



Software Market (B2B)

(part of **Software Legal Relations** lecture
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MVV59K Software Law

Tento projekt je spolufinancován Evropským sociálním fondem a státním rozpočtem České republiky.



INVESTICE DO ROZVOJE VZDĚLÁVÁNÍ



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- **Basic concepts and their common perception**
- **Characteristic features of software market**
- **Standards and standardization at software market**
- **Software standards and economic competition**



- **Monopoly**
- **Interoperability**
- **Standard**





Characteristic features of Software Market

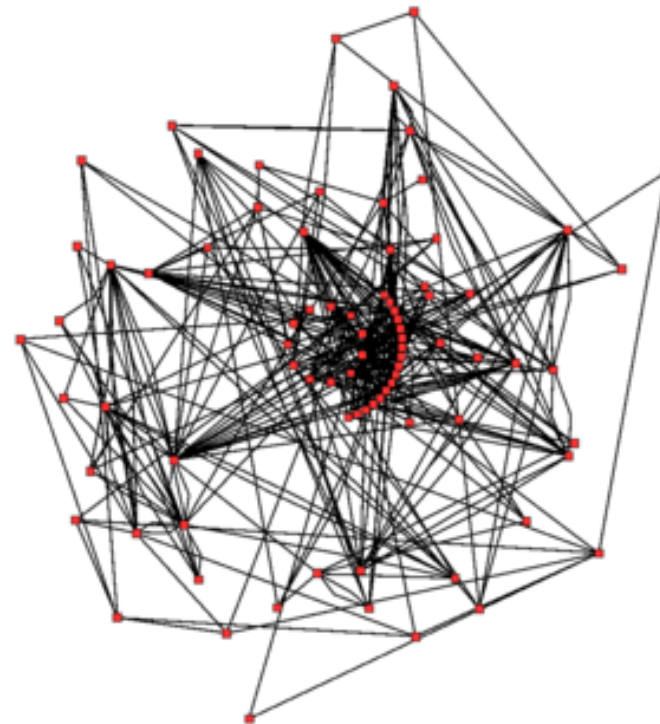
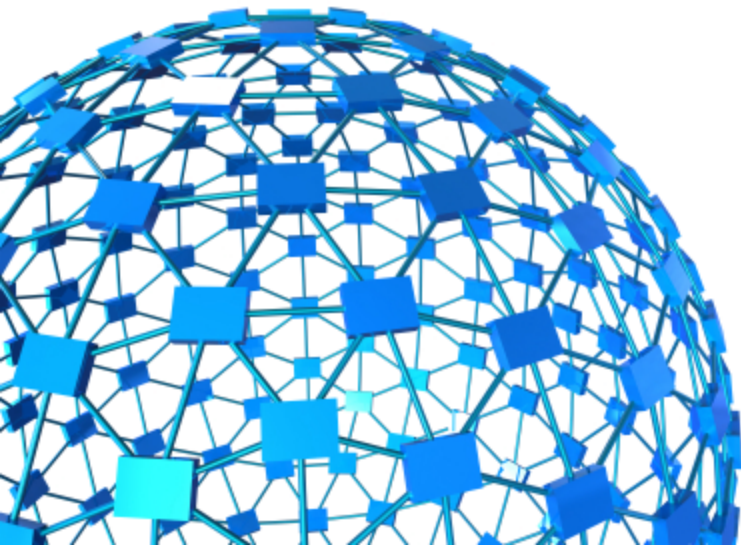
#1 “Public goods effect”

Intellectual Property Protection



#2 “Network effect”

=> Increasing number of users raises
a value of a product



#3 “Extreme dynamics”

Incredibly short lifetime of a product

Possible to sustain heavy losses in case of refraining from activities for even a very short period of time



