

Brussels, September 1st, 2009

DIGITALEUROPE reply on European Commission White Paper “Modernising ICT Standardisation in the EU. The Way Forward”

Identification

Your name (compulsory)

Tony Graziano

Country of Residence (compulsory)

Belgium

Are you? (compulsory)

responding on behalf of a company,

responding on behalf of an association,

responding on behalf of another organisation, or

responding as an individual

Could you please tell us the nature of your association or organisation (compulsory)

DIGITALEUROPE, the organisation formerly known as EICTA, is the voice of the European digital technology industry, which includes large and small companies in the Information and Communications Technology and Consumer Electronics Industry sectors. It is composed of 61 major multinational companies and 40 national associations from 28 European countries. In all, DIGITALEUROPE represents more than 10,000 companies all over Europe with more than 2 million employees and over EUR 1,000 billion in revenues.

Are you primarily: (compulsory)

ICT product provider

ICT service provider

ICT product user

ICT service user

N/A

Policy Questions

(a) Do you agree that the attributes for standards to be associated with EU legislation and policies should be integrated in the future ICT standardisation policy as set out in section 2.1 of the White Paper? (optional)

Yes

No

Explain why you agree (optional)

DIGITALEUROPE (DE) supports the introduction of a list of attributes for eligibility of standards. This is an essential move for assessing global ICT standardisation deliverables with respect to the requirements of the public sector. DE particularly appreciates that the list of attributes has closely been derived from the WTO criteria for standards development and established EU policy so that a close linkage to international best practice and agreed principles is given. DE supports the recommendation that these attributes be integrated into the future ICT standardisation policy and provide the baseline for assessing standards and specifications.

The list of attributes provides an agreed base for assessing the eligibility of global standardisation deliverables regarding their use in public policies and in public procurement. An assessment against the list of attributes is essential to ensure that a proper standards development process has been applied by the respective global standards development organisation when developing the respective specification or standard. Each attribute shall have a short and generic definition. Precise interpretation and use shall be under the responsibility of the high level strategy platform.

We fully agree to the IPR attribute, and we believe that it is important that EU standardization policies are based on the principle:

“(3) Intellectual property rights: IP essential to the implementation of standards is licensed to applicants on a (fair) reasonable and non-discriminatory basis ((F)RAND), which includes, at the discretion of the IPR holder, licensing essential IP without compensation. The principle of FRAND is that all parties agree to license their intellectual property present in the respective standards on fair, reasonable and non-discriminatory terms to everyone who wishes to implement the standard. The actual licensing agreement is made between the respective owners of the IP and those who wish to implement the standard.”

However, we observe that the notion “without compensation” is not used elsewhere in the White Paper, and to improve consistency we suggest replacing “without compensation” by wording that is used elsewhere in the White Paper, viz. “on a royalty-free basis”.

(b) Do you agree that the public procurement provisions of CD 87/95 should be updated so that public authorities can more easily acquire ICT services, applications and products that fulfil their specific requirements and in particular an adequate level of interoperability? (optional)

Yes

No

Please explain why you agree (optional)

DE values the proposals around the use of ICT standards in public procurement for updating CD 87/95 “to provide public authorities with standards and specifications that meet today’s needs with regard to public procurement of ICT services and applications”. DE agrees that more flexibility is required in this regard for the public sector and agrees that the Commission proposals will provide the necessary enhancements.

A revised CD 87/95 should complement the provisions in the procurement directives (Dir 2004/17 and Dir 2004/18) and provide a clear policy for referencing in public procurement global standards/specifications that were developed in global fora/consortia which fully meet the attributes of eligibility.

