



From Head of European Affairs, Public Policy

European Commission,
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14 December 2000

Dear Sir,

Consultation Paper: "The Patentability of Computer-Implemented Inventions"

The BBC welcomes the Commission's consultations on the patentability of computer-implemented inventions. The need to promote innovation in this field through the possibility of obtaining patents must clearly be balanced with the need to ensure fair competition in the market place. The proposals set out in the Commission's consultation document seem likely to achieve a favourable general balance in this respect. However, the BBC would be concerned if, as a consequence of patents on software used in digital TV set-top boxes, integrated digital TVs or personal digital recorders, access to information essential to interface and/or interoperate with such software were denied or were available only on payment of excessive licensing fees and/or acceptance of unduly restrictive terms.

Interoperability (the general issue of which is referred to in paragraph (vii) of the Commission's Consultation Document) between digital TV products and between digital TV services is important in allowing the development of competitive markets (and thus consumer choice) in these areas. An important consideration in determining the interoperability of digital TV products and digital TV services is the software and methods used to decode the received digital broadcasts and to allow the users to interact with the same. Key parts of this "software" include the programme/channel navigation system (e.g. the Electronic Programme Guide (EPG) and the "Application Programming Interface" (API) which is used in the delivery and decoding of enhanced and/or interactive digital TV services. Taking the latter as an example, (the issues raised in the example set out below also apply more generally to digital TV set-top box software), to ensure full interoperability sufficient information must be disclosed by the creator/owner of the API software to allow:

- a) The creation, download and operation of applications (e.g. to allow pages of text and graphics to be displayed and the end-users to interact with the same) which run above the API;

- b) The integration of the API into set-top boxes, integrated digital TV sets and other consumer electronics products produced by a wide range of manufacturers.

The current generation of digital TV set-top boxes in Europe use a multiplicity of proprietary standards for the API: interoperability has consequently been rather poor with resultant fragmentation of the market. The Digital Video Broadcasting (DVB) Project's Multimedia Home Platform (MHP) offers an open interoperable standard and thus improved interoperability. However, it should be noted that proprietary solutions will exist in the market alongside the DVB MHP solution for many years to come. With both the existing proprietary standards and the DVB MHP, licences are already needed by developers/system integrators in order to access and use the API. However, if the API software were patented there seems to be a risk that the licensing terms would be more stringent and restrictive. This would be of concern.

Although, the Consultation Document notes that: "If the patent holder does not want to grant a license, compulsory licensing and competition law may force him/her to do so and competition law can also be used to put curbs on abusive license conditions" timescales of actions under competition law may be rather too long to meet the needs of such a fast moving environment. Hence the BBC would suggest, in order to mitigate this risk that consideration be given to circumstances in which licensing on fair, reasonable and non-discriminatory terms might be mandated to ensure access to essential patented software. This approach is consistent with the objectives of Article 6 of the Proposed Directive Com(2000)384 on Access to, and Interconnection of, Electronic Communications Networks and Associated Facilities.

I can confirm that the BBC is willing for its comments, as set out above, to be published on the Commission's website.

Yours sincerely,

David Levy

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