

## MEMORANDUM

**AUTHOR:** Nigel Gibbons (CEO)**DATE:** 17<sup>th</sup> November 2008**ATTN:** THE EUROPEAN COMMISSION'S WORKSHOP ON IPR IN ICT STANDARDISATION**SUBJECT:** WRITTEN STATEMENT FOR THE 'IPR IN ICT STANDARDISATION' WORKSHOP.

UniTech is pleased to make these comments to the European Commission on the occasion of its Workshop on IPR in ICT Standardisation.

UniTech is a small IT solution provider founded in 1995 and has grown consistently by delivering bespoke technology solutions, offering high quality service for a broad range of Blue Chip clients from the private and public sectors. UniTech utilises the latest technology with a policy of putting the business value to the client first in all our solution; which mandates an open mind to technologies and flexibility to determine how and where we may best invest to underpin our service business with IP asset.

*"Cutting through unnecessary complications with clear, direct and flexible thinking. Learning to see with new eyes, looking beyond the obvious, moving freely from established ways of thinking, reappraising old assumptions, finding new answers."*

UniTech would like to address two points that have been raised in the Commission's review of standardisation, with particular relevance to intellectual property ('IP'). The first is a misperception that the industry needs more or different formal standards, or different ways of developing standards. The second is a misperception that IP rules need to be changed or applied differently in the standards process to achieve this aim. Neither is true.

- 1. Information technology ('IT') has always been about a race to develop new technologies and a wide variety of products and services competing in the market. Formal standards are only a part of this equation. Any perceived lack in the standards process is not down to IP rules, but rather reflects market dynamics that dictate that only technologies that the market finds useful (including standardised technologies) get used.***

One wrong assumption that seems to be driving some of the discussion on standards policy is that Europe needs more, better or more widely used formal IT standards, and that it might have them if only the intellectual property rules were changed or taken out of the equation.

The issue is not really intellectual property, though. It is that the IT market is very fast moving, and the time and care needed to develop formal standards in many cases simply cannot keep up with market developments. In some cases, formal standards are outdated by the time they are adopted. In other cases, they do not address real needs in the market.

That is not to say that common technical specifications are not important or widely used in the IT industry. They most emphatically are. But a large number of the specifications that become widely used in the IT industry are those that first become successful in the market. Other companies then rush to support those specifications in their own products, which might be done by using the original developer's tool kits, by taking a license, or by developing compatible technologies.

In a large number of cases, the IT industry relies on fast-moving, informal industry forums to develop informal 'standards'. Wi-fi, USB, MPEG, the hotly debated ODF and Open XML document formats, as well as a great many other industry specifications have emerged from these industry forums. Sometimes the *last* step may be for a specification to be submitted to a formal standards institution, and it is not always seen as necessary. The industry takes up and implements all sorts of common specifications almost without regard to whether a formal standard exists.

In short, the Commission does not need to rush in to 'fix' the standards system. It works well alongside a whole range of other mechanisms for developing common specifications that are responsive to real needs in the market. Any perceived weakness of the formal standards system basically has nothing to do with intellectual property rights, which in fact often work the same in formal standards institutions as they do in informal industry forums. Both the value and the limitations of formal standardisation are simply a function of the fast moving and market-driven nature of the IT industry in developing and implementing technologies.

***2. Standards need to support, not subvert, IP protection and licensing. Defining 'open standards' in a narrow way that gives a preference to particular IP, licensing or business models is entirely inappropriate.***

An idea that sometimes comes up in government IT discussions, which is particularly worrying to companies like ours, is that if companies are willing to waive their intellectual property rights or otherwise give away their software products through open-source licensing, they somehow ought to get a preference over companies that have a business model under which they sell or license

software for a fee. This gets presented in a number of different guises, and in standards discussions appears as an attempt to define 'open standards' as only those that have no intellectual property or royalties attached.

It is important to remember that open-source and 'proprietary' software are nothing more nor less than competing business models. IT users buy an entire package of hardware, software, warranty, maintenance, and other products and services. If one element is 'free', it does not mean that the overall cost or usefulness of the package is better, or even that that particular component is superior. Most IT vendors nowadays offer both open source and proprietary software for different applications and packages, and there is healthy competition among the lot of them.

It would be entirely inappropriate to give an unfair advantage to one particular business model in the IT industry by narrowly defining 'open standards' in a way that limits access to procurement based on the type of intellectual property protection or license under which the underlying technology is offered. Nor should such standards rule work to give a procurement preference to any one type of *implementation* of a standard by approving it as 'open' based on whether IP is included or waived, what type of license or royalty is offered, or the business model under which it is offered. Any such state of affairs would be blatantly discriminatory against many legitimate companies and IT solutions without any economic or market justification.



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