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CONSIDER THIS

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38 The Minnesota Open Formats Bill: Bandwagon or Babel?

Standards, as compared to laws, are created through something called a "voluntary consensus process." This process operates on an opt-in model, so if you wish to participate and have the time and wherewithal to do so, you are free to join in so long as you meet whatever eligibility requirements the organization in question may impose. Once in, you are free to act in your own self-interest, without any strict obligation to other members or constituencies, although the common goal is expected to be the creation of effective standards.

That goal is important, because standards directly and indirectly affect many constituencies. These constituencies include vendors, consumers, and government users, among others, and such categories are often referred to "stakeholders." If the active membership of an organization includes representatives of all such groups, then there is the potential for the final standard to be representative of the desires, and responsive to the needs, of all stakeholders. On the other hand, without the participation of a given affected class, the likelihood of achieving such an ideal result decreases.

In a democratic government, the goals are similar, but the means of achieving them are rather different. First, legislators are directly responsive to their electorates, rather than being merely individuals that live in the same districts, and therefore may (but also may not) have a common self-interest with their neighbors. Second, there is an active and free press in many countries that is more than interested in exposing shenanigans whenever they occur. Again, most stakeholders in a country like the United States are well organized and represented by national organizations with lobbyists, in order to make sure that those that make the laws know what each segment of voters (and potential campaign contributors) is looking for. And finally, there is a web of laws and regulations that provide an overarching rule set, prohibiting (for example) various types of discrimination, guaranteeing free access to the polls, and many other systemic safeguards to protect the rights and interests of the various classes of stakeholders.

These two systems, one consensus based and the other founded on the election process, usually operate independently. But at times they do intersect. For example, governments as well as private sector organizations set standards in areas such as health and safety, although only government can enforce such standards through laws and regulations. But governments also recognize the value of the voluntary consensus process, and defer to the many accredited and unaccredited standard setting organizations (SSOs) that have been founded over the years.

This results in greater efficiency in government, because legislators can focus on those tasks for which formal government is best suited, while the public benefits from the many thousands of standards that are created without tax dollars by privately funded SSOs standards. Today, these standards are increasingly essential to the operation of modern life, and to the operation of government itself.

In recognition of this value, the United States federal government decided ten years ago this month to get out of the standard setting process to the greatest extent possible. Through passage of the Technology Transfer and Advancement Act, the federal agencies were directed to use voluntary consensus standards (and even de facto standards set by single vendors, if they are widely adopted) wherever possible, rather than create "government unique" procurement specifications that could lead to higher contracting costs.

All of which sounds very neat and orderly in principle. In practice, of course, the public and the private sectors do not always interoperate so coherently or with such productive results. After all, standards are not what could be called a high profile topic for legislators to focus on, and therefore well-intentioned efforts can sometimes be launched that may require refinement before they are capable of achieving the greatest good.

Which, at last, brings us to my usual invitation, which, as always, is to consider this…

It is perhaps no surprise that Minnesota, a blue state like Massachusetts and heir to the political traditions of the Prairie Populists, should be the situs of a bill to require "open data formats." In spirit, this is a good thing, as it indicates a broadening appeal for open document format standards that, if missing, would be worrisome. But is the bill as submitted an encouraging signal that a bandwagon effect is taking hold, or a step towards standards Babel, and a step backwards? The question is a serious one for a variety of reasons, and cuts to the heart of why standards exist.

Clearly, the definition of an "open standard" contained in the Minnesota bill includes many of the attributes that make a standard useful, such as requirements intended to prevent "lock-in" by a single proprietary vendor. But inherent in the concept of a standard is wide acceptance - and if everyone comes up with her own definition of what an "open standard" means, then there is no "standard" for what a "standard" is. If that happens, then the whole economic basis for standardization collapses, because the incentive for a vendor to support a standard is to reach and sell to a large potential customer base with a single, uniform product. Unless each customer specifies the same standards requirements, then the vendor can expect no return on its investment in compliance. Moreover, the citizenry suffers as well, because the software that someone needs to exchange a document with her state congressman in St. Paul may not be what's required to communicate with her senator in Washington.

Does this make the Massachusetts policy bad as well?

The answer is no, because there is one crucial distinction between the Massachusetts policy, and the bill filed in Minnesota. That difference is that the Massachusetts bill refers to whether or not a specification has been approved by a recognized standards body, while the Minnesota bill (thus far) does not. In doing so, Massachusetts is doing several productive things:

- First, it is piggybacking on the good work that has already been done elsewhere, through recognized and respected standards organizations, in creating "open" standards for specific purposes.
- Second, it spares the State the burden of evaluating every product on its own, rather than being able to rely on evaluations (and sometimes certifications) that are already available in the marketplace for standards-compliant products.
- Third, it is taking advantage of the appeal to vendors that a recognized standard provides - that there will likely be many customers that will include compliance to the standard in their purchasing requirements. This means that there will be likely to be many more products offered, with more attractive and varied features, and with greater price competition.
- Finally, the products purchased will be likely to be interoperable with far more products outside the state, enhancing the utility and efficiency of the software purchased.

By omitting reference to recognized standards, the sponsors of the Minnesota bill are actually taking a step backwards in the area of government purchasing. When the federal government abandoned the costly procedure of commonly using "government unique" standards, it sought to abolish the kind of procurement policies that led to the infamous $200 toilet seat, and other exorbitantly expensive purchases by federal agencies. In the IT world, that meant entering the more competitive, varied world of "COTS" (commercial off the shelf software).

The lesson, then, is clear. When legislatures and IT divisions of governmental entities wish to move towards open standards - a commendable goal - they should not create their own definition of what open standards are, but make use of the definitions of standards - and the products that meet those standards - that already exist.

This does not mean abandoning the ability to choose among standards. For example, a government could state preferences as among various standards. For example, a law could state that a standard that prohibits proprietary extensions would be used over one that doesn't. This would permit current purchasing from the field of standards and products that exist, while signaling the way to get more business in the future from the adoption of tighter standards.

There is also a second moral to the story: it is (in my view) very appropriate and desirable for governmental agencies (such as IT departments) to restrict purchasing to products that support open standards, wherever possible. It may even be useful for legislatures to require this - but only if those that craft the bills get the language right, and if that language survives floor debate and the reconciliation of drafts, which is not so easy to manage in the rough and tumble of the legislative process. A flawed bill, once passed, may needlessly restrict purchasing in a way that may cause long term harm.

Hopefully, the Minnesota legislature will add in references to established standards if the bill moves forward. Hopefully, too, this will become the norm in any other states that decide to walk down the same road.

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