



Mike Wendy, policy counsel of CompTIA.  
photo: Declan McCullagh

## The politics of open-source software

By [Declan McCullagh](#)

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**ARLINGTON, Va.--Mike Wendy says he doesn't hate open-source software.**

Wendy, spokesman and policy counsel for the [Initiative for Software Choice](#) (ISC), says he just wants to make sure government agencies don't unduly favor open-source or free programs over proprietary software.

"We want a process that is not based on automatic preferences," Wendy said. The ISC is by far the most vocal opponent of a growing trend: Legislation that, if enacted, would all but prohibit government agencies from purchasing proprietary software for their own use. The ISC asserts that such legislation could jeopardize the future of the worldwide commercial

software industry.

Because of the size of governments' ever-growing information technology budgets, billions of dollars are at stake. ("Open source" [means](#) that, at the very least, the source code is available, and "free software" [means](#) that anyone who modifies the code may, if they distribute it, be required to disclose details of the modifications.)

So far, the ISC says more than 70 such proposals have surfaced in U.S. state capitals and in about two dozen other countries. The reasons for the initiatives are complex and varied, but some governments have cited Microsoft's relatively expensive licensing terms. Other measures in some foreign countries are probably driven by issues such as anti-American sentiment.

No open-source preference legislation in the U.S. has yet become law, though the ISC is tracking proposals in Texas, Oregon and Delaware. On its "Open Source Now" [Web site](#), Red Hat posts [a copy of a California proposal](#)--never introduced -- that says government-purchased software must offer "unrestricted access" to source code.

"We've managed to stop the bills that have been put up so far," says Bob Kramer, ISC's executive director. "We would like to think that we can defeat all of them. But there have been bills passed in the provincial level in Brazil, and there have been two administrative rules that have been enacted--essentially administrative decrees or what we would call regulations--in Spain."

One [proposal in Peru's national legislature](#) that has not been enacted defines its objective to "employ exclusively free software in all the systems and computing equipment of every state agency."

Free software is defined as follows: unrestricted use of the program, unrestricted access to the source code, unrestricted ability to make copies and redistribute them and unrestricted ability to alter the software. This definition is extremely similar to the [GNU General Public License](#), used in such popular software as Linux, Perl, and MySQL.

Kramer rattles off a slew of other examples from memory: "The South Australia government in Adelaide has introduced a piece of legislation this year that is a hard preference (for open source) bill. There was a bill introduced in Portugal this year that is locked in committee. The Bulgarian federal government introduced a bill. The Ukrainian federal government introduced a bill. The finance minister in Estonia is starting to talk about saving money, but he hasn't introduced

anything. The ministry of communications in Korea has talked about this, but there have been no legislative proposals that have come to the floor so far. The federal government in Brazil had introduced a bill last year. Before the elections this year, they hadn't introduced a bill, but they've talked about a very strong pro-open-source policy."

### **ISC's mysterious origins**

Like many similar inside-the-Beltway groups, the ISC has no formal structure: It's not a true organization with a dedicated staff and board of directors. Instead, it's a part-time project of [the Computing Technology Industry Association](#). Now about 20 years old, CompTIA is best known for its [certification programs](#), which test knowledge in areas such as technical training, Microsoft network administration and even Linux competency.

While CompTIA is based in Oakbrook Terrace, Ill., it runs a nine-person lobbying outpost in a nondescript Arlington, Va., office building, just a few miles from downtown Washington, D.C. From that outpost, five lobbyists devote at least part of their day to the ISC. Another five state lobbyists based in California, New York, Florida, Connecticut and Illinois work part-time for the ISC. The group also employs international lobbyists, with an emphasis on Europe.

### **The ISC's critics in the open-source and free-software movements claim the initiative is little more than a front for Microsoft.**

Kramer, the ISC's director, is vague about the origins of his initiative. "When we were first approached by a couple of companies to take a look at it, we realized it was a big issue," Kramer said. "If these procurement proposals went through, a lot of our resellers would have big problems. They would have to make changes to their business models or be left out of the market...We are one of the few IT trade associations with true international reach. So it seemed like a good fit."

That begs the question: A good fit for whom? What companies proposed this to CompTIA? ISC's critics in the open-source and free-software movements claim that the initiative is little more than a front for Microsoft, which has identified free software as a deadly serious competitive threat.

