DVD makers complain they are forced to overpay

By David Lawsky
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Independent makers of pre-recorded DVDs have told the European Commission that a coterie of big companies use patents to choke their income, violating European Union law.

But those who license the technology say they follow the patent licensing rules for pre-recorded optical discs.

The independent fabricators make a quarter of the 3 billion DVDs produced annually worldwide and believe the situation is at a turning point because new, high-capacity Blue Ray and HD DVD discs for high-definition movies debut next year.

"There will be new formats coming and we feel it's important that a line should be drawn in the sand by regulators," said Guy Marriott, head of the International Optical Disc Replicators Association (iODRA) in Geneva.

The European Commission had no comment. It draws a delicate line between legal patent pools and illegal cartels, and can fine companies up to 10 percent of turnover for violations.

Marriott's members say licensing fees take a bigger bite of revenues than in the past for the multi-hundred million dollar industry.

Fabricators pay three consortia which hold patents covering software that dictates the way data is written to discs.

Philips acts as the licensing agent for one group, which also includes Sony and Pioneer.

Phillips "follows a proven patent licensing model that has been implemented worldwide for more than 20 years," a company spokeswoman said, noting the firm had not seen the complaint.

Toshiba handles the licensing for a group which also includes Matsushita, Hitachi, JVC, Time Warner and Mitsubishi.

A Toshiba spokeswoman called the allegations meritless, saying the group's "licensing program has always been and remains in full compliance with EU competition law."

MPEG LA acts as a one-stop shop for patent holders of the MPEG-2 compression technology.

"The MPEG LA licensing program is widely accepted throughout the world as a reasonable and convenient means of addressing MPEG-2 intellectual property obligations," said MPEG LA's director of marketing Larry Horn. He said he has not seen the complaint.

Horn said MPEG LA has been careful to do nothing beyond its commitments to the European Commission.

FAIR AND REASONABLE

MPEG LA's logo says it provides "fair, reasonable, non-discriminatory access" to patents, as patent pools are generally required to do.

But iODRA's Marriott says corporations and MPEG LA make them pay a bigger percentage of costs than they paid in the late 1990s.

Prices have crashed from the late 1990. DVD fabrication for movie companies once fetched $1 a disc but large runs
nowadays are worth 30 cents or less.

But licensing fees have only dropped from 16.6 cents to about 11 cents. In percentage terms the independents pay twice as much now for licenses.

"That's not fair and reasonable," said Marriott.

The Phillips spokeswoman said its pricing took into account both research and development costs and "the expected markets and the expected lifetime of the product."

Marriott also argues patent holders promised to evaluate patents to determine which were essential, but that he has not seen the results. Those on the other side say they have in fact provided charts that meet the requirements of the Commission.