

WIKI RECOMMENDATIONS

IBM facilitated an online conversation during the summer of 2008, in which 70 independent, forward-thinking experts from across the globe, from academia, standards, law, government and public policy 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.

Following are suggestions that were proffered by individuals during the wiki. They do not necessarily reflect unanimous or consensus views.

Government

- Call on lawmakers to regulate intellectual property component of standards
- Encourage adoption of new procurement rules requiring good ratings from trusted sources
- Recognize the existence of "Civil Information & Communication Technology Standards," 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 National Institute of Standards & Tech. 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)
- Encourage bilateral and multilateral government coordination for the sharing of best practices

Standards Development Organizations (SDOs)

- Develop and maintain an organization to create a quality index of existing SDOs and best practices for SDOs to motivate existing and new SDOs
- Encourage member-pledges to make early disclosures of intellectual property
- Discourage non members from ambushing standards -- create organization to expose prior art of patent speculators
- Create a clearinghouse to determine the value of patent to standards
- Adopt Web 2.0 and 3.0 technologies to enhance transparency during the standards development process

Standards Community

- Create standards and intellectual property-oriented clearinghouse with watchdog or accreditation responsibility
- Create an organization to apply open source-style ratings to intellectual property policies, such as patent non-assertion covenants. This will encourage more consistency and certainty, and promote free and open source-friendly patent commitments
- Apply open-government rules to standards creation process to ensure transparency, limit undue influence, and increase public confidence in standards
- Create "commitment registry" for ex-ante disclosures and patent pledges, ideally in cooperation with the US Patent & Trademark Office
- Encourage "minimalist" specs while discouraging competition-limiting proprietary extensions. This will limit intellectual property conflicts, and leave room for future development, innovation, accuracy and consensus
- Create "Underwriters Laboratory-type" organization to provide patent certification prior to SDO submission
- Pilot Peer to Patent-style program to determine what patents may be essential to a standard, and which ones are not

Quasi-Governmental and Non-Governmental Agencies

- Define civil ICT standards, and promote their development and use
- Harmonize national standards development policies
- Elevate mission of UN Dynamic Coalition on Open Standards & UN Development Programme

International Organizations

- Call for review and pervasive reform of ISO/IEC JTC 1 directives and processes
- Reinforce World Summit on the Information Society Declaration of Principles -- states that open standards are important to IT diffusion in the developing world
- Take concrete actions to fulfill the extend reach and use of ICT flagged by World Bank and other international organizations through public-private partnerships
- Encourage better application of World Trade Organization's Agreement on Technical Barriers to Trade

Intellectual Property

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Academia

- Offer standards courses at engineering schools
- Promote academic and policy research and discussions at law and business schools.

WIKI EXCERPTS

TRANSPARENCY & ACCOUNTABILITY

Conclusions

1. By whom and to whom? The concept of accountability in this context assumes not only a process that should be accountable, but also the identification of the stakeholders to which or whom the process should be accountable. The current ICT standard setting process does not seek to accurately identify to whom it is accountable, and as a predictable result does not always well serve those that are dependent upon it.
2. Civil ICT Standards: ICT standards are becoming far more important, and in more ways, than ever before. A prime example can be found in certain standards that might be properly be called "Civil ICT Standards." These are the standards that are necessary to guarantee rights of free speech, free association, and free interaction with government on line. Open document format, Web, and Internet standards provide obvious examples. Those that develop such standards should be properly accountable to all citizens – but currently are not.
3. End-user Stakeholders: The current standards development process in most cases is insufficiently available to the large class of non-commercial end users that are affected by them, and who therefore have no effective means for them to contest a result. Indeed, ISO/IEC go so far as to disavow any responsibility for accommodating any concerns other than technical merits. (It is recognized that actual active end user interest will usually be limited to a small percentage of all standards, such as Civil ICT Standards.)
4. IPR Policy Inadequacies: Current IPR policies do not provide the degree of certainty that can lead to efficient accountability when game playing occurs. The lack of more than the highest level definition of "F/RAND" is an example, leaving both small vendors and end users at a disadvantage in asserting their rights. The current litigation between Broadcom and Qualcomm presents one of several current examples of the consequences.
5. Inadequate Legal Means: While there is movement on the part of regulators in some jurisdictions (e.g., the US and Europe), existing laws often do not provide either adequate tools, nor necessary certainties of result, to protect stakeholders. The Rambus experience illustrates concern well, with some courts and administrative proceedings holding (for example) that there is a duty of good faith in standards-setting, and others just the opposite. No one benefits as a result (other than the lawyers and day traders).
6. Reflexive Secrecy Must End: Traditional closed door, minimal disclosure policies serve the convenience of those involved at the expense of those that are not. Consortia such as the W3C and open source projects demonstrate that far greater transparency can benefit, rather than undercut, good results.

