

STANDARDS BLOG:

U.K. Comes Out for Royalty-Free Standards for Government Procurement

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The U.K. has become the latest country to conclude that for information and communications technology (ICT) procurement purposes, “open standards” means “royalty free standards.” While apparently falling short of a legal requirement, a Cabinet Office [Procurement Policy Note](#) recommends that all departments, agencies, non-departmental bodies and “any other bodies for which they are responsible” should specify open standards in their procurement activities, unless there are “clear business reasons why this is inappropriate.”



Under the new Procurement Note, “open standards” are defined as standards that:

- result from and are maintained through an open, independent process;
- are approved by a recognised specification or standardisation organisation, for example W3C or ISO or equivalent. (N.B. The specification/standardization must be compliant with Regulation 9 of the Public Contracts Regulations 2006. This regulation makes it clear that technical specifications/standards cannot simply be national standards but **must also** include/recognise European standards);
- are thoroughly documented and publicly available at zero or low cost;
- have intellectual property made irrevocably available on a royalty-free basis; and
- as a whole can be implemented and shared under different development approaches and on a number of platforms.

The U.K.’s decision is noteworthy for several reasons. First, the W3C, a consortium (as compared to a national or European standards body) is specifically mentioned as being an acceptable source of open standards. The EU has for some time been

Quixotically wrestling with the question of whether or not to allow standards developed by consortia to be specified in procurement (Quixotic, because of course so much of their ICT procurement already necessarily depends heavily on such standards to enable interoperability).

Second, the U.K. decision is a repudiation of the recent decision of the European Commission to retreat from a royalty-free definition when it released its long-awaited new version of the European Interoperability Framework, originally issued in 2004 with a royalty-free (and otherwise more strict) definition of open standards for government procurement purposes.

India had [already adopted](#) (in November of last year) a definition of open standards that went even farther than the original EIF 1.0 definition of open standards. But unlike India, a comparative newcomer to the practice of automatically patenting everything in ICT that can be patented, Britain has been part of the high tech intellectual property business regime since its inception. In other words, specific British technology companies will lose as well as gain from the U.K.'s adoption of such a policy, while Indian companies are likely to only gain from the decision of their government.

Finally, the British decision, in comparison to that of the E.C., illustrates where and how lobbying is most likely to be successful. Why? Because as [I noted last December](#), it was largely due to the lobbying of major ICT companies (represented in part by the Business

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Software Alliance) that the EC backed down on the EIF definition of open standards. I ended that blog entry by noting that, "Those that believe that open standards, liberally defined, are vital to open government will now have to look for innovation elsewhere."

In a way, what we are witnessing on a global scale is reminiscent of a dynamic often seen in the U.S. Controversial legislation introduced at the national level will often fail, only to later succeed at the state level (stringent environmental and global warming initiatives launched in liberal "Blue States" are an example). The reason is that special interest groups will under most circumstances pay and focus more on legislation of national impact than they will on threats that relate to only a single state. Similarly, it may be easier to kill a bill of weak national appeal at the federal level than it may be to defeat the same legislation in a single state where local support is strong. Years later, after these laws and their results become public, the national *Zeitgeist* and laws sometimes fall in line, and national adoption of a law pioneered in one or more states follows.

It is the same process that I expect we are now seeing in the E.C. The revision of the EIF process was a matter of overall EU applicability, and therefore of broad and drawn out community debate and lobbying pressure. At the level of an individual country, however, there is much greater freedom to set government procurement policy less visibly, and thus a greater ability to set policy rapidly and with less attention from lobbyists.

And indeed, the U.K.'s decision to adopt something much closer to the original EIF requirement of open standards than the watered-down recommendation found in EIF 2.0 appears not to be an isolated decision. I have recently heard (first hand) that at least two other E.U. member states plan to continue to honor the original EIF definition rather than the new one. And why not? The new definition deliberately avoids imposing exact requirements (because that's what the lobbyists asked for).

The challenge for traditionalists wishing to keep the royalty-free genie in the bottle therefore appears to be increasing. If additional nations jump on the bandwagon already sent rolling by India and the U.K., there may simply be too many moles for the lobbyists to whack. And if three metaphors in two sentences aren't enough to get that point across, I've got more where those came from.

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