(c) Do you agree with the need to clarify that when they are defined within the context of ICT strategies, architectures and interoperability frameworks, the implementation of standardised interfaces can be made a requirement in public procurement procedures, provided the principles of openness, fairness, objectivity and non-discrimination and the public procurement directives are applied? (optional)

Yes

No

Explain why you agree (optional)

DE agrees with the Commission proposal, in fact DE has long argued in favour of a public procurement practice based on the requirement for standardised interfaces and to put strong emphasis on interoperability. [Please see the DE/EICTA Interoperability White Paper, p. 2 (Executive Summary) and chapter 5, p. 19ff (“Role of Governments”); the DE Interoperability White Paper is available for download following this [link](#) .

DE also supports the principles of openness, fairness, objectivity and non-discrimination in public procurement, as well as compliance with the public procurement directives; and agrees that these principles and practices must apply equally to the use of standardised interfaces in ICT strategies, architectures and interoperability frameworks.

DE welcomes that these positions have now been taken up in a very similar way by the Commission in the ICT standardisation White Paper. But DE urges the Commission to ensure that the principles of openness, fairness, objectivity and non-discrimination, EU public procurement directives, as well as the attributes of eligibility be fully applied in this context, as well. The effective applying of these changes, rules and regulations will facilitate public procurement processes of ICT products, solutions and services and will help promoting and strengthening competitiveness in the ICT industry. Thus, these new provisions will take their share in realising the Lisbon agenda.

(d) Do you agree that standardisation and research stakeholders, in particular ETPs, should be regularly consulted to ensure that relevant European research initiatives contribute most effectively to ICT standardisation activities? (optional)

Yes

No

Explain why you agree (optional)

Overall DE appreciates the pragmatic approach on the relation of R&D and standardisation taken in the White Paper. However, DE would like to express its concerns against considerations of making standardisation mandatory for R&D projects or giving a bonus to those R&D projects which include standardisation into their proposal in a call for tender. For follow-up activities around the relation of R&D and standardisation it should be recognised that (i) there are many R&D projects operating on the level of basic research to which standardisation does not apply at the early stage of technology work the project is engaged in; and (ii)

the transfer of technologies into standardisation is always a business decision and exploitation of R&D results can be done in different ways, not just via standardisation.

Nonetheless, DE agrees with implementing processes that facilitate the transfer of R&D results into standardisation and creates the general awareness for the potential benefits of standards. The suggestions outlined by the Commission go into the right direction since they take a moderate approach emphasising awareness for standardisation at an early stage of research project planning and looking for improved procedures for faster transfer of research results into standardisation. Such a faster transfer could help making technologies and technology components available faster for broad implementation and exploitation. The ETPs can, indeed, play a valuable role in coordinating and facilitating the transfer of research results into standardisation.

(e) Do you agree that standardisers should adapt their procedures where necessary to ensure that contributions from research organisations, consortia and projects facilitate the timely production of ICT standards? (optional)

Yes

No

Explain why you agree (optional)

DE appreciates the suggestion by the Commission to improve these procedures for allowing faster transfer of research results into international standardisation. DE regards this as beneficial for the European industry. DE agrees that it is essential to include fora and consortia which fully meet the attributes for eligibility into target organisations for standardisation. Additionally these fora and consortia should have a global focus and a considerable impact on the market place in the technology area concerned. Only in this way it will help in strengthening the global position and competitiveness of European industry.

(f) Do you agree that Member States should similarly consider regular consultation of standardisation and research stakeholders to ensure that relevant national research initiatives contribute most effectively to ICT standardisation activities? (optional)

Yes

No

Explain why you agree (optional)

DIGITALEUROPE appreciates the suggestion by the Commission with the same observations as made under (d) and (e).

(g) Do you agree that ICT standards developing organisations should, subject to competition law and respecting the owner's IPR: implement clear, transparent and balanced IPR policies which do not discriminate and allow competition among different business models, ensure the effectiveness of procedures for IPR disclosures, and consider a declaration of the most restrictive licensing terms, possibly including the (maximum) royalty rates before adoption of a standard as a potential route to providing more predictability and transparency? (optional)

No and YES

Reason:

Clearly, we do agree that ICT standards developing organisations should, subject to competition law and respecting the owner's IPR: implement clear, transparent and balanced IPR policies which do not discriminate and allow competition among different business models, ensure the effectiveness of procedures for IPR disclosures.