Recommendations

1. "Open Government" Rules Should Apply: Standards processes should adopt the equivalent of "sunshine laws" that would guarantee interested stakeholders greater visibility into the standards development process. These rules would require elements such as public discussion lists, public and detailed minutes, and open meetings. They would also provide "executive session" capabilities where needed to both permit, but also report out the results, of confidential discussions where they are needed to achieve good results.

Project suggestion: Create a model set of “open government” rules.

2. Governments Should Review Their National Bodies: National Bodies should be required to adopt process rules that assure accountability and transparency. Governments should also ensure that NBs are not vulnerable to undue vendor influence – and should not allow themselves to be made conduits for such influence.

Project suggestion: Create a model set of best practices principals for NB operation.

3. Disclosure As Prior Art: Whenever possible, ITC standards organizations should publish material at their sites that could constitute prior art for patent claims. A uniform way of presenting such material in an easily searchable format should be made available and promoted.

Project suggestion: Create a model set of “open government” principals as guidance for the creation of NB process rules.

4. Establish a Commitment Registry: Patent office rules should be amended to permit the filing of licensing and non-assertion covenant “liens” on patent claims, so that such commitments will remain legally binding upon patent assignees.

Project suggestion: Create a beta proposal for submission to the PTO, following up on the successful collaboration of industry and the PTO on the peer to patent project and related activities.

5. Establish a New Standards for SSO Organization: If ISO and IEC are not interested in providing a mechanism for credentialing both SSOs and individual standards as meeting “open standards” requirements, then create a new organization that would provide both standards as well as certification to those standards. The definition of “open standards” should include not only IPR requirements, but also accountability and transparency elements.

Project suggestion: Create a formation proposal for such an organization, outlining possible membership, work groups, deliverables and budget.

6. Governments Should Adopt New Procurement Rules: Governments should endorse the resulting definitions of “open standards” and pledge to procure only products, when available, that conform to such standards. This will provide a strong, non-regulatory influence on the marketplace to move in a responsible direction.

Project suggestion: Create a white paper outlining the need for such policies, actions already taken by various countries, and suggesting a model procurement policy.

7. Upgrade to the Web: SSOs that do not already make full use of the Internet, the Web, and the standards development platforms and tools already in existence should do so, in order to facilitate real-time, in depth transparency.

Project suggestion: Enlist several SSOs and platform vendors to create site tours that showcase their capabilities.

Discussion Excerpts

Andy Updegrove, Attorney representing standards organizations, Blogger, Pundit, Editor, Gesmer Updegrove LLP: Absent a common definition of "openness," there is inevitably a spectrum of "openness" in existence.

Chuck Allen, HR-XML Consortium: Bright sunshine is good, with just a little shelter. If you don't give a bit of shelter to these conversations (at least the 'rationale part') you wind up benefiting "lurkers" who tune in merely to learn about their competitors' rationales and interests. You benefit the uninformed at the expense of real contributors and potential contributors.

Don Purcell, Center for Global Standards Analysis, Catholic University School of Law for Cyber Law, Catholic University School of Engineering for Strategic Standardization, Purcell & Fox LLP: Participants in a standards project are entitled to discuss important and sensitive issues in a confidential manner provided there is a meaningful disclosure of the issues discussed which is made publicly available to all interested parties.

Colin Jackson, New Zealand, open source advocate, standards participant: The principle of "sunlight being the best disinfectant" is well established in democratic governance processes. It seems to me that you need a strong argument to overrule this. I haven't heard one yet.

Brian Kahin, Computer and Communications Industry Association, University of Michigan: If we ever do legislate against patent ambush of standards -- or if courts use the Laches Doctrine [unreasonable delay] against this sort of thing -- then any protected standards process would have to be public.

