

Intellectual Property Rights, Conformance Testing
associated with the Globally Executable MHP

Several sections of the GEM specification do not require literal conformance with the corresponding requirement in the underlying MHP specification but allow for comparable substitution. As defined in GEM, a “functionally equivalent” requirement is one that specifies behaviour that performs the same function with substantially the same behaviour as the original specification, as seen from the application’s point of view.

Sister standards fora are called upon to set the specifications for Functional Equivalents. This statement describes the approach that has been adopted by the DVB Project

- to ensure that IPRs essential to these Functional Equivalents are available on terms fair, reasonable and non-discriminatory; and
- to achieve an understanding of the working of the conformance testing regime the sister standards forum proposes for its GEM specification and its relationship to our own.

This statement has been adopted by the November 2002 Steering Board as an interpretation of the statutes of the DVB Project under art 17 DVB MoU. A copy of this statement may be communicated to a sister standards forum so it can understand our internal process and our approach to these issues.

IPRs associated with GEM implementations

Principle of reciprocity. Under article 14.2 of our Memorandum of Understanding, each DVB member undertakes, on its behalf and behalf of its affiliates, that it will grant non-exclusive, non-transferable, world-wide licences, on fair, reasonable and non-discriminatory terms under any of its IPRs necessarily infringed by a DVB specification, for use in or of equipment fully complying with such specification, *to any third party which submits a similar undertaking with respect to such specification.* (This is a summary; for the text of art 14 DVB MoU, see www.dvb.org/tofollow.) Thus the third party must reciprocate by offering, in return for a grant by a DVB member of a licence of essential IPR, a licence of its own IPR essential to that specification on terms fair, reasonable and non-discriminatory.

The process which is set out in this statement extends this principle of reciprocity to Functional Equivalents. Because we expect standards fora to specify the Functional Equivalents, we look to them to confirm to the DVB Project that their members are bound by an IPR policy comparable to our own. In this statement, a standards forum can include a recognised standards setting body, an industry consortium, or similar entity. The term “member” may include any contributor to the standards forum process.

Review of IPR policy of sister standards forum. A sister standards forum seeking to specify Functional Equivalents will be invited to submit its IPR policy, to confirm that its members undertake to grant licences to IPRs essential to specifications of that standards forum on terms fair, reasonable and non-discriminatory, and to provide other relevant materials. (The standards forum may also request that the DVB Project submit to it a copy of its own IPR policy.)

The submission of the standards forum will be reviewed by the IPR Module. If the submission is found to be acceptable to the IPR Module, the Chairman IPRM will so notify the standards organisation. If the submission is found to be unacceptable or if no consensus is reached by the IPR Module on the submission, the Chairman IPRM will report this result to the Steering Board which shall make a final determination.

The submission will be reviewed to determine if the members of standards forum undertake to grant licences to IPRs essential to specifications of that standards forum, including Functional Equivalents, on terms fair, reasonable and non-discriminatory. In this undertaking, there may be exceptions for reciprocity, full compliance with the specification and other customary limitations. It is not expected that the IPR policy of the sister standards forum follows all the elements of the IPR policy of the DVB Project.

Substantive changes adopted by sister forum. Our review of the materials submitted pursuant to this statement, and the rights available to DVB members under Article 14.1 (notice of inability to offer essential IPRs), are based in part on the Functional Equivalents which the sister forum intends to adopt. At the time our GEM specification is revised to reference as “fully compliant” the base specification of the sister forum, the Technical Module will have been informed of these specific Functional Equivalents and the nomenclature for the reference (for example, profile or major version number).

A substantive change to this specification – a new profile or major version change evidenced, for example, by a corresponding name under its nomenclature convention – would require a revision of our GEM specification. This new specification would allow our members, under article 14.1, to review their essential IPRs in respect of the GEM revision. (For the sake of completeness: a minor change to the Functional Equivalents of the sister forum would not require a revision of our GEM specification; and issues

arising out of an article 14.1 notice relating to a GEM revision would not reopen the IPR position for prior versions of GEM.)

Conformance testing

The DVB Project has developed a sophisticated regime for conformance testing and IPR licensing for its MHP. It is based around the MHP Test Suite, distributed by a neutral custodian, which is called upon to receive certificates from each implementer when it has successfully completed the test suite. The custodian also handles some aspects of IPR licensing; the DVB Project Office is responsible for the licensing of the MHP Mark; and we are presently fostering a pooling arrangement that covers MHP and other DVB specifications. All these elements are described at length in DVB blue book A066, *MHP Implementation Arrangements and associated agreements*, available at www.dvb.org/compliance.