"I'd rather not go into that," Kramer says, in response to my questions. "Obviously, Microsoft was one of them."

Later in the conversation, Kramer adds: "Microsoft is a major proponent and a driver, but there are also major companies that are equally interested in this and strongly involved in this." He also names EDS, Intel, and [Wind River](#), the world's biggest creator of embedded software applications. The ISC's other source of support, which makes a lot of sense: Resellers, who currently make a handsome living by marking up commercial software and selling it to state and federal governments.

On Friday, Microsoft refused to disclose how much money, if any, it gives directly to the ISC. A Microsoft spokesman did tell me: "Microsoft is a founding member and maintains a strong commitment to the ISC. This commitment is based on Microsoft's support of the initiative's belief that it is important to allow multiple software development, business and licensing models to compete on their merits and without government regulations that would seek to prefer one model over another."

You know what? That argument, at least for Microsoft and the ISC, makes a heck of a lot of sense.

Sure, maybe Redmond is being sneaky in how they created (or co-created) and may or may not be funding the ISC. But enacting laws that mandate just open-source software would create

serious problems. First, open-source software is frequently superior to proprietary software, but not always.

It's nutty to prevent bureaucrats--and, by extension, taxpayers--from getting the best product they can. Second, a realistic cost-benefit analysis would take into account the total cost of support and maintenance--not just the sticker price--and the person making the purchase is typically in the best position to perform that calculation.

Third, as Tim O'Reilly [points out](#), debating such laws opens the door for a closed-source counterattack, in which proprietary vendors could try to enact laws that limit open-source or free software.

For its part, Microsoft denies that it would favor a hypothetical law that was the opposite of the current proposals and established a legal preference for closed-source software: "No. Microsoft firmly believes that software should be procured on the basis of functionality, performance, security, value and cost of ownership--and should avoid any categorical preferences for open-source software, commercial software, free software or any other software development model."

### **Critics reply**

So, what's the problem? If all Microsoft and the ISC want is purchasing neutrality, that's good, right? Aren't Linux aficionados supposed to be willing to go head-to-head against Windows?

ISC's Kramer says: "If the economics go in a particular direction, we're good with that. If that's Linux, we're fine with that. Those are purchasing decisions." Jonathan Zuck of the [Association for Competitive Technology](#), an ISC member, adds: "Right now, there's no barrier to (governments) using open-source software. Just compete. If you like this open-source product, use it. If you like this closed-source product, use it."

Open-source evangelist [Bruce Perens](#), on the other hand, says it's not that simple. He says the ISC is going beyond its "neutrality" claim and is lobbying against open-source software. He's created a rival organization, [Sincere Choice](#), to oppose it.

"I think that the reason they should be paid attention to is because they come out against stuff that is not a hard preference law," Perens says. "If they limited their objections to hard preference laws, there would be fewer problems with them...Hard preference bills are a red herring. They're very rarely offered seriously by any government. What's offered instead are bills that say, 'We'll consider open source.' The ISC comes in and says the next step is hard preferences. They paint a draconian scenario for something that isn't draconian."

Perens adds: "Their message is not just that open-source preference laws are bad. They argue against open source in general."

We saw a partial example of this in the ISC's campaign last fall to convince the U.S. Department of Defense to ignore an earlier report that touted open-source software's utility and prevalence inside the military. "While the law on this matter remains untested, it makes sense for companies to be highly risk-averse in this area, striking a more defensive posture when confronted with software development that may implicate GPL (General Public License) code or similar coding environments," the ISC said in a letter. "Commercial and hybrid software developers generally do not want to risk losing their investment."

For his part, Perens doesn't seem to be willing to say whether he supports a "hard preference" law. In response to a question about regional governments in Brazil and Spain already moving in that direction, he replies: "Why shouldn't they have the freedom to make that choice? I don't think it's a good choice at the national level, because it drums up too much opposition." As for his own

preference, he mentions that he only has one computer that runs Windows--exclusively for Quicken and TurboTax--and says, "I personally have made my choice."

Well, that might be the right one for him. And it might not. Just like individual users can, government agencies should be able to make their own procurement choices. Why not let open-source and closed-source products compete in a free (government) market, and let the best-fitting software win?

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