Strong presence of IP protection

+

Tendency to develop standards

=>

Tendency to create monopolies

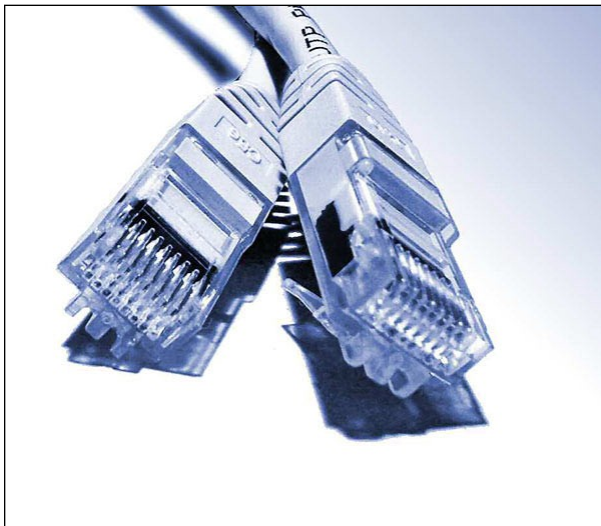
Constantly changing conditions



Standardization at Software Market

Certain terms, concepts and techniques underlying the operation of various pieces of software (vs. a particular software product)

Communication protocols, file formats





#1 OPEN Standard:

- Cannot be controlled by any single person
- Has evolved and has been managed in a transparent process open to all parties
- Platform independent, vendor neutral and usable for multiple implementations
- Openly published
- Available royalty free or at „RAND“ conditions
- Approved by rough consensus among participants



#1 PROPRIETARY Standard:

- Any standard that does not meet the conditions to be considered an open standard.



Formal „public body“ standards

Standards introduced by various Standard-Setting Organizations

„De facto“ Standards



I E T F[®]



- **Formal „public body“ standards and standards introduced by SSOs**
 - undergo a certain process of approval to be openly declared and accepted as standards
- **„De facto“ Standards**
 - approved by a success at a market

Legal Protection of Economic Competition

Standard vs. Monopoly

Not evil *per se*!

Potentially dangerous – reflected by Law

„Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States.“

(Art. 82 EC Treaty)

- imposing unfair purchase or selling prices or other unfair trading conditions
- limiting production, markets or technical development to the prejudice of consumers
- applying dissimilar conditions to equivalent transactions with other trading parties



- **Charging unreasonable prices for licences for the use of a product covered by IP rights**
- **Refusal to grant such licenses**
- **Tying**

„The function of a computer program is to communicate and work together with other components of a computer system (...) to permit all elements of software and hardware to work with other software and hardware and with users in all the ways in which they are intended to function. (...) This functional interconnection and interaction is generally known as ‘interoperability’; such interoperability can be defined as the ability to exchange information and mutually to use the information which has been exchanged.„

(Recital 10 of 2009/24/EC)



- **The level of interoperability decisively determines market success of a software product**
- **Unreasonable power entrusted in hands of a dominant undertaking?**
 - Reverse engineering – decompilation
 - Obligation to make information available

„The person having a right to use a copy of a computer program shall be entitled, without the authorisation of the rightholder, to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.“

