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Joint H.264/MPEG-4 AVC Patent Licence

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The EBU¹ was disappointed to see the News Release issued by MPEG LA on 17 November 2003 entitled “MPEG LA Announces Terms of Joint H.264/MPEG-4 AVC Patent Licence”. (http://www.mpegla.com/news/n_03-11-17_avc.html).

Although MPEG-2 is currently used for all digital TV broadcasts in Europe, it has been widely assumed that AVC would be the preferred standard for the “second-generation” of digital TV services, such as for HDTV broadcasts or for advanced services delivered by non-traditional means, such as UMTS or ADSL. As the EBU has repeatedly affirmed its belief that open standards should be used for all services offered to the public, it has strongly supported the successful standardisation of the AVC standard. Regrettably, the EBU considers that the licence terms and conditions for use of AVC are extremely unfavourable to broadcasters. In particular, the above-mentioned Press Release states:

Over-the-air free broadcast – There are no royalties for over-the-air free broadcast AVC video to markets of 100,000 or fewer households. For over-the-air free broadcast AVC video to markets of greater than 100,000 households, royalties are \$10,000 per year per local market service (by a transmitter or transmitter simultaneously with repeaters, e.g., multiple transmitters serving one station).

This formulation may be sensible for broadcasters in the USA, where the size of the “local market” may be a useful indicator of a station’s profitability or “ability to pay”. However, it is not appropriate for Europe where there is a mixture of local, regional and national broadcasting services. Broadcasters in many European countries use large networks of terrestrial transmitters to provide near-national coverage. If a broadcaster uses such a network to deliver a purely national service, the “market” would seem to correspond to a single market consisting of essentially every household in the country.

On the other hand, if another broadcaster uses an identical network to deliver a mixture of local, regional and national programming, the “market” would correspond to many separate local markets. It is not obvious to us why these two broadcasters should pay different fees for their AVC licences. Moreover, given the large disparities in the economic conditions in the different countries in Europe (and indeed elsewhere in world), it is difficult to justify usage charges based on population size without reflecting the broadcasters’ ability to pay. The AVC licence terms are obviously very onerous for broadcasters in poor countries with large populations.

It is not clear to us from the above text whether the term “over-the-air” is restricted to terrestrial transmissions since satellite or cable delivery are mentioned only in the context of “title-by-title” or “subscription”. It should be noted that many broadcasters in Europe enhance their terrestrial coverage by “free-to-air” satellite broadcasts: for example, broadcasters in small countries with just 2 or 3 million people

¹ The EBU (European Broadcasting Union) represents the interests of 71 national broadcasters in 52 countries in the European Broadcasting Area (which includes Europe, North Africa and the Middle East).

EBU / UER
Ancienne Route 17
Case postale 45
CH - 1218 Grand-Saconnex GE
Switzerland / Suisse

Tel.: +41 (0)22 717 27 05
Fax: +41 (0)22 717 27 20
e-mail: ebu@ebu.ch
Internet: //www.ebu.ch



often make their national services available via satellite, mainly for expatriates. As such satellite services are typically freely available throughout much of Europe, the potential “market” would be enormous if judged simply in terms of the numbers of household able to receive these services. In practice, the audience for such services is often trivial because of the many national languages used in Europe. Similarly, many broadcasters offer services for minorities, such as ethnic groups, which must be made available to the entire population of a country. By assuming that all “over-the-air” services have similar characteristics, the AVC licence terms would have the unfortunate effect of discouraging broadcasters from operating such services.

In the past, many broadcasters in Europe owned their terrestrial transmitter networks – but now most broadcasters depend on commercial providers of transmission services, either via terrestrial, satellite or cable delivery. As a result, broadcasters are becoming agnostic about delivery systems. Furthermore, the concept of “technological neutrality” is now an integral part of EU legislation. Despite these trends, it is interesting to note that the AVC licence terms specifically favour the use of the Internet for delivery of broadcast services by not charging any royalties during the initial term of the licence. As mentioned earlier, it is also not clear whether the AVC licence terms discriminate in favour of satellite and cable delivery relative to terrestrial delivery.

We note that the initial term of the AVC licence expires on 31 December 2010. From the perspective of a user, it is essential to have full transparency about the long-term costs of using a particular technology. Any broadcaster committing themselves to the use of AVC technology must recognise that the IPR holders might unilaterally impose exorbitant fees for the use of AVC technology after 2010. Given that broadcasters offering “free-to-air” services do not control the purchase of receiving equipment by members of the public, broadcasters would have little or no choice but to pay the fees demanded: in essence, broadcasters could be held to ransom by the IPR holders in these circumstances.

The EBU believes that the above issues are so fundamental that, if the current licensing terms are maintained, it may be forced to take the very drastic steps of:

- (a) recommending that EBU Members should not adopt or use the AVC standard;
 - (b) recommending that the DVB Project should not include the AVC standard in any of its specifications.
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