

S4S

PROCEEDINGS

**STANDARDS FOR STANDARDS SUMMIT
AT YALE LAW SCHOOL**



**HOSTED BY THE
YALE INFORMATION SOCIETY PROJECT**

**November 21, 2008
New Haven, CT**

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S4S Background

On November 21st, the Yale Information Society Project hosted a Standards for Standards (S4S) Summit at Yale Law School. The gathering brought together industry leaders, standards practitioners, scholars, and legal experts from around the world to discuss problems and recommend solutions in the current global context of technical standardization.

This gathering was an outgrowth of a six-week online standards forum facilitated by IBM in the summer of 2008. Through an interactive wiki format, this online discussion brought together approximately 70 standards experts from academia, standards-setting institutions, law, and government. The overarching purpose of the wiki discussion was to assess whether standards and standards-setting institutions are keeping pace with contemporary technical, social, legal, and political realities in the global information society project. The online forum was divided into five topics:

- Transparency and Accountability
- Standards Quality and Creation
- Policy and Society
- Intellectual Property
- Rating and Accreditation.

IBM published the results of the online standards wiki at <http://www.research.ibm.com/files/standardsforstandards.pdf>. Many of the debates and recommendations focused on the need for greater transparency, fairness, openness, and quality in contemporary technical standards contexts.

The impetus for the Standards for Standards Summit at Yale Law School was the need to further reflect upon recommendations from the online discussion and determine some concrete steps for improving the global standards-setting environment.

The participants in the Summit had a range of expectations for the day: some wished to begin creating a set of best practices for national standards organizations; others wished to discuss a model government procurement policy based on open standards; and others hoped to begin creating model intellectual property rights policies. Some of the participants also wished to discuss the formation of a standards for standards organization that advocates for greater openness and others hoped to craft standards recommendations for the Obama administration.

Drawing upon the recommendations and debated topics from the online wiki, much of the day's discussion was divided into three working groups: Standards and the Role of Government; Quality and Creation of Standards; and Standards and Intellectual Property. The following document provides information about this standards event, including a list of participants, the schedule of the day's events, summaries of each of the three working group sessions, and some concluding thoughts and next steps.



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Summit Schedule

November 21, 2008

- 8:30-9:00 a.m.** Welcome Breakfast
- 9:00-9:30 a.m.** Introductory Remarks
Professor Jack Balkin
Dr. Laura DeNardis
Dr. Robert Sutor
- 9:30-10:00 a.m.** Framing the Topic, Preview + Q&A: "Intellectual Property"
Andrew Updegrove, Esq.
- 10:00-10:30 a.m.** Framing the Topic, Preview + Q&A: "Standards Quality"
Gerry Lane
- 10:30-11:00 a.m.** Framing the Topic, Preview + Q&A: "Government"
Laura DeNardis
- 11:00-11:15 a.m.** Break
- 11:15-2:45 p.m.** Concurrent Breakout Discussions (IP, Quality, and Government)
and Working Lunch
- 2:45-3:00 p.m.** Break
- 3:00-5:30 p.m.** Participants Regroup;
Breakout Representatives Present Recommendations;
Next Steps, facilitated by Laura DeNardis

Summit Participants

Chris Andrews
IBM

Jack Balkin
Professor Yale Law School; Director, Yale Information Society Project

Karl Best
Standards Consultant

Sandy Block
Counsel, IP Law, IBM

Elizabeth Cleary
Manager, Standards Business Strategy, IBM

Dave Coryell
CEO, Kavi Corporation

Cui Guobin
Associate Professor, Tsinghua University (Beijing, China)

Laura DeNardis
Executive Director, Yale Information Society Project and Lecturer, Yale Law School

Ari Fishkind
IBM Public Affairs

Melanie Freeman Chernoff
Public Policy Manager, Red Hat, Inc.

