

Title: Current Attempts to Change Established Definition of “Open” Standards

Issue: The term “open standard” has been used recently to describe a standard that may be copied, used and distributed for no fee and/or whose embedded technology is irrevocably available on a royalty-free basis. This definition has created some confusion among standards developers and users because it is contrary to the definition of “open” and “openness” long held by the American National Standards Institute (ANSI) and many other recognized standards bodies who understand the term to describe a collaborative, balanced and consensus-based approval process for the promulgation of domestic or international standards.

Background: Historically, ANSI and many U.S.-based developers of voluntary consensus standards have used the terms “open” or “openness” to characterize a process that has certain important features. These include:

- consensus by a group or “consensus body” that includes representatives from materially affected and interested parties;
- broad-based public review and comment on draft standards;
- consideration of and response to comments submitted by voting members of the relevant consensus body as well as by the public;
- incorporation of approved changes into a draft standard; and
- availability of an appeal by any participant alleging that due process principles were not respected during the standards-development process.

These same features are central to the policies of well-recognized regional and international standards bodies such as the International Telecommunications Union (ITU), International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), European Telecommunications Standards Institute (ETSI) and the WC3 Consortium. Further, these features are endorsed in Annex 4 of the Second Triennial Review of the WTO/TBT Agreement.

By contrast to these well-established notions of standards organizations that develop “open” standards, other incompatible definitions of the term “open standard” exist, both within the standardization industry and within certain industrial sectors. For example, recently the European Commission’s Interchange of Data Between Administrations (“IDA”) released a document which seeks to establish a European interoperability framework to support the delivery of electronic government services. In that document, entitled *European Interoperability Framework of Pan-European E-Government Services*, the IDA stated that an “open standard” is one that is “available to all interested parties” and subject to copying, distribution and use “for no fee or at a nominal fee” and whose intellectual property is “irrevocably available on a royalty-free basis” with “no constraints on the re-use of the standards.”

But using the term “open standard” to define a specification whose sole quality is that is unconditionally and freely available to those who wish to implement it is misleading for two reasons.

First, it ignores the fact that essential patent holders have the right to decide how they will license their intellectual property. The terms and conditions used in the development of “open standards” should balance the interests of those who will implement the standard with the interests and voluntary cooperation of those who own intellectual property rights that are essential to implementation of the standard. Such terms and conditions should readily promote, and not unreasonably burden, accessibility to the standard for the communities of interested implementers. To achieve such balance, the payment of reasonable license fees and/or other reasonable and nondiscriminatory license terms may be required by the intellectual property rights holders. This balance of licensing rights (rather than waiver thereof) is consistent with an open standard. The word “open” does not imply “free” from monetary compensation or other reasonable and nondiscriminatory license terms.

Further, an open standard may involve the payment of a fee to obtain a copy of the standard. Such fees are sometimes used to offset the costs associated with managing open standards development process.

Additional Information

- *ANSI Essential Requirements: Due process requirements for American National Standards*

- American National Standards Institute - Introduction

ANSI Group Addressing Issue

Intellectual Property Rights Policy Advisory Group

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