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20th May 2011

Dear [REDACTED]

Re: UK Government Open Standards Procurement Policy Note & Consultation

You kindly invited me to write to you directly setting out Microsoft's concerns on the emerging new UK policy on open standards, as set out in Procurement Policy Note 3/11 on "Use of Open Standards when specifying ICT requirements". This letter takes you up on that offer.

I should start by saying that Microsoft shares the UK Government's objectives in this whole debate. The Government's new ICT strategy sets out an exciting vision - of utility-based computing in government, of ICT-enabled service transformation, and of the democratisation of data - which we believe is genuinely world-leading. Interoperability between systems and data is a vital enabler of this vision. As you say in the Procurement Policy Note: *"Government assets should be interoperable and open for re-use in order to maximise return on investment, avoid technological lock-in, reduce operational risk in ICT projects and provide responsive services for citizens and businesses."* We strongly support this objective, and agree that open standards are key to delivering it.

Commitment to open standards lies at the heart of the Microsoft business strategy. For example:

- We too are committed to utilising the power of open standards based platforms to transform and open up the ICT supply chain – which is why we are investing billions in Cloud Computing, why we are identifying best-of-breed SME solutions around the world via our own Government App Store, and why we are committed to doing all this via open standards.
- We document and publish the APIs for all our high volume products, enabling any developer easily to innovate and interoperate with Microsoft technologies whether they are "commercial" or "open source".
- We invest significantly in the open standards process, actively participating in many standards bodies where we contribute valuable technologies to implementers on Fair, Reasonable and Non-Discriminatory terms (including dozens of contributions on a royalty free basis).
- And we continue to invest heavily in our support for standards. We are formal members in 150 standards organisations and represented on over 350 working groups. We have more than 1,000 people trained for standards group participation through internal certification as well as a community of 15 National Standards Officers worldwide

Despite this strong strategic alignment, we believe that there is an opportunity to create a more open policy to help the Government deliver on its strategy.

Definition of Open Standards

The first opportunity is regarding the final part of PPN 3/11's definition of open standards, which is that these *"must have intellectual property made irrevocably available on a royalty free basis"*. This represents a break from standard global practices which we believe would be highly damaging for the UK. Allowing IPR holders to contribute their IP to a standard while protecting the interests of users by ensuring this is done on fair, reasonable and non-discriminatory (FRAND) terms has always been at the core of standards-led innovation across all sectors. Prior to the industry roundtable with you on 12th May, Intellect circulated a letter from three European Standards Organisations (CEN, CENELEC and ETSI), written to the Minister for the Cabinet Office, which recommended improvements / enhancements and I fully endorse all their points: notably, that the proposed definition of open standards could be made more open, and would ensure that the UK Government, its partners and its citizens continue to be able to exploit standards from "the majority of the most important standards bodies, including those of the recognised European Standards Organizations".

We believe this issue is fundamental to the UK government's objectives around economic growth, modernising public services, social aspiration and open government. For example, one recent study found that a typical laptop contains over 250 technical interoperability standards – with 75% of these being developed under FRAND terms, and only 23% under Royalty Free terms.¹ Moreover, as we shared with you when we met on 14th April, our own database illustrates that between 50% and 70% of the standards that are commonly deployed by public sector customers around the world would be excluded by PPN 3/11's definition of Open Standards.

By adopting a FRAND-based definition of open standards the UK government and its partners would benefit in a number of key ways:

- **Create a true "level playing field" as per the Government's ICT Strategy** between different suppliers in the market place, increasing competition in the short term. And in the medium term, it would increase incentives for innovation and new market entry in the government ICT market.
- **It would continue to allow government to be citizen centric.** Common standards such as MP3 and GSM are highly successful and widely adopted by citizens. Not supporting FRAND-based standards and abandoning such standards because they contain royalty-bearing IPR will negatively impact both government and citizens.
- **Finally, it would enhance the UK's international competitiveness.** The UK's ICT sector would be disadvantaged compared with both the US (where the Federal government takes an inclusive approach to standard setting, including through FRAND approaches²) and the rest of Europe - where the European Interoperability Framework Version 2 (with which Member States are expected to align their national policies by 2013) explicitly allows standards to contain royalty-based IP, provided that this is licensed on a FRAND basis.³ And the policy could also damage UK commercial interests overseas more broadly, by weakening the UK and EU policy stance with non-EU governments about the importance of protecting intellectual property rights. China, for example, has proposed a similar mandatory royalty free policy for Chinese national standards – and this has rightly been opposed by

¹ Biddle, Brad, White, Andrew and Woods, Sean, How Many Standards in a Laptop? (And Other Empirical Questions) (September 10, 2010). Available at SSRN: <http://ssrn.com/abstract=1619440>

² See "Federal Use of Standards", clauses 5i and 5j, at http://www.whitehouse.gov/omb/fedreg_a119rev

³ The language in EIFv2 Section 5.2.1 states: "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." This recognizes that FRAND-based standards can be implemented in open source as well as proprietary software.



the UK and other western governments (with strong urging and support from their large domestic companies) as an attempt to weaken intellectual property rights.

