

**Comments of the
Initiative for Software Choice
On Committee Bill No. 5299
Relating to Software Acquisitions
By Connecticut State Agencies**

Introduction

The Initiative for Software Choice (ISC, www.softwarechoice.org) is a coalition of software companies and associations comprised of over 300 members across the globe.¹ The ISC works to advance the concept that multiple competing software markets should be allowed to develop and flourish, unimpeded by government preference or mandate.

As will be more fully explained in the text below, the ISC believes that Committee Bill No. 5299 (as introduced) – which creates an implicit “preference” for open source software (OSS) over hybrid or proprietary software – will harm Connecticut’s public administration, its citizens, and its information technology (IT) industry by limiting software choice that is presently available to the State. Further, the ISC believes that no new laws or regulations are needed in order to accomplish what the State can already do today – that is, go into the working software market, and acquire the best solution for the given need. Consequently, the ISC cannot support Committee Bill No. 5299, and respectfully urges its rejection in this Committee.

Software Co-Existence Enhances Choice, Delivers Greatest Benefit

Because more and more government services are being delivered via IT systems, the cost-effectiveness of software has rightly come under the spotlight of public administrators and legislators. Within this context, competition between two

¹ The ISC has 2 members in Connecticut, and is run by the Computing Technology Industry Association (CompTIA, www.comptia.org), which itself has over 120 corporate members (mainly small-to-medium-sized enterprises) in the State of Connecticut.

main models of software development – OSS and proprietary – has come to the fore, with proponents for each side contending that their model alone represents the best solution for government IT uses. Though listening to the debate one might be left with the impression that only one camp can be correct, the closer truth is that both are right.

The ISC strongly supports the development and adoption of all kinds of software – OSS, hybrid and proprietary. All models have a place in the highly competitive software market, interdependently making up the software eco-system. Only in this manner, through vibrant and open competition, does the whole of the market thrive, and consumers – both public and private – reap tremendous benefit.

Standing in stark relief to open competition are many proposals that mandate government requirements, giving preference to certain kinds of software over others. These so-called “preference” policies tend to strip merit out of the process by using access to source code as a proxy for IT project success.

Doubtless, public administrators and legislators, charged with serving the public, want their IT projects to run successfully and on budget. They ask: “How can we get the most out of our IT projects so that taxpayers receive the best value-for-money?” The present debate – whether to automatically prefer one development model to another – is largely irrelevant to answering that question.

The ISC believes that how software gets built – that is, whether it’s OSS, hybrid or proprietary in nature – guarantees nothing. Only when all options remain on the table can the specific needs of each IT project be met, driven by a flexible range of factors such as cost, reliability, security, functionality, ease-of-use, access to trained support and staffing, and availability, among others. Thus, competitive co-existence, which leaves the full panoply of options available for the choosing, remains the “Way” toward better serving consumers and constituents.

As witnessed throughout the private sector, all models can “get along,” with IT administrators basing their decisions on the individual needs of each IT project, on “what’s the best, most economical way to get the job done.”

Where this does not occur in the public sector, public IT planners should look to this private sector model – without resort to law or rule – to make their IT projects more robust, cost-effective and constituent-oriented.

Government as Market Opportunity, Not Leveler

The government market for software represents a \$22 billion worldwide opportunity for software manufacturers, developers, resellers, services providers, and distributors. Across the globe, OSS, hybrid and proprietary options compete vigorously for access to government projects. Though proprietary solutions still predominate,² with increasing frequency OSS and hybrid solutions have become popular and effective alternatives.

Even within this environment, however, “preference” laws have proliferated. The spate of these proposals globally – which range on a continuum from automatic “hard preferences”³ to more permissive policy statements, urging “merit-based” approaches – have ostensibly been justified by any number of reasons: to save costs,⁴ to enhance security, to prevent software piracy, to foster competition, to

² Proprietary solutions still predominate because the industry is comprised overwhelmingly of proprietary companies, creating proprietary solutions. CompTIA represent nearly 4,000 resellers globally, many of which are small companies, selling mostly proprietary solutions.

³ I.e., “Thou shall use only OSS in public administrations,” as seen in such legislation as California’s Digital Software Security Act (never formally introduced); COCOF legislation in the Brussels Region Parliament; and Portuguese legislation, Parliamentary Bill Number 126.

