

## **Why the OOXML Vote Still Matters: A Proposal to Recognize the Need for "Civil ICT Standards"**

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*This essay is in one sense a reply to the open letter recently released by [Patrick Durusau](#), in which he suggested that it was time to acknowledge progress made and adopt OOXML. But it is also an explanation of why I have for the first time in my career become personally involved in supporting a standard. The reason is that I believe that we are at a watershed in public standards policy, and that there is much more at stake than ODF and OOXML. In this essay, I explain why I think we need to recognize the existence and vital importance of what I call "Civil ICT Standards," and why more than simple technical compromises are needed to create them in order to protect our "Civil ICT Rights."*

As I write this entry, hundreds of people from around the world are converging on Geneva, Switzerland. 120 will meet behind closed doors to hold the final collaborative discussions that will determine whether OOXML will become an ISO/EC standard. When their work is complete, not everyone will be pleased with the changes agreed upon, but all will acknowledge that the specification that eventually emerges will be much improved from the version that was originally submitted to Ecma two years ago.

Most will also agree that Microsoft's customers and independent software vendors (ISVs) will be far better off with OOXML publicly available than they would if Microsoft had not offered the specification up at all.

To reach this final draft, hundreds of standards professionals in many nations have spent a great deal of time and effort, including many at Microsoft. And while Microsoft, working with Ecma, has not agreed to all of the changes that have been requested, my impression is that it has agreed to many that will, if implemented by Microsoft, require a substantial amount of work and technical compromise on its part.

Leaving aside whether Microsoft has made sufficient concessions, it has also made substantial accommodations on the intellectual property rights (IPR) front along the way as well. Today, it makes important IPR available under covenants not to sue that are more broadly available, and far less burdensome than the licenses that it required two years ago.

When I first began to write about ODF in September of 2005, none of these developments had been anticipated, much less promised by Microsoft. And while the interoperability promises made by Microsoft as recently as last week still fall short of those that would be required to meet the needs of (for example) open source software developers, it is only fair to acknowledge that there are other proprietary software vendors that have not promised as much, and that the vast majority of information technology and communications (ICT) standards are still adopted under IPR policies that are primarily based upon RAND declarations.

With so many accommodations by a commercial vendor that has no incentive (antitrust regulators aside) to make any concessions at all under the cold realities of the business world, it is not surprising that a number of commentators in the last few weeks have focused on the distance that Microsoft has already traveled, rather than the distance left to go. Most notably, Patrick Durusau, the ODF Project Editor in both ISO/IEC JTC1 as well as OASIS, released an [open letter](#) calling for passage of OOXML, calling the progress of the last two years, warts and all, as "Poster Child of Open Standards Development." He closed that letter with the following:

The OpenVMS project has made a large amount of progress in terms of the openness of its project development. Objections that do not recognize that are focusing on what they want to see and not what is actually happening with OpenXML.

Is it true, then, that those who are still uncomfortable with the adoption of OOXML are either vendor-competitors with obvious commercial axes to grind, or unrealistic zealots that won't be satisfied until Microsoft's dominance is destroyed?

The answer, I think, is no. And here is why I believe that this is the case.

We are entering an era in which IT technology is to society as earlier very different modalities were to human rights, from freedom of expression and free access to information (the unfettered use of the printing press), to civil rights (the abolition of separate schools and separate seats on buses for people of color in the US), to freedom of religion (the ability to openly practice one's religion in houses of worship).

In this new interconnected world, virtually every civic, commercial, and expressive human activity will be fully or partially exercisable only via the Internet, the Web and the applications that are resident on, or interface with, them. And in the third world, the ability to accelerate one's progress to true equality of opportunity will be mightily dependent on whether one has the financial and other means to lay hold of this great equalizer.

Not surprisingly, with these new and wonderful technical possibilities come real risks and responsibilities. In order to avoid the former and assume the latter,

questions of social policy therefore enter the picture, because where the unconstrained forces of the market place will lead may not be where the best interests of society will lie.

In the dawn of the computer age, when only isolated mainframes lived in major corporations and research labs, such a concern barely existed, if at all. But as the world becomes more interconnected, more virtual, and more dependent on ICT, public policy relating to ICT will become as important, if not more, than existing policies that relate to freedom of travel (often now being replaced by virtual experiences), freedom of speech (increasingly expressed on line), freedom of access (affordable broadband or otherwise), and freedom to create (open versus closed systems, the ability to create mashups under Creative Commons licenses, and so on).

This is where standards enter the picture, because standards are where policy and technology touch at the most intimate level.

Much as a constitution establishes and balances the basic rights of an individual in civil society, standards codify the points where proprietary technologies touch each other, and where the passage of information is negotiated.

In this way, standards can protect – or not – the rights of the individual to fully participate in the highly technical environment into which the world is now evolving. Among other rights, standards can guarantee:

- That any citizen can use any product or service, proprietary or open, that she desires when interacting with her government.
- That any citizen can use any product or service when interacting with any other citizen, and to exercise every civil right.
- That any entrepreneur can have equal access to marketplace opportunities at the technical level, independent of the market power of existing incumbents.
- That any person, advantaged or disadvantaged, and anywhere in the world, can have equal access to the Internet and the Web in the most available and inexpensive method possible.
- That any owner of data can have the freedom to create, store, and move that data anywhere, any time, throughout her lifetime, without risk of capture, abandonment or loss due to dependence upon a single vendor.

