard by a recognised standards body of a specification approved by the Steering Board to declare to the DVB Steering Board that it will not make available licences under an IPR that was subject to the undertaking for licensing pursuant to article 14.2 above, only in the exceptional circumstances that the Member can demonstrate that a major business interest will be seriously jeopardised.
- 14.4 As used in this Article 14, "affiliated company" shall mean, in respect of a Member, any legal entity which directly or indirectly controls, is controlled by, or is under common control with the Member, but only as long as such control exists, where the term "control" means the ownership, directly or indirectly, of more than 50 % of the interest representing the right to vote or to manage the affairs of an entity.
- 14.5 This Article covers digital video broadcasting via satellite, cable, terrestrial and broadband wireless (MMDS, LMDS, etc.) means and incorporating the global MPEG2 standard for

- source coding and multiplex to the extent possible together with the relevant aspects of the related receiving equipment (including, in each case scrambling) and does not cover associated matters such as conditional access or interactive services. For the avoidance of doubt Article 14 does not cover the IPR arising from the MPEG standard itself.
- 14.6 Any notifications made by Members in connection with this Article 14 shall not constitute notice from any Member to any other Member (or any Observer) or constitute a charge or basis for a charge, of infringement of any IPR or related damages claim of any kind, for any purpose, under any applicable law.
- 14.7 Each Member hereby agrees, on its behalf and on behalf of its affiliated companies, that, subject to clause 14.9 of this Article 14, all disputes with any other Member of these statutes (MoU) regarding solely the terms and conditions of licences arising in connection with the undertaking in this Article 14 shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with such Rules. Arbitration shall take place in Frankfurt, Germany. German substantive law shall apply. The
- language of the arbitral proceedings shall be the English language unless agreed otherwise between the Members.
- 14.8 Clauses 14.1 through 14.6 of this Article 14 to these Statutes (MoU) sustains in force the provisions of Article 19 of the previous version of the statutes (MoU) adopted by the General Assembly in accordance with the voting procedure pursuant Article 15 of that version and those provisions applied retrospectively.
- 14.9 For any specification approved by the Steering Board clause 14.7 of this Article 14 to the Statutes (MoU) shall come into force after 1st October 1998 unless by this date at least 70 % of all Members or their affiliated companies holding IPRs which have been identified as being necessarily infringed when implementing such specification and subject to the undertaking for licensing pursuant clause 14.2 of this Article 14 (but excluding Members or their affiliated companies, all of whose IPRs were subsequently declared unavailable under clause 14.3 of this Article 14) have notified the Steering Board of a voluntary agreed upon joint licensing program regarding their identified IPRs for such specification.