Don Purcell, Center for Global Standards Analysis, Catholic University School of Law for Cyber Law, Catholic University School of Engineering for Strategic Standardization, Purcell & Fox LLP: It is common for standards groups working in the fields of health, safety and the environment to, on their own, make important decisions which may have important implications in the areas of public policy. In short, standards groups should have an adequate opportunity to discuss these issues within a confidential context before reporting to the interested public on decisions made and the reasons for the decisions.

Brian Carpenter, Internet Engineering Task Force, University of Auckland: I do have a lot of trouble with the notion that there are *any* matters in the formulation of a standard affecting the public that must of necessity be kept secret. I can't help feeling that there must always be a sinister reason. If it's a safety standard, and someone says in the course of discussion that there aren't enough data to fix a safe level of some parameter, then that opinion should *clearly* be part of the public record, even if it makes some other members of the committee sweat (in fact, especially so). Open access to the standards *process* is the only way to be sure that the playing field is in fact level and that matters of public interest are not being concealed.

Jim Melton, Oracle, ANSI, ISO, and W3C: I am a fervent, perhaps even vehement, supporter of openness, full disclosure, and inclusivity. I truly believe that secrecy raises questions of (and risks of) corruption, and eschew it whenever there are not vital reasons for it. Having said that, let me suggest that when a standard of great complexity is being developed, having too many voices speaking at once makes it (nearly) impossible to reach closure.

It is, I think, appropriate to limit the discussion to those whose interests are sufficiently strong that they join the group in question, attend meetings, etc. As long as it is possible for anybody to do so, I do not think that the notion of openness is violated. Of course, I do expect that the work product of such groups be published and otherwise reported at intervals or as milestones are reached, and that public feedback is encouraged.

Chuck Allen, Director, HR-XML Consortium, Inc: Standards groups are subject to manipulation. Powerful corporations as well as even a few consultants with too much time on their hands can advance private interests over those of rank-and-file stakeholders. In general, when you analyze the agendas of lobbyists, and compare it to the economic/social interests of stakeholders they allegedly represent there is almost always some degree of divergence. You need to provide incentives to organizations that play nicely and disincentives to those who don't.

Nnenna Nwakanma, Chair of the Free Software and Open Source Foundation for Africa:

Nothing beats international mobilization. Which is the reason why global networks must be maintained! Coming from Africa, it is difficult to convince donors to put their cash into building viable advocacy networks.... until something happens...One other thing I saw is very simple - there are no invincible giants! No. The ooXML campaign shocked even Microsoft.

STANDARDS QUALITY & CREATION

Conclusions

The way to measure the quality of a standard depends on the goals of the standard. When there is disagreement, the integrity of the premise and process become even more vital. And since these cases are often unforeseen, it's worth having an efficient and open process from the beginning.

One of the core aspects of standards quality is that they be demonstrably representative of the industry position and users' short and long-term needs. Two things contribute substantially to the quality of a standard: The first is a good set of business requirements from the business users. The second is a good set of working business use cases, which prove that the requirements have been met, as specified in the business requirements by the business users.

A key issue for quality is the management of the standards body. Successful management drives the schedule forward at a fast pace, yet respectfully provides fair opportunity for all participants to contribute. Strong management allows contribution, but is focused.

Quality in a technical standard requires that the standard be complete, unambiguous, clear, concise, readable, implementable, and maintainable. There are "hygiene factors" that provide a foundation for quality. Every standards organization should aim to provide this foundation (openness, transparency, a documented methodology, good documentation practices, a clear understanding of how IP is handled, etc.)

Recommendations

Standards Quality Index

Organizational characteristics

- Membership & participation rules - Demonstrably 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. Board members have experience in standards development or expertise in underlying or related technologies.
- 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.
- Intellectual property rights - Disclosure required by participants based on agreed criteria and licenses available to all applicants on a worldwide, non-discriminatory basis.
- Geographic applicability - 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-lingual

Standards Setting Process Elements

- 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.
- Open participation - Contributions are accepted from diverse communities, and standards from other organizations are taken into account.
- 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. Demonstrable reuse or evaluating existing standards.
- 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, compacted-ness, security, privacy).

