



From A to Veck:
Standardization and the Law

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Non-definitive View of Open Standards

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Note: Author's views and not necessarily those of his employer

Overview

- “Open Standards” – What’s in a Name?
- “Open Standards” definition --
a riddle wrapped in a mystery inside an enigma
- Innovation -- “Open Standards” and Proprietary
- Conclusions



What's in a Name?

Why Search for an “Open Standards” Definition?

- Good vibrations associated with “open standards” that promote...
 - Comfort in largely level playing field → in creating and using specification
 - Avoidance of single vendor lock-in
 - Consideration of IPR policy
 - Cost efficiencies, especially if global
 - Political efficiencies for government entities
 - Widespread adoption → longevity of standard
 - Market development → more benefit to more users → larger pie
 - Shared technical efforts → innovation and choice among technical options
 - Software product interoperability
 - Purchase of implementer's products where buyer favors “openness”



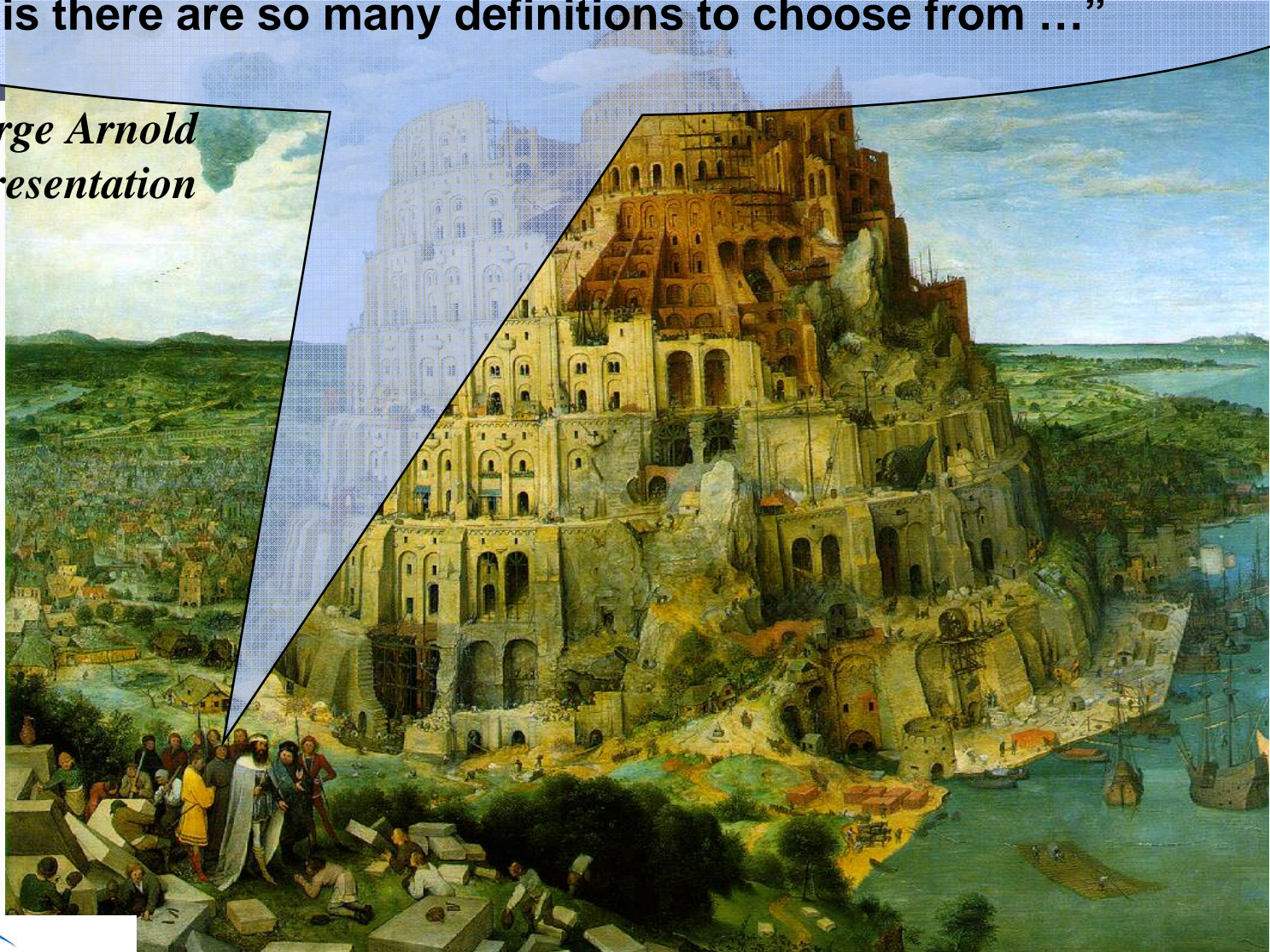
In Search of an “Open Standards” Definition

- Can one size fit all?
- Degrees of openness in an “open standard”?
 - Perhaps dependent on technology and business needs and other factors?



