

[address omitted]

1 June, 2012

Francis Maude MP
Minister for the Cabinet Office
Cabinet Office
4th Floor, 1 Horse Guards Road
London

Dear Minister,

I would like to respond to your *Open Standards: Open Opportunities* consultation document. I do so as a British citizen, although I have lived in Ireland for several years. I have been personally and, latterly, professionally involved in software for around twenty years, and so I would consider myself part technical expert, part citizen. (To be clear, although I am professionally involved with software, the opinions expressed here are mine and not my employers'.)

I warmly welcome the government's drive towards Open Standards in its IT systems. Much of the discussion in the document matches my own reasoning, in terms of, for example, interoperability, lack of lock-in, and freedom for data-consumers such as citizens to choose their own software. In this last regard, it is important that citizens be able to choose Free/Open-Source software.

The freedom enjoyed by users of Free/Open-Source software is very valuable with regard to government data, empowering individual citizens to make full use of what could be considered 'their' data. They have the freedom not only to choose from existing software, but (if suitably skilled) to build on it and modify it to their particular needs. The potential for innovative uses of government data, by individual citizens, is huge. The document hints at this possibility in its first 'Potential benefits' bullet on p.17.

In this context, I am greatly encouraged by the document's frequent referral to the need for an Open Standard to be implementable in Free/Open-Source software. I agree that this is a vital component of what an 'Open' standard should mean.

The chief potential stumbling block in this regard is patents. A standard cannot be called 'Open' if, by means of the licensing terms of essential patents, it cannot be implemented in software licensed under one of the most popular Free/Open-Source licences, the GNU General Public Licence. One of the GPL's requirements is that a person must be free to redistribute the software to others without further conditions. This is not possible if a patent-holder demands a royalty for each copy distributed — the royalty charge is a further condition. The document notes that 'the most commonly used of these [open source] licences do not allow the development of software that requires royalty payments', and the GPL is perhaps one of the licences that it refers to here.

I am, again, encouraged that the document recognises this in its bottom bullet on p.12 with its statement that 'Licences, terms and conditions must be compatible with implementation of the standard in [...] open source software', provided that 'open source software' includes Free software licensed under the GPL. But how to ensure this?

The 'royalty-free and non-discriminatory basis' is by far the best approach.

The 'non-discriminatory promise of non-assertion' is decidedly weaker. How could such a promise be made binding and irrevocable? What happens if the patent in question is sold to somebody who does not honour the promise?

Later the document mentions 'FRAND' terms. As discussed above, this would in practice exclude a significant set of Free/Open-Source software, and a standard involving such patent terms could not truly be deemed 'Open'.

With the above as rationale, I attach my answers to the specific questions asked in the document. Many thanks for your consideration of these points.

Yours sincerely,

Ben North

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| Chapter 1: Proposed open standards specification policy | | |
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| Qu | Your views | [office use] |
| 1 | The definition in the document very closely matches my own understanding. The most important factor to me is that anybody is free to implement the standard under any development model, in particular, software under the GPL. | |
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| 4 | I am answering not as an ‘organisation’ as such, but as a citizen. The effect that mandatory Open Standards would have on citizens is the enabling of greater access to government data, with greater freedom of choice in how citizens do so; this would be hugely beneficial. | |
| 5 | | |
| 6 | Yes. Open Standards would allow any supplier to create innovative solutions to government’s, citizens’, and others’ needs, creating competition and choice. Citizens and other consumers could also create their own, individual solutions. Free/Open-Source software could play a significant role here. | |
| 7 | Patent licences in standards have the potential to derail interoperability, if the terms are such that only certain development models are possible. Patent licences in the context of Open Standards must allow implementation in all development models, including under all Free/Open-Source licences. | |
| 8 | So-called ‘FRAND’ terms, usually involving a royalty payment per copy of a program, would preclude certain, very important, types of Free/Open-Source software, and would therefore deliver the very opposite of a level playing field. They should not be considered for an Open Standard. | |

| Chapter 1: Proposed open standards specification policy (<i>cont</i>) | | |
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| Qu | Your views | [office use] |
| 9 | Open Standards compatible with Free/Open-Source licences cannot exclude suppliers. The central tenet of an ‘Open’ standard is that anybody is free to implement it. | |
| 10 | On the face of it, a promise of non-assertion of patents for Free/Open-Source software seems potentially attractive. However, it could be difficult to make such a promise binding, legally meaningful, and irrevocable, even in the case of transfer of a relevant patent. | |
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| 12 | Taking a longer term view, the government could work with the British Standards Institute to ensure that the BSI creates only Open Standards, and uses its influence to push for Open Standards internationally. | |
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| Chapter 2: Proposed open standards mandation policy | | |
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| Qu | Your views | [office use] |
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| 5 | It is difficult to see how mandatory Open Standards could promote anti-competitive behaviour. The central tenet of Open Standards is that anybody is free to implement them. Proprietary standards, in contrast, can very easily lead to vendor lock-in, with that vendor then suffering the temptation to use its control over the government’s data to act in an anti-competitive fashion. | |
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| Chapter 2: Proposed open standards mandation policy (<i>cont</i>) | | |
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| Qu | Your views | [office use] |
| 9 | The government could perhaps become involved in pilot projects for an under-development standard, data format, or similar, but with the understanding that it would have to become a formal Open Standard before the government could fully adopt it. One could take another view on the interplay between standards and innovation: a set of Open Standards can provide a common infrastructure on which innovation can freely flourish. For example, the internet is built on Open Standards and has generated a vast amount of innovation. | |
| 10 | The government could sponsor and/or host ‘plugfests’ for relevant standards — gatherings of implementors and stakeholders of a standard to ensure interoperability and provide an opportunity for discussions. The particular potential solution whose conformance is being investigated could be part of such an event. As well as the direct benefits of the plugfest itself, the UK government would gain international credibility and publicity for its ‘Open Standards’ stance. | |
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| Chapter 3: Proposed international alignment policy | | |
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