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Dear friends and colleagues at OASIS:

The current dialog regarding IP on this list is familiar in it contentiousness and the gap in perspective it reveals. I humbly suggest for the sake of people's attention and in line with the purpose of this list, this dialog be moved to another or a new list, if there is sufficient interest in further discussing the relevant issues. I would support carrying on the dialog and would be interested to hear (off-list) whom else would also have interest. I believe the issues are fundamental to the suitability of OASIS to carry on certain types of open standards, and generally important to the uneasy current balance between cultures within OASIS. My analysis and suggestions are below.

I'm in sync with the sentiments expressed on openness regarding open standards and open source, but am reluctant to compel companies or individuals to give more detail on why they choose this or that IP policy. It is very important that we all, as professional who work together voluntarily and in good will, be careful neither to impugn the motives or truth-telling of others in our community, not be over intrusive in changing other modes of doing business and cultural expectations about spin vs. accuracy. However, in a respectful way, I wish to take this opportunity to more fully explore the important issues raised by this topic. I hope that the rift between advocates of more fully operating in the public, non-commercial interest for such applications as open government and open civic architectures can continue to work with an in OASIS in the future - but the different cultures jostling within OASIS would be well served by finding better governance and business processes to ease joining together with like minded people who seek to get together to do the people’s work in an open standards body.

Please note that the instinct to ask more and more questions about the motives of commercial organizations regarding their IP is of limited and instantly diminishing value. More information freely given can be helpful, but it seems an odd practice to force private businesses that exist, inter alia, for proprietarization of software to speculate about or otherwise limit their options by describing their inner motives for choosing a given IP policy. Compelled speech is usually a bad idea, even when required for good reasons (and who, after all, is to judge what reasons are "good" - so let's just say " even for reasons you agree with"). It also seems to me that the choice of a policy that allows licensing fees and other restrictions speaks for itself. It is, in fact, a valid policy that explicitly and impliedly conveys an array of options. That is the reason it was chosen - so the IP holders can gain access to that horizon of IP licensing possibility. In latin the phrase would be "res ipsa loquitur" - the thing speaks for itself. The choice of a given IP regime puts everybody on notice of what *can* happen.

In my experience, sensitively chosen language around choice of IP can serve to obfuscate rather than clarify the relevant realities at play. I'd rather read a smarmy, crisp statement like "because it's a valid IP choice" than the next most likely alternative - a paragraph of sculpted PR language around IP that leave the head spinning without sharpening access to relevant facts. xxxx I support the evident intent behind the suggestion that better information hence choice be available regarding IP. Here is some background on my perspective of the context of this dialog in OASIS and the types of ways we can constructively further evolve the culture and practices in OASIS to be more suitable work environment for open, non-proprietary standards.

When I helped to negotiate the merger of LegalXML into OASIS as a Member Section, we found that our IP policies and culture was a clash with that of OASIS. This was because we forbade the licensing of our end-product standards and other works anyway but by copyleft. OASIS, by contrast, permitted exclusive, proprietary, license fee copyright terms. The way I proposed we bridge the gap and preserve the explicit and important commitment to a safe place to work on truly open standards in the public interest was to create a legal bubble around our Member Section wherein the participation and output of members could only be contributed under the legal terms of our copyleft culture.

OASIS was not against this in principal, since they respected the choice of members to select their IP environment and all I was doing was suggesting a way members could self-select and group in a larger group rather than TC by TC. However, OASIS was unwilling to amend their bylaws to reflect this arrangement, and since there was no other obvious way to effectuate this goal, I proposed to LegalXML and OASIS that we include a clause in our OASIS approved Member Section rules that individually required every participant in a Technical Committee (TC) formed under the LegalXML OASIS Member Section must abide by our policy and refrain from making contributions that infracted the policy.

Since there was no mechanism for getting individual OASIS members and participants to agree (like a webform contract as part of signing up to a TC), we decided to include the requirement in the enabling charter of each TC, thereby defining and governing the scope of authority and the valid processes of all work and arrangements under or through that TC. So, we inserted a clause in the Member Section that included a block-quoted statement about IP that was required to be present in the Charter of every TC created or operating under the LegalXML Member Section, and that paragraph was vetted, negotiated, amended and endlessly discussed before finally being included.

As it was reported to me, there was resistance by representatives of certain large software companies relying upon closed methods, proprietary licensing and continuing legal and network controls over their products. However, in the end, since it was difficult to prevent good government people and open source/open standards advocates from choosing their model of participation, the plan was accepted.

