

A Look Across the Atlantic

Politicization of Standards Development
ANSI World Standards Week 2023

Carter Eltzroth
Legal Director DVB

11 October 2023
Washington, DC



WORLD STANDARDS WEEK, 2023

DVB is...

...a business-to-business industry alliance of the world's leading digital media and technology companies.

Working through consensus, DVB designs open technical specifications for the delivery of digital television and other broadcast and broadband services.



DVB is...

...the truly global standard

DVB specifications are used on every continent
and in every country.

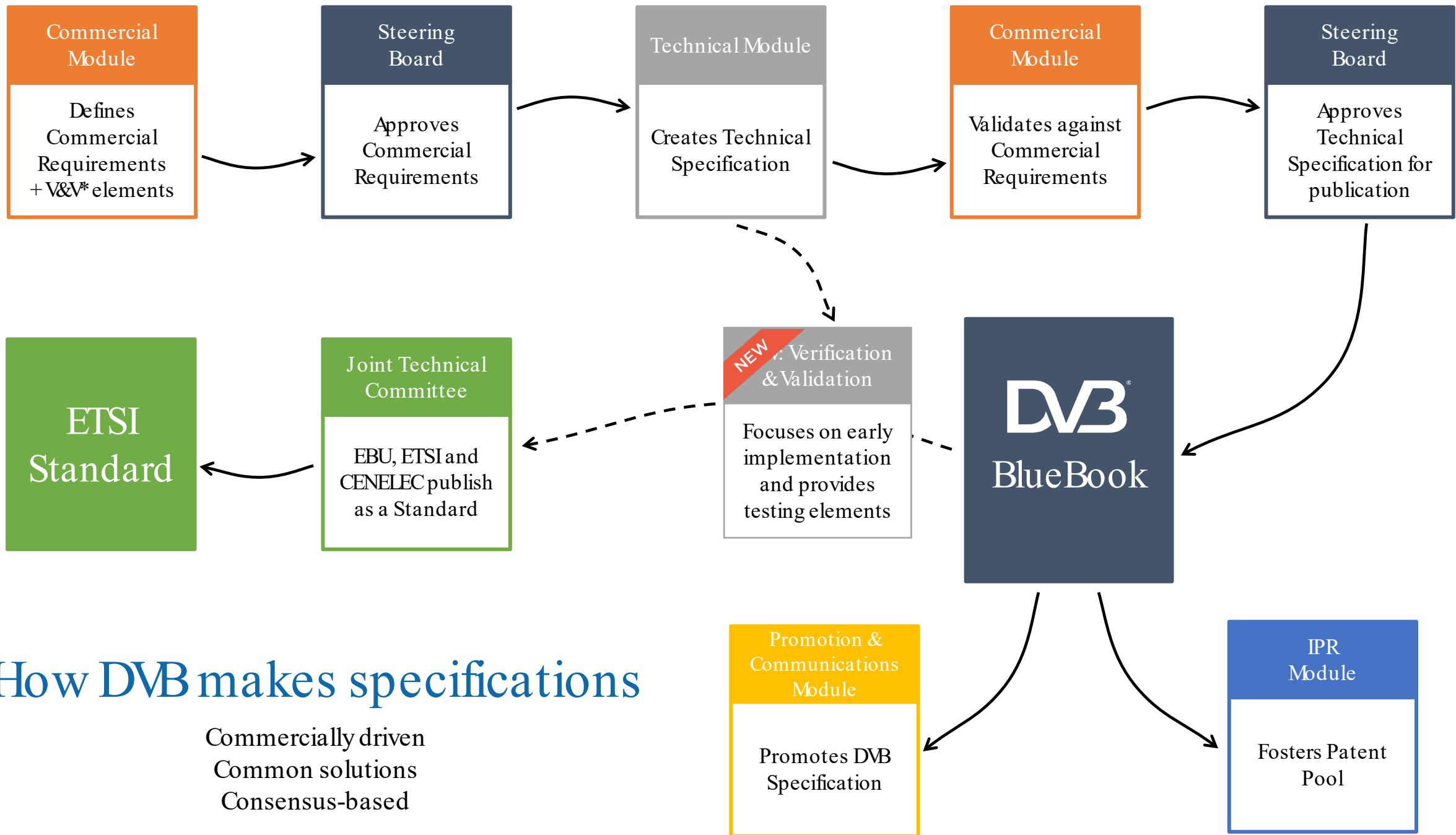


150+ Members

Manufacturers
Broadcasters
Network Operators
Regulatory Bodies
Trade Associations
Research Institutes
Universities