Rishab Ghosh
Senior Researcher
UNU-MERIT United Nations University / Maastricht University, Netherlands

Eduardo Gutentag
Director, OASIS, Sun Microsystems

Ralph Hertlein
Vice President of Operations, OAGi

Brian Kahin

Senior Fellow, Computer & Communications Industry Association

David J. Kappos

Vice President & Assistant General Counsel, Intellectual Property Law & Strategy, IBM

Gerry Lane

Director, Standards and Open Source, IBM

Peter Lefkin

COO/CFO, IEEE

Peter Lord

Director, Technology Policy, Oracle

Scott McGrath

Senior Director of Member Services, OASIS

Michael R. Nelson

Visiting Professor, Internet Studies

Communication, Culture and Technology Program, Georgetown University

Earl Nied

Program Director of Standards and Intellectual Property Rights, Intel Corporation

Paul Nikolich

Chairman, IEEE P802 LMSC

Steve Nunn

COO and Chief Legal Counsel, The Open Group

Zsolt Okanyi

Yale Law School

Donald E. Purcell

Chairman, Center for Global Standards Analysis

Ronald F. Silletti

Corporate Program Director of Standards, IBM

Robert Sutor

Vice President of Open Source and Open Standards, IBM

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Richard Wolfram
Attorney

Don Wright
Director of Standards, Lexmark International
Director, ANSI & IEEE-ISTO

Joseph Ziskin
TM Forum Board Member

Standards and the Role of Government Working Group

This section describes the findings and recommendations of the Standards and the Role of Government Working Group. The first part of this section includes the background material provided for the working group at the Standards Summit. This background summarizes the key questions and recommendations discussed in the policy and society forum during the online summer wiki discussion. The second part of this section summarizes the problems, recommendations, and next steps discussed in the working group at the November 21st S4S Summit.

I. Background Material for Standards and the Role of Government Working Group

Some Questions

The following questions about standards, politics, and society were presented for discussion in the Summer Online Standards Forum.

The Role of Government

- How and where does government policy intersect with standards?
- How could or should governments be stronger players in the creation and adoption of standards without necessarily controlling the process?
- As enormous procurers of information and communication technologies, what market role, if any, should governments play in influencing technical standards?
- What are the economic and political implications of different government approaches to standardization (e.g. *laissez-faire* versus government leadership)?
- What is the appropriate relationship between governments and the national standards bodies that feed into international standards-setting processes? On what basis do these national organizations derive the legitimacy to be making decisions on behalf of national governments?

Standards as Public Policy

- What are the most critical public interest implications of standards?
- If standards establish public policy, what characteristics, processes, and possibly accreditation are necessary to provide the legitimacy for a standards-setting institution to make policy on behalf of publics?
- How can the interests of the public be balanced with the interests of the creators of standards?
- In democratic societies, what are the rights of the citizens to know how national standards are approved and how the country votes for international standards?

- How strong is the linkage between standards and the ability of governments to deliver public services, whether disaster response, eGovernment services, or providing citizens with access to public information?

Standards and Global Trade

- In what ways are standards currently enabling or impeding global trade?
- Is the World Trade Organization's Agreement on Technical Barriers to Trade (TBT) being effectively implemented in practice?

Standards and Developing Countries

- Are there special considerations for emerging markets?
- Do the interests of developing countries adequately enter the design, selection, and implementation of standards? What's working and what's not?

Problems in Transnational Jurisdiction

- What are some problems at the intersection of national standards bodies and the international standards-setting process?
- How could an international standards body provide an appropriate level of guidance to a national standards body and at the same time respect their country's sovereignty?
- What are the current problems with the interactions between consortia and "global" standards development organizations (like the W3C and OASIS) and the international standards organizations (like the ISO and IEC)? What are possible solutions?
- How do standards set by one group of countries affect other countries?
- Could/should national standards policies be harmonized, and if so, how?

Selected Recommendations from Online Standards Forum

The following collection of recommendations were proffered by individuals during the summer online standards forum and do not necessarily reflect consensus.

Recommendations to Governments

- Establish policies to procure and use only information technologies based on open standards.
- Call on lawmakers to regulate intellectual property component of standards.
- Call on governments to review their national standards bodies and require them to adopt process rules that assure accountability and transparency and that limit vulnerability to undue vendor influence.

