ABSTRACT

# OPEN SOURCE SOFTWARE

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> ➢ *Open source software – software that can be used, copied, modified and redistributed by anyone – is integral to the world's IT infrastructure.*
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> ➢ *Governments should choose software based on an analysis of short and long-term costs and benefits, not ideology.*
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> ➢ *Copyright law supports the ability of open source developers to determine the form of licensing.*
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> ➢ *Patents are a high-overhead form of intellectual property that fit poorly with open source models of development and distribution.*

**Background:** CCIA's support for open source software follows logically from our historical commitment to open standards and open competition. CCIA established the Open Source and Industry Alliance (OSAIA) to provide focus and engagement for policies important to open source software.

Much of the Internet runs on open source software, and many businesses and government agencies rely on it for essential operations. Many companies have built business models around open source software or use it as part of a marketing strategy. In most cases, the models are based on complements, such as hardware, support services, systems integration, or less restrictive versions ("dual licensing," possible only if the company holds the copyright in the code).

There are many different open source licenses, but they generally break down in two categories. The "copyleft" model is used in the General Public License (GPL); it requires that any modifications be available to others under the same terms if the software is redistributed. The "permissive" model, associated with BSD Unix and Apache, allows for distribution of proprietary modifications and thereby enables direct commercialization. Sometimes it is erroneously assumed that "open source" means only the former, more restrictive type of licensing.

**CCIA's Position:** Policies for procurement, copyright, patents, and standards should not discriminate against open source software. The development, distribution, and use of open source software should be encouraged on its merit, especially where there is a need to motivate users inside and outside the government. We work to educate policymakers that copyright law supports and is often essential to the integrity of open source software. Patents pose an especially dangerous threat to open source software because of the low standards and high costs of the patent system – and because open source development is often uncapitalized.

- **Open source solutions** should be adopted on the basis of real benefits and costs, including the terms of availability and use. It may be especially appropriate where there is a community willing and able to support its continued evolution.

- **Copyright** should be available to enforce the terms of open source distribution consistent with the wishes and expectations of contributors.

- **Standards** intended to be implemented in the software should be available royalty-free so as not to discriminate against open source implementations.

- **Patentability** should be based on high thresholds of concreteness and invention. Patents should be granted only where needed to encourage innovation, not as a tool for portfolio owners to discourage market entry.

- **Patents** should be asserted in a specific manner so as to not generate fear, uncertainty, and doubt.

***Key Players and Politics***:  Open source software may threaten the business models of some software developers; however, most companies embrace open source software as an essential part of the IT ecosystem.  For many, the ability to access and modify source code is a top priority, if not a necessity.

***Current Status***:  Patent reform would benefit open source, as it would the IT sector in general. The Federal Circuit's decision in *In re Bilski* is a major step in resolving the problem of limitless patentability.  Similarly, the PTO Board of Patent Appeals and Interferences appears to be adopting a more disciplined approach to subject matter, which will reduce the dangers to open source.