⁴ The cost of software, expressed as the total cost of operation (TCO), has received a lion’s share of attention within this procurement debate. Though many studies have been conducted that try to illuminate what the TCO is for software procurements, the clear answer is – the “jury’s still out.” One review and analysis of the available TCO studies (by Alan MacCormack, Lumry Family Assistant Professor of Business Administration at the Harvard Business School, funded in part by Microsoft) concludes: “[A]cquisition costs for software tend to be dwarfed by other costs, typically comprising less than 10% of the TCO for a system. This suggests that whether software is free, cheap or relatively expensive has relatively little impact on the total cost of IT investments. By contrast, the single largest component of cost is staffing, typically comprising 50-70% of the TCO for a system. This suggests that TCO studies should expend significant amounts of effort on assessing the drivers of differences in staffing cost across the systems under examination.”

further the development of indigenous software communities, to promote better interoperability, to combat "laziness" of administrators, to defeat institutional prejudice, and to clear up any "ambiguous use" issues, among others. The list goes on.

In our view, "preference" laws have really only been designed, not to further the aforementioned goals, but rather, to allow easier access to government market opportunities as an important "pump primer" or "leveler" for greater OSS acceptance.

Passing a law to "prime the pump" or "level the playing field" is not necessary. As we have pointed out, OSS acceptance cannot be in doubt, proliferating through vigorous, unregulated competition. Further, no current law, rule or regulation stands in the way of the State of Connecticut from availing itself of the free market to make its software selections – be they for OSS, hybrid or proprietary solutions.

Accordingly, the ISC believes that a legislative and/or regulatory approach to foster the use of one model over another should be strenuously avoided. At their best, such "preference" policies would merely be redundant of market functions. At their worst, such policies would arbitrarily eliminate one type of model – namely, proprietary offerings – from consideration by public administrators, resulting in reduced choices for government administrators, and less effective services for citizens.

Analysis of Committee Bill No. 5299 Reveals Its "Preference"

On the surface, Committee Bill No. 5299 may appear benign. However, the bill's reference to open source software and its direction to procure OSS "as an alternative to proprietary software" creates an implicit preference for OSS over proprietary software.

This legislated preference is unnecessary and could instead, result in harmful unintended consequences. There is no rule or regulation that exists today to restrict Connecticut public agencies from procuring OSS, or any other kind of software.

A "Preference" Choice Could Have Widespread Effect

If Committee Bill No. 5299 is enacted, the ISC believes that this "preference" legislation could result in a number of serious practical repercussions. The most significant of these include:

- Because Committee Bill No. 5299 generally works to prefer OSS software over proprietary options. Consequently, taxpayer dollars could be wasted as the supply for competitive software offerings gets reduced, leading to increased costs for software acquisition, development, training, staffing and related servicing.
- With fewer options on the table, "preference" laws can undermine the efficacy of Connecticut's public administration because many viable proprietary options – oftentimes the best choice for the job – could be eliminated from consideration.
- IT companies and related jobs could be put at risk because the lion's share of Connecticut's software companies and resellers deal in proprietary or hybrid solutions (with the overwhelming bulk of these being small-to-medium-sized enterprises). For many of these companies, the ability to sell to the State means the difference between surviving or failing. Should a "preference" law be proposed and become law, companies doing business with the State of Connecticut could be denied access to State's procurements, and jobs for these companies could be greatly compromised, if not eliminated altogether.⁵

⁵Aside from jeopardizing Connecticut's software developers and resellers, preference proposals would also harm the State's other commercial IT companies and workers, including retailers and Application Service Providers, by limiting their ability to recommend the best solutions to both their government and private-sector clients.

Conclusion

The immense customer-driven success of the IT industry has never relied on government regulations to serve the market. That reliance should not start now. Rigid laws or rules based on access to the source code can't, on their own, be a panacea for the many technology issues facing public administrators and legislators. Such "preference" policies only restrict choices, not expand them. When this happens, citizens can never get the best out of their public IT because the best software for that IT can never truly be obtained. As such, the ISC respectfully urges the State of Connecticut to avoid passing needless laws, and do what it already does well - look to the free and open software market to acquire the best solution for the given need.

Respectfully submitted by,

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