



Infrastructure, Devices, Technology – Ownership and Openness

ITU-WIPO Symposium on Dispute Resolution
at the Crossroads of ICT and IP

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UNDERLYING THESIS

- Law reflects relatively stable societal values
- Law balances competing values based on a presumed technological equilibrium
- Disruptive technologies and market changes rapidly upset the balance
- The law must adapt
- This is playing out in ICT-IP intersection in the ownership v. openness struggle

SOME DIFFERENCES BETWEEN PHYSICAL ASSETS AND INTELLECTUAL ASSETS



physical assets are scarce and deplete-able...
“the tragedy of the commons” leads to private
property



knowledge assets are inexhaustible...this leads to open source...they are primarily public

...but we make exceptions to incent innovation – so IP is the exception, not the rule, for knowledge assets



Regulated Public Utility Model

(primarily based on physical assets paradigm)

Ownership



Telecom
Regulator

Openness

Examples of push to openness:

- Rate regulation
- Open access
- Nondiscrimination
- Introducing competition
- Build-out and universal service obligations
- Line of business and cross-ownership restrictions

Traditional Intellectual Property Model

(based entirely on knowledge assets paradigm)

Openness



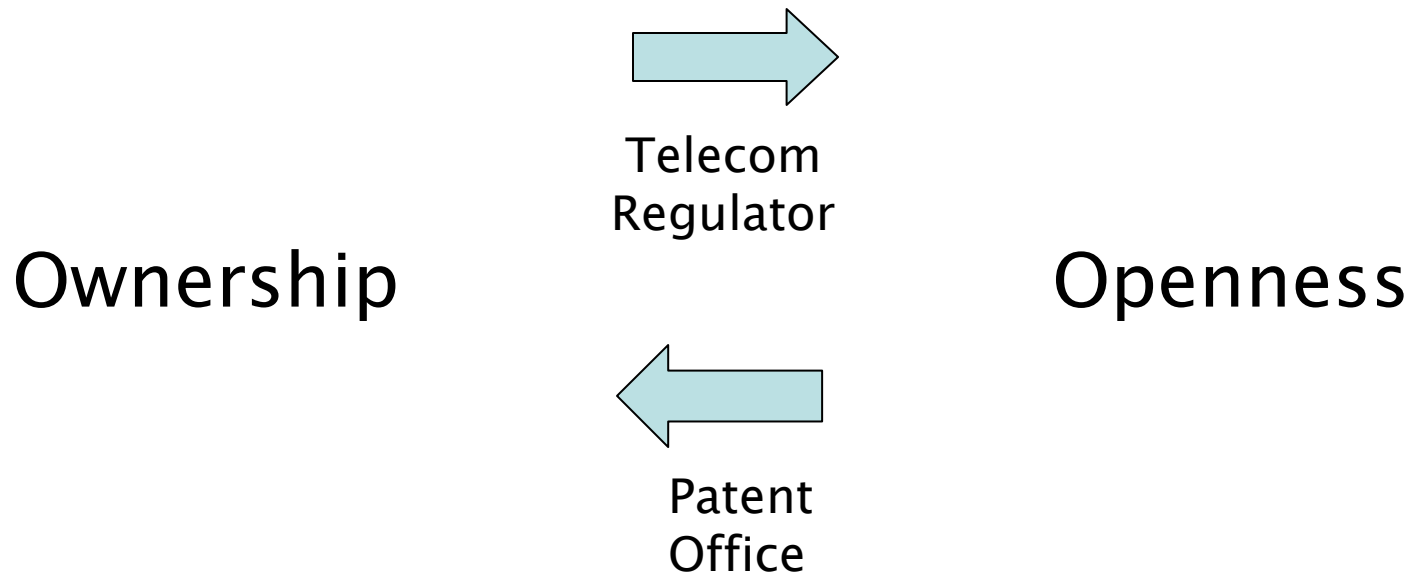
Patent
Office

Ownership

Examples of push to ownership:

- Patents
- Copyrights
- Trade and service marks
- Trade secrets
- Database rights
- Privacy and data protection rights

Telecom Regulation Meets IP



Examples:

- Ownership of telephone directories
- Open standards vs. patented technology
- SMP for IP assets constituting “critical infrastructure”

What we need to solve for

Utility of cyberspace = f (Openness, Ownership)



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