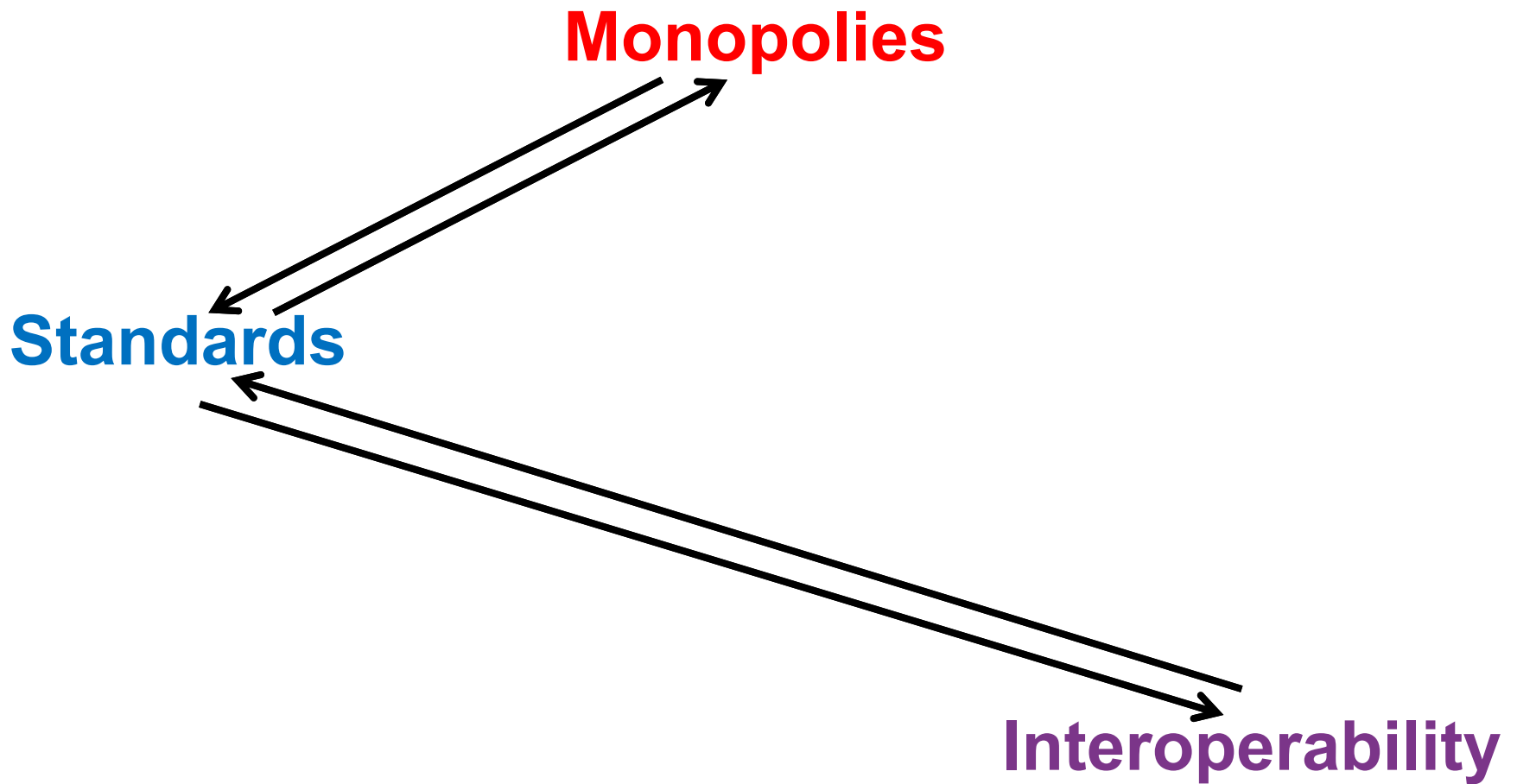
(Art. 5(3) of 2009/24/EC)

„The authorisation of the rightholder shall not be required where reproduction of the code and translation of its form within the meaning of points (a) and (b) of Article 4(1) are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met “

(Art. 6(1) of 2009/24/EC)

„The provisions of this Directive are without prejudice to the application of the competition rules under Articles 81 and 82 of the Treaty if a dominant supplier refuses to make information available which is necessary for interoperability as defined in this Directive.„

(Recital 17 of 2009/24/EC)





- **Software market is specific in many ways**
- **Software market tends to create standards and monopolies**
- **The position of the monopolies can be controlled through the introduction of high quality standards and the interoperable environment**



- **In case of refusal to supply the necessary information incredibly large damages may arise because of dynamics of the market**
- **A danger of trade-secrets and know-how expropriation**