

INTELLECTUAL PROPERTY MANAGEMENT IN STANDARD SETTING:

E-GOVERNMENT ACQUISITION PROCESSES IN THE US,
EU, INDIA, AND JAPAN

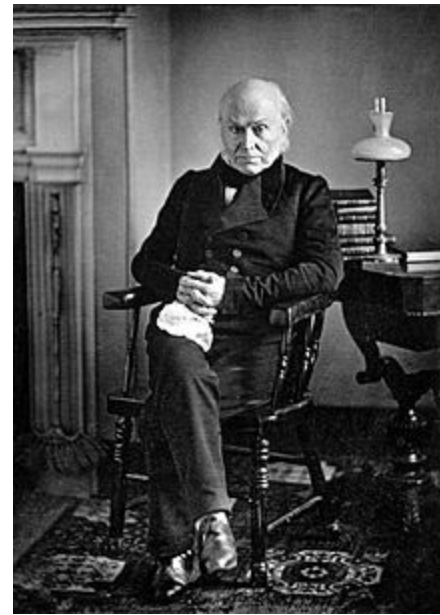
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NATIONAL ACADEMY
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John Quincy Adams (1821)



“Weights and measures may be ranked among the necessaries of life to every individual of human society. They enter into the economical arrangements and daily concerns of every family. They are necessary to every occupation of human industry; to the distribution and security of every species of property; to every transaction of trade and commerce...and all the operations of war.”

Standards and e-Governance

Internal
Government IT
Infrastructures

IT-Reliant
Government
Functions

Information
Exchange with
Citizens

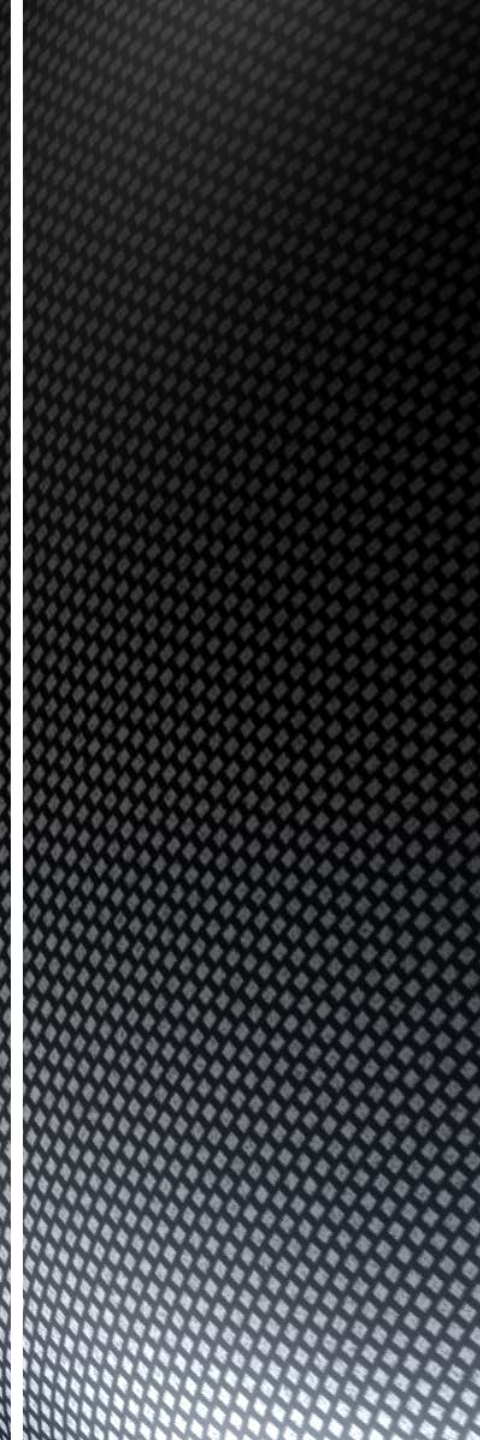
Technical Standards
(Interoperability, Cost Efficiency, Public
Interest Benefits)

Research Questions

- What are governments' policies toward standards-related intellectual property rights in e-Government acquisition processes?
- What are their rationales for these policies?
- How specific are these policies? Do they list IPR characteristics, the actual standards, or even products?

Four Case Studies

(US, EU, India, Japan)



The Private Sector-Based Approach of the United States

- Emphasis on adopting private sector developed standards
- National Technology Transfer and Advancement Act (NTTAA)
- Office of Management and Budget (OMB) Circular A-119

“these standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties.”

The Evolution of EU Standardization Policies and Regulations

- European Interoperability Framework
- Fair, reasonable, and non-discriminatory licensing terms
- European Commission's Regulation on European Standardisation

“IP essential to the implementation of standards is licensed to applicants on a (fair) reasonable and non-discriminatory basis (FRAND), which includes, at the discretion of the IPR holder, licensing essential IP without compensation.” (EC 2009 White Paper)

India's Open Standards Policy

- Policy on Open Standards for e-Governance (2010)
- Royalty-free preference
- When royalty-free standards are not available for a particular domain of technology, the Policy allows for the exception of adopting information and communication systems based on FRAND or RAND terms with no royalty payments or FRAND/RAND terms with royalty payments

“The Patent claims necessary to implement the Identified Standard shall be made available on a Royalty-Free basis for the life time of the Standard.”

Japan's Interoperability Framework for Information Systems

- The standard should be established and maintained by a non-profit organization with open participation processes and democratic procedures.
- Anyone can adopt the standard, which is published; if there are any intellectual property restrictions on implementing the standard, the IPR should be licensed on a royalty-free or RAND basis.
- More than one market implementation should conform to the standard.

Summary of Findings

The four cases generally demonstrate five shared principles

Interoperability

Cost Efficiency

Supporting the Private Sector

Transparency

Information Diversity

Open Questions about Translating Principles into Practice

Definitional Ambiguity

- What exactly constitutes RAND/FRAND licensing?
- What counts as multiple implementations of a standard?

Challenges for Procurement Officers

- Determining which standards are embedded in the product
- Determining whether standards meet RAND terms
- Determining whether the standard is used in multiple, competing products

Operational Challenges

- Would royalty-free licensing requirements eliminate some popular standards?