Discussion Excerpts

David Baron, Mozilla, W3C: The way to measure the quality of a standard depends on the goals of the standard. Working with standards for the World Wide Web, I've seen a number of different categories of goals. However, that doesn't say anything about what happens when different participants disagree about the goals. It's these cases, where different participants have different goals, that process becomes more of a concern. And since these cases are often unforeseen, it's worth having an efficient and open process from the beginning.

Martin Creaner, TeleManagement Forum: One of the core aspects of standards quality is that they be demonstrably representative of the industry position. In terms of the 'quality' of a particular standard I suspect that this relates to fitness for purpose. I'm a great believer in standards being good enough and timely as opposed to being perfect and late. The timely aspect is key, as there are time windows for standards, and if these time windows are missed, the proprietary approaches of the industry are so deeply embedded that it becomes near impossible to roll out a single unified standard.

Charles Hoffman, UBMAtrix: Two things contribute substantially to the quality of a standard. The first is a good set of business requirements from the business users. The second is a good set of working business use cases which prove that the requirements have been met, as specified in the business requirements by the business users. To me this seems pretty fundamental.

Cliff Reader, Audio and Video Coding Standard Workgroup of China: A key issue for quality is the management of the standards body. Successful management drives the schedule forward at a fast pace, yet respectfully provides fair opportunity for all participants to contribute. Strong management allows contribution, but cuts off contributors who are long-winded, or off-focus, or who are trying to subvert the standard development for their own benefit. A good standard is one that is minimalist -- it should specify the smallest possible set of normative requirements to achieve the goal of interoperability.

Jim Melton, Oracle, ANSI, ISO, and W3C: In my mind, quality in a technical standard requires that the standard be complete, unambiguous, clear, concise, readable, implementable, and

maintainable. I do not believe, unfortunately, that it is possible to achieve all of those goals at the same time. (I'm reminded of the old saw: Good, fast, and inexpensive -- pick two.)

Brian Kahin, Computer and Communications Industry Association, University of Michigan:

In my view, "usefulness" (and actual use) is more meaningful and measurable than quality, which tends to mean only technical quality. Obviously, technical quality is desirable, but it doesn't mean much beyond the technical community except insofar as it contributes to the usefulness and use of the standard. Furthermore, it invites invidious comparisons between proprietary technology (presumptively high quality) and non-proprietary technology (presumptively low quality) that invite proprietary technology into the process.

Chuck Allen, HR-XML Consortium: I think there are "hygiene factors" that provide a foundation for quality. Every standards organization should aim to provide this foundation (openness, transparency, a documented methodology, good documentation practices, a clear understanding of how IP is handled, etc.). But as many others have pointed out, actual standards success obviously depends more on market factors.

Bob Sutor, IBM: Some standards, though rather imperfect, seem to have been in the right place at the right time. That was enough to push them to market success, if they filled a need and the market expanded around the need. I am starting to get concerned that purely objective measurements of standards quality might produce elegant results that no one uses.

Dr. Linda Garcia, Georgetown University: Quantity is as important a problem as quality. In a networked society, in which interoperability is increasingly a requirement for interactivity, what is to assure us that supply can keep up with demand. Networked technologies are subject to a number of market failures, and in a winner take all situation, companies have greater incentives to behave opportunistically and with guile. While the public will require standards, it is not clear that providers will have adequate incentives to produce them; in fact, their strategic interests may lead them to undermine the process.

POLICY & SOCIETY

Conclusion

Governments should procure and use only information technologies based on open standards.

Recommendations

As enormous consumers of standards, governments are a major component of the market. This is particularly true in developing countries in which internal markets are small and governments are the main consumers of products and services. In some countries, governments account for more than 75% of total expenditures.

Procurement policies are a way in which governments can be stronger players in the creation and adoption of standards without necessarily controlling, regulating, or impeding the process.

Governments have an obligation and an interest in encouraging open standards because:

- Open standards enable fair competition, allowing companies to enter new markets while avoiding lock-in and reducing future migration costs
- Open standards increase interoperability, thereby increasing efficiency and return on investment, both saving tax payers' money and improving the quality of services to citizens.

- Governments should be concerned with standards because they not only make technical decisions but establish public policy. Open standards provide the participatory openness and procedural transparency that provide the necessary oversight and legitimacy for standards-setting organizations to establish protocols that have public interest implications.