I'm pleased to share, as Chair of this TC, that our hard fought IP language appeared in the Charter and was carried forward into the text of the OASIS eContracts TC final, formally approved and released eContracts 1.0 Specification. Sadly, with the passage of years, eventually those who favor proprietary IP in the standards context found an acceptable new plan, and the then new now current OASIS IP Policy effectively repealed the deal between LegalXML and OASIS that was so key to our merger. On a personal note, it felt like the old fire of openness fueling the early Internet was being extinguished over years with a velvet hammer. A “transition” period was permitted by OASIS to the new policy, and our copyleft commitment faded into the night of a long, cold winter.

But now the spark is blinking into existence again, as part of the new exciting times we are living into. The incoming Administration, for example, is committed to a new brand of online public infrastructure for civic engagement - they call it "Open Government". Check out change.gov if you want a taste of the bright, shiny future. Many individual and small team developers are again innovating through web 2.0 methods, community creation and relationship tools all freely available as - in effect - public civic infrastructure. My own efforts lately have been in creating identity and community dialog civic public open infrastructure through the eCitizen Foundation. Open government requires open standards and open architectures that are of, by and for the people - not private infrastructures of standards with tolls and checkpoints littering access and usability. And eventually, those infrastructures benefit from the formal, mature processes of standards making by organizations like OASIS. Will OASIS be able to evolve to create a safe place within it’s mosaic of cultures for like spirited people to work together in the public, open, free interests of the people?

While there will always be an important place in the ecology of America's and the world's economy for proprietary solutions, a new day is dawning and the original point of the Internet as a tool to liberate individuals, connect communities and transform society is returning. Better ways to define public, free infrastructure for civic engagement vs toll roads and gated communities will be needed for our new online lives - a kind of re-zoning of cyberspace. And some of the online space and time must be reserved as "public", "open" and "free". That's where we will interact as civic participants, enjoying the rights of free speech, free association, free assembly and helping our public servants in government to better support our participation in American self-governance.

The online infrastructures at all levels of the stack, horizontally, vertically, diagonally and across the business, legal, social and technical dimensions should be free, public and open. How, after all, can a private company be ceded ownership of the means for self-governance in a free society without that company, itself, being an organ of government and fully transparently accountable and responsive to the people who use the tools for their own self-governance. Otherwise, an improper alignment between self-interested private purposes can emerge in conflict with the public purposes of civic engagement.

Private software companies would do well to buy their influence in Congress, the White House and the Judiciary by paying lobbyists, lawyers and pressure groups like everybody else - and eventually those process should be reformed to prevent breakdowns in the system like the current economic crisis. But to extend the broken, closed and self-serving systems of power to also control the matrix of standards, code and infrastructures that comprise government of the immediate digital future is tantamount to outsourcing the methods of sovereignty, and therefore ceding undue influence over the possible options and results. It's a bad idea, because it's both anti-democratic and anti-market, preventing the broad participation, competition and capacity to adapt that is a hallmark of openness in the markets of ideas and solutions.

It is better for civic infrastructures that enable and contain public participation in self-governance in a free society to be subject to open transparent accountable systems and come from places like academia, non-profits and civic groups than from large private companies because ownership and control should be aligned in the public interest and not behind the profit motive or a narrow special interest.

Eventually, I imagine a cluster of standards, technologies and processes will emerge as a suite of standards in an open architecture for online civic engagement. At that time the stewardship of oversight and steering for that cluster will be transferred to a quasi-public agency of some kind - perhaps like ICANN but with broader scope and hence different and better participation in decision making and governance. In the meantime, as things get started at the next stage of adoption of a networked society, use of existing open standards groups like OASIS would be an optimal way to bridge from the past to the future. Can OASIS adapt to meet the challenges of standards making for open, public civic infrastructure in the information age?

I hope that one day soon OASIS will work with members who prize openness to create more safe bubbles or other more workable and acceptable approaches for like-spirited people to work together in the public interest within OASIS. Whether contained by the structure of a "Member Section", as I legally and politically architected in prior years, or perhaps in some new cross-boundary council or SIG - it's time for a change. And better commitment openness is change we need. A broader community is needed to work, not just isolated groups one TC at a time. Based on prior work along, OASIS deserves the chance to evolve and adapt to the new, better times. I encourage people who feel disgruntled by the current IP postures to take some time to communicate, including with OASIS, to explore potential better ways to work in the future.

Please take heed of the underlying energy animating this thread - it is not so much about gaining better clarity over the choice of IP in a rigid, industrial after-the-fact comment process - I perceive it is really about a call for change, a call for more and better methods to clearly enable and promote openness that is not closed by proprietary ownership and control, it's a call for OASIS to improve the culture by creating work environments of people who share a commitment to reform that in some way allowed easier access to a broader culture of like-minded volunteers who want to work on standards that are open inside OASIS and/or in alliance combination with other groups.