Let us call these "Civil ICT Rights," and pause a moment to ask: what will life be like in the future if Civil ICT Rights are not recognized and protected, as paper and

other fixed media disappear, as information becomes available exclusively on line, and as history itself becomes hostage to technology?

I would submit that a vote to adopt OOXML would be a step away from, rather than a way to advance towards, a future in which Civil ICT Rights are guaranteed.

Those within Microsoft that truly believe that it needs to change its ways to compete in the future – and there are many that do believe this – may understandably feel aggrieved that people like me would say this. Hasn't Microsoft gone far enough, they may ask? Shouldn't it be rewarded, rather than punished, for having traveled so far? Wouldn't a "no" vote on OOXML support arguments that Microsoft should entrench rather than open itself up even farther?

Some people might also feel that people like me are applying different rules to Microsoft than we would apply to another vendor. What they fail to see is that while I am applying different rules indeed, I am not applying them to a single vendor, but to a single class of standards. Those standards are the ones that have profound social significance – such as document formats – rather than purely technical meaning – such as the means to achieve a local area network connection. Standards in this class are a small, but vitally significant percentage of the whole, and therefore demand special attention, because their impact is far reaching, and their effect long lasting.

Standards in this area today involve enable universal global access in native character sets (the Unicode) and the basic standards upon which the Internet and the Web are based, In the future, they may involve new standards that relate to health records, privacy, security, electronic voting, federated identity, and more. Over time, they will become both more numerous as well as more vitally important. I will refer to such standards as "Civil ICT Standards."

I believe that documents clearly fall into the category of Civil ICT Standards, as they control whether the documents of today can be accessed far into the future, and whether citizens have the freedom of choice in the technology they use. Can ODF and OOXML each lay claim to meeting the requirements of Civil ICT Standards?

Microsoft has rightly observed that OOXML has a different goal than ODF, and they are right. The purpose of ODF is to create a standard that any application of any nature can use to exchange information with any other application that implements the same standard. It does so by requiring enough uniformity to ensure the result by permitting enough flexibility to promote innovation. OOXML, in contrast, is targeted at permitting information created in Office to be exchanged with any other application that implements OOXML with full fidelity. It does so by requiring near total uniformity at the expense of precluding almost any innovation. I would submit that the former meets the requirements of a Civil ICT Standard, while the

latter meets the needs of single vendor and the ISVs that have chosen to be part of its ecosystem.

And now, I think, you will begin to see why the OOXML vote still matters, and why I believe that Microsoft has not, in fact, traveled far enough along the road to openness.

If I have persuaded you that the application of public policy considerations to Civil ICT Standards is necessary, then you must consider how that policy is to be developed and applied. This is a difficult issue, given that ICT standards must be globally adopted in order to achieve their full potential.

How can this be accomplished? At the one extreme, there is self-regulation by industry, and at the other there is legislation. But the former is subject to proprietary pressures and usually does not include meaningful participation by all stakeholders (especially end users), while the latter is slow, cumbersome, and still subject to lobbying by commercial interests.

What, then, can be done? Some would say that government has no business in the equation at all, but this, I believe, is insupportable once the social importance of Civil ICT Rights is accepted. Why should government intervention be justified in order to require handicapped access to schools and voting booths, but not the Internet to access a school or distance learning Web site? Or to a town hall, but not a town hall Web site? Or to obtain a photocopy of a public record for a small charge, but not an electronic one unless one buys the products of a single vendor?

So we have a problem without a much needed solution. But at least we are beginning to recognize that we have such a problem, and to begin to grapple with the difficult issues that stand between where we are today, and where we need to be. I believe that it is very important that we do so successfully, and soon, because the speed of technological innovation and adoption is far out running the process of social recognition and protective action.

Although Microsoft might have hoped otherwise, OOXML has found itself at the watershed of society's recognition of this problem. Appropriately enough, Geneva, Switzerland, the home of many United Nations and other global offices and agencies, will be the place where an opportunity is seized or lost to make progress in finding that solution.

This, at last, takes us to the reason that I believe that the OOXML vote matters, and it is this: approval or disapproval will have impact on government purchasing, and the exercise of the very substantial power of government procurement offers a middle ground between self regulation by industry and direct intervention by government.

Already we have seen that the non-legislative action of a single US state – Massachusetts – dramatically accelerated the credibility of ODF, motivated enormous efforts on the part of many individual as well as industrial supporters to support that standard, and forced Microsoft to take open document formats far more seriously than it doubtless ever would have otherwise. Increasing interest in the importance of document formats by other governments, especially in Europe, has further motivated supporters of both formats, and brought about more movement by Microsoft.

