Community: W3C and the Promotion of Fee-based Standards for the Web

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W3C and the Promotion of Fee-based Standards for the Web Adam Warner

On 16 August 2001 the W3C made public a proposal to substantially change their patent policy framework. Amongst the changes is support for a new licensing model (called RAND) that legitimises the W3C's role in developing and promoting standards that could require the payment of royalties.

This is a substantial shift in the philosophical direction of the W3C and should be of extreme concern to anyone who values being able to implement W3C standards in a royalty-free manner. In particular this has profound implications for the support and implementation of future W3C standards by the free software community. It is likely to extinguish free software development and deployment in the areas where the payment of royalties is required.

The last call review period closes on 30 September 2001 (two days from the time I am writing this abstract). The W3C is aware of the importance of this issue and states "As the policy has ramifications on the Web community at large, and as the Web Community have consistently helped W3C in its efforts, views from this diverse community are essential."[1] However, as evidence of how well this issue has been publicised, only two relevant public comments have been made to the W3C archive to date. It is a matter of urgency that you make your views known. A final policy is expected from the W3C by February 2002.

Please email all comments or suggested corrections to this document to comment@openphd.net.

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An Overview of the W3C

The World Wide Web Consortium (W3C, http://www.w3.org) has been highly successful to date in its pursuit of "leading the Web to its full potential". It actively promotes vendor neutral open and universal standards. Its membership is to be commended for its ability to achieve consensus and coordination with other standards bodies and consortia.

The W3C has over 500 member organisations and approximately 66 full-time employees. Even large and influential companies have only one vote at the Advisory Committee level.

Tim Berners-Lee, the Director of the W3C (http://www.w3.org/People/Berners-Lee) is also the inventor of the World Wide Web. The W3C is a distinguished organisation producing quality specifications, guidelines, software and validation tools.

The W3C is involved in these important areas:

- The architecture domain (e.g. DOM, the Document Object Model).
- Document formats (e.g. HTML, mathematics and graphics).
- Interaction (e.g. multimedia).
- Technological and societal issues (e.g. privacy, encryption and the legal issues).
- Web accessibility initiatives (e.g. for user agents and authoring tools).

Crucially the work of the W3C is available to all.

The W3C has an ongoing role in the development of the World Wide Web from purely static document hosting to dynamic documents, application services and automated applications.

W3C Recommendation Process

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The W3C recommendation process typically follows a five step procedure:

- Interested parties submit notes to the W3C.
- A working draft is produced (these typically come with big disclaimers, and their citing as anything other than work in progress is inappropriate).
- Candidate recommendations are made.
- A recommendation is proposed (this means the working group has reached consensus and the work has been proposed by the Director to the Advisory Committee for review).
- Recommendation. These have been ratified and can be relied upon to not change.

The W3C’s Patent Policy Framework is at the Working Draft stage. The Working Draft plainly states: "This Last Call period will be the only opportunity for public comment."[2]

Remember that "The Last Call period closes 30 September 2001."

Furthermore, "As we have begun to use portions of the policy in the day-to-day operations of W3C, we plan to skip the Candidate Recommendation and move directly to an Advisory Committee Review of a Proposed Recommendation draft." Later in this article I will show some of the consequences of this in the release of the Scalable Vector Graphics (SVG 1.0) Recommendation.

RAND Licensing

This is the new licensing model the W3C is proposing that will allow for non-royalty-free standards to become W3C sanctioned recommendations. RAND stands for "Reasonable And Non-Discriminatory" terms. "RAND means that someone may or may not need to pay a fee, and that it is at the discretion of the license holder."[3]

In essence it requires that any company that imposes licensing restriction must impose those restrictions uniformly (the non-discriminatory part of the definition). It appears to follow that non-commercial organisations cannot be given any preferential treatment over commercial organisations since that would be discriminatory licensing.

The Working Draft (http://www.w3.org/TR/patent-policy/) (reproduced in the Patent Policy Frequently Asked Questions, http://www.w3.org/2001/08/16-PP-FAQ) also states that RAND allows for licensing audits (RAND "may include reasonable, customary terms relating to operation or maintenance of the license relationship such as the following: audit (when relevant to fees), choice of law, and dispute resolution.")

Legitimising RAND

The W3C states that "Recommendations addressing higher-level services may be appropriate for licensing on reasonable and non-discriminatory (RAND) terms." It is clear that "patent processes will increasingly affect the Web. These factors make it clear that the W3C must have an effective policy to address the inevitable increase in patent issues that will come before the W3C Membership and the development community as a whole." What isn't clear is that the appropriate response is for the W3C to condone RAND licensing terms and to actively promote non-free licenses.

As part of the theoretical underpinning of this new policy we are told: "On the other hand, there are other technologies, typically higher level, where it might be appropriate to accept fee-bearing requirements in a Recommendation. It is worth restating that, as of today, W3C is not aware of any fee-based license required for any of its Recommendations. Thus, there is an established history of RF [Royalty Free]."

This distinction between lower and higher level technologies appears to be somewhat arbitrary and misleading. Any technology that becomes sufficiently used on the World Wide Web will become a part of everyday infrastructure. For example it might be considered that a moving picture format is sufficiently high level for RAND licensing to be appropriate. But if that moving picture format becomes an integrated baseline technology in future products then the chance of a future fee being associated with that technology could be devastating.[4]

The W3C has recognised the pressures from (some of) its members to be able to exploit the potentially lucrative Internet-related patents they have been accumulating. There appears to be a resignation that it may be better for the W3C to promote standards that have non-free conditions attached rather than to receive no consensus on potential recommendations.

