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EDITORIAL

A CALL FOR COMMUNICATION BETWEEN COMMUNITIES

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For twenty-five issues we have refrained from tackling that most persistent of all questions in standard setting: what, exactly, does "open" necessarily mean?

Given how much consensus exists over many attributes of "openness" and how little is left to debate around the edges, it is surprising how much heat has been generated on this topic, and how long the debate has continued. But continue it does, and with the convergence of open source and open standards, the question is currently generating more heat than light.

The impetus for finally addressing the topic of openness in this issue is a recent open letter delivered by 29 individuals in the vanguard of the open source movement to OASIS - the Organization for the Advancement of Structured Information Standards (disclosure: this author is legal counsel to OASIS). In that letter, the authors called for a boycott of all standards created, and all standard setting conducted, by OASIS that fail to meet the authors' concept of openness (see our <Feature Article> in this issue).

While this ultimatum represents the extreme edge of conduct in an ongoing debate, it nevertheless underlines the importance that is attached to rules and licensing terms, and the special status of openness as an essential element of the standard setting process.

So what, precisely, does "open" mean? The answer is, "it depends".

How can that be? In fact, a more useful question is, how can that not be, given that we are not referring to revealed truth, or laws of physics. Standards, after all, are tools, and not ends in themselves. And tools must be tailored to suit the task at hand. Over time, tasks can change. When they do, so also must the tools.

It must also be remembered that openness arises from not one, but multiple attributes of a single process, each of which is subject to evolution in thinking as well as to external forces. Those attributes include how a standard is created, what obligations are imposed on those who participate in the development process, how the resulting standard is made available, and to whom. Open source methodology is an example of how each of these attributes can evolve internal to the process, while the changing state of patent law is an example of externalities that impact the process.

Of course, the above observations are in part disingenuous, for in fact there are certain aspects of "openness" that seem to be durable, and therefore are likely to be fundamental. They include equal rights of participation in the creation of standards, and equal access to the end results. But they do not necessarily include whether or not royalties may be charged for the privilege of implementing a standard. To analogize to a common term in standard setting, a royalty-free requirement is not an essential element of standard setting today (except in open source projects), although it is an increasingly popular option.

Since royalty free usage of standards is not deemed to be essential in all areas today, it therefore follows that it is not an essential attribute of "openness". Perhaps it will become normative in the future, at which point it would achieve fundamental status. What does underlie "openness" in most definitions today has to do with concepts of trust, equality and fairness. Royalties have nothing to do with any of these

concepts (or, at least, they need not, when their imposition is accepted by those voluntarily participating in the standards development process). Royalties relate to economic models, and open source is only one economic model that is in use today.

Can royalties and restrictive licensing terms transcend classification as purely economic criteria? Yes, a very reasonable argument can be made that this is so in fundamental areas where their imposition might preclude the very existence of a valuable creation (such as the Internet and Web), or might strangle innovation (as in operating systems). But it would be hard to reach the same conclusion with respect to a printer driver.

What the open source community has ignored in delivering its manifesto to OASIS is the fact that there are something like one million standards in use around the world today. Most may indeed be implemented without payment or troublesome restrictions, and no one would disagree that such standards are more welcome than those that bear a fee. But there are many successful standards that do bear an implementational tax without objection by the implementers that pay them. It can therefore not be denied that while free use is attractive, it is not essential to every situation. In some settings, the opportunity to charge royalties may even be advantageous, as it may provide incentives to innovation that would not otherwise be brought to bear.

Proponents of the open source model also ignore the existence of other ways of managing implementation costs. In some industries, patent pools are created in order to provide for a single point of licensing to avoid imposing too great a burden on end users. Market forces then determine whether a cell phone (for example) can bear a total royalty payment of \$1.83 per unit or \$1.86, and then that amount -- and no more -- is divided among the owners of the patents that would be infringed by the manufacture of that cell phone, no matter how numerous they may be.

At the end of the day, the concept of "openness" subsumes both fundamental as well as political attributes in the same sense that "freedom" does. Despite the nuances and fashions of the times, the definition of freedom that is acknowledged today is not so very different from that which was posited by Greek philosophers over 2,000 years ago. In this sense, some elements of values-based definitions do appear to be fundamental, because the principles upon which they are based are sufficiently robust to continue to resonate over long periods of time.

But definitions also have political dimensions, which arise from the way in which underlying values are understood, and the circumstances under which they are called into play, at a given point in time.

To Plato, freedom meant the ability to do whatever one wished. At the same time, the Greek philosophers tempered their expectations of the enjoyment of freedom with their understanding of moral responsibilities -- as we continue to do today. Then, as now, even free people acknowledge the need to pay taxes, and the necessity of submission to the rule of law. Still, the degree of tolerance for limitations on personal freedom varies between libertarians and democrats, even though both honor the same core values.

In fact, the finer details of what "openness", like freedom, may mean are what we agree they should mean at any point in time, under the circumstances and attitudes of that time. And in a world of 6 billion souls, there will certainly be different and equally valid visions of how openness can be expressed even at the same time.

To summarize: Just as a typical Swede understands the socio-economic role of government somewhat differently than does an average American, though each regards herself to be equally free, so also can different standards regimes peacefully coexist, without one laying claim to being more "open" than the other. Or, at least, so we believe.

Open source is without question one of the truly revolutionary and important developments in the history of commonalities. But the day of traditional standard setting is not yet over, nor is the usefulness of specifications at an end. As a result, it is critically important that the interface between open source and open standards be properly defined and agreed upon.

But just as it is true when creating an interoperability standard to permit two IT systems to exchange data, so also must the interface between open source and open standards be designed to facilitate the coordinated use of each system as it natively exists, rather than dictate that either system must fundamentally change.

We believe that the interface between open standards and open source should be addressed and developed in the same way that any other standard setting challenge is addressed - through an open process. Sending an ultimatum in the pursuit of "openness" is at best oxymoronic, and at worst, an example of the type of proprietary abuses against which open source advocates have so rightly inveighed.

At the Republican convention in 1964, Barry Goldwater famously intoned that "Extremism in the defense of liberty is no vice. And moderation in the pursuit of justice is no virtue." We do not find that line of thinking to be any more satisfactory today than did the majority of American voters in November of that same year.

At the end of the day, whatever "openness" precisely means, it certainly honors the value of consensus among all interested and affected parties. Calls for boycotts against those that have a different understanding, but the same commitment, to common goals can never be considered to be part of an "open" effort to advance the state of the standard setting art.

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