

Second Response to Draft National Policy on Open Standards for e-Governance

Centre for Internet and Society | 2009-07-07

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Another draft (labelled “version 2”, dated May 26, 2009) of the draft national policy on open standards for e-governance was made available to Fosscomm, while many software companies were speaking out against NASSCOM’s position on the policy. CIS drafted a second response addressing both the allegations against NASSCOM as well as the few shortcomings we perceive in the draft policy.

To Shri Shankar Aggrawal Joint Secretary (e-Governance) Department of Information Technology Ministry of Communications and Information Technology

Tuesday, July 7, 2009

Dear Sir,

Sub: Comments on Draft National Policy on Open Standards for e-Governance (version 2)

I am writing on behalf of the Centre for Internet and Society, which is a Bangalore-based civil society organization involved both in research and policy advocacy. Public accountability and digital pluralism are two of our core concerns, and it is for this that we are writing to you today. As a natural corollary of our mission, we aim at representing the concerns of citizens and consumers. You would recall that we had submitted comments to the call for comments you had put out for the draft National Policy on Open Standards for e-Governance last year (archived at <http://cis-india.org/advocacy/os/iosp/the-response/>).

We have recently received what appears to be a newer draft (version 2) of the National Policy on Open Standards for e-Governance, dated May 26, 2009. We are yet again very pleased to note the progressive nature of this document and wish to congratulate the government on its decision to promote the interests of the citizens of India over the narrow partisan interests of a few companies which wish to promote proprietary standards.

It has brought to our notice by some in the software industry that the National Association of Software and Services Companies (NASSCOM) has argued for

the dilution of the definition of open standards by including standards licensed under “reasonable and non-discriminatory” terms to be considered “open”, and has also called for multiple standards in the same domain to be considered valid as a rule under the policy. We believe both these demands go against the interest of consumers of standards — which in this case is the Indian government — and are thus against the interest of citizens as well, since the Indian government handles data on behalf of its citizens.

Even “reasonable and non-discriminatory” terms of licensing of standards are in fact discriminatory as they prevent the development of free/libre/open source software based on those standards. And while having multiple implementations of a standard is beneficial as it increases consumer (i.e., governmental) choice, having multiple incompatible standards is detrimental to the government's interest as the policy itself recognizes in paragraph 4.2, and the very purpose (as enumerated in paragraphs 1, 3, and 4) of having standards is defeated. Even if the multiple standards are bi-directionally interoperable, additional costs are incurred in having concurrent multiple standards.

Thus, one hopes that the the threshold of “national interest” mentioned in paragraph 6.4.1 is set to a high level. Lastly, the views put forth by NASSCOM seem not to be truly legitimate as it has been the complaint of some that NASSCOM did not hold an open consultation with its own members before formulating its views. There are software giants, including IBM, Sun, and Red Hat, that have openly criticized the NASSCOM position on open standards. More importantly, NASSCOM's position does not concur with what we believe is in the best interest of small and medium software enterprises, which constitute the bulk of the Indian software industry. We pray that you shall keep this in mind while considering NASSCOM's views.

We believe that apart from the technical reasons to favour open standards, there are many public interest reasons as well. We believe that the adoption of open standards is a step towards the promotion of equitable access to knowledge to all the people of our country. We further believe that public accountability will be served greatly by adoption of an open standards policy by the Central and State governments. While even developed countries (such as those of the EU) are mandating open standards in all governmental departments, processes, and interactions, it is developing countries that stand to gain most from open standards. Proprietary standards place a larger burden on developing economies than developed as developing economies have a greater need to participate in the global network by using standards, but do have lesser capabilities than developed economies in terms of paying for royalties.

On the document itself, while there are many reasons to hail it, we believe there are still a few shortcomings which we wish to bring to your notice.

Issue 1: Possibility of following letter of policy while violating its spirit

Explanation Sometimes private companies can interfere with the standardisation process by exerting undue influence on the members of the standard setting body. That such undue influence have been sought to be applied even in India recently shows that this is not mere conjecture or idle speculation. Given this background, the document should note this as a problem and note that remedial measures could be undertaken in the event such undue influence comes to light.

Resolution Introduce language, such as that used in the EU EIF, stating: “Practices distorting the definition and evolution of open standards must be addressed immediately to protect the integrity of the standardisation process.”

Issue 2: Patenting and licensing of government-developed standards

Explanation Paragraph 6.3 of the draft policy allows the government to opt for the development of a new standard by a Government of India-identified agency in case no standard is found to meet the government's functional requirements. However, it is not clear under what terms this standard will be available.

Resolution Introduce a paragraph 6.3.1 stating: “Any standard developed by or on behalf of the government shall be patent-free and the specifications of such a standard will be published online and will be available to all for no cost. Along with the standard, the government shall also provide, or shall cause to be provided, a free/libre/open source reference implementation of that standard.”

Issue 3: No framework provided for review or phasing out interim standards

Explanation Paragraph 6.2 permits the government to adopt a non-open “interim” standard (one which does not fulfil all the mandatory requirements of open standards as laid out in 5.1) if no open standard exists in the specific domain for which the standard is required. This however does not have a clause necessitating the phasing out of such an interim standard.

Resolution A review mechanism should be provided for periodic evaluation of all standards selected by the government, especially those designated as interim standards. A new paragraph 7.1.1 could be added: “All standards selected through the processes outlined in this policy shall undergo an annual review by the Apex Body on e-Governance Standards, and all those designated as interim standards shall be reviewed biannually.”

Issue 4: Problematic definition in the glossary

Explanation In Appendix A, the definition of “patents” (A.12) states: “The additional qualification 'utility patents' is used in countries such as the United States to distinguish them from other types of patents but should not be confused with utility models granted by other countries. Examples of particular species of patents for inventions include biological patents, business method patents, chemical patents and software patents.” Many of these references are U.S.-specific and are not valid forms of patents in India (e.g. biological patents, business method patents, and software patents).

Resolution Delete the last two sentences in A.12

We once again wish to compliment the government on developing such a strong policy on open standards, and hope that our suggestions are incorporated into the text of the final version. We further hope that the policy will be notified at the earliest, as there has already been considerable opportunity for the public and industry to comment on the draft versions of the policy.

Yours sincerely,

Pranesh Prakash Programme Manager Centre for Internet and Society