Ancillary Recommendations:

- ISO certification does not make something an open standard.
- Open standards should be defined as those that are developed in an open and transparent standards development process and are freely available. Intellectual property must be irrevocably made available on a royalty-free basis, patents, if any must be licensed for free.
- The recent Hague Declaration should be accommodated by all signatories to the World Trade Organization.
- Make the World Trade Organization's Annex 3 of WTO/Agreement on Technical Barriers to Trade: "Code of Good Practices For The Preparation, Adoption and Implementation of Standards," more than a recommendation. Make membership contingent upon not using standards as obstacles to trade.
- Make more binding the World Summit on the Information Society (WSIS) Declaration of Principles, which states that open, interoperable, non-discriminatory standards are particularly important to ICT diffusion in the developing world.
- Governments should require, as a condition of legitimacy in international standards-setting process, a far greater degree of procedural openness and consistency, transparency, and common sense oversight criteria such as making transcripts of debates publicly accessible, archiving meetings, and live streaming of video and audio proceedings.

Discussion Excerpts

An Baisheng, Chinese Ministry of Commerce: All of the essentials about our discussion could be summed up with the word "openness." A fair standards setting process, well balanced intellectual property rights policies, interoperability, fair competition, democracy, information security, and most of all, an information society, all go back to the word "openness." Let's cheer for this word. What we need to do is to make this word true and meaningful for us. Hey, WTO, TBT and TRIPs: Wake up and examine this word!

Don Purcell, Center for Global Standards Analysis, Catholic University School of Law for Cyber Law, Catholic University School of Engineering for Strategic Standardization, Purcell & Fox LLP: I believe the United States is behind the curve in the field of standards education, and I do not see a strong, comprehensive commitment to standards education programs in the private, public or academic sectors which will provide the degree of training and education necessary to educate the next generation of standards practitioners across the spectrum of the the United States economy.

Bart Hanssens, Belgian Information and Communication Technology Federal Service (FEDICT): Personally, I think a good standard organization is somewhat self-regulating, with a healthy mix of members from the government, industry / vendors and individual experts. That would allow us to (re)view standards from every possible angle.

Dr. Laura Denardis, Yale Law School, Information Society Project: The linkages (or lack of linkages) between national standards bodies and the governments they purport to represent in international standards votes vary dramatically by country. These international votes, to the

layperson, convey a certain legitimacy because country "delegations" are voting, but it seems that few of these national bodies have any of the traditional characteristics (elected officials, appointed experts, transparent procedures, accountable processes, oversight) that ascribe political legitimacy.

Bart Hanssens, Belgian Information and Communication Technology Federal Service (FEDICT): Open standards are important for both technologically developed and developing countries. The former have probably learned the hard way that standards are necessary, while the latter can benefit from this expertise and enjoy the opportunity to do it "the right way" without having to migrate a huge amount of legacy applications, data and infrastructure.

Don Purcell, Center for Global Standards Analysis, Catholic University School of Law for Cyber Law, Catholic University School of Engineering for Strategic Standardization, Purcell & Fox LLP: Can national standards policies be harmonized or made more consistent, and if so, how? The policies are diverse and reflect national interests, as necessary. It might be helpful, however, within an international or global group setting, to develop a statement of common principles or concepts which should be addressed by all national standards policies.

An Baisheng, Chinese Ministry of Commerce: Awareness of importance of ICT standards among officials from developing world needs to be greatly promoted. Without knowing that, it is not easy for them to carry on their policy development and efficient participation in international discussions. There should be well-designed and intensive brainstorming seminars and publications to explain why ICT standards are important to developing world in terms of information infrastructure, education, medical care, how they could afford and benefit from ICT facilities. The interests of developing world are many times in line with those of multinational companies since they may gain from making the pie bigger. But sometimes not. They should be aware of the potential negative factors.

Bart Hanssens, Belgian Information and Communication Technology Federal Service (FEDICT): Standards (especially open standards) are very important for non-technical users, even if these users are not fully aware of the standards being used. Correctly implemented, widely used standards should make life easier for all of us, while safeguarding our (digital) assets for future reuse and promoting the freedom of choice.

