

Hybridization of Open Standardization Models: Typologies and Competition Law Concerns

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WELCOME TO THE SOFTWARE ERA

- “Software is everywhere” - e.g. Internet of Things
- Convergence of ICT sectors - e.g. IT and Telecom Networks
- End of traditional allocation of IPRs (patents/hardware, copyright/software)
- Impact of ‘softwarization’ in hardware-based standardization settings
 - = **increasing role of open source in the development of the standard**

HYBRIDIZATION? STANDARDS? “WAIT...WHAT?!”

Different standardization and IP instrumentalization approaches:

➔ **Consensus-based formal standards** - e.g. telecoms networks

Open innovation / Open standardization / Semi-open IPR exploitation
(FRAND)

➔ **Open Source-based informal standards** - e.g. information technologies

Open innovation / (Semi) Open standardization / Semi-open IPR exploitation

INTERACTIONS BETWEEN STANDARDIZATION MODELS

1. **Vertical integration** = “now I also develop software implementations”
2. **Competition and exclusion** = winner-takes-all
3. **Coexistence by specialization by technical sector** (horizontal)
4. **Coexistence by specialization by value chain stage** (vertical)

CURRENT COMPETITION LAW CONCERNS

101 TFUE = horizontal agreements = “innovation cartels”

Cases: X/Open Group; ETSI/DVSI.

102 TFUE = abuse of dominant position = abusive exploitation of IPRs

Cases: Rambus; Huawei v. ZTE.

NEW CONCERNS FOR NEW DYNAMICS?

Hybridization - Vertical integration

- Consensus-based SDOs also develop technical reference implementations
- Technical specifications + open source-based reference implementations

Potential competition relevant effects - ‘anti and pro’: Keeping the balance

- ➔ Internal deceptive behaviors = “factions’ wars”
- ➔ Which competition effects from the open source reference implementation?
- ➔ Ex-post market practices - e.g. forking: a rightful risk

Cool things to take back home...

- Re-defining (re-tooling) the concept of the standard
- “Clash of IP cultures” = exclusion (e.g. SEPs) vs. distribution (e.g. OSS)
- Rethinking current standardization legal frameworks:
 1. Public policy: Role of policy makers? Legislator? Public enforcer?
 2. Private policy: New IPR policies? New standard-focused OSS licenses?

¡MUCHAS GRACIAS!

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