- Recognize the existence of “Civil Information and Communication Technology Standards” and the need for government to protect them and promote them through procurement policy
- Elevate the importance of standards in the missions of the Departments of Justice and Commerce and the National Institute of Standards and Technology. These agencies would guide the creation, publication, and rewards associated with standards.
- Elevate the priority of protecting standards in the missions of the Federal Trade Commission and the Department of Justice.
- Raise government awareness throughout the world to the deliverables of the Interoperable Delivery of European eGovernment Services (IDABC).

Recommendations for International Coordination and Action

- Encourage bilateral and multilateral government coordination for the sharing of best practices.
- Reinforce World Summit on the Information Society Declaration of Principles – that open standards are important to IT diffusion in the developing world.
- Take concrete actions to fulfill the extent, reach, and use of information and communication technology flagged by the World Bank and other international organizations through public-private partnerships.
- Encourage better application of the WTO’s Agreement on Technical Barriers to Trade.
- Ask all WTO signatories to accommodate the recent Hague Declaration.
- Reinforce that ISO certification does not make something an open standard.

Recommendations to Promote the Public Interest

- “Open Government Rules” should apply. Standards processes should adopt the equivalent of sunshine laws guaranteeing interested stakeholders greater visibility into the standards development process.
- Civil ICT standards should be properly accountable to all citizens. These are the standards that are necessary to guarantee rights of free speech, free association, and free interaction with government online.
- Reflexive secrecy must end. Traditional closed door, minimal disclosure policies serve the convenience of those involved at the expense of those who are not. Consortia such as the W3C and open source projects demonstrate that far greater transparency can benefit, rather than undercut, good results.

Selected Next Steps Mentioned in Online Forum

Government procurement policies

- Create a white paper outlining the need for government procurement policies based on open standards and describing actions taken by various countries.

- Suggest a model procurement policy

Coalition of Open Standards

- Create a standards for standards organization that advocates for greater openness and for solutions to some of the problems listed above.

Best Practices for National Standards Bodies

- Create a model set of best practices for national standards organizations.

Open Government Principles

- Create a model set of “open government principles” as guidelines for the creation of national body processes and rules.

II. Summary of Government Working Group Discussion in S4S Summit

The Working Group gave a brief definition of the standards:

Standards are technical specifications, or blueprints, which provide a common design for products and processes. They are the international language of commerce and the blueprints for the global electronic sphere.

The Working Group laid out a framework for why governments should care about technical standards:

1. Innovation Policy

Standards are central to innovation policy and national economic competitiveness by providing a common platform from which collaborative innovation can proceed, a level playing field on which competition can occur, and through which the risk of experimentation is lowered.

2. Global Trade

Standards play a central role in either enabling or impeding global trade.

3. Government Services

Standards are the underpinning of government functions including, efficient eGovernment services, and the ability of governments to perform national security, law enforcement, public document availability and other functions and services to citizens that rely upon information and communication technologies.

4. Public Interest Effects

Decisions made in standards-setting have public interest effects such as privacy, accessibility, health, safety, environment, and security.

5. Critical Information Infrastructure

The degree of security, reliability, and interoperability within standards has significant implications for a nation's critical information infrastructure, including financial systems.

The Working Group summarized current problems in standardization:

In response to the possible response of government policy makers that "everything seems to be working – what are the problems," the working group mentioned the following:

1. Interoperability is not a given.
2. Proprietary standards impede innovation.
3. Some important standards are not adopted because of collective action problems.
4. Standards can impede global trade and be used as technical barriers to trade.
5. It is a problem when eGovernment or critical information infrastructure is locked into a single vendor because of standards.
6. Secure, cloud-based infrastructures can not be built without the use of open standards
7. Closed standards can impede government services.

The Working Group described some theoretical disaster scenarios related to standards:

1. Government becomes locked into a single vendor for critical functions.
2. Foreign competitors lock in a large part of IT infrastructure through proprietary standards, resulting in national security vulnerabilities and competitive disadvantages.
3. Vulnerability in a protocol (or a lack of a protocol) takes down the Internet and other critical information infrastructures.
4. Lack of interoperability impedes critical government service in a national disaster.
5. A critical standard for security and authentication fails to provide adequate privacy for critical information infrastructures such as ecommerce and financial transactions.
6. The public can no longer access public documents because documents are locked into an obsolete legacy standard no longer supported or maintained.

