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
How DVB makes specifications

Commercially driven
Common solutions
Consensus-based

Commercial Module
Defines Commercial Requirements + V&V elements

Steering Board
Approves Commercial Requirements

Technical Module
Creates Technical Specification

Commercial Module
Validates against Commercial Requirements

Steering Board
Approves Technical Specification for publication

ETSI Standard

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

Blue Book

Verification & Validation
Focuses on early implementation and provides testing elements

Promotion & Communications Module
Promotes DVB Specification

IPR Module
Fosters Patent Pool

V&V: Verification & Validation
Two issues:

1. How did DVB, a European SDO, handle the BIS named entities issue;

2. DVB’s innovative governance rules
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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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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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.
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 ITC 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 stakeholders. Consensus means a general agreement, characterised by the absence of formal opposition to substantial issues by any important part of the concerned interests and by a pressure 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:

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

(iv) information on new standardisation activities was publicised and widely announced through visible and accessible means;

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

(vii) consultation and responses were given to comments by interested parties.

4. The technical specifications must the following requirements:

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

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

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

(i) legitimacy:

(i) the specifications are effective and relevant;

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

(k) neutrality and stability:

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

(iv) specifications do not distort the market or limit the possibility for implementers to develop competitive and innovation based upon them;

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

(l) quality:

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

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

#### Regulator guidance to standards bodies on IPRs

<table>
<thead>
<tr>
<th>Identify IPRs not available for FR&amp;ND</th>
<th>Negative disclosure (90-day window art 14.1 MoU)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transferee obligation</td>
<td>Art 14.8 MoU</td>
</tr>
<tr>
<td>Cash only licensing; no duty to cross-license SEPs</td>
<td></td>
</tr>
<tr>
<td>Limitations on injunction</td>
<td></td>
</tr>
<tr>
<td>Lowering cost to determine FR&amp;ND</td>
<td></td>
</tr>
<tr>
<td>Increase certainty that patents are essential</td>
<td></td>
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</tbody>
</table>

#### EU Regulation on Standardization

- Annex II as a measure for standards body conduct
- MoU, Rules & Procedures largely meet Annex II criteria

#### Spill over from litigation

- Standards body process cases: Limit apparent authority of subgroup chairmen
- NEW AFFIRMATION NEEDED IN R&P?
  - (Continue to maintain immunity from US litigation)

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“Scorecarding” is not new: SDO measures its policies and procedures against OMB Circular / EU Regulation to determine:

- a. standards as a basis for USG procurement (Circular)
- b. if not a recognised standards body, standards for EUMS 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.
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
A Look Across the Atlantic

Politicization of Standards Development
ANSI World Standards Week 2023

Carter Eltzroth
celtzroth@helikon.net

11 October 2023
Washington, DC