However by doing this the W3C is diminishing the significant tool they have to encourage royalty-free licensing: their official stamp of approval on Internet technologies and credit to the companies that provide those technologies. The support of the W3C is an important factor for a web-based standard to achieve dominance. A company might be willing to provide their intellectual property on royalty-free terms to receive W3C approval and thus an increasing chance for their sponsored standard to become widely adopted. Now those same companies may think they can get the best of both worlds: A W3C recommendation and the reserved right to charge licensing fees in the future.

The prospect of future fees could also have a chilling effect upon free/open source software development. Standards that require licensing fees to implement are, for obvious reasons, totally incompatible with the use of free software. If the free/open source software communities will not be able to rely upon the W3C to pursue royalty-free standards the question has to be raised whether the support of a new institution is appropriate. Given my admiration for all the W3C has contributed to the development of the World Wide Web this would be a tragic development.

Back-door RAND
If an Advisory Committee Representative to the W3C (each member organisation of the W3C has an ACR) fails to respond to requests for patent disclosures by default "they will commit their Member company to license all Essential Claims needed to implement W3C recommendations on at least RAND terms. This is true whether any personnel from the Member company participates in a WG or not."

This means oversight, negligence or perhaps deception is rewarded by requiring the commitment to a RAND license rather than a royalty-free one. If a relevant patent was disclosed at the appropriate time it might have been worked around, or the working group may have even disbanded. For members to face a financial incentive to disclose there should be a deterrent in the form of royalty-free licensing. Few things would be more lucrative than being entitled to charge RAND fees on an established W3C web standard though a simple oversight. RAND in Action

Even though RAND is only a Working Draft and public comment has for the first time been solicited (and very shortly closes) the W3C has already begun using RAND in its day-to-day operations. This can be seen in the recently released Scalable Vector Graphics Standard (SVG 1.0): http://www.w3.org/2001/07/SVG10-IPR-statements.html

Apple, IBM, Eastman Kodak and Quark have all only been willing to supply their intellectual property or potential future intellectual property under RAND licensing terms. This means that in the event that one of their patents overlap the SVG specification they have reserved the right to start charging royalties or set other licensing restrictions upon a non-discriminatory basis.

Presently the SVG specification is free to use. The uncovering of a favourable patent or a legal reinterpretation could change that. For example it is stated: "Kodak does not believe it currently has any essential claims that fall within the specification of the

Recommendation as currently understood and interpreted by Kodak for implementors of SVG. However, Kodak hereby identifies U.S. Patent 5,459,819 and affirms that in the event that any claim of this patent is interpreted as an essential claim within the specification of the Recommendation in its current or later amended form, Kodak agrees to provide a RAND License as set forth in the previous paragraph."

The significant change here is that Kodak (as a particular example) are not giving standards users an assurance that they will be able to continue to use SVG on a royalty-free basis in the future. A windfall judgement and we could have a problem of GIF-style proportions--even though SVG is a W3C sanctioned standard and the company potentially doing the enforcing helped create the standard for people to freely use in the first place. Users could feel far more secure that SVG will remain a free standard if for example Kodak said that in the event that any claim of their patent is interpreted as an essential claim within the specification of the Recommendation in its current or later amended form, Kodak agrees to provide a royalty-free license.

What You Can Do

1. As a matter of urgency, send a comment to www-patentpolicy-comment@w3.org before 30 September 2001. You can check out the current archive of responses here: http://lists.w3.org/Archives/Public/www-patentpolicy-comment/.
2. Spread the word about this issue as soon as possible.
3. Ask companies that are members of the W3C to give an undertaking to only support the development of royalty-free standards. This will require significant change to the Working Draft of the W3C’s Patent Policy Framework.
4. Do you have a professional relationship with any of the authors or companies of the Working Draft? If so it may be appropriate to send a message to the relevant organisation. These are the listed authors of the Working Draft:
    - Michele Herman, Microsoft, micheleh@microsoft.com
    - Scott Peterson, Hewlett-Packard, scott_k_peterson@hp.com
    - Tony Piotrowski, Philips, tony.piotrowski@philips.com
    - Barry Rein, Pennie & Edmonds (for W3C), barry@pennie.com
    - Daniel Weitzner, W3C/MIT, djweitzner@w3.org
    - Helene Plotka Workman, Apple Computer, plotka@apple.com

It is also stated here: http://www.w3.org/2001/08/patentnews that "W3C Members Apple, AT&T, Hewlett-Packard, IBM, ILOG, Microsoft, Nortel Networks, The Open Group, Philips Electronics, Reuters, and Sun worked on this draft together with W3C Team members."

Essential Reference

W3C Patent Policy Framework, W3C Working Draft 16 August 2001: http://www.w3.org/TR/patent-policy/

Backgrounder for W3C Patent Policy Framework: http://www.w3.org/2001/08/patentnews

Patent Policy Frequently Asked Questions (FAQs): http://www.w3.org/2001/08/16-PP-FAQ

SVG 1.0 Patent Statements: http://www.w3.org/2001/07/SVG10-IPR-statements.html

Notes
[1] http://www.w3.org/2001/08/patentnews [2] http://www.w3.org/TR/patent-policy/ [3] http://www.w3.org/2001/08/patentnews [4] For example, a scenario where the majority of future web appliances included this decoding ability in their ROM.