The Working Group suggested recommendations to the Obama administration:

1. For national security reasons, the government should be concerned about the development and adoption of key security standards such as DNSsec
2. The U.S. Government should appoint a high-level advisory committee on technical standardization.
3. U.S. should establish a government procurement policy to prefer open standards that are implemented by at least two independent organizations.
4. Standardization work should be included as part of the R&D tax credit and this should be made permanent.
5. There should be greater U.S. government concern about IPR in standards. The Patent and Trademark Office, in particular, should have greater expertise. (More standards expertise in key technology agencies, beginning with the PTO).
6. Encourage better implementation of the WTO's Agreement on Technical Barriers to Trade.

The Working Group suggested some next steps:

1. By inauguration day, submit recommendations to the Obama administration on U.S. technical standards policy.
2. Create an electronic sphere and institutional structure to continue this discussion.
3. Form some kind of open standards U.S. tiger team or standards advisory committee.
4. Create a global open standards advocacy organization
5. Create a white paper outlining the need for (federal and state) government procurement policies based on open standards and describing actions taken by various countries already. Suggest a model procurement policy.
6. Create a model set of best practices for national standards organizations.

Quality and Creation of Standards Working Group

Faced with the challenge of improving
the quality of Information Technology standards -

What would your focus be?

The following section summarizes both the online wiki discussion forum on standards quality and creation and the working group on quality and creation of standards at the S4S Summit. The first conversation (Summer 2008), was conducted as an online wiki discussion among seventy experts from academia, standards, law, government and public policy. This forum debated the question of whether standard-setting bodies have kept pace with today's commercial, social, legal and political realities. Actionable suggestions to modernize their processes were offered during the six-week discussion with an eye toward increasing standards transparency, fairness and quality.

A subsequent in person session was conducted by the Information Society Project at Yale University Law School. This discussion focused on key topics arising from the first discussion which seemed to warrant the most attention. In this forum, the intent was to develop action plans and potentially recruit volunteers to continue the discussion and define approaches that address the core issues.

I. Summary of Standards Quality Wiki

Several discussion threads were introduced to start a broader discussion on the information technology standards-setting process in view of changes across the globe and the reality of information technology's impact on our lives. Two of the threads dealt with potential quality ratings of standards organizations and criteria which could aid in that assessment.

Throughout the discussion, these threads covered many aspects of standards process and quality. The participants brought a wealth of standards-setting and standards-implementation experience to the discussion. They offered many perspectives, driven both by observation and direct involvement.

At the outset of these two threads, participants addressed some basic questions:

Rating and Accreditation Thread	Quality & Creation of the Technical Standard Thread
<p><i>Is it possible for the standards community to adopt models of stewardship and accreditation required of professionals, products and industries?</i></p>	<p><i>Are common criteria that may help assess the quality of a standard applicable?</i></p>
<p>Organizations like ANSI and ISO already approve and accredit standards (and standards policies) created by others. Can they be improved? Do they reflect present day understanding of the requirements for interdependent, interoperable networked systems?</p> <p>Should we be able to distinguish between a “one-star” and a “five-star” standards setting organization?</p> <p>Is there any benefit to creating a rating system?</p> <p>Who would be the intended audience, vendors, consumers, or standard setting organizations?</p> <p>What kind of rating system could be established? Who would do it, and how?</p> <p>Should accreditation be subjected to the same transparency and quality benchmarks as the standards and standard bodies?</p> <p>What problems or difficulties (e.g. costs, expertise, authority, and neutrality) would be involved in developing or extending rating and accreditation functions?</p> <p>Should accreditation pertain to the standards setting process, or the quality of the standard itself, or both?</p>	<p>Where in the creation of a standard and in the standard itself should we be concerned about quality?</p> <p>How should the attributes of “openness” be considered when thinking about quality?</p> <p>What criteria and metrics define the quality of a standard?</p> <p>What aspects of the standards creation process can be made more consistent and “fair”?</p> <p>How and where can community involvement and democratic processes be encouraged in the creation of a standard?</p> <p>How can ease of independent implementation be improved?</p> <p>What can be done to ensure that standards use the best new or existing technology available?</p> <p>How can the standard creation process be speedy without compromising quality?</p>

It was noted by participants that new members of the community were rapidly emerging with opinions on quality, including those from governments and individuals in the blogosphere. Prior work to identify SSO comparisons or criteria were identified such as work done by IDC to compare various standards organization approaches and work done at the University of Colorado by Ken Krechmer to identify relevant criteria.