When governments commit to procure only software based upon truly open document formats implemented by multiple competing products, that promise tells both proprietary and open source developers that a sufficiently large market will exist to reward the substantial effort required to produce robust and compliant products. By doing so, these governments have provided the first credible incentive for market participants to compete on the desktop in almost two decades. This in turn has provided incentives to Microsoft to truly innovate there as well, rather than simply seek to maintain its installed base while maximizing profits. One need only look to the historical intervals between releases of products such as Internet Explorer to see this predictable dynamic at work.

Such action by governments is entirely consistent with the role of government as demonstrated by past practice. In the United States, for example, government contractors alone must abide by a wide variety of rules that are intended to pursue social goals, such as encouraging minority hiring and other rules that require the preferential award of contracts to women and minority owned businesses. The goal of each is to help historically disadvantaged classes of individuals gain equal access to good jobs, and to successfully launch businesses of their own.

With this background to provide context, let us now look at the predictable consequences of the final vote on OOXML.

If the eligible members of ISI/IEC JTC1 vote not to approve OOXML, then OOXML will still be an Ecma standard, and all of the benefits to Microsoft customers and developers will still be preserved. Microsoft will also reap the principal benefits that OOXML can provide for it: its developers will be more likely to continue to support Office, and new developers will doubtless become motivated to become part of that environment. In short, a vote against OOXML does not deprive either the marketplace or Microsoft of the value of OOXML having been made public, and all of the changes already made by Microsoft will still bear fruit.

But if the National Bodies vote to approve OOXML, what then?

If they do, OOXML will achieve titular parity with ODF in the eyes of legislators around the world, most of whom will lack the existing knowledge and the time and interest to learn whether there would still be a reason to prefer products that

implement ODF over OOXML. Presumably, the high water mark of interest in ODF would have passed, and the credibility of ODF-compliant products, as well as the importance of open document formats in general, would begin to recede from public and legislative view.

Microsoft, like any other publicly held company, would then have no incentive at all to consider moving even one step farther down the path to openness with OOXML than it had on the date of the vote, except to the extent compelled to do so by the European Commission – a glacial process, as witnessed by the more than nine-year duration of the EC’s last prosecution. Microsoft would not have even the incentive to fully implement OOXML, nor to agree to implement any later Ecma-approved change that it did not find to its liking. Nor to work towards merging ODF, OOXML and UOF (the Chinese open document standard). And then we would be back where we started.

Perhaps most tellingly, neither Microsoft nor any other dominant vendor would be any more likely to cooperate in the creation of another Civil ICT Standard that threatened its hegemony than Microsoft has done in the past. There is an historical antecedent for this as well, because Microsoft stood aside rather than join the working group in OASIS that created ODF, despite the fact that it held a seat on the Board of Directors. Had it chosen to participate rather than bet that the ODF effort would fail, we might have one standard today instead of two, and everyone would be better off, including Microsoft’s customers and ISVs. I believe that this is the type of behavior that government should encourage, rather than the opposite.

What is needed for the future is a commitment by governments to ensure that proper Civil ICT standards are created and adopted. I believe that this will happen sooner or later, and the question is only how it will be accomplished. Too often, industry holds out as long as it can, until legislators finally act legislatively, usually long after the point in time at which the public would best have been served (e.g., in the United States, where domestic car manufacturers successfully resisted an increase in government-mandated fleet mileage efficiency requirements for over 20 years).

If industry (and not just Microsoft) wishes to preserve its freedom to act, and indeed if the formal global standards infrastructure itself wishes to retain a role in the process of creating Civil ICT Standards at all, then each would be wise to consider the fact that a vote against OOXML is a vote not just to serve the public interest, but also a vote to preserve the right of self regulation. While ISO and IEC lack the treaty recognition of the ITU, they have traditionally enjoyed quasi-governmental status nonetheless. With that privilege comes responsibility to serve the public, or to lose the credibility of their imprimaturs entirely.

What is at stake in Geneva, then, is not just the fate of OOXML, but of many other things as well:

- The continuing legitimacy of the traditional standards process
- Recognizing the existence and importance of Civil ICT Rights
- Defining the proper role of government in the recognition of Civil ICT Standards
- Deciding how, and by whom, Civil ICT Standards will be developed, approved and adopted

If the National Bodies elect to focus only narrowly on technical issues, then it may be that many will come to believe that the traditional standard setting infrastructure is not adequate to play an active role in the recognition of the Civil ICT Standards needed to protect Civil ICT Rights. If so, I have [previously proposed](#) the type of new structures and policies that would be better able to fill the gap, and how they could be created, funded and operated.

It should not go unmentioned that the stakes for society are even higher than I have thus far suggested, because the questions raised above extend beyond the field of ICT. Standards of equal importance are urgently needed in [other areas](#) as well. These will have as profound an impact on commerce and the human condition in areas such as global warming, and will tell us what we can and cannot do except at our peril, how we will determine whether we are winning or losing that battle, and how we can protect our environment from further degradation.

So it is we see that what happens in Geneva this week is about far more than whether Microsoft wins and IBM and its allies lose or vis-versa, even if that will be the superficial result. It is about fundamental human rights, about not only seizing but also securing the opportunities of the future for the benefit of all. Only by thinking clearly and deeply about these larger issues will we be able to adapt the practices of the past to meet the challenges of a future that has already arrived, whether we realize it or not.