Sincerely,
- Dazza Greenwood

In reply to the following:
From: Patrick Durusau <patrick@durusau.net>
To: Abbie Barbir <abbieb@nortel.com>
Cc: oasis-charter-discuss@lists.oasis-open.org
Sent: Wednesday, November 19, 2008 6:28:05 PM
Subject: Re: [oasis-charter-discuss] RAND for Requirements?

Abbie,

Abbie Barbir wrote:
> Patrick
> RAND is a common mode of operation for Telecom industry.
> This has nothing to do with marketing, it only has to do with allowing
> Telecom providers to operate in SDO using the same environment that they
> are used to.
>
>
RAND is an *uncommon* mode at OASIS, although clearly permitted.

Perhaps we have different definitions of *marketing* if "allowing Telecom providers to operate in SDO using the same environments that they are used to" isn't marketing.

Quite frankly I would not deceive even a Telecom provider in order to get them to participate in OASIS.

The work product of the TC appears to not be subject to RAND in any meaningful way.

If it were, that would have been your first response.

So, let's simply tell the Telecom providers the truth, that RAND is meaningless for requirements and by extension for this TC.

Unless there is some problem with truth telling as a strategy?

Hope you are having a great day!

Patrick

> Have a nice day
> Regards

> Abbie
>
>
> -----Original Message-----
> From: Patrick Durusau [mailto:patrick@durusau.net] Sent: Wednesday, November 19, 2008 7:25 PM
> To: oasis-charter-discuss@lists.oasis-open.org
> Subject: [oasis-charter-discuss] RAND for Requirements?
>
> Greetings!
>
> The reasons given for RAND for this TC:
>
> Orit Levin:
>
>> 1. This TC is NOT going to produce any technical specifications.
>> 2. This TC is about gathering requirements backed up by use cases and scenarios and their applicability to existing technologies.
>> 3. This TC is about bringing as many as possible telecoms and vendors working in the Telecom area who feel most comfortable with RAND to contribute to the discussion.
>>
> and, Abbie Barbir:
>
>
>> Plus I would add that we will be dealing with other SDO such as TM Forum, ITU-T etc.. and working closely with them to get requirements from their documents. These SDO operate under RAND and as such this make the flow of information between the OASIS SOA TC and the other SDO more fluid.
>>
> Seem very unpersuasive to me.
>
> First, I can't say that I am familiar with the practice of treating
> requirements as IPR. Can someone point me to known legal authority for
> the notion that a requirement is subject to some vendor's IPR? (Granting
> that if I publish a book with a list of requirements, my statement of
> the requirement may be copyrighted, i.e., "Text must be presented in a
> *bold* font." (copyright Patrick Durusau 2008) but the substance of the
> requirement itself, that is that users want to use *bold* text, I don't
> think is subject to any IPR claim.)
>
> Second, from what has been said the TC doesn't intend to produce
> anything that is subject to any known IPR claim, thereby rendering RAND
> rather meaningless.
>
> Third, following up on Abbie's comment, is making this TC operate under
> RAND a marketing strategy to make it more attractive to vendors who

> aren't advised well enough to realize that requirements are not subject
> to IPR? Or who take false comfort from committees that operate under
> RAND?
>
> While I am all for marketing OASIS as much as the next person I think
> offering meaningless RAND on material that cannot be the subject of IPR
> is a very bad marketing strategy. What do we say to those vendors who
> falsely took our word that the requirements produced by this TC were
> subject to RAND? Some dreaded FOSS group implements technology to meet
> those requirements more cheaply and efficiently than commercial vendors.
>
> Then what do we say? No, let's be honest up front with all our members,
> even commercial vendors.
>
> BTW, I think anyone who charters a TC under RAND should have to specify
> what IP is being contributed under what conditions so that OASIS members
> can make a determination as to whether they wish to participate or not. As far as I can
tell at this point, neither Microsoft nor Nortel have
> any IP as traditionally understood to contribute to this TC. So, why the
> RAND? (Other than for false advertising purposes.)
>
> Hope everyone is having a great day!
>
> Patrick
>
> --
> Patrick Durusau
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> Chair, V1 - US TAG to JTC 1/SC 34
> Convener, JTC 1/SC 34/WG 3 (Topic Maps)
> Editor, OpenDocument Format TC (OASIS), Project Editor ISO/IEC 26300
> Co-Editor, ISO/IEC 13250-1, 13250-5 (Topic Maps)
>
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> To unsubscribe from this mail list, you must leave the OASIS TC that
> generates this mail. Follow this link to all your TCs in OASIS at:
> https://www.oasis-open.org/apps/org/workgroup/portal/my_workgroups.php
>
>

-- Patrick Durusau
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