Jim Melton, Oracle, ANSI, ISO, and W3C: Do the details of the syntax and semantics of SQL, or XQuery, or COBOL, or MP3 encodings, or NTSC/ATSC encodings, or the interface between an internal combustion engine and its operator really matter to the public? I suggest that it doesn't, so the concept of "open standard" means, at best, that the few people and organizations who are actually involved in such details are acting as proxies for humanity. As long as those individuals and organizations can participate meaningfully on reasonable and non-discriminatory terms, then public policy is reasonably well served.

Guobin CUI, Tsinghua University: The question is, why are standards unique [and why should they require direct public input]? Wrongfully-set standards can hurt the public's health, privacy and other interests, but why not just reinforce the enforcement of these rights, which would force the standard-setter to find a way to set better standard, why bother to encourage public participation? Sometimes, I am afraid the argument for public participation in standard-setting process could be used for justifying public participation in any other commercial events.

An Baisheng, Chinese Ministry of Commerce: In the US, where individualism is strong, there is no such thing as the public interest. In China, people would find it is natural to establish links between standards and public interest. This might be true in Europe to some extent. This could be profound to the making and interpretation of laws. But ICT standards and rules, due to their global characters, will only be regulated by international rules when standards are deemed to be as important for the public good -- that is, when everyone gains -- as with free trade, for example.

Bart Hanssens, Belgian Information and Communication Technology Federal Service (FEDICT): Standards must be approved by a standards body; the specification must be available for free or at a nominal charge; implementing the standard must be possible without any restriction; and intellectual property must be irrevocably made available on a royalty-free basis.

Steven Ray, U.S. National Institute of Standards and Technology: Governments are intrinsically tied to geography and societal good, while corporations are not -- they are tied to economic viability. So corporations can shift around the globe as conditions, and regional standards, change. They have a broader set of options than do governments in that regard. On behalf of people who do not have this kind of mobility, this gives me pause. Who is going to look out for them?

INTELLECTUAL PROPERTY

Conclusion

With intellectual property rights come inherent responsibilities.

Recommendations

1. Ex ante intellectual property disclosures, and royalty-free licenses, should be mandatory for consortia members
2. There should be sanctions and rewards for non-consortia members with IPR related to developing standards.
3. Government agencies should take a more active role in the enforcement

Discussion Excerpts

Ray Alderman, VITA: I think that patent searches should be a requirement for SDO participants. It's not that hard, and although it's not perfect, it adds some assurances that there will be no surprises as the document develops.

Ray Alderman, VITA: Legislation has chosen certain technologies over others and mandated those technologies (in the US, DTV and the V-chip are examples, while the EU has made many technologies mandatory for their people). However, when legislation mandates technologies, they do not take any responsibility for their actions (ie, they do not explore the existence of IP before they make their choices).

Legislation should play a role to establish the rules of standards development involving IP. Mandatory disclosure of all IP (and ex ante licensing terms) relevant to all essential elements in the standard is one piece of legislation that is sorely needed. Legislated penalties for violation of those rules goes along with these rules.

Ray Alderman, VITA: Standards are NOT institutionalized like patents. We could all demand that ANSI spend huge bucks on advertising "standards", but that would be a waste of money. I doubt that Wolfe Blitzer will ever do a two-hour segment about standards on CNN, or that we will see "The Importance of Standards" on PBS, even though you can see "The History Of Cheese" on that channel regularly. As long as the standards community abdicates self-government and avoids truly qualified and dynamic leadership, and does not press for significant legislation concerning behavior of SDO participants, we will always run a distant second to cheese.

Ray Alderman, VITA: Patent law spends its volumes of pages defining the RIGHTS of a patent holder, but nowhere does it spend any of its words on the RESPONSIBILITIES of patent holders. With monopoly power, granted by a patent, comes responsibility. This lack of laws governing patent owner responsibilities, and the expectations of people in standards meetings, collide right in the center of the standards arena. If you look at most complaints and confrontations amongst humans, they always seem to be initiated by one singular characteristic: someone's expectations were not met.

Brian Kahin, Computer and Communications Industry Association, University of Michigan: Since non-participant ambush cannot be resolved by the standards organizations themselves, there are good policy reasons for Congress to intervene.

Andy Gibbs, Patent Cafe: Perhaps by focusing on these three bureaus (FTC, DOJ, NIST) "in the interest of consumer advocacy, open competition and National economic vitality," draft legislation might outline a requirement for review by the FTC of any new standard proposed by SDOs. A review would require a much lower level of policing, reduction in involvement in after-the-fact disputes, and would give the FTC the authority to influence fairness and objectivity of the standards before they are promulgated.

