

# Need for affirmative actions in public procurement for Free Software

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# Main areas

- What is an affirmative action to "favor" Free Software
- Is an affirmative action needed, and why
- The European experience on-the-field
- European Interoperability Framework v.2: a missed chance or a dismaying failure?
- What should others learn from Europe shortcomings?

# Affirmative action

- In general, an action to remedy an evident imbalance
- Situation detrimental to a category that does not deserve to be treated pejoratively
- Question: is this the case for Free Software?
- Answer: “arguably yes”

# Competition in tenders

- Study by Matthieu Paapst [2010] shows that still many intra-EU tenders name a brand when they tender for software procurement
- EU law forbids that and provides caveats when naming a product is unavoidable
- That study shows that the playing field is tilted

# EU recent experience

- EU Commission: one of the starkest opponents of PC operating systems monopolies
- EU Commission: one of the largest accounts for the same monopolists
- Jan 2011: EU decided to move 36,000 PCs to Windows 7 – without even bothering to issue a public tender (including *new* services “bundled” to W7, like Share Point)
- Why?

Windows is *unavoidable*

( *WTF* )

# Lock-in

- That goes by the name of *lock-in*
  - Means the previous purchases have an impact on new ones
  - Migration costs are so high that individually any new purchase can be justified with the previous contractor
  - No competition = technical dependency *and* higher prices
- Public, private entities *must* avoid lock-in.
- Need to consider the overall long-term costs

# EIF

- Still no clear policies to push for lock-in avoidance
- EIF document within EU Digital Agenda
- Mandated to prevent competition distortion and promote interoperable technologies, especially in the public sector
- Promoting, inter alia, Open Standards (“OS”)

# EIF v.1

- Mainly an internal document, not really a policy
- Follows up on IDABC studies that clearly show how Open Standards and Free Software should be favored to free the public market
- Identifies Open Standards according to certain criteria

# OS according to EIF v.1

- "Standards are key to interoperability"
- Open standards are unencumbered by patents
  - *"The intellectual property - i.e. patents possibly present - of (parts of) the standard is made irrevocably available on a royalty-free basis"*
  - *There are no constraints on the re-use of the standard."*
- Notice: no mention of Free and Open Source Software here

# Open Standards in EIF v.2

- EIF v2 Section 5.2.1 sets out a three part definition for “open specifications”, note this one:
  - *“If the openness principle is applied in full:*
    - *All stakeholders have the same possibility of contributing to the development of the specification and public review is part of the decision-making process;*
    - *The specification is available for everybody to study;*
    - *Intellectual property rights related to the specification are licensed on FRAND terms **or** on a royalty-free basis in a way that allows **implementation in both proprietary and open source software.**”* [emphasis added]

# What has happened

- The requirement on Open Standards has been diluted
- In a document that is not even mandatory, just best practices
- Huge spin “FRAND is compatible with Open Source (Free Software), while **it's NOT**.
- FRAND (think of MPEG) invariably discriminates against Free Software, it's admissible (?) according to EIF v.2

# Lesson learned

- More dynamic and less “colonized” countries, such as Korea, *must* avoid similar counterproductive policies as in Europe
- Don't be fooled into thinking “openness is a continuum”, because at the end of the spectrum lies total closure and a recipe for disaster

# Further readings

- The EIF v.1/v.2
  - <http://ec.europa.eu/idabc/servlets/Doccd552.pdf?id=19529>
  - <http://fsfe.org/projects/os/bsa-letter-analysis.en.html>
  - <http://ecis.eu/documents/ECISStatementreEIF13.10.10.pdf>
- Matthieu Paapst's study:
  - <http://www.ifosslr.org/ifosslr/article/view/41/76>