

# Comments to the 19 November Workshop

## Valley View Corporation

**Valley View Corporation** is a small consulting company to the Information, Communications, and Entertainment (“ICE”) sector. Its President and CEO, Dan Bart, has more than 40 year’s experience in this sector, and that includes working in the areas of standardization, Intellectual Property Rights (“IPR”) protection, Standards Development Organization (“SDO”) IPR Policies, and education efforts related to these topics. These comments are on behalf of Valley View Corporation to aid the European Commission, and do not necessarily represent the views of any particular client of Valley View Corporation.

One of the key issues in discussions of “**Open Standards**” is whether the “Open” in “Open Standards”, refers to the openness and transparency of the “process”; or does the proposed definition for “Open Standard” mean **the document** itself must be freely available, possibly having a major impact on SDOs who support their standards activities through the sale of copyrighted documents; or does the proposed definition for “Open Standard” mean that patent holders who hold essential patent claims related to the standard **must make their patented technology freely available**? Some groups wants all information to be FREE, and thus deprive copyright holders, like SDOs, of some of their rights, including the right to sell their works, as well as having any IPR embraced within a standard, available on a compensation-free or royalty-free (“RF”) basis.

Valley View believes these elements of some of the proposed “Open Standard” definitions **are contrary** to ANSI, TIA, ITU, ETSI, CEN, CENELEC, ATIS, ISO, IEC, IEEE, etc., RAND/FRAND IPR Policies, thus, would **eliminate literally tens of thousands of standards from being deemed “Open Standards,”** under such ill-advised re-definitions.

Many organizations have adopted their own positions or views on what is an “**Open Standard,**” and some of those organizations may file their own Comments with the Commission.

### ANSI

In May 2005, ANSI issued a Critical Issues paper on “**Open Standards**” and efforts to redefine the term “**Open Standard.**”

<http://publicaa.ansi.org/sites/apdl/Documents/Standards%20Activities/Critical%20Issues%20Papers/Open-Stds.pdf>. ANSI has filed its own Comments with the Commission.

### ETSI SOS

ETSI launched a series of Workshops to discuss and share views on “Standards, Open Standards and Interoperability” (“**ETSI SOS**”). At **SOS II**, the **GSC-10** view on an “**Open Standards**” definition was agreed. [portal.etsi.org/docbox/workshop/2005/sos\\_interoperability/sos3/](http://portal.etsi.org/docbox/workshop/2005/sos_interoperability/sos3/).

The Director General at ETSI summed up at SOS III why the SOS effort at ETSI:

- “Intensive activity from policy makers
- Study on ICT standardization in EU (DG ENTR)
- Communication on Interoperability (DG ENTR)
- Revision Directive 98/34 (DG ENTR)
- EU Interoperability Framework for e-gov (IDABC, DG ENTR)
- ICT Task force (DG INFSO/DG ENTR)
- Consultation on patent system in EU (DG Internal market)
- And in other regions as well (US Congress, FTC, DoJ ... )”

**The Conclusions** from ETSI SOS II at the Closing Session by Karsten Meinhold, ETSI General Assembly Chairman, Chair ETSI IPR Reform Committee, and Co-Chairman of the SOS Workshop were: **For “Open standards” the GSC Resolution 10/4 is way of addressing the issue of “Open Standards” in an acceptable way, and every SDO should adopt this text having in mind that:**

- it is valid in the ICT scope
- it gives a characterisation of “open standards” through a minimum set of characteristics
- in a given context, actors can precise their practical applications.
- [See document SOS2\_17]”

## **GSC**

The **Global Standards Collaboration (“GSC”)** meetings are by-invitation events which bring together the top Standards officials from the USA, Canada, the EU, China, Japan, Korea, Australia, and the International Telecommunication Union (“ITU”). At GSC-10 GSC adopted **a Resolution on “Open Standards.”** (GSC Resolution 10/4). At GSC-13 (Boston 2008) this Resolution was **reaffirmed.**(GSC-13/24).

