DIGITALEUROPE statement on HbbTV Mandate

Brussels, April 2019

KEY MESSAGES

A number of DIGITALEUROPE members are major supporters of the HbbTV Standard and are also leading members of the HbbTV Association that develops the Specification. Whilst members are positive about the continued market adoption of the HbbTV Standard, they have significant concerns about the apparent desire of some national bodies to make it a legally mandatory requirement for all connectable TVs, all TVs or even all IRDs.

1. EECC and European Commission review

A legal mandate would significantly exceed any flexibility given to Member States by the newly approved European Electronic Communications Code (EECC) and would directly impact the free circulation of goods in Europe, which is the first of the four fundamental freedoms of the internal market.

DIGITALEUROPE would like to remind national bodies that between 2004 and 2006 the European Commission extensively and thoroughly examined the issue of mandating digital interactive television standards. At that time, the primary interactive middleware in question was the MHP, but exactly the same principles and conclusions of that review[1] almost certainly apply to HbbTV, even though it is now over ten years later.

The main outcome of this review in 2006 was that "*the Commission concluded that there was no clear case for mandating standards for interactive television*". In addition the final report added that "*the market is best served at the present time by continuing to rely on industry-led voluntary standardisation initiatives.*"

The report also added the important point that "*the Commission may take steps to make certain standards mandatory, if adequate interoperability of interactive digital television has not been achieved.*" However it is the view of DIGITALEUROPE that in many EU territories this condition has and continues to be met through industry co-operation without any need for mandation and it is through such voluntary efforts that HbbTV has succeeded where MHP ultimately failed.

In further detail in the Extended Impact Assessment, the key finding was that "*while the imposition of one or more mandatory standards at European level could offer legal certainty to the various players in the interactive TV value chain and enable economies of scale at European level, it would have negative economic impacts with respect to legacy consumer equipment, and could stifle innovation and create a barrier to market entry.*"

Much of the rest of the report relates to market conditions at that time but another key finding was that "*interoperability cannot be guaranteed by simply imposing in law a standard like MHP; it can be achieved*

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[1] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52006DC0037

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when stakeholders act together to implement a standard with a common aim of securing interoperability"
and "*a new paradigm of consensual approach and cooperation on technical interoperability has emerged in the area of High Definition TV, and this appears as a promising model for solving other interoperability issues.*"

The final conclusion of the review highlighted the benefits of the "MHP Implementation Group". Although DIGITALEUROPE has no vested interests in the HbbTV Association, it is our view that this association continues to best meet the interoperability needs of the interactive TV market in Europe and that this industry-led cooperation between all stakeholders is a far superior approach than individual Member State mandation of selected technologies.

2. Complexity to validate and test

A legal obligation to support HbbTV in all TVs or in all connectable TV sets in turn creates a requirement for CE Manufacturers and Regulators to be able to check whether a product in the market is definitively and fully compliant with HbbTV. This is not possible today.

Whilst the HbbTV Association produces an HbbTV Test Suite that Manufacturers can check their implementation against, the HbbTV Test Suite does not provide full coverage of the Specification and we do not consider the HbbTV Test Suite suitable as a measure for legally mandated Regulatory compliance. According to HbbTV.org[2], "*while the HbbTV test suite is designed to be as clear, complete and comprehensive as possible and constitutes a major goal of HbbTV, it is not possible to guarantee that the test suite has a complete coverage of the specification. The test suite alone does not provide a definitive measure of receiver compliance and makes no provision for testing application compliance*."

Further, when we consider that on the content creation side there is no method with which to validate an HbbTV Application, there is potential for great confusion in the market. Should an interoperability problem arise between a broadcast application and a TV's HbbTV implementation, regulatory compliance of the TV is complex to determine. Therefore the absence of any way to test an HbbTV Application's compliance with the HbbTV Specification also causes concern in terms of our ability to respond if a broadcast HbbTV application causes problems with a TV in the field. CE Manufacturers must always have a way to remedy a worst-case scenario of a non-compliant HbbTV application disrupting normal operation of a TV in the field, by disabling HbbTV until a problem is resolved.

The HbbTV Specification is a powerful and feature rich technology, which in turn demands significant processing power and internet capability in a TV set. Most European TV markets see a demand for a range of devices at different price points to meet the needs of the consumer. In turn, manufacturers offer a range of TVs with different feature sets and price points to address the market demand. A legally binding mandate to support HbbTV in all TV sets would introduce significant cost to TV sets at the lower end of the product range, potentially burdening consumers with unnecessary cost when seeking an entry level TV.

3. Potential IPR issues

DIGITALEUROPE's final concern relates to the risk of IPR claims that may be raised by parties who sit outside the ETSI IPR policy, due to the complexity of the HbbTV Specification. While ETSI IPR policy includes a procedure to handle such risks, as long as HbbTV is not legally mandated, manufacturers have the freedom

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[2] https://www.hbbtv.org/overview/#how-it-works

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to remove IP that is subject to unreasonable non-FRAND claims, should such claims arise. Whereas if HbbTV is legally mandated, this option may no longer be available and manufacturers may be prevented from selling products until the ETSI resolution process has completed. Consequently, there is a risk that some IP holders may exploit this to their commercial advantage as leverage to exert non-FRAND licence terms for IPR. This risk of non-FRAND IPR results in uncertainty and commercial risk to members of the ecosystem. At least one DIGITALEUROPE member has already been subject to spurious licence claims against essential IPR in the HbbTV Specification.

4. Conclusion

DIGITALEUROPE members remain supporters of HbbTV and encourage its adoption. However, for the reasons described above we would recommend that the legislators consider giving HbbTV a RECOMMENDED or OPTIONAL status instead of a MANDATORY status. In addition, we recommend that national bodies develop pragmatic logo programs to promote HbbTV implementation and the benefits of local HbbTV services to consumers, and to foster interoperability through cooperation.

DIGITALEUROPE is happy to discuss its concerns on this with local regulators as needed.

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ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE's members include in total over 35,000 ICT Companies in Europe represented by 66 Corporate Members and 40 National Trade Associations from across Europe. Our website provides further information on our recent news and activities: http://www.digitaleurope.org

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