Geoffrey Oliver, Jones Day LLP: I think neither the FTC, nor the DOJ, nor legislation is likely to solve these problems. As a result, absent emergence of a greater degree of consensus, it most likely will be up to individual standards organizations and their members to take the lead in resolving these issues, with some help from courts and government agencies around the edges.

Manny Schecter, IBM: Raise the mission of the FTC or DOJ. Or at least specifically grant standards watchdog responsibility to a particular government organization? And not just to resolve disputes, but to provide guidance throughout the standards process - creation, publication, licensing, and so on.

Andy Gibbs, Patent Cafe: The NIST suggestion in lieu of ANSI is interesting. NIST seems to be more aligned with high tech issues, while ANSI seems to be stuck in the 1950s automotive world. And I question ANSI's small \$22 million budget as being adequate to support the kind of global standards reform challenges that we're discussing here (NIST's budget is about \$1B).

Brian Kahin, Computer and Communications Industry Association, University of Michigan: We need broad appreciation that IT standards create value and are property-like in that they generate expectations that are backed by investments. We cannot rely on ad hoc interventions by competition agencies, especially when we have courts like the DC Circuit and the Federal Circuit that like patents and don't understand standards.

An Baisheng, Chinese Ministry of Commerce: Traditional legal reasoning should not be a block to IPR in standardization. We should elaborate the concept of fiduciary or even legal responsibilities of SDO in their good-patent policy. They shouldn't be allowed to just say that they won't make changes to their patent policies because it's not their responsibility to do so.

Dr. Laura Denardis, Yale Law School, Information Society Project: I personally am not a proponent of direct government intervention in standards development, funding, or regulation, BUT, as enormous components of information technology markets, governments have the opportunity and obligation to establish procurement policies that promote open standards for the political, economic, technical interoperability, and human rights rationales mentioned earlier. There are many areas that might require a greater or lesser degree of openness than others, but in my opinion, the baseline definition of government involvement should require minimal intellectual property restrictions. The reality is that governments are already establishing these procurement policies – from Brazil to Denmark to Malaysia – and this should (and already has) influenced corporate approaches to IPR.

Cliff Reader, Audio and Video Coding Standard Workgroup of China: : Perhaps the most powerful way to address this IPR issue is minimalism in the standard specification. The specification will comprise a set of normative requirements. Conforming implementations of the standard will be ensured interoperability by precisely conforming to each requirement. The trick is to create the minimum set of such requirements, which takes considerable management skill by the standards body officers and collective discipline by its members.

Andy Gibbs, Patent Cafe: Could there be a third-party clearinghouse to evaluate the quality or importance of a patent to a particular standard? Should there be an "Underwriters Laboratory" that provides some sort of certification for patents prior to their submission to an SDO with the argument of being an essential patent? Would a "Peer-to-Patent" type of program serve an equivalent function that would allow the community to determine what patents may be essential, and which ones are not? This could be an interesting approach to forced disclosure, and user community vetting.

Ray Alderman, VITA: Standards committees with more than about 50 people become curiously dysfunctional. The objective of SDO management is to keep the dues coming in, not to accomplish anything significant or make the environment conducive to excellence in the work. Until that basic fact changes, the standards environment will continue it's journey down the path of mediocrity....especially when it comes to how intellectual property is handled. Perhaps the WTO can play a role in cleaning-up the standards environment.

Ray Alderman, VITA: IPR pledges might work in some areas, but recent court findings (Rambus) showed that not having a contract is a major problem in legally enforcing the rules. The court actually said, in one of the Rambus trials, that Jedec's policies were less than stellar, and member's obligations were not clear. So, a pledge, or some other non-binding agreement, will create a lot of problems for you.

David J. Kappos, IBM: I would suggest a working team go through the major conflict points between the interests/needs of participants, versus those of third-party IP rights holders that bear on the standards being set, versus those of the public. Examine each group's legitimate views and needs. Then look for common ground. Where there is no common ground, ask whose interests should dominate in a "tie." Where there is no other principle available to call the tie, default to serving the interests of the public. At the end of the day, both IP and standards are intended to advance the best interests of the public.