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## STANDARDS BLOG:

### “Openness,” Customers and the IDABC

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Any old standards hand forced to choose the single most disputed issue in standard setting over the past decade would likely respond with a deceptively simple question: “What does it mean to be an “open standard?”” A similar debate rages in the open source community between those that believe that some licenses (e.g., the BSD, MIT and Apache licenses) are “open enough,” while others would respond with an emphatic *Hell No!* (or less printable words to similar effect).

That’s not too surprising, because the question of what “open” means subsumes almost every other categorical question that information and communications technology (ICT) standards and open source folk are likely to disagree over, whether they be economic (should a vendor be able to be implement a standard free of charge, or in free and open source software (FOSS) licensed under a version of the General Public License (GPL)); systemic (are standards adopted by ISO/IEC JTC 1 “better” than those that are not); or procedural (must the economic and other terms upon which a necessary patent claim can be licensed be disclosed early in the development process)?

One school of thought holds that there should be no single definition of “openness” in standards (or open source code), as this would in some cases needlessly over-constrain the development of standards (or source code). By this line of reasoning (and narrowing the focus just to standards), “openness” should be conceptualized not as an absolute, but as something that exists along a pragmatic continuum, with progressively stricter requirements applying depending upon contextual factors, such as who will use the standard or software, for how long, and for what purpose.

Underlying the debate is the necessity of balancing the rights of the owners of any intellectual property rights (IPR) that might be infringed by the implementers of a standard with the benefits to society and industry that can be obtained from wide adoption – a complex question, when it is remembered that the owner of such a

claim can often gain significant indirect as well as direct benefits from such adoption. Given that standard setting is a consensual process and that it is not possible to compel a non-member to make any promises at all, it is hardly surprising that different balance points have been found within any given organization, and in particular among diverse industry niches.

Traditionally, openness related discussions leading to the adoption of IPR policies have been “bottom down” in nature, in that those that develop standards have decided what they are, and are not, willing to do. In other words, the opinion of the customer has been largely missing from the equation, because they are usually underrepresented, when they are represented at all, in the standards development process. This, because although customers are welcome at the standards development table, few have taken up the invitation. Nor should this be a surprise, because participation in standards development is time consuming and expensive, and individual customers usually have much less to gain or risk from how a standard turns out than a vendor. Consequently, most customers have traditionally been content (or at least willing) to take what they have been given.

Now, however, this dynamic is shifting with respect to one particular type of customer, and the agents of change are governments, in their capacities both as customers and as the developers of policy.

Governments have always been interested parties in standards development, and especially in areas such as health and safety. But governments have largely played a passive rather than an influential role when it comes to developing ICT openness requirements.

*Governments today are beginning to offer new answers to the question, “What does it mean to be an ‘open standard’?”*

With governments in many nations becoming enamored with the potential for something new called Open Government or “eGovernment,” however, legislators and bureaucrats alike are taking a harder look at what openness does – or should mean. While only some candidate attributes of openness are relevant to interactions with citizens (e.g., accessibility), others are meaningful to governments as consumers of ICT standards for their internal usage, and still others are vital with respect to the performance by governments of specific public functions, such as archival storage, where such standards were never relevant before.

But where to begin? Some governments are only now awakening to these concerns. But others have been studying these issues for some time. Their emerging conclusions are instructive, and can serve as an important roadmap for those that are only now beginning their examinations.

In January of 2005, the European Commission created a new programme, called the *Interoperable Delivery of European eGovernment Services to public Administration, Business and Citizens* (IDABC), and charged it with investigating how the EU could move forward into a future in which information could freely flow not only among EU agencies, but also between these agencies and those of EU Member States (MS), and between all of the above and their citizens. Such a

system would not (indeed, could not) be forced upon the MS, but the recommendations and models developed in collaboration between the IDABC and MS could be employed by the MS as they saw fit to achieve the common goal.

Last year, the IDABC released drafts of several new deliverables that demonstrate what must be one of the most thorough, thoughtful and pragmatic efforts ever mounted to envision what an interoperable eGovernment should look like, and how it can be achieved. These deliverables include a lengthy study intended to serve as one of the principal bases for version 2.0 of the European Interoperability Framework (EIF 2.0), and a Report and Proposal for a Common Assessment Method for Standards and Specifications (CAMSS) that can be profitably employed by governmental entities of any type, anywhere. Importantly, each of these represents a substantial advance in the examination and determination of what should constitute openness in government ICT standards from both an aspirational as well as a pragmatic perspective.

Significantly, one of the cornerstone requirements for achieving interoperability identified in the original (2004) version of the EIF is the use of open standards, which in EIF 1.0 are defined as having the following minimum attributes:

- 1) The open standard is adopted and will be maintained by a not-for-profit organisation, and its ongoing development occurs on the basis of an open decision-making procedure available to all interested parties (consensus or majority decision etc.).
- 2) The open standard has been published and the standard specification document is available either freely or at a nominal charge. It must be permissible to all to copy, distribute and use it for no fee or at a nominal fee.
- 3) The intellectual property - i.e. patents possibly present - of (parts of) the open standard is made irrevocably available on a royalty free basis.
- 4) There are no constraints on the re-use of the standard.

These recommendations met with wide, but not universal, approval. Some vendors of proprietary products were especially unhappy that a requirement to charge a royalty could potentially invalidate a standard from consideration for inclusion in a tender for government procurement. The IDABC countered by noting that such royalties could make interaction with government too expensive for some citizens, and that royalty-bearing standards could help entrench dominant vendors, decrease competition, and result in less innovation.

The new basis document for EIF 2.0 goes even further, noting in part as follows:

Since the publication of version 1 of the EIF, several practical cases have however shown the necessity to clearly point out the extent of this definition and to clarify its applicability...

- Open standards or technical specifications must allow all interested parties to implement the standards and to compete on quality and price. The goal is to have a competitive and innovative industry, not to protect

market shares by raising obstacles to newcomers. Also, we want to be able to choose open source solutions or proprietary solutions on the basis of price/quality consideration...

- Practices distorting the definition of open standards or technical specifications should be addressed by protecting the integrity of the standardisation process....
- This definition reflects a consumer's viewpoint, with his needs uppermost in mind....

The last point, perhaps, is the most significant, when read in the context of those that precede it. It puts vendors on notice that while they cannot be forced to make their patent claims available for free, or on terms conducive to licensing under Free and Open Source Software (FOSS) licensing terms, or prevented from advancing their agendas preferentially in compliant development venues (subject to the limits of anticompetition laws), neither can they force governments to buy their wares.

These documents, which were posted for public comment through September 22 of last year, represent but the latest deliverables of a carefully considered and practical process. The definition and requirements for open standards that the IDABC has developed are both sound in substance and founded on real and well articulated justifications.

I believe that the EU is following a path that is leading towards the type of interoperability within governments, and between governments and citizens, that should serve as a model for governments everywhere. Hopefully governments around the world will so conclude as well. If they do decide to follow along on the carefully considered roadmap that the IDABC and the Member States of the EU have laid out, vendors as well as citizens will benefit, as achieving a global consensus on what constitutes an open standard for government procurement must inevitably serve to rationalize and expand the market for compliant products.

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