Approved 20 June 2008 by the Intellectual Property Rights Standing Committee of the TIA

TIA – A Leading Developer of Open Standards

The Telecommunications Industry Association (TIA) is a leading developer of a wide number and variety of Open Standards, including American National Standards. Open Standards enable interoperability, interworking and connectivity. There are varying types of Open Standards, ranging from those that specify network protocols and service interoperability to electrical connectivity to software and system interfaces. TIA's standards committees, for example, develop protocols and interface standards relating to fiber optics, public and private interworking, telco cable infrastructure, wireless and mobile communications, multimedia and VoIP access, as well as healthcare ICT (Information and Communications Technology) applications and vehicular telematics.

Market-driven **Open Standards** can help promote competition and innovation. Such standards are developed or ratified through a voluntary, open and consensus-based process**.**

This process is defined by flexible policies that balance incentives to participate in and contribute to the formulation of standards. This process benefits users and consumers by the broad implementation of the resulting standards. One element of a voluntary, open and consensus-based process addresses the inclusion of patented technologies. The patent policies of standards organizations typically find a balance among differing interests. For example, implementers need to access and use patented technology included in the standard. Patent holders need to preserve their rights in a way that encourages them to contribute their innovative solutions to the standardization effort. "RAND" patent policies seek to provide this type of balance by helping to make that patented technology available to all on "reasonable and non-discriminatory" (*i.e.,* RAND) terms and conditions.

Consistent with this voluntary, open and consensus-based process, globally recognized standards bodies like TIA, ISO, IEC, ITU, ETSI, IEEE,[1] etc. all produce Open Standards that address many important ICT challenges in the marketplace while preserving incentives for further innovation and improvements over time.

This widely accepted definition of an "Open Standard" is reflected in the following:

[1] **ISO = International Organization for Standardization; IEC = International Electrotechnical Commission; ITU = International Telecommunication Union; ETSI = European Telecommunications Standards Institute; and IEEE = Institute of Electrical and Electronics Engineers.**

- **Global Standards Collaboration (GSC) – Resolution GSC-12/05: (Opening Session) Open Standards** - **www.gsc.etsi.org;**

- **ITU-T – http://www.itu.int/ITU-T/othergroups/ipr-adhoc/openstandards.html**; and

- **American National Standards Institute (ANSI) – http://publicaa.ansi.org/sites/apdl/Documents/Standards%20Activities/Critical%20Issues%20Papers/Griffin%20-%20Open%20Standards%20-%2005-05.doc**.

For example, TIA supports the GSC Resolution that outlines the following elements of an "Open Standard":

- The standard is developed and/or approved, and maintained by a collaborative consensus-based process;
- Such process is transparent;
- Materially affected and interested parties are not excluded from such process;
- The standard is subject to RAND/FRAND Intellectual Property Right (IPR) policies which do not mandate, but may permit, at the option of the IPR holder, licensing essential intellectual property without compensation; and
- The standard is published and made available to the general public under reasonable terms (including for reasonable fee or for free).

Recently, there have been some attempts to re-define "Open Standards" that may disrupt this process and its related balance of interests. The concept of "open" is being equated with patented technology that is "free" (without payment) or "free to use freely" (without payment and without any restrictions). These proposed re-definitions are being used to advocate policy changes that would undermine the rights of those who have invested in the development of the standardized technology.

While the notion of patents being "free to use freely" is superficially attractive, like most "free" things, it comes at a cost. Technological capabilities and innovations most often result from substantial investments in R&D. Such investments typically drive the growth of the investor's patent portfolio. If patent holders in standards-setting activities are expected to give away or waive their patent rights, there are likely to be significant adverse results including:

- Technology leaders will reduce or cease participation in (or technical contributions to) voluntary standards-related activities, or

- Individuals and organizations will not invest (or will invest less) in the development of innovative and next-generation technology in the technical

areas subject to standardization, thereby creating innovation "dead zones" in those areas.

These types of adverse results would cause (a) the standardization system; (b) its open, voluntary and consensus-based process; and (c) ultimately the resulting Open Standards, to be less effective or successful than they are today.

Moreover, TIA believes that these results would have a negative impact on global respect for intellectual property that helps stimulate innovation and develops local economies around the world.

Open Standards are Different from Open Source Software (OSS)

"Open Source" Software should not be confused with "Open Standards":

- Open Standards are technical specifications that are developed and ratified through the open, voluntary, consensus-based process described above.

- "Open Source" Software is software distributed with the source code openly available under a certain specified software distribution license. Open Source Software is distributed under license, often for "free" by distributors who charge instead for other products or services, including upgrades or full-feature proprietary software licenses, customization and maintenance services for the software, or related consulting and integration services.

While an implementation of a particular standard may be distributed under an Open Source Software license, the development of the standard is independent of the license that the distributor of an implementation may ultimately choose to adopt. The standards development process is neutral to accommodate and balance the interests of all stakeholders and all business models.

TIA strongly favors the traditional fundamental elements of Open Standards which support a balance of interests that preserves the incentives to innovate and spreads development costs in and around technology areas that are subject to standardization.

In doing so, TIA notes the important distinction between "Open Standards" and "Open Source Software," which should not be confused.