Additional referenced sources of opinions were from various government officials, on one hand, and individual standards participants or open source developers on the other. The Wiki participants pointed to the proliferation of Country Interoperability

Frameworks in countries such as Brazil, India, South Africa, Korea, Germany, Japan, Hong Kong, New Zealand and of course there is the European Union trying to develop and interoperability framework to deliver e-government services across all the citizenry of their member states. The EU had published several papers based on commissioned studies, such as “The Way Forward”, the European Interoperability Framework, and their CAMSS (Common Assessment Method for Standards and Specifications).

Overall, the conversation highlighted several criteria in the attempt to define what contributes to the creation of a quality standard. The most important word was “openness” as a prerequisite for an acceptable globally relevant IT standard. In these discussions, further qualifications were “transparency” and “quality” where these words qualified process, availability, interoperability, choice and avoidance of vendor lock-in.

These discussions took many turns including the identification of standards which lacked quality. A key observation was that some of those standards were so important that the quality issues were overshadowed by their timeliness and market relevance. Timeliness and market relevance were deemed to be essential elements in identifying highly successful ICT standards. However, these observations are mostly retrospective and the question of how to anticipate a quality effort remained unanswered

This led to remarks about standards organization rules and procedures by which standards are developed and promulgated.

<p><i>Some snippets addressing what were offered as the most important considerations in the development of a quality standard...</i></p>	<p>Hygiene factors of openness, transparency, documented methodology, good practices, clarity of IP handling ...</p> <p>Complete, unambiguous, clear, concise, readable, implementable, maintainable...</p> <p>Demonstrably representative of the industry position...</p> <p>Fitness for purpose: good enough and timely..</p> <p>Good, fast, inexpensive – pick two..</p> <p>A good standard is one that is minimalist – the smallest set of normative requirements to achieve the goal.</p> <p>A good set of requirements and working use cases to prove requirements are met.</p> <p>It depends – when participant goals differ, the process is more of a concern.</p> <p>Management of the standards body: schedule, fair opportunity to contribute, focused.</p> <p>Purely objective measurement may produce elegant</p>
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	<p>results that are unused.</p> <p>Quantity is also important – while the public requires standards, will providers have adequate incentives to produce them?</p>
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Certain SSO approaches and processes were highlighted as exceedingly important in predicting a quality outcome. These organizational and process topics are more likely to influence the production of quality results, namely the quality of the standards produced. This conversation coalesced into discussion of quality criteria and best practice considerations, in lieu of quality metrics for ICT standardization. Through these discussions, the topics of testing, requirements definition, due process, openness and transparency were deemed treasured characteristics.

In summarizing the Wiki threads, the standards criteria conversation entailed:

1. Criteria for a quality standard
2. Criteria for organizations capable of producing quality standards.

A draft of standards development processes and SSO management characteristics was noted and merged with information from other sources to propose a tool to assist in assessments of the relative quality of ICT Standards Setting Organizations. The analysis tool is divided into two sections. The first is an assessment section to address the overall operational and managerial approaches of the SSO. The second section is a matrix to assist in assessment of the processes employed by the SSO to develop standards.

The analysis tool outlines the elements identified to be the major contributors to quality standardization efforts in information technology and facilitates comparison of SSO approaches. This brought the Wiki discussion to a close.

II. Summary of Standards Quality and Creation Working Group Discussion at S4S

In this forum, additional interested parties converged on New Haven to discuss the Wiki results. A report similar to the description above was offered about the “Quality Criteria” and a team formed to discuss next steps.

