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EDITORIAL:

The U.K. Cabinet Office Solves the Open Standards Policy Conundrum

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Governments certainly have more than enough to concern themselves with these days – financial crises, natural disasters and terrorism, to name just a few. Given that's the case, it's surprising that so many are finding the time to worry about the kind of standards with which the products and services they purchase comply. But they are.

That's the case in the EU, where the final terms of version 2.0 of the European Interoperability Framework (EIF) were the subject of heated debate, resulting in a watered-down definition of what should be regarded as acceptable standards for enabling communications between EU member nations. It's also the case within those EU member states that are considering adopting definitions similar to the formulation that appeared in the original, 2004 version of the EIF.

It's somewhat ironic that this discussion is occurring not in the context of standards generally, but with respect to information technology (IT) standards, where the standards of greatest concern are those that enable interoperability. I say ironic, because once a standard has become universally

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adopted in the marketplace, customers – including governments – have little choice but to adopt it as well, because interoperability standards not only enable government IT systems to interact with each other, but also with the citizenry. Moreover, one great economic benefit that can be gained from procuring products and services that comply with widely adopted standards is that this practice protects the purchaser from becoming locked in to the proprietary products and services of individual vendors.

In some cases, there's a public policy as well as an economic concern: governments everywhere are seeking to move as many citizen-facing services and information on to the Internet, because more services can be provided more conveniently to more people at a far lower cost than on a face-to-face basis. But that can only happen where citizens can afford computers and Internet connections, and if the computers and software they choose to purchase can, in turn, interoperate with government systems.

This new, electronic relationship between the public and private sectors raises standards policy considerations that never existed before. Can the standards required by government procurement officers be implemented for free, and if not, do they significantly drive up the cost of accessing government resources? And were the processes under which these standards developed truly open, allowing the best technology to rise to the fore, or were they manipulated by proprietary vendors to serve their own interests to the exclusion of other classes of stakeholders?

The words that have traditionally been used to define technical specifications that have been developed in such a way as to address these concerns are 'open standards,' implying openness in not only the

process under which the standard was created, but also the transparency of that process, and ensuring the availability of any patented technology necessary to implement the standard on fair and reasonable, non-discriminatory (FRAND, or in the U.S. just RAND) terms. To truly level the playing field among vendors, many now advocate that a proper definition of open information and communications technology (ICT) standards should include the ability to implement the standard in both open source software as well as in proprietary products, and preclude a requirement to pay royalties or other fees to owners of any patent claims that would be unavoidably infringed by a compliant implementation (Essential Claims).

As noted earlier, the great quandary for both procurement officers and policy makers alike has been how relevant an openness definition can really be. After all, in the case of interoperability standards, selecting an open standard where the rest of the market has already unanimously adopted a less open standard would be an exercise in futility, since interoperability could only be easily achieved among government systems, and not between government systems and the rest of the world.

As a result, every definition of openness that has been incorporated into any government procurement rules to date has contained an exception that frequently swallows the rule: to wit, an open standard (however defined) must be specified in procurement unless it would be impractical to do so. The result is that, even given the vast purchasing powers of governments, the adoption of an openness definition will have no effect on the future behavior of either the standards setting organizations that create standards, or on the vendors that use them.

Until now.

In an elegant bit of definitional creativity, the United Kingdom Cabinet Office has come up with an answer to this conundrum. The achievement can be found in a document titled [Open Standards Principles: For software interoperability, data and document formats in government IT specifications](#). What the authors have pulled off involves a bit of clever time travel, transferring the costs of later breaking the hold of a proprietary vendor back to the initial bidding process, and grossing up the vendor's bid accordingly.

In other words, when an IT contract is put out for bid, a respondent that does not intend to deliver products that comply with 'open standards,' as defined by the Principles, must include a fair estimate of the government's later switching costs into the vendor's initial bid, as if those costs would need to be paid at the time of procurement rather than at the time of product replacement. The result is that a vendor responding with a bid to provide products compliant with open standards would be at a substantial advantage to a vendor offering only its own proprietary offerings.

Moreover, the definition of open standards included is the kind that precludes charging for Essential Claims or inclusion of licensing terms that would preclude implementation in open source software.

The elegance of the approach is that it provides proprietary vendors that have to date provided only half-way compliance with open standards - or (worse) that have locked in their customers by adding proprietary extensions to existing standards - with immediate incentives to fully comply with the type of standards that are most effective to avoid vendor lock in.

The Foreword to the Principles makes no attempt to disguise the fact that breaking the hold of large, proprietary vendors on government customers was a major goal in crafting the Principles, while at the same time creating more commercial opportunities for small and medium size businesses.

As one might imagine, the public comment period that preceded the release of the final version of the Principles attracted a broad and energetic range of responses. All of this input was taken into account, but despite substantial pressure from some commercial interests, the Cabinet Office held firm on its key terms.

Clever though the Cabinet Office's gambit may be, it will not immediately solve all aspects of the openness/interoperability conundrum, since the switching cost provisions of the new procurement rules relate primarily to new purchases. Moreover, while the Principles may move some vendors to fully comply with interoperability standards that already exist, they will not, without more, influence the marketplace to create future standards that meet the process and economic terms of the British open standards definition.

But if the Principles are adopted by the procurement offices of other nations, then something truly interesting will begin to occur. That's because more than one SSO often has the technical competence to develop the same standard, and new SSOs are being formed on a weekly basis. For many years, vendors seeking to have a new standard have often based their decision to choose one SSO over another (or to form a new SSO) based upon the intellectual property rights (IPR) policies of the available alternatives. The global government procurement market is enormous, providing ample motivation to vendors in making such decisions, and to SSOs competing for that work.

Given that a growing number of existing and new SSOs have already moved towards compliance with most or all of the rules included in the Principles independently, governments that decide to follow the lead of the U.K. can expect to finally have a real, forward-looking impact on the rules and processes under which standards are created, and the terms upon which the technology underlying those standards will be made available.

And the timing is good. Within the past few months, both US and EC regulators have made it known that they wish to see SSO IPR policy rules change in order to minimize the potential for the sort of multi-billion dollar waves of litigation that are currently sweeping the globe involving 'standards essential patents' used in mobile devices. SSOs across the board will need to give attention to amending their policies, providing a convenient opportunity to consider bringing them into compliance with the Cabinet Office's Principles as well.

Will that happen? It's too early to tell. But if the Federal Trade Commission, in the US, and the European Commission wanted to give the marketplace a nudge in that direction, the openness conundrum in standards development could rapidly become a dilemma of the past.

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