

# A global agenda for addressing patent reforms and standards

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Standards Edge Workshop: Innovation—Strengthened or Strangled  
by Standardization?

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# Standards are important

- The modern economy depends upon information and services delivered over the Internet, with standard file formats, interfaces and protocols.
- Goods and services increasingly move in international trade, where global standards increase efficiency
- Consumers and users benefit from interoperability

# Open standards are important

- Particularly when:
  - Open standards are free, as in free beer,
  - Open standards are free, as in the freedom to implement the standards in ways that are not controlled by the creators of the standard
- The Internet was based upon standards. To avoid market segmentation and as a consequence, web fragmentation, the standards for the primary languages and protocols were open.
- The attractiveness and value of the Internet is largely based upon "network effects," where users "work together to provide a benefit that is greater than the simple sum of their parts"\* Network effects for ICT are best executed and maintained in an environment of open and interoperable ICT standards.

\* August 2, 2006 IGF Submission: CPTech, Sun Microsystems, IP Justice, Professor Ghosh, and EFF

# Strategy for reform

- Identify solutions
- Identify fora

# Basic ideas

- Procurement is important lever
- Managing disclosure on standards is important
- Introducing cost/benefit analysis into scope of patent debate
- Finding practical ways to address patent quality
- Broadening role for exceptions to patent rights
- Rethinking “exclusive rights” model for patents, in favor of compensatory liability model

# RAND vrs Royalty Free

- When goods and services are sold for fees, remuneration models are an acceptable solution.
  - For example, royalties on elements of computer or router hardware.
- When goods and services are “free” royalties present problems:
  - Data formats, free software, etc

# Global Fora

# WIPO Reform Agenda

- PCDA
- A2K Treaty
- Patent Agenda

# WTO

- Committee on Technical Barriers to Trade
  - Consequences of insufficient inventive step in granting patents

# IGF

- DCOS

# A2K Treaty Proposal

- Will be debated in June 2007 in the PCDA

# **A2K Treaty Proposal – May 9, 2005**

- 2005 Multi-stakeholder exercise
- Recent consultation in Alexandria, Egypt

# Part 6 – Promotion of Open Standards

## Article 6-1 - Committee on Open Standards

A committee on open standards (COS) shall be established.

# **Article 6-2 - Disclosure Obligations for Patents Relating to Standards Development Organizations.**

(a) The COS shall establish a process and criteria for a Standards Development Organization (SDO) to request a managed disclosure of relevant patent claims for standards relevant to a knowledge good or service. To make such a request, the SDO must be global, with a membership that is open to any party, and the qualifying open standard must:

## VERSION 1

- Be adopted and maintained by a not-for-profit organization, and with ongoing development based upon an open decision-making procedure available to all interested parties (consensus or majority decision);
- Be published, with the specification of the standard available either for free or at a nominal charge, with permission to all to copy, distribute and use it for no fee or at a nominal fee; and
- The intellectual property aspects of the standard, including the relevant patents or data, shall be made irrevocably available on a royalty-free basis; and
- There are no constraints on the re-use of the standard.

## VERSION 2

- Be published without restriction (e.g., potential implementers are not restricted from accessing the standard) in electronic or tangible form, and in sufficient detail to enable a complete understanding of the standard's scope and purpose;
- Be publicly available without cost or for a reasonable non-discriminatory fee for adoption and implementation by any interested party;
- Any patent or data rights necessary to implement the standards are made available by those developing the specification to all implementers on reasonable and non-discriminatory (RAND) terms (either with or without payment of a reasonable royalty or fee); and
- The process to develop, maintain, approve, or ratify the standard is by consensus in a market-driven, standards-setting organization that is open to all interested and qualified participants.

(b) The request for a managed disclosure process shall include the following:

- A description of the SDO
- An initial specification of the standard, including the expected applications for the standard,
- The benefits to the public of the development of the standard,

(c) Disclosures of patents relevant to the proposed standard that are not responsive to the requirements to be specific with regard to the relevance of the patent to the proposed standard shall be rejected.

(d) Members agree that a patent-holder that fails to make constructive disclosures of relevant patent claims will be prevented from enforcing the patent against the implementation of the open standard.

# Article 6-3 - Essential Interfaces for Knowledge Goods

- (a) The COS will periodically request public comment on the interfaces that are essential for software, computers and other knowledge goods.
- (c) The COS will publish and periodically update a list of essential interfaces for knowledge goods.
- (d) Members agree to consider procurement policies that provide preferences or requirements that computer software, hardware, or accessories that use and enable open standards compliant interfaces.
- (e) Members agree that patents that are licensed on a non-discriminatory and royalty free basis for use in implementing an interface for an essential knowledge good shall not be subject to further fees.

## **Article 6-4 – Compulsory Licensing of Essential Interfaces for Knowledge Goods**

Members agree to develop procedures for compulsory licensing of essential interfaces for knowledge goods.

[note, US CL for clean air act, EU mandatory CL for biotechnology directive and exports of medicines]

# Article 7-3 - Essential Software

- (a) The CCAP shall publish and periodically update a list of software programs and interfaces that are essential for access to knowledge.
- (b) The CCAP shall collect information and publish best practice guidelines for Members seeking to promote competition and access to essential software, on such topics as:
- i Government procurement policies relating to the licensing of software, and requirements for
    - Open interfaces,
    - Obligations for software source code to be released to the public within a fixed period of time,
    - Use of standards-compliant file formats for data storage,
    - Obligations to license interface information on a non-discriminatory basis;
  - Measures to remedy excessive pricing of products with significant market power.
  - Application of essential facilities and tying doctrines, with particular emphasis on obligations to un-bundle software components that are potentially

# Big pharma vrs tech sector on patent reform

- Solving the pharma problem
  - Article 27 of the TRIPS
  - The Medical Innovation Prize Fund