As with any such effort, the participants needed to discuss the existing materials before proceeding. They took issue with the lack of consideration of the important issues of interoperability testing and marketplace adoption. After much discussion, the group agreed both are important indicators of what constitutes a quality standard, when the standard is already available. This led to the observation that no widely accepted cross-SSO or cross-standard mechanism exists to collect community experiences with specific standards. The resulting thought: We need an Amazon or e-bay type review or customer comment mechanism to collect experiences with standards; the criteria developed during the Wiki discussion (with modification to address interoperability) could be offered to potentially inform the commentary.

The group also discussed how governments, through their Interoperability Frameworks, are asking for, or creating, multiple and somewhat overlapping, but unique guidelines (or

criteria) to be used as a predictive method and a way to ensure certain standardization process elements are exercised during standards development before using the resultant standards in e-government service implementations. The proposed Quality Criteria was assembled to meet this need and should be made available through as many outlets as possible to assist in elevating the overall quality of ICT standards.

Suggestions and Ideas

As the team turned its attention to a discussion of next steps, the first suggestion was to explain the importance of multi-source ICT solutions based on open standards of at least two independent interoperable implementations. The team suggested the addition of this requirement to Government Procurement mandates to drive momentum on this point. The next suggestion was to update the Quality Criteria to address interoperability testing and highlight the use of the Criteria package as a predictive mechanism while finding a permanent home for it on the Internet to further publicize and encourage its use. Another important suggestion was the collection and publishing of papers for a “Guide to Best Practices in Standards Development”. These would inform standards developers and government decision makers. The Guide could also include sample guidelines for government procurement agencies. An interim solution to highlight the Quality Criteria, while testing its applicability, would be an Amazon-like review web application. This would encourage standards implementers to capture experience driven opinions. This may have the benefit of encouraging SSO participation in either the creation of essays and practice improvements. Finally, the idea of providing the Quality Criteria to standards developers for a self assessment also received endorsement from attendees of the Yale Summit.

<p><i>Summary of suggested actions derived from Yale “Quality” discussion group</i></p>	<p>Encourage: A US Government Procurement Requirement to drive momentum Define: Work with a specific widely-accepted definition of “quality” [and other terms] Prove: Use Case studies and empirical evidence Focus: Identify where are the hotspots that NEED to be addressed NOW? Educate: through information Publish: Best practices Highlight: Interoperability at implementation (conformance etc) Develop: a self-assessment tool in partnership w/SSOs</p> <ul style="list-style-type: none"> • Think! AMAZON 2020 • Recruit additional SSO participation and publication of results • Raise awareness of the issues • Drive consensus around the solutions <p>Incent: SSO participation (avoid disincentives). Establish: credibility for the program FIND A HOME FOR A COMMUNITY ASSESSMENT TOOL</p>
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This brought the Yale University Law School Session to a close.

The next phase should be the conversion of the ideas proffered during these conversations into action. The following action items are intended to further open the discussions of Standards Quality Criteria by providing preliminary mechanisms to verify what was learned in the 2008 discussions.

Recommended Action Items

1. Continue the discussion in phase 3 (post Yale Summit) focused on "Best Practices" in SSO Management and governance.

Why: The extent that management and governance influence the quality transparency and fairness of standards is not well understood and documented. This is evident from the proliferation and variation in e-government interoperability frameworks underway.

2. Engage a number of high volume SSOs to contribute their creation/maintenance process maps and related procedural frameworks. This will serve to determine commonalities and differences among this core set. Based on this input, identify best practices in procedures and solicit broad SSO review and more consistent adoption of processes and procedures.

Why: There is likely more diversity in procedures and practices than widely believed. SSOs are usually not for profit organizations and do not necessarily have the budget, staff or motivation to lead in the creation of unbiased views of process frameworks --but could leverage these for overall quality improvements.