[http://docbox.etsi.org/workshop/gsc13/gsc13\\_closing\\_plenary/GSC13-CL-35%20All%20Approved%20GSC-13%20Final%20Resolutions%20\(single%20.pdf%20file\).pdf](http://docbox.etsi.org/workshop/gsc13/gsc13_closing_plenary/GSC13-CL-35%20All%20Approved%20GSC-13%20Final%20Resolutions%20(single%20.pdf%20file).pdf)

### **GSC-13/24 Resolves:**

1) that the Participating Standards Organizations (PSOs) **define an “open standard”** to include the following fundamental elements:

- the standard is developed and/or approved, and maintained by a collaborative consensus-based process;
- such process is transparent;
- materially affected and interested parties are not excluded from such process;
- the standard is subject to RAND/FRAND Intellectual Property Right (IPR) policies **which do not mandate**, but may permit, at the option of the IPR holder, licensing essential intellectual property without compensation; and
- the standard is published and made available to the general public under reasonable terms (**including for reasonable fee** or for free). (**Emphasis added**)

## **ITU-T**

**The ITU-T** advises: “The ITU-T has a long history of open standards development. However, recently some different external sources have attempted to define the term "Open Standard" in a variety of different ways. In order to avoid confusion, the ITU-T uses for its purpose the term "Open Standards" per the following definition:

**"Open Standards"** are standards made available to the general public and are developed (or approved) and maintained via a collaborative and consensus driven process. "Open Standards" facilitate interoperability and data exchange among different products or services and are intended for widespread adoption.”

[www.itu.int/ITU-T/othergroups/ipr-adhoc/openstandards.html](http://www.itu.int/ITU-T/othergroups/ipr-adhoc/openstandards.html).

The ITU-T also looked for attributes such as:

- **Collaborative process**
- **Reasonably balanced**
- **Due process**
- **Intellectual property rights (IPRs)**
- **Quality and level of detail**
- **Publicly available**
- **On-going support**

## TIA

The Telecommunications Industry Association has also adopted its own paper on Open Standards, and it has filed its own Comments with the EC related to that paper.

[http://www.tiaonline.org/standards/about/documents/TIA-IPR\\_20080620-003\\_TIA\\_OPEN\\_STANDARDS-CLEAN\\_R4.pdf](http://www.tiaonline.org/standards/about/documents/TIA-IPR_20080620-003_TIA_OPEN_STANDARDS-CLEAN_R4.pdf)

## WIPO

### **WIPO Report on International Patent System**

Pursuant to the decision by the 34th WIPO General Assembly held in September/October 2007 to submit a Report on the International Patent System to the Standing Committee on the Law of Patents (“SCP”), a document was submitted by the Secretariat as a working document for the twelfth session of the SCP, held from June 23 to 27, 2008. That **WIPO Report** also discusses “Open Standards”

### **WIPO Report, paragraph 121**

121. Among technology standards, there is particular interest for “open standards”. While **there is no universally accepted definition of that term, all open standards** have the following common characteristics: (i) the specification is publicly available without cost or for a reasonable fee to any interested party; (ii) any IP rights necessary to implement the standard are available to all implementers on RAND terms, either with or without payment of a reasonable royalty or fee; and (iii) the specification should be in sufficient detail to enable a complete understanding of its scope and purpose and to enable competing implementations by multiple vendors. **Some** define open standards as publicly available technical specifications that have been established in a voluntary, consensus-driven, transparent and open process, **others** appear to add to this definition the requirement that an open standard has to be available **royalty-free**. The defenders of the first definition favor patent policies on a RAND basis, which they believe to maximize flexibility through a commitment to license combined with the right of patent holders to receive reasonable and adequate compensation for their sharing of their technology, and trust in the co-existence of this model and a royalty-free model. **They also question how, in a royalty-free environment, investments in research and development could be maintained in the long run and how a broad participation in standard-setting processes could be maintained.** On the other hand, the advocates of the latter approach are convinced that society as a whole would benefit from the open and royalty-free access to standards, as it is the case, for example, in the Internet context, which had been established precisely in order to allow the free publication and retrieval of information from the web. According to them, this model would best ensure interoperability, greater innovation and consumer welfare. In addition, they argue that, even where a royalty-free policy is adopted, the benefit of standardization may outweigh the loss of royalty income in certain technologies, simply through greater quantities of a certain product being sold. **(Emphasis added)**

### **WIPO Report, paragraphs 122 and 314**

122. In this context, the notion of “open source” is often mentioned, but it **should not be confused with open standards**. . . . When governments and other users are in the process of selecting a specific technology to meet their needs for interoperability and/or free use of that technology, in addition to the open or proprietary nature of any software involved, factors such as overall costs, the maturity of the technology, and the support offered, should be taken into account. **(Emphasis added)**

314. Given the **different levels of development**, there might be **no answer that fits all**. Development is a long-term goal, and the determination of how the international patent system could contribute to development may require long-term strategies. **(Emphasis added)**

## Conclusion

**Valley View believes the EC should recognize the consensus view on the Open Standards definition.**