Among our goals in the MHP process are interoperability of MHP equipment and ease of IPR licensing. The DVB hopes that the sister standards forum shares these goals and indeed can integrate its own processes with those which we have established.

It will be the task of the IPR Module, based on the submissions of the sister standards forum, to indicate to the Steering Board when the processes, relating to conformance testing and licence administration, adopted by the forum represent an egregious departure from our own, do not otherwise conform to industry practice and would seriously prejudice the interests of the DVB Project or a number of its members. In the more likely case (ie when the processes are harmonious), the IPR Module will make itself available to advise on the means to integrate these processes into the DVB's own.

[Change to GEM specification]

To be "fully compliant" with this specification, equipment shall also be fully compliant with any one of the following other specifications.

- MHP 1.X
- OCAP 1.X

For avoidance of doubt, equipment which is fully compliant with all of this specification apart from the above clause is not fully compliant with this specification.

[letterhead of DVB Project]

[date]

for further information, please contact:
Carter Eltzroth, Chairman IPRM
celtzroth@dvb.org

[Sister Standards Forum]
[address]

Dear []:

Globally Executable MHP: IPR Policy

The DVB Project is pleased that you are considering adopting our GEM specification which, when combined with Functional Equivalents to be specified by you, will provide functionalities very similar to the Multimedia Home Platform.

As part of our work with you, each of us should have an understanding of the other's policies on intellectual property rights, conformance testing and related aspects of our activities. This letter summarises our views on each of these. (I assume that you have separately supplied to the DVB Project the proposed specifications for the Functional Equivalents to be adopted by you.)

1. Intellectual Property Rights. Our IPR policy covers the duty of our members to license intellectual property rights infringed when implementing a specification. The core of our policy is that each of our members undertakes to grant non-exclusive, non-transferable world-wide licences on fair, reasonable and non-discriminatory terms and conditions, under any of its IPRs necessarily infringed when implementing a DVB specification, for use in equipment fully complying with such specification, to any third party agreeing to submit a similar undertaking. This is a summary of article 14.2 of the DVB's Memorandum of Understanding; the full text of our article 14 can be found at www.dvb.org. I attach the statement recently adopted by our Steering Board on the application of our IPR rules to GEM.

It is important for the DVB to know that you have a similar policy, that is, which compels each of your members (or contributors to your specification setting process) to grant, subject to customary exceptions, licences to IPRs it owns which are essential to the Functional Equivalents you adopt on terms fair, reasonable and non-discriminatory. Can you confirm that this is your policy? Could you also send to us a copy of your IPR policy? As part of our GEM process, we will review your IPR policy to assess whether it is comparable to our own.

I also call your attention to the effort, undertaken by the DVB Project, to foster a voluntary licensing programme for IPRs essential to the Multimedia Home Platform. We should discuss whether it would be desirable for your GEM implementation to be included in the ongoing initial work – review of declarations of essential IPR – which, we hope, will lead to one or more patent pools covering MHP and GEM products.

2. Conformance testing. As part of our work on the Multimedia Home Platform, we also developed an MHP Test Suite for use in conformance testing. A central goal has been to ensure interoperability of equipment implementing the MHP specification. Under our regime, a neutral custodian distributes the MHP Test Suite, receives certificates of completion of conformance testing, and handles some IPR licensing. An implementer successfully completing the MHP Test Suite is entitled to the MHP mark. This is a very cursory outline of our regime; a far more detailed description, and related documents, are available in the DVB blue book A066, *MHP Implementation Arrangements and associated agreements*, available at www.dvb.org/compliance.

Could you describe to us the conformance testing regime you intend to undertake in connection with your GEM specification?

We encourage you to consider establishing a regime comparable to the DVB's. As an initial step, it may be suitable for you to contact the companies which developed the test applications incorporated in the MHP Test Suite.

3. Other aspects relating to adoption of GEM. As part of our work together, we'd also like to discuss with you your nomenclature convention and how it signals, for example, a substantive change to a specification adopted by you, or a revision for debugging or to correct errors.

[Further paragraph intended for specific standards forum]

If you have any questions about the DVB's policy on IPRs, conformance testing, our GEM process, or our request, please don't hesitate to contact the undersigned.

Sincerely,

Carter Eltzroth
Chairman IPRM

Attachment: SB interpretation