100+ published specifications

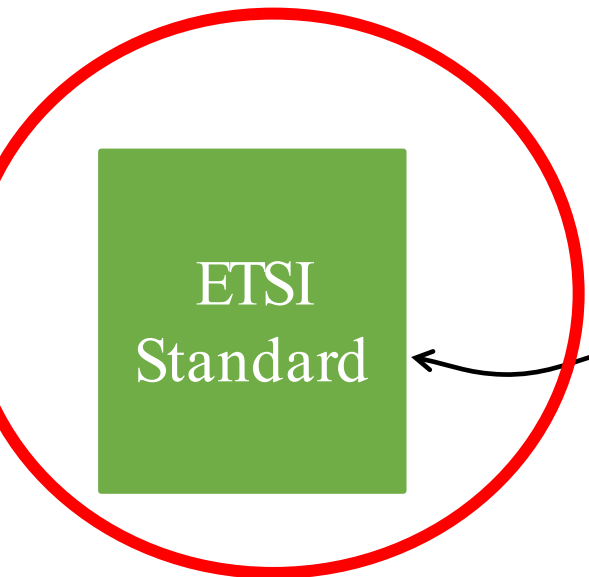
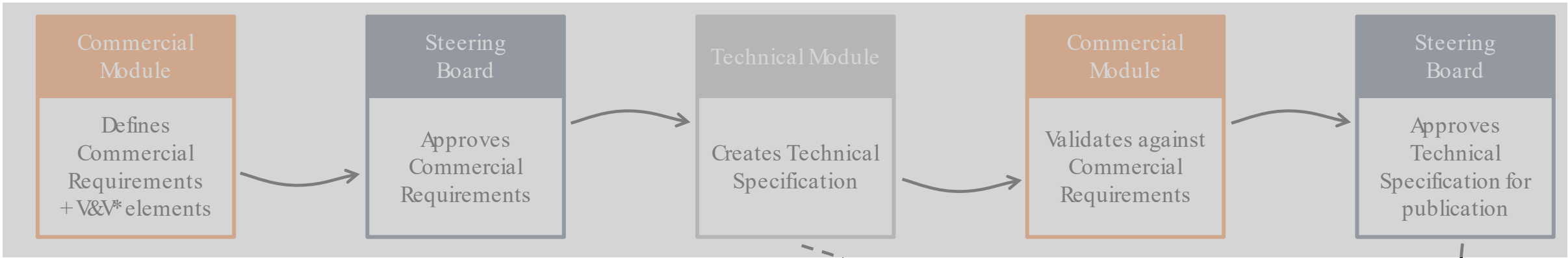
and 40+ implementation guidelines



How DVB makes specifications

Commercially driven
Common solutions
Consensus-based

V&V*: Verification and Validation



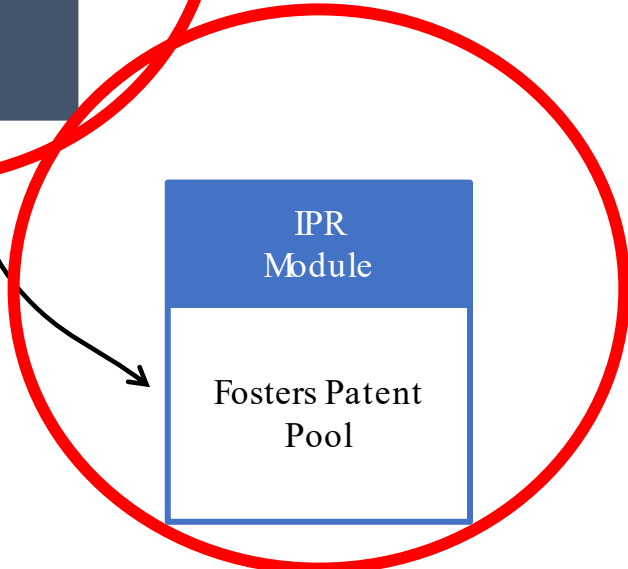
ETSI
Standard

Joint Technical
Committee
EBU, ETSI and
CENELEC publish
as a Standard

NEW: Verification
& Validation
Focuses on early
implementation
and provides
testing elements



