GESMER UPDEGROVE LLP
Attorneys at Law

Consortium Standards Bulletin

*A **ConsortiumInfo.org** publication*

April 2003
Vol II, No. 4

SHOULD CONGRESS CERTIFY STANDARD SETTING?

Editorial: **What Makes a "Good" Standard Setting Organization Good?**
The modern technology-based world is increasingly dependent on the "global standard setting infrastructure," made up of diverse processes and types of organizations. All are essential to the result and the value of each should be recognized and supported by Congress.

Feature Story: **What is Congress Up To? Watch Out for H.R. Bill 1086**
The restrictive approach of a new Congressional bill under review represents a retreat from existing law and could deprive consortia that develop important standards from the very protection it seeks to extend.

Trends: **INCITS: Then and Now**
Faced with growing competition, some SDOs -- like INCITS -- have adapted by providing a link between consortium-originated standards and international "de jure" bodies. The result is a more effective global standards infrastructure.

Rambus: **Update: The Stage Shifts to the FTC**
Infineon has petitioned the Supreme Court to intervene, and today the Federal Trade Commission brings its suit against Rambus to trial for alleged federal antitrust violations.

News Shorts: **The most important recent press releases and news stories**

Consortium Standards Bulletin is a free monthly electronic Journal sponsored by the Boston law firm of Gesmer Updegrove LLP. The current issue of the ***CSB*** and a subscription form may be found at www.consortiuminfo.org/bulletins. Questions or comments about these articles, the ***CSB*** or ConsortiumInfo.org may be directed to Andrew Updegrove at updegrove@consortiuminfo.org.

EDITORIAL:

WHAT MAKES A "GOOD" STANDARD SETTING ORGANIZATION GOOD?

Andrew Updegrove

Abstract: *The modern technology-based world is increasingly dependent on the "global standard setting infrastructure." That infrastructure incorporates many types of commonalities besides specifications, and is made up of diverse processes, from internationally and nationally recognized standard setting bodies, to established consortia, to transitory fora, to open source projects. All are essential to the result, and the output of this infrastructure would be better coordinated and more useful if the value of each evolved process were recognized and supported. Any effort by Congress to favor only the official standard setting bodies over other types of processes is therefore counter productive and likely to be ultimately harmful.*

In this issue, we ask an important question: what attributes render a standard setting organization -- and its standards -- worthy of respect? The impetus for asking this question is a pending bill in Congress (H.R. 1086) which seeks to define, in effect, what a "good" standard setting organization is. (See the following article: "H.R. 1086: Does Congress Know What it's Up To?")

A related question is, "Who is entitled, and best qualified, to decide what those attributes are?" Due to the vast purchasing power of the United States federal government and its myriad agencies, this question is more than usually relevant. Any decisions that the federal government makes about what standards it will endorse (or refuse to endorse) will have a profound impact on government contractors of many types. Another reason why the question is important is that the government has the power (as with H.R. 1086) to selectively shelter some types of standard setting over others from the full impact of antitrust and other laws.

The bill in question shines a spotlight yet again on the ongoing feud between the relatively small number of officially recognized Standards Development Organizations (such as ANSI) and their accredited standard setting partners (such as INCITS), and the more numerous types of unrecognized bodies, usually referred to generically as "consortia." The formal bodies, or "SDOs," typically have a more elaborate process than consortia and enjoy international recognition, while most consortia are more narrowly focused, more commercially driven, and place a premium on rapidity of process. Their standards often receive unofficial international "de facto" recognition due to their widespread adoption.

In fact, the speed advantage of consortia has decreased, since many SDOs have adopted expedited processes in response to the competitive challenge represented by the burgeoning of consortia. At the same time, despite typically adopting a more streamlined process, not all consortia in fact achieve rapid results.

The distinction between the two types of organizations is further blurred by the fact that standards developed by consortia that achieve broad acceptance are often adopted by the SDOs themselves. As of this writing, almost every consortium that the author works with is in the process of transferring at least one standard to an SDO -- in most cases at the invitation of the SDO.

The fact of the matter is that both SDOs and consortia fulfill a vital function, as recognized by the fact that thousands of technology companies are active participants in multiple organizations of both types, at great expense in both cash and human resources.

Unfortunately, despite their non-profit status, standard setting organizations of both types often exhibit the same behaviors as their for-profit members: that is, they can become proprietary, turf conscious and

competitive. Indeed, some standard setting organizations have been known to become almost as preoccupied with positioning themselves as their commercial counterparts, spending a significant portion of their management and board meeting time on issues related more closely to self-perpetuation than the direct goals of their members.

At the same time, it cannot be challenged that the modern technology-based world becomes daily more dependent upon standards. It is an ongoing thesis of this author that there is insufficient appreciation of what we call ***"the global standard setting infrastructure."*** That is, the many hundreds of standard setting groups of every type -- from technical fora, to open source development networks, to consortia, to SDOs -- that agree upon commonalities of all types. These commonalities include not only traditional technical standards, but programming techniques, business methods, best practices, compliance tests and certification programs as well. Each of these still-evolving consensus-based processes play an essential role in the speedy development and adoption of new technology, and in the creation of useful products and services to the ultimate benefit of all sectors of the global economy.

Which brings us back to the danger of too-narrowly defining what a "good" standard setting organization is. We would submit that the following should be the ultimate definition of such an entity:

> ***A "good" standard setting organization is a body which -- by whatever process it has adopted -- is successful in creating standards and other work product which are respected for their technical merit, trusted for their openness, and which become widely adopted.***

To conclude that there is only one process that can achieve that end is to deny the contrary conclusion reached by a rigorous and dynamic marketplace. Certainly, developing best practices for standard setting and agreeing upon model intellectual property policies will make it easier to create and operate "good" standard setting bodies. But mandating a rigid approach will serve no one well.