However, the last part (starting with "consider a declaration ...") may give the impression that ex-ante declaration of financial licensing terms always results in positive effects on standardisation, which could lead to the assumption that an ex-ante declaration should be made a mandatory part of the IPR declaration and licensing regime. However, several SDOs such as ETSI allow voluntary disclosure of such terms but do not make it mandatory; their IPR policy is to avoid any discussion of financial terms inside the SDO. Ex-ante disclosure of licensing terms may not always bring positive effects in every case and may even bring risks - the word "voluntary" is necessary. One of the overriding messages that came from the Commission Workshop last October was that "one size does not fit all", even when it comes to ex-ante disclosure of license terms. ¹***The last part differs from the Communication on Standards and Innovation and from the Communication on Industrial Property Strategy in lacking the recognition of SDO's independence and self-governance and in making recommendations that go beyond the usual encouragement to effectively apply the IPR policies that have been set by SDOs to suit their specific situation. Arguably, the*

¹ Five DIGITALEUROPE members can also accept to remove the paragraph embraced between **

*Commission's suggestion for SDO's to consider a declaration of most restrictive licensing terms would put a high level of administrative burden and an increased compliance risk on SDOs and would lead to a fundamental shift in their role. It is not clear whether the terms referred to relate to an individual licensor, or the cumulative rates (of all licensors) for a technology; of course both are relevant. As to the notion "royalty rates" is not clear whether it means rates per patent or per patent portfolio. Members doubt whether any benefit can be derived from disclosing the most restrictive terms without the maximum royalty rate. Applying "ex ante" conditions may result in that the competition will not be on the real price but only a theoretical upper limit resulting in a cumulative theoretical maximum value which significantly affects the position of the standard in international competition. On the other hand***, for some industries and stakeholders, ex ante disclosure could contribute to greater transparency and transparency would lead to better results in standards setting. Ex-ante declarations should in any case take into account comments made by competition law authorities.²

(h) Do you agree with enabling the referencing of specific fora and consortia standards in relevant EU legislation and policies subject to a positive evaluation of the standard and the forum or consortium processes with regard to the attributes list as described in chapter 2.1 of the White Paper? (optional)

Yes

No

Explain why you agree (optional)

DE agrees that the ability for directly referencing specific fora and consortia standards in EU policies is of high importance. Therefore, DE welcomes the proposal to implement a process for cooperation with fora and consortia. This has been a key requirement of the ICT industry since a major part of highly relevant and globally implemented ICT specifications is developed in fora and consortia and thus outside of the formally recognised standards organisations. It is essential to have a process for allowing the direct referencing of such specifications in EU policies. DE supports the proposed process of accepting relevant specific standardisation deliverables rather than organisations and of making the eligibility of the specifications subject to a positive assessment based on the list of attributes.

Direct referencing of standards and specifications from fora/consortia which are relevant and fully meet the attributes of eligibility should be straight forward in EU policies and public procurement. Regarding standards in support of regulation/legislation some process of adoption of the respective standard/specification by an ESO should be available and applied. This process should ensure a fast availability of the standard/specification for the public sector while allowing for some flexibility in the collaboration between the ESO and the forum/consortium. This means, for instance, that there could be different levels of collaboration on the specific standard/specification, from full adoption by an ESO including a re-issuing of the standard/specification (as is currently the case with DVB standards) to something like a base agreement where responsibility and maintenance for the standard

² A minority of DIGITALEUROPE members do not agree with the statement expressed in this sentence in its current form.

remains with the forum/consortium but an ESO is entitled to take over ownership in case a forum/consortium terminates or decides to discontinue the maintenance work. The cooperation process will also have to take account of issues like preserving the visibility of the developing organisation and such like.

