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## ABSTRACT

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### 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.*
- *Governments should choose open source software based on an analysis of the costs and benefits, not ideology.*
- *Open source models depend on copyright. Copyright law gives exclusive rights to open source contributors which they may choose to waive or assign consistent with the particular distribution model.*
- *Unbalanced patent policies are especially harmful to open source development and distribution.*

**Background:** CCIA’s support for open source software is a logical extension of our historical commitment to open standards and open markets. 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 open source software for essential operations. Open source software is pervasive behind the scenes, although this often goes unappreciated because its presence on the desktop is still limited. Many companies have built business models around open source software or use it as part of a marketing strategy. In most cases, models are based on complementary assets, such as support services, or retention of copyright in the code so as to allow for licensing of commercial versions.

There are many different open source licenses, but they generally break down in two categories. One, following the General Public License (GPL) used by Linux, requires that any modifications be available under the same terms, if the software is redistributed. The other, associated with BSD Unix, allows for distribution of proprietary modifications and so encourages commercialization of the software itself. Sometimes it is erroneously assumed that “open source” means only the former more restrictive type of licensing.

**CCIA’s Position:** CCIA supports policies for procurement, copyright, patents, and standards that do not discriminate against the development, distribution, and use of open source software. We work to educate policymakers that copyright law supports and is crucial to the viability of open source software, while patents may threaten open source software just as they may threaten proprietary technologies.

- Like information technology in general, open source solutions should be adopted on the basis of real benefits and costs, including the terms of availability and use.
- We support copyright-based enforcement of the terms of open source distribution explicitly or implicitly agreed to by contributors.
- Software standards should be openly available on royalty-free terms so as not to discriminate against open source implementations.
- Patents should not be asserted in a non-specific manner so as to generate fear, uncertainty, and doubt. This general principle is not limited to open source software.
- Patentability should be based on high thresholds of concreteness and invention. Patents should be granted only where needed to encourage innovation -- not to encourage the development and use of patent portfolios that may discourage market entry.

**Key Players and Politics:** Open source software may threaten the business models of some proprietary software developers. However, most companies and agencies embrace open source software as an essential part of the IT ecosystem, especially where the ability to access and modify source code is a high priority.

**Current Status:** There is no legislation presently pending specific to open source software. Patent reform would be of benefit to open source, as it would be for the IT sector in general. The open source community is concerned about the appeal of *In re Bilski* and other cases involving abstract subject matter. Both the PTO and the Federal Court appear to be adopting a more restrictive, rational approach to subject matter, which will benefit open source.