

OPEN STANDARDS, IPR AND INNOVATION
***THE DEFINITION AND VALUE OF
OPEN STANDARDS***

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What is a standard?

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A BROAD DEFINITION

- ***Whatever tool(s) we need***
- ***That we need to agree on and create***
- ***In order to do what we agree needs to be done***

OVERVIEW

- Different standards for different goals:
 - Safety Standards: Governments and SDOs develop these (“what you must do, and what you must not do”)
 - Performance standards: Offer benchmarks for comparison, price competition and assurance of usefulness
 - Interoperability Standards: Avoid dependence on a single vendor for all components, and permit many users to work together on a LAN, WAN or via the Internet

DIFFERENT CHALLENGES

- Each type of standard has value, and each has different challenges in creation:
 - Performance and safety standards require agreement among vendors, but usually don't present intellectual property rights (“IPR”) problems
 - Interoperability and other technical standards can infringe on patents when implemented
- Our focus will be on interoperability standards and other technical standards that may infringe on patents

What is an “open standard?”

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ARE ALL STANDARDS “OPEN STANDARDS?”

- No! Standards can be divided into several categories:
 - Regulations: Requirements that serve the function of standards, but which are created by law (safety standards, etc.)
 - De facto standards: Set by a single vendor, or a group of vendors that operate on an “invitation only” basis
 - Open standards: (we’ll talk much more about these)
 - Everything Else: Standards that fall somewhere between De Facto standards and Open Standards

WHAT ARE OPEN STANDARDS?

- Surprisingly, there is no “standard” definition of an “open standard”
- Some factors that affect the definition:
 - Who is developing the standard (accredited organization, consortium or open source project)
 - Who is using the standard (Example: United States or European agency vs. industry)
 - Where the standard is being set (Europe or elsewhere)
 - How the standard will be used (on the Internet? In connection with open source software?)

WHAT EVERYONE AGREES ON

- **Development**: Anyone can participate in the standards development process (e.g., representatives of business, government, academia, etc.)
- **Use**: Everyone can implement the standard, no matter who they are or where they are located
- **Terms of Use of IPR**: Every similarly-situated user can obtain similar terms (economic and otherwise), referred to as “Reasonable and Non-Discriminatory,” or RAND terms (in Europe, often: “Fair, Reasonable and Non-Discriminatory”, or FRAND terms)

WHAT SOME WOULD ADD

- Development:
 - Development process must be transparent
 - Approval must be by “consensus” without domination by any member(s)
 - Voting must be by ballot (or similar)
 - A formal appeal process must be provided
 - No interface element may be controlled or hidden

WHAT SOME WOULD ADD

- **Ongoing Development and Use:**
 - The same standard must be used throughout the world for the same purpose (see also WTO Agreement on Technical Barriers to Trade)
 - Ongoing support of the standard must be provided through the useful life of the standard
 - Amendments to a standard must be adopted through the same process
 - Certification mechanisms should be available to demonstrate compliance
 - *See: The Meaning of Open Standards, by Ken Kretchmer: <http://www.csrstds.com/openstds.html>*

WHAT SOME WOULD ADD

- **Terms of Use of IPR (examples):**
 - For Internet and Web: no royalties or other fees
 - For open source implementation: no terms that would be incompatible with the open source license in question (e.g., downstream users must not need their own license, must not be required to pay a royalty, etc.)
 - *See: Open Source Institute definition:
<http://www.csrstds.com/openstds.html>*

Why are open standards valuable?

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REASON ONE: Open Standards Create New Markets

- In technology in particular, many markets simply could not exist without widely adopted standards
- Other markets could only be proprietary
 - Audio, video
 - Computer systems
 - And many, many more

REASON TWO: Open Standards are more likely to be widely adopted

- Because an open standard is not controlled by any one company or group of companies it is safer to adopt
 - Each competitor knows that it has an equal voice in developing and amending the standard
 - Because the same terms must be offered for all, each vendor knows that it will have a “level playing field” with its competitors

REASON THREE: Open Standards Lower Risks for Vendors

- Risks of entry are lower for everyone in the supply chain (because the market is more likely to develop, and to develop quickly)
- A vendor can invest in a new product line, knowing that after the investment has been made, the rewards will follow (compare to Betamax/VHS or HD-DVD/Blu-Ray)
- Incentives are higher for vendors of supporting technologies and services to participate (for the same reasons)

REASON FOUR: Open Standards Lower Risks for Customers

- The product will be much less likely to become obsolete (e.g., not like Betamax)
- Pricing will be more competitive and prices will be likely to fall
- Choices will be greater
- Value-added features will be more numerous
- Migration paths will be more likely to be provided to the next generation of technology

REASON FIVE: Open Standards Make Products and Services More Valuable

- The “Network Effect:” The more nodes there are to the network, the more valuable the network becomes
- The Internet/Web as an example:
 - The more you can do and find on the Internet, the more people want to be able to access it
 - The more people access it, the more people want to offer on it for other people to find, use or buy
- Example: the more DVD players are sold:
 - The more outlets will want to sell the same players
 - The more movies content owners will want to offer in that format
 - The more distribution channels will offer players and movies in that format for rental and sale

FURTHER INFORMATION

- **Visit ConsortiumInfo.org**

- Essential Guide to Standard Setting and Consortia:
<http://www.consortiuminfo.org/essentialguide>
- Consortium Standards Bulletin:
<http://www.consortiuminfo.org/bulletins>
- Standards MetaLibrary:
<http://www.consortiuminfo.org/metalibrary>
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