DVB
BlueBook



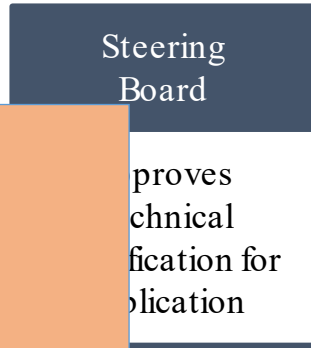
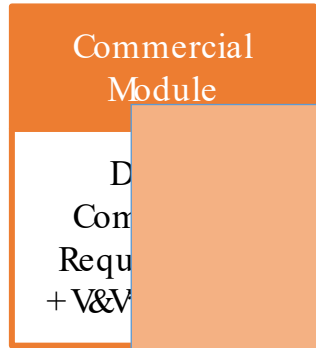
IPR
Module
Fosters Patent
Pool

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Promotion & Communications Module
Promotes DVB Specification

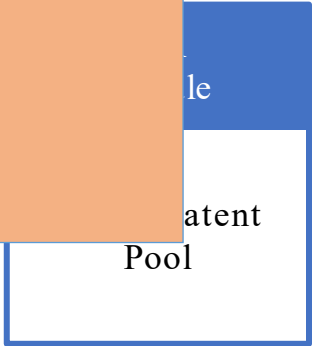
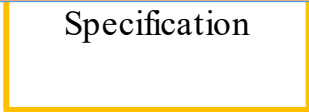
V&V*: Verification and Validation



How

Two issues:
1. How did DVB, a European SDO, handle the BIS named entities issue;
2. DVB's innovative governance rules

Common solutions
Consensus-based



How did DVB, a European SDO, handle the BIS named entities issue?

Question: are [SDO's] draft documents “published” for purposes of US Export Administration Regulations?

If so, [SDO] members (including US members) can continue, alongside “listed entities”, to undertake standards development using existing practices defined, eg, by [SDO] policies and procedures?

OMB Circular A-119: definition of “voluntary consensus standards body”

“Voluntary consensus standards body” is a type of association, organization, or technical society that plans, develops, establishes, or coordinates voluntary consensus standards using a voluntary consensus standards development process that includes the following attributes or elements:

- (i) **Openness**: The procedures or processes used are open to interested parties. Such parties are provided meaningful opportunities to participate in standards development on a non-discriminatory basis. The procedures or processes for participating in standards development and for developing the standard are transparent.
- (ii) **Balance**: The standards development process should be balanced. Specifically, there should be meaningful involvement from a broad range of parties, with no single interest dominating the decision-making.
- (iii) **Due process**: Due process shall include documented and publically available policies and procedures, adequate notice of meetings and standards development, sufficient time to review drafts and prepare views and objections, access to views and objections of other participants, and a fair and impartial process for resolving conflicting views.
- (iv) **Appeals process**: An appeals process shall be available for the impartial handling of procedural appeals.
- (v) **Consensus**: Consensus is defined as general agreement, but not necessarily unanimity. During the development of consensus, comments and objections are considered using fair, impartial, open, and transparent processes.

.....

[And whose] **intellectual property rights (IPR)** policies [often] include provisions requiring that owners of relevant patented technology incorporated into a standard make that intellectual property available to implementers of the standard on nondiscriminatory and royalty-free or reasonable royalty terms (and to bind subsequent owners of standards essential patents to the same terms).

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- (ii) **Balance**: The standards development process is from a broad range of parties, with no single
- (iii) **Due process**: Due process shall include documentation of meetings and standards development, sufficient notice of objections of other participants, and a fair and
- (iv) **Appeals process**: An appeals process shall be
- (v) **Consensus**: Consensus is defined as general agreement. Consensus, comments and objections are considered using fair, impartial, open, and transparent processes.

The criteria for SDO under the Circular are comparable to the test for organisations developing ICT technical specifications under the EU Regulation on Standardisation.

.....
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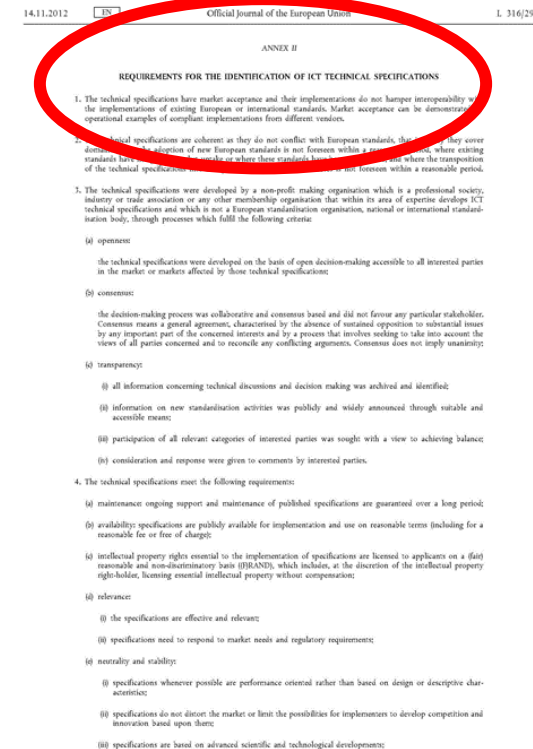
Regulation (EU) No 1025/2012 of 25 October 2012 on European standardisation