In the future process of making standards/specifications from fora/consortia available for referencing in support of legislation/regulation, DE sees a role for the ESOs in organising the consensus-building process of public enquiry in required. However, some fora/consortia have, in fact, implemented highly effective approval processes for their standards. In such cases the public enquiry should be waived.

Regarding the development of standards/specifications, e.g. in the context of the European mandate process, DE supports that specific project work could be given to fora/consortia provided that (i) the respective forum/consortium has key expertise in the specific domain; (ii) the project falls outside of the scope of one of the ESOs and that there is no international standard available yet; and (iii) that the process for developing the standard/specification fully meets the attributes of eligibility. If such a standard/specification is intended to be used in support of legislation/regulation the respective processes for cooperation with/adoption by ESOs need to be applied as discussed above.

(i) Do you agree that better cooperation should be promoted between fora and consortia and ESOs on the basis of a process which would lead to standards issued by the ESOs? (optional)

Yes

No

Explain why you agree (optional)

DE welcomes the proposal to the ESOs to implement better process for cooperation with fora/consortia.

(j) Do you agree with the establishment of a permanent, multi-stakeholder, ICT standardisation policy platform (with a wider membership than the Member State SOGITS Committee previously established by Council Decision 87/95) to advise the Commission on all matters related to the European ICT standardisation policy and its effective implementation? (optional)

Yes

No

Explain why you agree (optional)

DE supports the establishment of a multi-stakeholder High Level Strategy Platform as advisory committee to the Commission on ICT standardisation policy issues. The platform will certainly be instrumental for fostering communication and cooperation amongst stakeholders in ICT standardisation in Europe. DE believes that ICT membership to this platform is critical to provide significant added value to the Commission on the various aspects concerning ICT standardisation.

DE agrees with the main advisory tasks for this platform as outlined in the White Paper. DE expects that a more detailed definition of the tasks and processes of the platform will be done by the platform in its terms of reference and working procedures rather than in an updated CD 87/95.

(k) Do you agree that the ESOs and other ICT standard developing organisations should be invited to review the function and composition of the current ICTSB to make it more efficient? (optional)

Yes

No

Explain why you agree (optional)

DE supports such a review. ICTSB has been named in the ICT study as a potential nucleus for the establishment of a future operational unit alongside the future high level strategy platform. DE would further like to emphasise that the main tasks and responsibilities of the ICTSB need careful consideration in view of the extreme importance of global standardisation for our industry.

General Remarks: Are there any other comments you would like to add concerning the White Paper or review of ICT standardisation policy? (optional)

DE welcomes the adoption and publication of the White Paper by the Commission. DE has been a major supporter of the work developed by the ICT Steering Committee over the last 3 years with lead contributions in the ICT steering committee and with contributions to the three related workshops on the ICT study, on the document “The way forward” and on “Standardisation and IPR”.

DE believes that adoption and publication of the White Paper had been overdue. DE re-emphasises the need for the changes in EU standardisation policy as outlined in the White Paper and the benefits for industry in Europe to strengthen their global position and competitiveness.

DE strongly supports the recommendation for a revision of Council Decision (CD) 87/95 and urges the Commission to avoid further delays and proceed fast with the revision process of the CD for implementing the changes proposed in the White Paper. The CD is, in several parts, outdated and needs to be reviewed for properly covering the developments in the ICT sector over the last 10 to 15 years and for providing an up-to-date legal basis for effective and efficient processes in ICT standardisation and around ICT standards policy for the foreseeable future. Consequently we urge the Commission to get this reform fully prepared during the Swedish and the upcoming Spanish Presidency and ensure the reform happens during the Belgian Presidency in 2010.