We believe that these views are not just those of Microsoft, but are widely held across industry. In meetings which Microsoft has attended, such as the Intellect Industry roundtable last week, the general consensus has been support for FRAND-based standards.

Mandating of Single Standards

The second opportunity relates to the suggestion in the recent ICT Strategy document that the Government is considering mandating a single standard for at least some domains, starting with document publishing.

Microsoft believes strongly that the broader inclusion of multiple standards leads to more open and fair competition as well as increased innovation. The Government ICT Strategy states:

39. The Government believes that citizens should be able to read government documents with the standardised document format reader of their choice. The first wave of compulsory open standards will determine, through open consultation, the relevant open standard for all government documents.

The first sentence of this paragraph reflects a growing reality that citizens will use a wide range of devices to gain access to government information. As a result, governments must strive to make information available in a range of common formats, allowing the citizen to use the technology of its choice to access the information. The second sentence, however, contradicts this “citizen centric” view, suggesting instead that the government will dictate the single format in which citizens will have to access government documents. The vast majority of government documents are not intended to be editable and traditionally have been released de facto in an archival format such as the PDF format.

The idea of picking single standards across a range of technology domains might seem attractive at first glance, but the superficial appeal of such a policy disappears as we consider the realities of the technology world. Most technology domains encompass user requirements which are complex and non-heterogeneous which results in a broad ecosystem of competing, partially overlapping or parallel standards and technologies.

Specifically in the area of publishing editable documents, we believe strongly that the government should continue to recognise and use the different open standards which are available in this domain, including both ODF and OpenXML.

We would welcome a move by the UK government to ensure that when it publishes editable documents it will always do so with an ODF option, since this helps give the broadest possible accessibility and choice for users. But we believe having both ODF and OpenXML as approved standards would provide specific benefits:

- **Increased user choice.** Mandating ODF only would reduce choice for the great majority of government’s users and citizens. Many productivity users across the UK consumer market use Microsoft Word, which brings them a range of important functionality not available in ODF, such as auditable revisions tracking. Degrading their ability to use that functionality in respect of government documents seems a strange way of promoting consumer choice.
- **Enhanced interoperability.** Secondly, while ODF does provide another option for users (which is why we welcome its use by government), it is not the single best solution to document interoperability. Independent peer-reviewed empirical research⁴ has found significant interoperability problems

⁴ See *Lost in Translation: Interoperability Issues for Open Standards*, [Illinois Public Law Research Paper No. 08-02](#), by Professor Rajiv Shah, University of Illinois, August 2005, last revised February 2011



between the different commercial products that run ODF. OpenXML was found to be the best performing format in terms of cross-vendor interoperability, and even Microsoft's proprietary .doc format performed better when used across different products than ODF.

Internationally, there are examples of Governments who have already tried to mandate ODF as the single document format such as the State of Massachusetts in the United States. These have shown how such a policy negatively impacts citizen engagement, reduces productivity and adds cost and complexity to the government organisation.

We can illustrate the inherent risks in selecting a single standard and the potential variability in implementation through reference to a recent support call we've taken here in the UK. Ironically, it regards opening in Word 2007 the Government's own ICT Strategy from the recently published ODF file. I recall you briefly mentioned this problem yourself at the recent Intellect roundtable. Our forensic investigation indicates that the problem was within the ODT file and actually caused by an old version of OpenOffice used to convert the file from .doc to ODT, which is revealed by data inside the file. We believe the lesson from this is that the Government should embrace more than one Open Standard for document publication (and possibly as many as 3 or 4), use the latest native products to create documents and use all the chosen standards to ensure its publications faithfully reach as many citizens as possible.

Recommendations for next steps

Microsoft has two recommendations:

1. **The Government revise the PPN to align its definition of Open Standards with that set out in the European Interoperability Framework Version 2**, which explicitly allows standards to contain royalty-based IP, provided that this is licensed on a "Fair, reasonable and non-discriminatory basis".
2. **The Government adopt an open, fair and inclusive approach supporting internationally recognised standards to enable innovation, e-government delivery and drive choice for e-government users.** There is clear scope to get benefits by focusing government systems around a core set of standards (and we believe there is scope to be significantly more focused than in the draft list of standards set out in the SurveyMonkey consultation, on which we have provided detailed input which I hope you will find helpful in this regard). In contrast, taking a restrictive, narrow and closed approach by mandating specific standards to the exclusion of others will inevitably limit flexibility which impedes e-government delivery and reduces choice for e-government users.

I would be delighted to discuss this letter with you if you would find it helpful. Similarly, I would be delighted to bring in any additional expertise from across Microsoft globally that you might find helpful. As I said at the outset, Microsoft strongly welcomes the ICT strategy which the UK government is pursuing and is keen to help you deliver it in full. But we believe that on these two points of detail, the implementation of the strategy is flawed in ways which will lead to very significant unintended consequences.

Best regards,



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