**“The nice thing about ‘Open Standards’
is there are so many definitions to choose from ...”**

*ANSI’s George Arnold
May 2005 presentation*



As change becomes a staple, “Open Standards” meaning today addresses matters beyond standards development process.



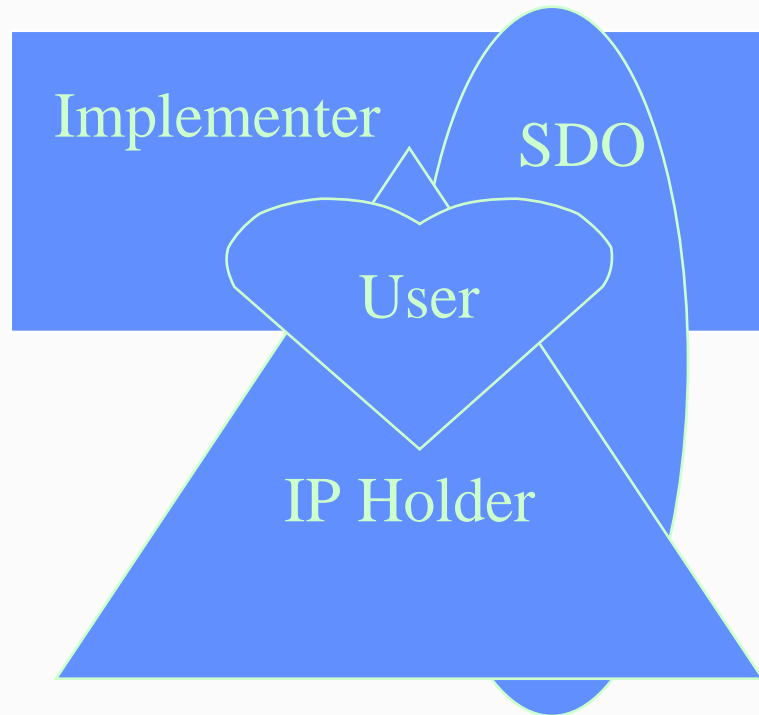
Open Standards Aspects – “Pure Open” at one end of Spectrum

Openness is along a multidimensional spectrum. “Pure openness” is outlined below, although there may be degrees of “open”.

- **Development:**
 - Open Participation to interested parties without discrimination
 - Proceedings public and published → transparency
 - No one with veto power → consensus
 - No secret agreements
- **Maintenance:**
 - Community and neutrally based → akin to Development model
 - Positions and votes publicly available
- **Access:**
 - Published specification available to all at no cost
 - Available on-line in open document format when possible
- **Implementation – IPR Terms:**
 - Intellectual property rights to allow anyone to implement in any compliant way with no royalty for “necessary” IP
- **Modification by Others:**
 - Useable in other standards



IP Holders, SDOs, Implementers, Users look at IP rights



Any Way to Address Different Opinions on “Open” IPR Terms of Use?



“Open Standards” definition -- a riddle wrapped in a mystery inside an enigma

Let's call the terms RAND.

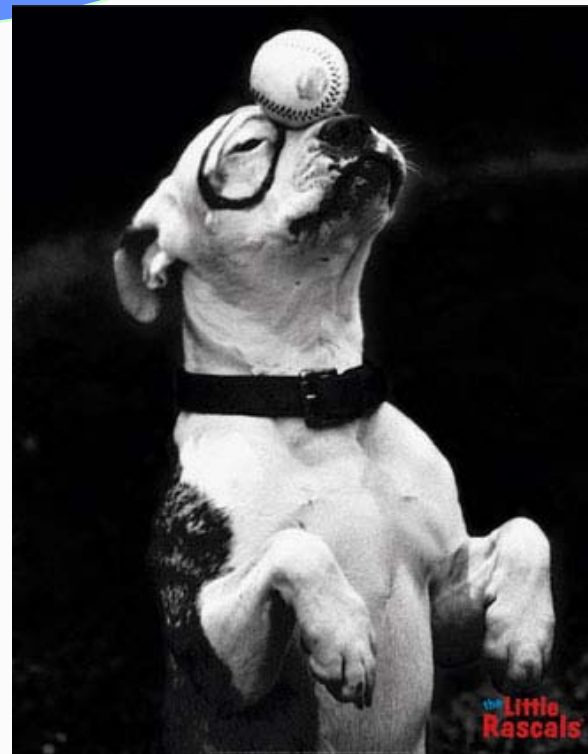


What does that mean? How much royalty is reasonable? Can you exclude my implementashun? Do I have to wait and go to Kourt? Am I limited to your environment? I'm the guverment and my venders need interoperability among different software products.



“Open Standards” definition -- a riddle wrapped in a mystery inside an enigma

Let's look for balance



“Open Standards” definition -- a riddle wrapped in a mystery inside an enigma

Can I put the fullkrum where it works for our business and technology sector? How about no royalties for patent klaims needed to implement the standard but some defense against those who want to soo us?



There may be patentholders who will weigh the potenshial value of partisipating in the SDO against the potenshial value of their patents. Keep them in mind.