DE very much welcomes that the White Paper builds on the consensus reached in the ICT Steering Committee on the required changes to the EU ICT standardisation policy. DE particularly appreciates that the document “The way forward” and the steering committee

document on “Horizontal Issues” have been taken into account for the White Paper to a large extent.

Regarding the legal implementation of the proposals made in the White Paper, DE believes that several details still need to be clarified, e.g. concerning detailed processes, escalation paths and means for conflict resolution, etc.. DE is ready to participate in the further development of ideas and proposals on such details, e.g. in the context of DE's participation in the ICT Steering Committee and by providing further detailed input to the Commission drawing from the broad expertise of DE's membership.

As IPR is seen as one of the most critical issues in this context, it does not come as a surprise that several DIGITALEUROPE members voiced a certain number of serious concerns on more detailed IPR statements contained in section 2.4 of the White Paper.

- As to the 3rd paragraph, it was observed that software standardization does not exist as such. Software is one means to implement standardisation, not more. Some members have questioned whether the reference to “software standardisation” can characterise the role of a chosen subset of SDOs and whether this is a clear, meaningful and useful concept.
- As to the 4th paragraph, in particular the words “cumulative IPR burden”, we observe that this is the logical result of increasing complexity of innovative services and applications. Cumulative IPR is to some extent the “normal” cost allocation for the use of protected technology which comes with its market price. The same holds for other products like cars: if people want navigation systems and airbags, cars logically become more expensive, and there is no reason why this basic economic logic would not apply in ICT standards. However, the real challenge is more about the predictability of cumulative royalty costs in the face of a growing number of essential patents and patent owners.
- As to the 6th and 7th paragraphs, in particular the language “A majority of IT stakeholders” and “many SME stakeholders”, no criteria and data have been provided as to what “a majority” and “many” shall mean and how this is calculated.

ABOUT DIGITALEUROPE

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THE MEMBERSHIP OF DIGITALEUROPE

COMPANY MEMBERS:

Adobe, Agilent, Alcatel-Lucent, AMD, Apple, Bang & Olufsen, Bose, Brother, Canon, Cisco, Corning, Dell, EADS, Elcoteq, Epson, Ericsson, Fujitsu, Hitachi, HP, IBM, Infineon, Ingram Micro, Intel, JVC, Kenwood, Kodak, Konica Minolta, Lexmark, LG, Loewe, Micronas, Microsoft, Mitsubishi, Motorola, NEC, Nokia, Nokia Siemens Networks, Nortel, NXP, Océ, Oki, Oracle, Panasonic, Philips, Pioneer, Qualcomm, Research In Motion, Samsung, Sanyo, SAP, Sharp, Siemens, Sony, Sony Ericsson, STMicroelectronics, Sun Microsystems, Texas Instruments, Thales, Thomson, Toshiba, Xerox.

NATIONAL TRADE ASSOCIATIONS:

Austria: FEEI; **Belarus:** INFOPARK; **Belgium:** AGORIA; **Bulgaria:** BAIT; **Cyprus:** CITEA; **Czech Republic:** ASE, SPIS; **Denmark:** DI ITEK, IT-BRANCHEN; **Estonia:** ITL; **Finland:** FFTI; **France:** ALLIANCE TICS, SIMAVELEC; **Germany:** BITKOM, ZVEI; **Greece:** SEPE; **Hungary:** IVSZ; **Ireland:** ICT IRELAND; **Italy:** ANITEC, ASSINFORM; **Netherlands:** ICT OFFICE, FIAR; **Norway:** ABELIA, IKT NORGE; **Poland:** KIGEIT, PIIT; **Portugal:** AGEFE, APDC; **Romania:** APDETIC; **Slovakia:** ITAS; **Slovenia:** GZS; **Spain:** AETIC, ASIMELEC; **Sweden:** ALMEGA; **Switzerland:** SWICO; **Turkey:** ECID, TESID, TÜBISAD; **Ukraine:** IT UKRAINE; **United Kingdom:** INTELLECT.