3. Begin to automate the "quality" assessment of SSOs, governance, policies and standards through creation of a community based tool soliciting commentary

-- Include the output from step 1 -- as a first iteration of assessment criteria -- which the community can continue to evolve/improve

-- Include the output from step 2 --- with a mechanism for comment and improvement of the process frameworks -- which the community can continue to evolve/improve

Quality criteria for Standards Organizations

Organization Characteristics proffered during the WIKI conversation

Organizational Characteristic	Definition
Membership & participation rules	Open to any interested party. A collaborative and consensus driven process
Cost of participation	Affordable for individual participation.
Oversight	Operated by an impartial board with board seats open to regularly scheduled elections.
Scope	Well defined charter or scope document at each level from organizational purpose to individual working group activities
Organizational History	A well established, respected organization with experience in the technologies being standardized
Cost	Specifications / standards are available for free or at a nominal charge.
IPR	Disclosure required by participants based on agreed criteria and licenses available to all applicants on a worldwide, non-discriminatory basis.
Geographic Applicability / Utility	Resultant standards / specifications are intended to be used globally
Relevance	New standardization is started upon due analysis of the market needs, including requirements phase (e.g. accessibility, multi-linguist)

Quality Criteria for standards / specification development

Process Phase Characteristics proffered during the MKI conversation

Elements \ Phase	Standards Activity Initiation	Specification Development	Review	Final Approval	Publication & Availability	Maintenance & Revision
Open Participation - Contributions are accepted from diverse communities.						
Transparency - Information is available, visible, disclosed and those in charge are accountable for a quality process and result.						
Impartiality - Not dominated by narrowly focused interest groups. Guaranteed fairness by the process and the neutral hosting with equal weight for each participant						
Quality Assurance - Test cases or multiple independent implementations available for each specification. Best practice – demonstrated interoperability between implementations from varied and independent sources						
Fairness - Decisions are made based on rules of consensus or voting. Guaranteed fairness by the process and the neutral hosting with equal weight for each participant.						
Clarity /completeness - The standards produced are well formed, free of unnecessary complexity and easy to use by independent implementers.						
Availability - Resultant drafts , specifications and standards are readily available.						
Special Case Processing - Any exceptions or unique case (such as complete specification contribution) must conform to all information and process step criteria.						
Implementation Considerations - Making it easy to use the standard and addressing user requirements (e.g. Interoperability, compactness, security, privacy).						

Standards and Intellectual Property Working Group

The following section describes the findings of the Standards and Intellectual Property Working Group. The first part summarizes the background information presented at S4S by Andrew Updegrave to frame the intellectual property problems related to technical standards. The second part provides a summary of the discussion and recommendations discussed during the intellectual property working group.

I. Background Presentation Prior to Intellectual Property Working Group

What are the Problems?

1. Vague, ineffective and non-uniform IPR policies
 - Lack of *ex ante* disclosure
 - Lack of effective sanction mechanisms
 - Incompatible with FOSS implementations
 - Lack of enforceability against patent assignees
 - Lack of protection against proprietary extensions
 - Lack of compatibility between consortia and ISO/IEC JTC1 rules
2. Contradictory participant goals (e.g., FOSS vs. RAND vs. Trolls)
3. Inconsistent and tentative government policies, procurement and regulation

What are the Possible Solutions/Tools?

1. Create model IPR policies with:
 - Multi-track IPR modalities (e.g., RAND, FOSS-friendly, etc.)
 - Consistent openness process rules and values
 - FOSS-friendly non-assertion covenants
2. Institutionalize *ex ante* disclosure
3. Create an “OSI for SSOs” to:
 - Certify their policies and procedures
 - Maintain a registry of certified standards and SSO
4. Integrate with and augment existing mechanisms:
 - OIN, Peer to Patent, Patent Commons, etc.

What about Government?

1. Recruit governments to:

- Recognize “Civil ICT Standards”
- Set procurement requirements to require certified standards from certified SSOs
- Requirements should be uniform across states and nationalities for maximum impact

2. Educate/recruit FTC, DOJ, EC, other regulators to enforce IPR compliance

3. Create a “lien registry” at the PTO and elsewhere to register patent commitments

A Straw Proposal

1. Create the model ICT IPR policy of the future

- Multi-modal to address all common IPR tracks
- Include non-assertion covenants
- Incorporate “Standards for Standards” values

2. Create an “OSI for Open Standards” which would:

- Maintain model IPR Policy and non-assertion covenants
- Certify other IPR Policies and non-assertion covenants of standards organizations
- Act as a trusted reference for government procurement

