Comments by some civil society organisations on
Version 1.1 of the Draft Policy on 'Open Standards on e-Governance'

We, the undersigned organizations, would like to submit our comments on the Draft Policy on Open Standards for e-Governance Version 1.1 dated May 2010, for the kind consideration of the Department of Information Technology.

We would like to thank DIT and all those who contributed to the drafting of this policy for doing a commendable job. This policy will be a landmark policy for e-Governance in India and has tremendous long term implications, not just for e-Governance; but also for the future of the information society in India. We welcome DIT's initiative in framing this policy because the provisioning of public goods like open standards can be done only through government intervention. The current situation, where de-facto proprietary standards, encumbered by heavy royalties, is a serious threat to the emerging global knowledge commons; and the free flow of ideas and information across the world. From an economic perspective, propagating proprietary standards is tantamount to establishing permanent means of transferring wealth from the citizens of our country to rent seeking private companies, mostly based abroad.

Allowing proprietary standards in e-governance processes also means that citizens have to pay royalty to private parties to access and interact with their own government, which violates the letter and spirit of many rights of the citizens, including of the right to information.

It is therefore heartening to note that DIT has taken a decisive step to mandate open standards in e-governance. At the same time, we request DIT to define open standards more clearly in the draft policy and also finalize it without delay, since the policy has been in the works since 2007 and has been delayed several times.

Our biggest concern is with the current version of the draft policy is with regard to its Section 4.1.2, which states that,

> "The patent claims necessary to implement the Identified Standard shall be available on a Royalty-Free basis for the life time of the Standard. If such Standards are not found feasible then in the wider public interest, Fair, Reasonable and Non Discriminatory terms and conditions (FRAND) or Reasonable and Non Discriminatory terms and conditions (RAND) with no payment could be considered."

It appears very anomalous that an exceptional situation signified by the phrase ' If such Standards are not found feasible then....' is mentioned as a part of the section on 'mandatory characteristics' which purports to define the very meaning of 'open standards'. It is even more inappropriate when there is a section 4.3 inserted specifically to deal with such exceptional situations. Mentioning 'exceptional situation' in the concept defining section also has the inadvertent effect of changing the very definition of 'open standards' away from what is widely recognised (including, for instance, in policy documents of European Union).

Accordingly, we suggest that the entire sentence,

> "If such Standards are not found feasible then in the wider public interest, Fair, Reasonable and Non Discriminatory terms and conditions (FRAND) or Reasonable and Non Discriminatory terms and conditions (RAND) with no payment could be considered."

be shifted from section 4.1.2 to Section 4.3 that specifically deals with "Non-availability of Open Standard which meets all Mandatory Characteristics." We do understand and appreciate that in certain cases, some exceptions may have to be made. All these exceptions can very well be handled through the application of Section 4.3. On the other hand, placing the exceptions in the definitional Section 4.1.2 conveys the impression that DIT is not firm in its resolve to guide the country towards open standards in e-governance. Therefore, removing it from this section will go a long way in correcting any such impression, without hampering DIT's flexibility in any way.

Further, we also request that it be ensured that the Designated Body tasked with selecting standards be appointed in a transparent manner and with representation from a wide variety of stakeholders to ensure that the policy is implemented in its true meaning and spirit. This is a crucial area of interest to civil society, especially after the recent controversy around the OOXML standardisation process. The blatant manner in which international standards organizations were subverted, national standards organizations were stuffed with Gold and Premium partners of a proprietary software vendor and every single loophole in the standardization process brutally exploited, should serve as a cautionary tale. Given the disregard that some proprietary vendors have shown for the public interest and sovereignty of countries, any 'standard' emanating from such proprietary vendors must be treated with extreme caution. We request DIT to stand firm against vendors promoted proprietary standards which subvert larger public interest.

We offer the whole-hearted support of the undersigned civil society organizations to DIT in its appreciable efforts to implement genuine open standards.

Knowledge Commons, New Delhi

Free Software Movement of India

Centre for Internet and Society, Bangalore

Free Software Foundation – India

IT for Change, Bangalore