

Brussels, October 7, 2010

We are writing on behalf of the Business Software Alliance<sup>1</sup> (BSA) to express our concern with regard to the proposed *European Interoperability Framework (EIF) for European Public Services*<sup>2</sup>.

We urge you to intervene with regard to Section 5.2.1 of the EIF, which is ambiguous and could be read to mean that the most innovative European and foreign companies are not welcome to participate in standards processes if they own patents in the relevant technologies and seek compensation for their inventions if those patents are made part of the standard.

We urge you to vigorously advocate the language be amended to include an express endorsement of technologies made available on fair, reasonable and non-discriminatory (FRAND) terms, which will allow European innovators who own patents and other intellectual property (IP) to participate in standards setting, provided their technologies are made available on FRAND terms to any person who wants to implement the standard.

In its current form, EIF Section 5.2.1 encourages public administrations to extend preferences to "open specifications" when establishing eGovernment

<sup>1</sup> The Business Software Alliance ([www.bsa.org](http://www.bsa.org)) is the world's foremost advocate for the software industry, working in 80 countries to expand software markets and create conditions for innovation and growth. Governments and industry partners look to BSA for thoughtful approaches to key policy and legal issues, recognizing that software plays a critical role in driving economic and social progress in all nations. BSA's member companies invest billions of dollars a year in local economies, good jobs, and next-generation solutions that will help people around the world be more productive, connected, and secure. BSA members include Adobe, Altium, Apple, Asseco Poland S.A., Attachmate, Autodesk, Autoform, AVEVA, AVG, Bentley Systems, CA Technologies, Cadence, Cisco, CNC/Mastercam, Corel, Dassault Systèmes SolidWorks Corporation, DBA Lab S.p.A., Dell, HP, IBM, Intel, Intuit, Kaspersky Lab, Mamut, McAfee, Microsoft, Minitab, NedGraphics, O&O Software, PTC, Progress Software, Quark, Quest, Rosetta Stone, SAP, Scalable Software, Siemens, Sybase, Symantec, Synopsys, Tekla, and The MathWorks.

<sup>2</sup> The EIF is to be adopted on 11 October 2010 as an Annex to the Commission's pending Communication "*Towards Interoperable European Services*"

services. Section 5.2.1 goes on to state that a specification (i.e. a standard adopted by industry consortia) is fully open only if "the specification can be freely implemented and shared under different software development approaches."

**EIF Section 5.2.1 will undermine the innovativeness of European standards.** Section 5.2.1's requirements that an open specification be "freely implement[able]" and capable of being shared and re-used are ambiguous, and suggest that the standard must be free of intellectual property rights (IPR). In practice, however, many of today's most widely-deployed open specifications incorporate patented innovations that were invented by commercial firms, which are licensed to implementers on FRAND terms, including WiFi, GSM, and MPEG.

FRAND licensing policies encourage innovative companies large and small to contribute their patented innovations to specifications, while at the same time ensuring implementers of a standard can utilize those innovations on fair terms. It allows inventors to charge a reasonable fee when their technologies are incorporated into specifications provided the technology is made available on FRAND terms to any person who wants to implement the standard.

In contrast, if the EU adopts a preference for royalty/patent-free specifications, this undermines the incentives that firms have to contribute leading-edge innovations to standardization—resulting in less innovative European specifications, and less competitive European products.

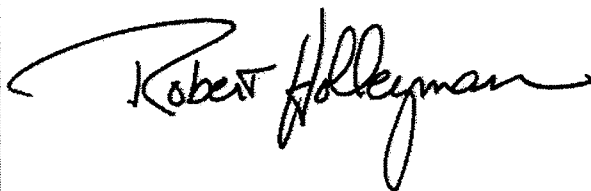
**EIF Section 5.2.1 is also inconsistent with Community policy and industry practice.** Not surprisingly given its benefits, the EU has consistently endorsed FRAND, including in EU policies on IP, standards, competition, and trade. Leading international standards bodies and consortia also endorse FRAND, as do industry stakeholders in and outside the information and communications technology sector. Each of these stakeholders recognizes the important link between IPR and standardization—and also recognizes that FRAND-based standards are highly flexible and can be implemented in a broad range of solutions, open source and proprietary; in fact, most OSS licenses are entirely compatible with FRAND-based licensing.

**Without clarification, the ambiguity in the EIF Section 5.2.1 also sets a dangerous precedent for third countries.** China, for example has sought to use standards policies to create market access barriers for European and other foreign innovators. The Commission has opposed these efforts, including in its comments on the Draft Chinese Administrative Regulation relating to Standards and IPRs. The ambiguity of the EIF's proposed preference will no doubt compromise the Commission's ability to maintain its robust defense of Europe's IPR holders.

We strongly support the EU's efforts to foster interoperability among eGovernment services and solutions and in order to fulfill European governments' need to provide cost-efficient e-government services to citizens.

Yet we believe that the EIF's proposed preference for IP-free specifications will undermine, rather than advance this objective, European standardization, competitiveness and interoperability over the longer term. For these reasons, we encourage you to call for the amendment of Section 5.2.1 to include an express endorsement of FRAND. We appreciate your support.

Yours sincerely,

A handwritten signature in black ink that reads "Robert W. Holleyman, II". The signature is written in a cursive style with a large, sweeping initial "R".

Robert W. Holleyman, II  
President and Chief Executive Officer  
Business Software Alliance

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