

Govt OSS Policy: resilient as a snowflake in June

Standards bodies get precious, Cabinet Office blinks

Let's be clear from the off, the open standards procurement policy note (PPN) designed to level the playing fields for open source software (actually: expose Govt ICT costs to the beneficial winds of competition) wasn't all that amazing.

As we said the PPN required open standards only "wherever possible". Not only does that include "never" but even if it were possible to use an open standard there was no indication what would happen if a government body chose not to.

Now, on "Friday the 13th" (there's a joke there somewhere) only four months later, we learnt that, really, the PPN was nothing at all: a Cabinet Office spokeswoman said the open standards policy was "not set in stone"

So much for Government OSS policy

Apparently CENELEC, CEN, ETSI and BSI have warned that the UK is in danger being ostracised from the standards making process unless the UK Government falls into line.

And rather than doing some policy analysis (have they run out of civil servants?) to find out if they were out of line, when asked to jump Cabinet Office appear to have asked "how high?"

All these standards bodies mentioned (but not all standards bodies) allow standards to be created that include intellectual property for which royalties can be charged. They also charge for copies of the standards themselves.

The UK Government could have assuaged CENELEC's grief by promising to meet the requirement to pay royalties where standards require such payment by promising only to use standards that don't require royalties.

BSI accuses Cabinet Office of doing something it didn't say it was going to do and then warns of the consequences "If the Cabinet Office were to follow through and say that all the standards they reference, including British standards and international standards, have to be made available free of charge, we will be kicked out of the international standards-making community."

The now in play PPN definition only required that open standards should be publicly available at low or no cost.

Luckily then, BSI can get back in its box. It's a shame they didn't stay there in the first place.

However, there's a small herd of elephants in the room here, with potentially wide ranging consequences for government

regarding tax and competition law.

Online government and taxation

From time to time FOSS advocates call for software unbundling to avoid the "Microsoft tax". Is the word "tax" as applied to proprietary software merely rhetorical? Consider this:

An increasing number of compulsory government interactions are only possible online

Some online government services only work with MS Windows and as such create user costs.

The government "digital champion" has declared that government should force people online

with online the default option

Using standards that require the payment of royalties are more of the same.

If you are required to pay (don't worry someone's looking) as a result of government imposition then it's a tax and the total amount has to appear in the National Accounts.

Why aren't standard bodies anti-competitive cartels?

Some standards bodies develop their standards in the open and make their standards freely available with non-assertion agreements with regard to intellectual property

No problems there for anyone to use those standards.

However, standards are not immune from competition law and as UK commentators have noted competition law is trumping IP.

It would be interesting, therefore, if government online services were unavoidable or the preferred channel and royalties to a third party were required, because that would raise the possibility of anti-competitive collusion.

So, if instead of dropping the definition for open standards Cabinet Office had instead dropped "wherever possible" from the PPN several policy pitfalls could have been pre-empted and a level playing field for all software created. Too much to ask for, it seems.

-- Gerry Gavigan, Chair, 15 May 2011

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