

## STANDARDS BLOG:

### EC Takes One Step Forward, Two Steps Back in Openness

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Last Thursday the European Commission took a major step forward on the “openness” scale. The occasion was the release of a new version of the European Interoperability Framework (EIF) which definitively endorsed the use of open source friendly standards when providing “public services” within the EU. This result was rightly hailed by open source advocates like [Open Forum Europe](#). 

But the EC took two steps backward in every other way as it revised its definition of “open standards,” presumably reflecting IT industry efforts (e.g., by the [Business Software Alliance](#)) to preserve the value of software patents.

In this blog entry, I’ll review the seven-year long process under which the “European Interoperability Framework” (EIF) first set a global high water mark for liberalizing the definition of open standards, and then retreated from that position.

If one were to choose the single most disputed question in standard setting over the past decade, it would have to be the deceptively simple question, “What does it mean to be an ‘open standard?’”

That’s not entirely surprising, given the emotions that are aroused in the commercial community when it comes to standards. Indeed, the simple question of what makes a standard “open” subsumes almost every difficult, standards-related issue that information and communications technology (ICT) vendors and users are likely to disagree over, whether economic (should a vendor be able to be implement a standard free of charge, or in open source software licensed under a version of the General Public License (GPL)?), systemic (are standards adopted by traditional standards bodies “better” than those developed by consortia?), or procedural (must the economic and other terms upon which a necessary patent claim can be licensed be disclosed early in the development process?).

Perhaps nowhere has the proper definition of “open” been subjected to a more thorough and broad based public debate than in the course of creating the EIF, a process that began in 2003 ([version 1 of the EIF](#) was released in 2004). The [latest version](#) was announced last Thursday after a multi-year process of drafting, exposure for public comments, and finalization (a related FAQ is [here](#)).

The original draft of the EIF is a fascinating document borne of the decade’s long process of bringing the varied nations of the EU into an increasingly integrated federation. Part of that process involves facilitating the ever more vital exchange of electronic data between many countries, while respecting the sovereignty of each, including in the areas of language and technology choices. The difficult goal of the EIF is to raise the degree of interoperability between these many national ICT systems, and the EU-wide adoption of a common framework of standards necessarily plays a central role in achieving this goal.

The most spirited debate in the revision of the EIF focused on whether adopters should be able to implement an open standard without paying patent royalties, including in open source software. This discussion was of a piece with the ongoing battle within the EU between those vendors that would like to expand the patentability of software in Europe and those that wish to avoid that result.

But other issues of importance were at stake as well, including whether governments should give equal consideration to consortium standards. Given the predominance of consortium-developed standards in the IT, and to a lesser extent CT world, any answer other than a (in some cases grudging) “yes” was inevitable.

*What are we to make of such a significant step backwards on the open standards front?*

In the original version of the EIF, a strong preference for open standards was expressed, and those standards were deemed to have 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.

This definition 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 body responsible for drafting the EIF 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.

Those charged with revising the original version of the EIF did not step back from their earlier position, however, and presented a powerful case for the use of open standards in the [Draft document as basis for EIF 2.0](#) released for comments in July of 2008, which included the following comment in the EIF Version 2.0 public draft released last year:

### **8.3 Openness and interoperability**

Openness of standards or technical specifications is important for public administrations because of its relationship with interoperability, freedom and choice:

- openness lowers barriers to market entry, thereby widening the field to competition – leading to more choice, better quality and lower prices;
- openness spurs innovation by allowing more talent to contribute ideas and advance the state-of-the-art;
- openness strengthens the position of consumers vis-à-vis their suppliers;
- openness enables consumers to combine off-the-shelf products with custom-built products and turn-key systems;
- openness facilitates interoperability through transparency;
- openness enhances security through transparency;
- openness ensure access to information and services, now and in the future, as it avoids lock-in situations, making such access dependent from specific products;

Any Public Administration must be independent of any particular supplier in terms of having permanent access to and control over its own data....

For all of these reasons, the overwhelming desire of Public Administrations in Europe is for a clear migration towards *openness*.

Many vendors were not at all happy with that direction, and the final version of EIF 2.0 released last week reflects significant concessions on the definition of open standards.

The correlative portion of the substantially revised document now reads as follows:

If the openness principle is applied in full:

- All stakeholders have the same possibility of contributing to the development of the specification and public review is part of the decision-making process;
- The specification is available for everybody to study;
- Intellectual property rights related to the specification are licensed on FRAND [i.e., fair, reasonable and non-discriminatory] terms or on a royalty-free basis in a way that allows implementation in both proprietary and open source software.

Gone from the definition are the specific requirements relating to what type of organization maintains the standard and how it is developed, other than to require open contributions and public comment. Moreover, the language is more ambiguous. For example, does “contribute,” in the first bullet, imply equal influence over the final form of the standard, or only equal opportunity to offer technology at the inception of the development process?

Also missing is the requirement that an open standard must not only be available to all, but available for free, or at nominal charge. The deletion of the right to copy and distribute on that basis is less surprising, given that most traditional standards developers rely heavily on revenue from selling their standards, and therefore carefully control distribution.

The preference for royalty-free implementation has also been dropped. No distinction now appears between FRAND and FRAND-free standards, even within the more aspirational (openness is most fully realized) language of EIF 2.0 as compared to 1.0 (the minimum requirements of open standards are). Finally, the right to “reuse” the standard has also been dropped, but this has traditionally not been an issue in any event.

Indeed, the only major liberalizing, as compared to dilutive, change is the clear statement that an open standard is one that can be implemented in open source, as well as proprietary software products.

What are we to make of such a significant step backwards on the open standards front?

In part, the dilution of the process related requirements may be intended to more clearly open the door to consortium-developed standards, which often do not embrace all of the specific process steps mentioned in the 2004 language (e.g., consensus decisions as compared to majority voting). But if this was the intent, then only very minor changes to the original language would have been required.

The policy thrust of the EIF appears to be diluted as well. Instead of setting a high “standard for standards” that might provide incentives for vendors to create specifications within processes that are most open, EIF 2.0 takes a more world-weary approach, noting:

However, public administrations may decide to use less open specifications, if open specifications do not exist or do not meet functional interoperability needs.

In all cases, specifications should be mature and sufficiently supported by the market, except if used in the context of creating innovative solutions.

However one views the changes, the retreat on the definition of open standards is stark. Perhaps the most intriguing question, though, is why we see such a disparate treatment of open source and open standards?

On the open source side, the explanation almost certainly derives from the passage of time. In 2004, open source software was less commercially important to vendors, less widely deployed by governments, and less familiar to policy makers. Today, virtually every software vendor of note incorporates open source software into its core strategy, and virtually every government runs open software as key components in its data centers.

Moreover, many software vendors also regard every dollar of sales that Microsoft loses as a dollar that is freed up to be spent on its own products. No surprise, then, that the majority of IT vendors would support the open source friendly change to the EIF.

The extensive dilution of the open standards language, however, reveals a different dynamic. In my view, this is best explained by the desire of most IT vendors to preserve the freedom to push for royalty free standards when it serves its individual needs, and to resist that requirement when the imposition of royalties provides greater rewards. And also to choose, on a case by case basis, the standards development venue (more open or more closed and easily controlled) that best meets their need.

For whatever reason, it appears that the EC has decided to abandon the leadership position that it took in 2004 for setting the bar on standards suitable for government adoption. Those that believe that open standards, liberally defined, are vital to open government will now have to look for innovation elsewhere.

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