### ECIS European Committee for Interoperable Systems

# Advocating for openness and interoperability

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## **Topics**

- About ECIS
- ECIS interoperability policy concerns
- Open standards
  - FRAND or royalty free
  - *Ex-ante* disclosure of licensing terms
- Licence of Right
- Open standards-setting
- Open source software
- Patents, standards and competition



- An international non-profit association founded in 1989 that endeavours to promote a favourable environment for interoperable ICT solutions
- Actively represents its members regarding issues related to interoperability and competition before European, international and national fora

## ECIS interoperability policy concerns

- Key issues ECIS is actively involved with include the promotion of:
  - Open standards

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- Case: Open Document Format ("ODF")
- Open standard-setting
  - Ensuring that standard-setting processes are not misused
- Open source
  - Encouraging the growth of European open source development
- Competitive ICT environments
  - Identifying and working with regulators to remedy market failure and barriers to competition

## What is an open standard?

- To be open, a standard should meet the following principles:
  - Adopted through an open, transparent and democratic process
  - It enables all implementations of the standard to interoperate
  - It is platform-independent and vendor-neutral, and can be implemented in competing ways
  - Its specifications are fully/properly documented and documentation is available at minimal cost to all
  - Essential patents are available under royalty-free or FRAND licensing terms that do not discriminate against open source

## The benefits of open standards

- Open standards should be the basis for ensuring interoperability in the ICT industry
  - Standards-based development allows focus to be put on developing innovative new features on top of the standard, and not in reverse-engineering for the purpose of enabling interoperability
  - Open standards based interoperability permits
    - new players to enter the market
    - competition on the merits
    - consumer choice
- Experience demonstrates the damage which can result when vendors fail to support or abuse open standards
- Open standards based interoperability prevents the anticompetitive exploitation of *ex-post* market power

## Essential patents under royalty-free or FRAND terms?

#### In the software sector:

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- Any IPRs related to a software standard should be available royalty-free or at minimal cost
- Other terms and conditions such as on field of use and defensive suspension should be FRAND-compliant
- Licensing of essential patents should not discriminate against open source model
- In the telecommunications sector:
  - The FRAND model should prevail

# *Ex-ante* disclosure as a guarantee to competition

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- Ex-ante disclosure of licensing terms and conditions is pro-competitive, especially in areas such as the software sector
- In the more complex area of telecommunications, *exante* disclosure of licensing terms is viewed with more caution and needs to be complemented by other measures
  - The most practical method may be an *ex-ante* commitment to a reasonable cumulative royalty, with appropriate limits on individual license demands

## A Licence of Right: an additional guarantee for a pro-competitive environment

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- Any person wishing to use the essential patent to manufacture and market interoperable software is able to obtain a licence to use it for that purpose
- Ensure wider access to technology essential to achieving software interoperability, without fear of patent holders trying to assert their exclusive rights to block development of new products
- Voluntary Licences of Right ("LoR") system (Article 20 of the Draft Regulation on EU patent)
- Need to provide patent holders with adequate financial incentive to opt for LoR

## Open standards-setting processes

- Need for clearly defined standardisation policies that allow for platform-independent and vendor-neutral standards that can be implemented in competing ways rather than competing standards
- Require full and proper documentation of the standard's specifications and availability of documentation to all at minimal cost
- The ODF v OOXML example

#### Open standards and open source software

- Open standards and open source are not the same
- Open source software however implements open standards
  - e.g., Open Office/ODF, Mozilla Firefox/HTML
- Nonetheless, for an open standard to be compatible with open source it should be made available royaltyfree
- Patent holders should not engage in vague allegations against open source software (spreading FUD)

## Patents, standards and competition

- The SSO rules/processes may not yield FRAND result and a patent holder can impose higher royalties or other unreasonable licensing terms and conditions in light of the absence of alternative technology
- Ex-post enforcement of competition law can play the role of a "safety valve"
- Need for governments to remain vigilant about abusive practices of dominant market players in the ICT sector that prevent competition on the merits
- Vigorous *ex post* deployment of competition law given that software markets are susceptible to distortion of competition