II. Summary of Intellectual Property Working Group

The IPR Session moved forward on three related fronts. First, the group considered what recommendations it could offer the Obama Administration relating to standards. Although standards have global impact, the importance of providing insights to the new U.S. Administration early on was recognized. It was noted that the President-elect relies on technology, published a "technology paper," and would appoint a Chief Technology Officer (whose role was not yet certain). The message to the Administration should contain the following points:

1. Patent quality is of special concern to standards
2. Integrity and certainty are vital to standards, and the process by which standards are created must support these goals
 - a. Standards are essential to society and innovation
 - b. The integrity of the process is essential to its proper operation, and the support of the courts is required to protect this goal
 - c. Administration policy should promote integrity and certainty of the standards development process
 - d. The Administration needs to take a leadership role with the DOJ and in important court cases
- (i) 3. Standards and open source should be able to peacefully coexist; leadership is needed to educate and supply solutions to achieve this goal

Accordingly, identifying specifics on how standards policy can contribute to the economic recovery would be valuable. Specific topics of interest could include (i) a public registry indicating licensing commitments for patents and associated standards, (ii) actions that might help address third party patent issues (which will be reviewed by a working group), (iii) re-opening OMB Circular A119 that discusses open standards and transparency, (iv) promote Agency guidance with respect to Standard body IP policies. Brevity of message was stressed. [One observation: European Commission seems way ahead of U.S. in assessing standard policy.]

Second, the group considered what key progressive initiatives relating to IPR and standards warrant attention and action. The topics in rough priority order:

1. Whether license commitments bind successor owners of patents was a vital topic
2. Clear guidance from court decisions was a vital topic
3. Enforceability -- with respect to methods of enforcing SDO rules and consequences for breaches -- was an important topic
4. Patent quality was seen as important in helping ensure that only sound patent issues arise with respect to standards
5. Certainty for standards stakeholders (especially implementers) in SDO policy -- with respect to consensus, efficiency, and disclosure aspects -- was of considerable interest
6. Interplay of Open Source with Open Standards had mixed support
7. Policy diversity was not viewed as important to consider.

* A topic discussed (but not voted on) was complexity of SDO rules – non-lawyers need to understand policies.

* A topic discussed (but not voted on) was problems from different policies for referenced and referencing standards.

Third, the group considered what specific next steps could advance those initiatives. The following working groups were proposed:

1. IP: OMB 119A Consider revisions to OMB Circular A119 on what is an open standard -- transparency. (Have list of interested participants)
2. IP: Registry Consider feasibility and features of a (international) registry of patents used in standards akin to assignment recordation at Patent Offices. Legal impact of such registration on future assignees of the patent and on others. (Have list of interested participants)
3. IP: RAND/ex ante Consider meaning of RAND and ex ante disclosure of license terms in conjunction with irrevocability. {Note: Consider effect of ex ante on companies who wish to use patents only defensively.} Recognized as difficult issue..

4. IP: 3rd party patents Consider measures to address essential patents that are not subject to license commitment. Recognized as difficult issue -- SDO has no control over patent holders. (Have list of interested participants)

IP: OSS/FOSS Consider interplay between Open standards and Open Source. (Have list of interested participants)

* Another topic considered was "model" IP policies for SDOs to help address problems with inconsistent policies. Akin to Creative Commons licenses.

* Another topic mentioned was an organization for standards akin to Open Source Initiative (OSI) for advancing open standards policies and procedures.

Next Steps

1. Form a global open standards advocacy and evangelism organization
2. By inauguration day, submit recommendations to the Obama administration on U.S. technical standards policy
3. Create a model set of IP policies for standards organizations
4. Develop a model set of best practices for openness in technical standards setting
5. Begin to automate the "quality" assessment of SSOs, governance, policies and standards through creation of a community based tool soliciting commentary
6. Develop an Amazon or eBay type review or customer comment mechanism to collect experiences with standards; the criteria developed during the Wiki discussion (with modification to address interoperability) could be offered to potentially inform the commentary.
7. Develop a list of open standards
8. Advocate for the formation of a standards advisory council in the United States
9. Create a white paper outlining the need for (federal and state) government procurement policies based on open standards and describing actions taken by various countries already. Suggest a model procurement policy.