

Europäisches
Patentamt

European
Patent Office

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des brevets

IPR and ICT standardisation

A conference organised jointly by the EPO and
the European Commission

22 November 2010
Brussels, Belgium

Open source, freely available software and standardisation

**Tensions between Intellectual Property
Rights and standardisation: reasons and
remedies**

Brussels, November 2010



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Open source, freely available software and standardisation (Panel 5)

James Bryce Clark, OASIS

Scott Peterson, Hewlett-Packard

Karsten Gerloff, FSF Europe

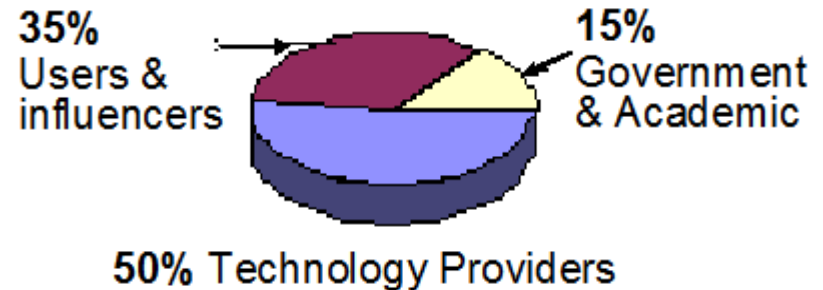
David Hammerstein, TACD

Erwin Tenhumberg, SAP

- OASIS is a member-led, international non-profit standards consortium for global e-business & the information economy
- Over 650 members
- Over 70 technical committees producing standards
- Deeply interoperable with global *de jure* standards bodies

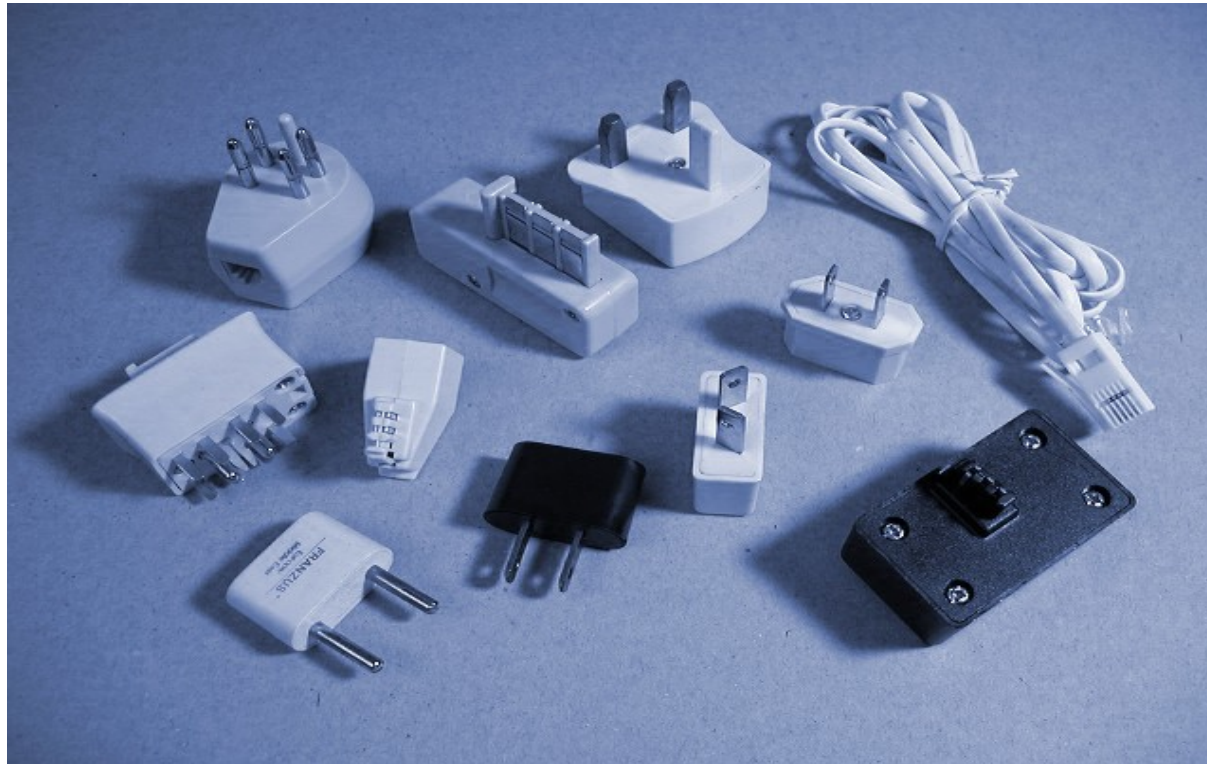
“The largest standards group for electronic commerce on the Web.”

