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open, competitive choice for IT users

Vice President Ansip, Commissioners Oettinger, Bieńkowska

cc Gertrud Ingestad, Margarida.Abecasis, Mario Campolargo, Pearse O'Donohue, Gerard De Graaf, Viorel Peca, Slawomir Tokarski, Kirsi Ekroth-Manssila,

European Commission

Dear Vice President, Commissioners,

Re: The ICT Standardisation Priorities Communication and Open Standards

You will be aware that some of the recent announcements of the Digital Single Market (DSM) Strategy package have drawn extremely negative comments from across parts of the Open Source community, and there is every indication that unless addressed they have the potential to cause substantial disruption to your plans to encourage collaborative, open ecosystems in support of your declared objectives.

OpenForum Europe (OFE) is an independent, not-for-profit think tank that draws support not only from some of the largest global ICT players, but organisations from across Europe representing both SMEs and Open Source communities. We also support and have access to some 40+ OpenForum Academy Fellows from across the world, each providing individual and innovative thinking on policy and technical issues. The focus of OFE is on encouraging openness in the ICT market, eliminating lock-in, and maximising the opportunity for all market players in Europe.

OFE is we believe already well known to you and your colleagues, and respected for the balanced approach that we have demonstrated we can bring to what sometimes have been difficult areas. We are an active member of the Multi Stakeholder Platform on ICT Standardisation (MSP), have been active members of the Cloud SIGs, and regularly meet the Director Generals of the European Institutions to discuss both internal IT usage and directions, as well as the ISA² programme.

Based on the broad spectrum of our membership, through this letter OFE would like to provide some further explanation of specific concerns that have been raised with respect to the recently published Communications. At the same time, we should emphasise that OFE fully supports the direction of the Commission with the DSM; we applaud the work of the MSP in bringing together all stakeholders with the aim of eliminating procrastination and seeking agreement from across the market; we recognise the understanding within the Cloud unit of DG-CONNECT of working closely with industry, and the recognition that Open Source projects can bring to the standards arena; we applaud the recognition of the importance of Open Science; we support the objectives of ISA² to achieve pan European interoperability, and the previous work to achieve a truly open Internet. Of particular note was the leadership offered recently in the presentation given by Commissioner Oettinger at the Net Futures conference, which seemed fully to recognise the importance of Open Service Platforms and the need to build truly open ecosystems if we, in Europe, are to break down past lock-in, encourage SMEs and build the ecosystems that the DSM needs. The ubiquity of Open Source is now apparent to all, and in that same speech Commissioner Oettinger recognised that industry-friendly open source licenses have become the norm. Today, Open Source technologies are integrated into systems and product offerings, Open Source Software competes on an equal footing in the marketplace, and Open Source development models are used across the industry for promoting innovation, openness and fast market adoption of emerging technologies.

However, Open Source needs Open Standards; and standards that are encumbered with patents and thus

require complex licensing agreements cannot easily be implemented in open source and are not easily compatible with open source license models – **if at all**. Therefore, the statement made in the Communication on *ICT Standardisation Priorities* that "ICT standardisation requires a balanced IPR policy, based on FRAND licensing terms."[1] has raised the alarm, not only with Open Source communities but also with any market player working with Open Standards as they are developed in global standards bodies like OASIS or W3C.

OFE understands the context against which the statement in the Communication was probably drafted, i.e. the discussions that have been held in organisations such as ITU-T, ETSI or IEEE. All of these organisations develop standards in areas where a lot of patents are involved, all operate FRAND-based policies and the ongoing discussions are about possible improvements of those FRAND policies regarding the balance between the interests and needs of patent holders and those implementers.

However, with respect to EU policy objectives and the promotion of innovative technologies as well as open platforms for Europe, we believe that a wider balance must be considered and recognised, specifically: the need for licensing terms that are royalty-free and less restrictive than FRAND ones. The Commission in fact does see the need for and benefit of requiring licensing terms that allow for implementation in Open Source, and OFE is a strong supporter of requiring Open Standards for software interoperability. All of this seems to have been excluded with the Communication on *ICT Standardisation Priorities*, and especially its sole focus on FRAND terms without any mention of Open Source or the need for such a broader balance regarding licensing terms.

Similarly, the Open Source community was quick to identify that despite seeking to offer increased leadership to Member States, the proposed revised version of the EIF continues to support FRAND terminology without any change from the previous version of the EIF. All of this seems to be in direct contradiction to Commissioner Oettinger's presentation.

In OFE, we are concerned not only about the bad publicity which this has generated, but also about the further effects which this could have on the perception of the Commission. We would therefore urge the Commission to review these concerns, and seek to achieve common language and practices. OFE would be delighted to meet at any time to discuss the thinking behind these concerns, and indeed to discuss how we could make our services available to help to bridge the apparent knowledge gap.

Yours Sincerely,

Graham Taylor
Chief Executive

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1 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: ICT Standardisation Priorities for the Digital Single Market , COM (2016) 176, p. 13.