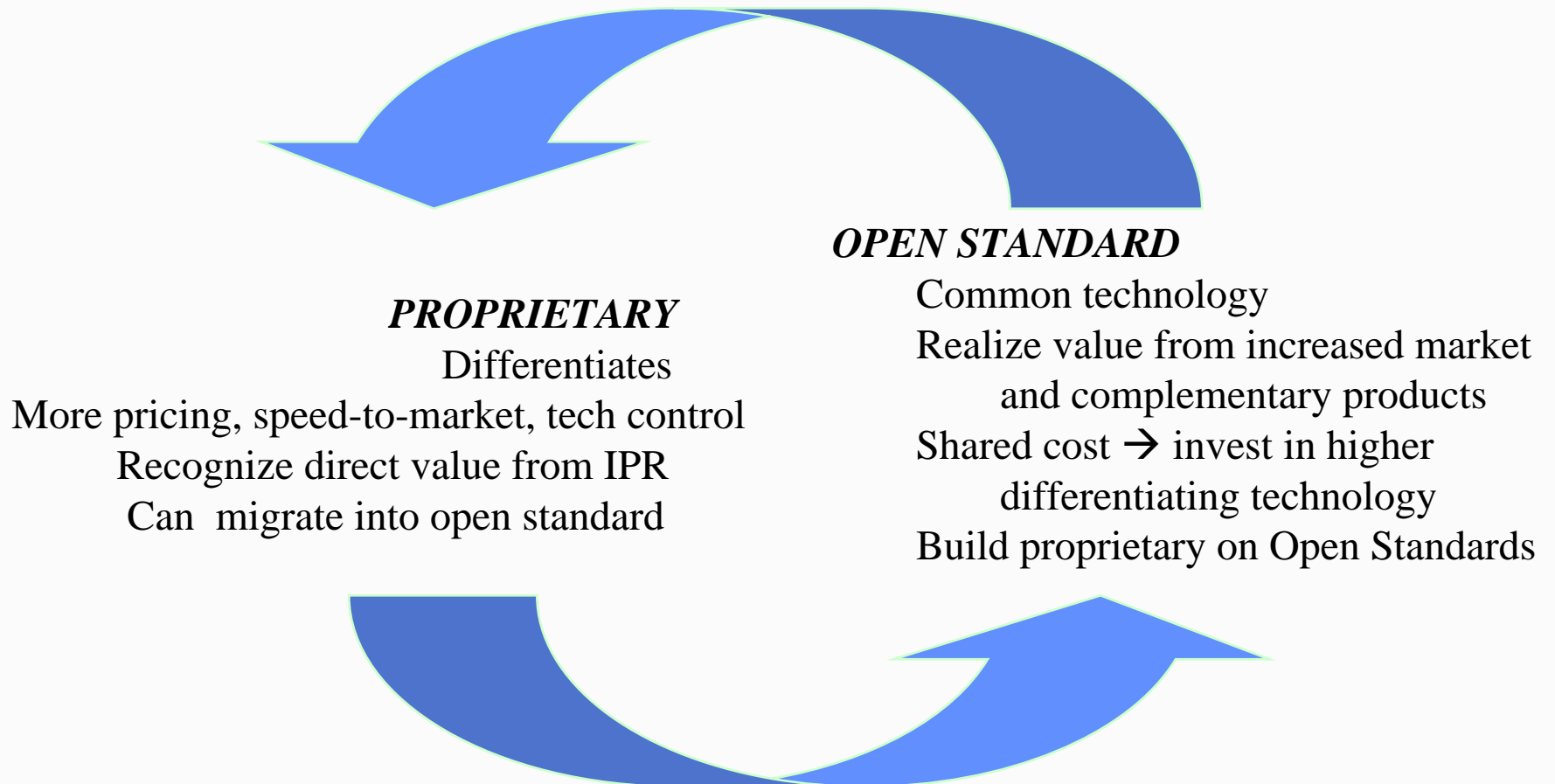


Some Thoughts for ANSI on Open Standards

- Per EIF (European Interoperability Framework), OASIS, commentators, et al, the standards landscape in the internet realm is changing → There is pressure for more certainty in IPR grants
- While some have rocked the pendulum, SDOs might consider that
 - Royalty free may fit in certain instances, especially for a government concerned with software product interoperability and security
 - While some proposals that there be no limitations on IPRs may go a bit far, it might be proper to avoid limitations that may effectively exclude certain compliant implementations of the standard
 - While totally unconditional grants may be problematic when they disallow reciprocity or defensive termination, standards implementers and users may wish to ensure that licenses are not too easily terminated
- OASIS recently authorized an option whereby work groups obligate participants to a royalty free commitment and largely prescribed license terms → other SDOs are exploring similar tracks
- SDOs may still be disrupted by third party actions (issue for another day), but covering participants robustly may not be unreasonable



Innovation -- “Open Standards” and Proprietary coexist



Conclusions

- “Open Standards” with multiple dimensions has less precise meaning
- “Open Standards” with various degrees of “openness” rights look to achieve the “good vibrations” for the various interests
- Exciting challenges lay ahead for those of us with patents and with interests in successful open standards and the collaborative innovation such standards promote