ICT TECHNICAL SPECIFICATIONS

Article 13

Identification of ICT technical specifications eligible for referencing

1. Either on proposal from a Member State or on its own initiative the Commission may decide to identify ICT technical specifications **that are not national, European or international standards, but meet the requirements set out in Annex II**, which may be referenced, primarily to enable interoperability, in public procurement.



Annex II of the Standardisation Regulation

3. The technical specifications were developed by a non-profit making organisation which is a professional society, industry or trade association or any other membership organisation that within its area of expertise develops ICT technical specifications and which is not a European standardisation organisation, national or international standardisation body, through processes which fulfil the following criteria:

(a) openness:

the technical specifications were developed on the basis of open decision-making accessible to all interested parties in the market or markets affected by those technical specifications;

(b) consensus:

the decision-making process was collaborative and consensus based and did not favour any particular stakeholder. Consensus means a general agreement, characterised by the absence of sustained opposition to substantial issues by any important part of the concerned interests and by a process that involves seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments. Consensus does not imply unanimity;

(c) transparency:

(i) all information concerning technical discussions and decision making was archived and identified;

(ii) information on new standardisation activities was publicly and widely announced through suitable and accessible means;

(iii) participation of all relevant categories of interested parties was sought with a view to achieving balance;

(iv) consideration and response were given to comments by interested parties.

4. The technical specifications meet the following requirements:

(a) maintenance: ongoing support and maintenance of published specifications are guaranteed over a long period;

(b) availability: specifications are publicly available for implementation and use on reasonable terms (including for a reasonable fee or free of charge);

(c) intellectual property rights essential to the implementation of specifications are licensed to applicants on a (fair) reasonable and non-discriminatory basis ((F)RAND), which includes, at the discretion of the intellectual property right-holder, licensing essential intellectual property without compensation;

(d) relevance:

(i) the specifications are effective and relevant;

(ii) specifications need to respond to market needs and regulatory requirements;

(e) neutrality and stability:

(i) specifications whenever possible are performance oriented rather than based on design or descriptive characteristics;

(ii) specifications do not distort the market or limit the possibilities for implementers to develop competition and innovation based upon them;

(iii) specifications are based on advanced scientific and technological developments;

(f) quality:

(i) the quality and level of detail are sufficient to permit the development of a variety of competing implementations of interoperable products and services;

(ii) standardised interfaces are not hidden or controlled by anyone other than the organisations that adopted the technical specifications.

← openness

← consensus

← transparency

← balance

← IPR

DVB Scorecard

Regulator guidance to standards bodies on IPRs	
Identify IPRs not available for FR&ND	Negative disclosure (90-day window art 14.1 MoU)
Transferee obligation	Art 14.8 MoU
Cash only licensing; no duty to cross-license SEPs	<p>“Scorecarding” is not new: SDO measures its policies and procedures against OMB Circular / EU Regulation to determine:</p> <ul style="list-style-type: none"> a. standards as a basis for USG procurement (Circular) b. if not a recognised standards body, standards for EU MS procurement (EU Regulation) c. compliance with evolving rules on IPR licensing d. satisfying guidelines on participation by “listed entities” e. adherence to criteria to be treated as standards body for antitrust, other rules.
Limitations on injunction	
Lowering cost to determine FR&ND	
Increase certainty that patents are essential	
EU Regulation on Standardization	
Annex II as a measure for standards bodies	criteria
Spill over from litigation	
Standards body process cases: Limit apparent authority of subgroup chairmen	<p>NEW AFFIRMATION NEEDED IN R&P?</p> <p>(Continue to maintain immunity from US litigation)</p>

DVB: Great Standards, Innovative Governance

Public / private partnership: European Commission, MS regulators are active participants

25 years of consensus-based decisions . . . but now increasing invocation of “antideadlock” rules

Cutting-edge IPR policy: FRAND with arbitration and fostering patent pools

DVB directly addressing risk of market dominance exercised through control of technology

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