

Sun Microsystems Working Paper

Open Standards Checklist

This Open Standards Checklist addresses the necessary technical, business and legal components of interoperability. These pro-competitive criteria create an environment in which the public interest is served, multiple, competing implementations create a flourishing and competitive market, and IP owners are given a secure environment in which their rights are respected and collaboration is encouraged. **The results are *true* Open Standards.**

Two areas are equally important in determining whether a technical specification is truly an open standard: how its created and managed and how it can be used.

Creation and Management of an Open Standard

- Its development and management process must be collaborative and democratic:
 - Participation must be accessible to all those who wish to participate and can meet fair and reasonable criteria imposed by the organization under which it is developed and managed.
 - The processes must be documented and, through a known method, can be changed through input from all participants.
 - The process must be based on formal and binding commitments for the disclosure and licensing of intellectual property rights.
 - Development and management should strive for consensus, and an appeals process must be clearly outlined.
 - The standard specification must be open to extensive public review at least once in its life-cycle, with comments duly discussed and acted upon, if required.

Use and Licensing of an Open Standard

- The standard must describe an interface, not an implementation, and the industry must be capable of creating multiple, competing implementations to the interface described in the standard without undue or restrictive constraints. Interfaces include APIs, protocols, schemas, data formats and their encoding.
- The standard must not contain any proprietary “hooks” that create a technical or economic barriers
- Faithful implementations of the standard must interoperate. Interoperability means the ability of a computer program to communicate and exchange information with other computer programs and mutually to use the information

which has been exchanged. This includes the ability to use, convert, or exchange file formats, protocols, schemas, interface information or conventions, so as to permit the computer program to work with other computer programs and users *in all the ways in which they are intended to function*.

- It must be permissible for anyone to copy, distribute and read the standard for a nominal fee, or even no fee. If there is a fee, it must be low enough to not preclude widespread use.
- It must be possible for anyone to obtain free (no royalties or fees; also known as “royalty free”), worldwide, non-exclusive and perpetual licenses to all essential patent claims to make, use and sell products based on the standard. The only exceptions are terminations per the reciprocity and defensive suspension terms outlined below. Essential patent claims include pending, unpublished patents, published patents, and patent applications. The license is only for the exact scope of the standard in question.
 - May be conditioned only on reciprocal licenses to any of licensees' patent claims essential to practice that standard (also known as a reciprocity clause)
 - May be terminated as to any licensee who sues the licensor or any other licensee for infringement of patent claims essential to practice that standard (also known as a “defensive suspension” clause)
 - The same licensing terms are available to every potential licensor
- The licensing terms of an open standards must not preclude implementations of that standard under open source licensing terms or restricted licensing terms