ECIS Statement on the proposed new European Interoperability Framework

13 October 2010

Some who pay lip service to interoperability in fact wish to frustrate it and thereby to preserve powerful market positions. These people have lobbied fiercely to prevent the adoption of a revised version of the European Interoperability Framework, to win adoption of an EIF that is considerably less favourable to openness and interoperability than the old EIF version 1.

Some critics claim the new EIF would establish a procurement preference for so-called "*IPR-free*" (Intellectual Property Rights-free) specifications that will disadvantage innovative companies and even frustrate the EU's ability to ensure respect to patent holders' rights in Chinese standardization processes. This is wrong.

Let us make two basic observations at the outset with regard to these suggestions:

- ECIS members, such as IBM, Oracle and Nokia, are among the most innovative information and communications technology (ICT) companies on the planet and include owners of some of the largest patent portfolios in the ICT sector. ECIS would have deep concerns about any European Union instrument that hindered ICT innovation. But fostering open government procurement for all software will not do so.

- Moreover, ECIS members share serious concerns about China's intellectual property and standardization policies. ECIS members would shoot themselves in the foot by supporting EU initiatives that would undermine the European Commission's ability to pursue these concerns with China. But the argument that the draft EIF version 2.0's principles on openness would do so is a red herring with no basis in fact.

More specifically, in Section 5.2.1 the EIF does not favour "*IPR-free*" specifications, as some have claimed.   It states only that to be deemed fully open a software specification must be able to be "*freely implemented and shared under different software development approaches*."

This language should be interpreted to mean that to be fully open, a software interoperability specification may not be encumbered with running intellectual property ("IPR") royalties. Encumbering what would otherwise be an open specification would exclude a broad segment of the industry – mostly open source software developers – from implementing that specification in their products. Such a requirement would disregard one of the core principles behind the most widely-used open source licence (the general public licence, or GPL), which prohibits the downstream distribution of software encumbered with IPR royalties.

CONFUSING ROYALTY-FREE WITH IPR-FREE

But defining openness as does Section 5.2.1 does not imply a preference for software that is free of IPRs. On the contrary, the open source software development model is based on IPRs in order to stimulate collaborative innovation within the broader open source community by

enforcing the promise that whatever they contribute to will be available by everyone without restriction to share, reuse and develop the software further. This is a powerful software development model that drives innovation, particularly in sectors that others are reluctant to enter because customers have been locked up by market-dominating players. Royalty-free should not be confused with IPR-free.

Moreover, a software interoperability specification that is freely implemented can be implemented also in proprietary systems. It is the specification that should be unencumbered. It can then be implemented in proprietary software for which the owner wants to charge royalties, or in open source software. That offers government authorities the necessary choice that in turn maintains competition and drives innovation.

In any event, where a particular functionality requires the use of specifications that may include proprietary technologies and royalty-bearing IPRs, nothing in the EIF prevents public administrations from choosing these specifications. The EIF provides simply that where equivalent functionality is provided by a specification that does not require payment of IPR royalties to implement, that specification is more open and should be favoured.