The New York Times
ON THE WEB



www.oasis-open.org

Conflicts: the price of success in standardisation



Conflicts: the price of

FREE vs. LICENSED

- **Are written licenses required, or self-executing terms?**
- **Who is the user of license rights? Vendor-to-vendor, or DIY models**
- **Are the issues different, for SMEs and lesser developed economies?**

WATCH: Nonassertion clauses [1]; Mash-ups based on re-use and modification; China's position on standards [2]

Conflicts: the price of SAFETY vs. PROGRESS

- **Do standards projects come after innovation, or induce it?**
- **Do governments use standards as mandates, or as incentives?**
- **Software development, including FOSS work, often now paces standards work. So do patents.**

WATCH: The SmartGrid; e-Health [3]

Conflicts: the price of ICT vs. EVERYTHING ELSE

- **Do the law's incentives negotiated for pharma also work for infotech?**
- **Are we protecting computational processes, or content?**
- **Is that still a valid distinction?**

WATCH: ICT patent & IPR trends [4]; complex content representation methods in e-gov "open data"; free speech issues in IPR laws [5]

Conflicts: the price of success

WE DO KNOW A FEW THINGS

- **Stable open standards regimes do address patent claims today [6]**
- **Many standards projects are robustly supported by open source implementations [7]**
- **However, not every 'open' thing works with every other 'open' thing [8]**

Conflicts: the price of success

WE DO KNOW A FEW THINGS

- **Some public functions have a right to unimpeded access**
- **Some technological developments have a right to compete**
- **Policymakers may find it difficult to balance those two goals**

FREE vs. LICENSED

Nonassertion clauses [1]: The OASIS version is in Section 10.3 of our IPR policy:
http://www.oasis-open.org/who/intellectualproperty.php#licensing_req

China's IPR policies [2]: See An Baisheng's 2008 paper to ETSI:
http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=3632

SAFETY vs. PROGRESS

The SmartGrid; e-Health [3]: For example, see: "When Should a Government Mandate a Standard? ..." Article series at: <http://www.talkstandards.com/The-Government-at-the-Standards-Bazaar-Redux-PART-1/>

ICT vs. EVERYTHING ELSE

ICT & patents trends [4]: Some at this seminar suggest that patents in ICT are far more likely to be specious. Also, see Neelie Kroes' recent comments on whether copyright law still works, in an era of dominant intellectual intangibles. What about patent law? <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/619>

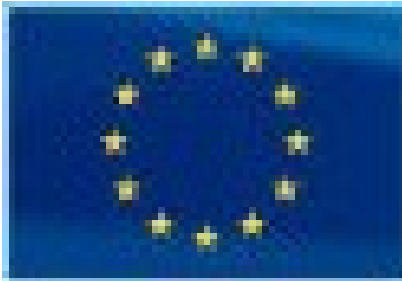
Free Speech [5]: See, for example, discussions of the 2006 US *MercExchange* patent case: <http://www.eff.org/press/archives/2005/09/26-0> & <http://j.mp/f1iTI7>

WE DO KNOW A FEW THINGS

Patents in standards [6]: See the OASIS, W3C and IETF policies on patents & IPR.

Open standards & open source [7]: Multiple license regimes sometimes require reconciliation; often this works fine. See Apache's legal review of OASIS IPR terms: <http://www.softwarefreedom.org/resources/2006/OpenDocument.html> ...

Not every 'open' thing works [8]: ... But combinations of multiple open licenses may conflict unexpectedly. This is a non-trivial problem Bruce Perens names 'combinatorics'.



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