We believe that it is time that the proponents of both SDOs and consortia lay down their cudgels and seek not only peaceful coexistence, but more outright cooperation as well. Each plays a vital role in the global standard setting infrastructure, and each is "good" in its own way. The anointment by Congress of one model over the other as the personification of "goodness" in standard setting will ultimately work to the detriment of vendors and end-users alike.

For the complete text of H.R. 1086, please see:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h1086ih.txt.pdf

Comments? updegrove@consortiuminfo.org

FEATURE STORY

WHAT IS CONGRESS UP TO? WATCH OUT FOR H.R. BILL 1086

Andrew Updegrove

> ***To encourage the development and promulgation of voluntary consensus standards by providing relief under the antitrust laws to standards development organizations with respect to conduct engaged in for the purpose of developing voluntary consensus standards, and for other purposes." [Purpose, H.R. 1086]***

Abstract: *The National Cooperative Research and Production Act (NCRPA) provides an important level of immunity from the economic impact of antitrust sanctions, but it is uncertain which, if any, standard setting activities undertaken by consortia and SDOs are currently entitled to that immunity. A new bill under review in Congress (H.R. Bill 1086) would explicitly extend the protection of the NCRPA to standard setting, but only to SDOs and those few consortia, if any, that operate in a manner functionally equivalent to SDOs. The restrictive approach of H.R. 1086 in its current form represents a retreat from existing law as reflected in OMB Circular A-119 and would needlessly deprive those consortia which develop important standards from the protection which H.R. 1086 seeks to extend. This represents an unwise and inappropriate use of government power. [For the complete text of H.R. 1086, please see: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h1086ih.txt.pdf]*

Introduction: On March 5, H.R. Bill 1086 was introduced in Congress by James Sensenbrenner, Jr. (R. - Wisc) and 16 other co-sponsors. Its stated purpose, as quoted above, recalls principles such as motherhood, America and apple pie. What could be wrong with a bill like this? Unfortunately, perhaps a great deal.

It is a familiar axiom that "no good deed goes unpunished." Thus it is that Congress should first be applauded for making one of its very rare forays into promoting and facilitating the standard setting process. And there is an actual need for the bill, which is intended to correct a flaw in the law which it seeks to amend. That law -- now called the National Cooperative Research and Production Act (NCRPA) -- was drafted to benefit cooperative efforts that commenced after the bill was passed, leaving then-operating consortia and SDOs ineligible. H.R. Bill 1086 would amend the NCRPA to offer a grace period under which these preexisting organizations could register themselves under the Act.

Unfortunately, the structure of the bill itself is seriously (and perhaps unintentionally) flawed, and could serve to restrict, rather than augment, the speed and range of standard setting. The reason is that, while H.R. Bill provides that it will not "alter or modify the antitrust treatment under existing law" of standard setting, it leaves open which standard setting activities, if any, of entities that do not meet the Bills' definition of a "good" standard setting organization are entitled to protection. Indeed, the inference would seem to be that non-SDO organizations are ineligible for protection.

The current language of the Bill is doubly unfortunate because there is no public interest to be served by adopting so restrictive an approach. Indeed, there is the prospect of harm, as its effect may be to lead those who would set standards to choose venues for their efforts that may be less appropriate and/or rapid in a given case. This is ironic, since the original purpose of the NCRPA was to make America more competitive in world markets by allowing commercial companies to work together cooperatively and on an expedited basis. Indeed, when first enacted, the NCRPA was intended to encourage not broad-based

consensus organizations, but close cooperation by major corporations in areas such as semiconductor design.

In order to understand in greater detail why H.R. 1086 may be a step backwards for standard setting, it is necessary to briefly review the evolution of governmental acceptance of so-called "voluntary consensus standards" in its procurement activities.

Agency and Legislative History: For many years, the federal government generated its purchasing requirements without any effort to reference existing standards, using instead what came to be referred to as "government-unique standards." Over time, it became recognized that this practice had a number of negative aspects, including increasing procurement costs, since fewer "off the shelf" products were eligible for purchase, and fewer vendors were likely to compete for a given contract.

Eventually, the Office of Management and Budget (OMB) amended an existing advisory to heads of executive departments and agencies called ***OMB Circular A-119***. This October 10, 1993 revision acknowledged that the policy of the federal government, in its procurement and regulatory activities, is to:

> (1) Rely on voluntary standards, both domestic and international, whenever feasible and consistent with law and regulation; (2) Participate in voluntary standards bodies when such participation is in the public interest and is compatible with agencies' missions, authorities, priorities, and budget resources;" [additional elements omitted] [See section 6 entitled "Policy"]

However, OMB A-119 did not have the status of law. Subsequently, the ***National Technology Transfer and Advancement Act of 1995*** (Public Law 104-113 http://www.nal.usda.gov/ttic/faq/pl104113.htm) was signed into law on March 7, 1996. In that Act Congress found that: "Bringing technology and industrial innovation to the marketplace is central to the economic, environmental, and social well-being of the people of the United States."

In order to harmonize with and implement the Act, draft amendments to OMB A-119 were prepared. After a public comment period, the current version became effective on February 19, 1998 (http://www.whitehouse.gov/omb/circulars/a119/a119.html). This version noted that:

> Standards developed by voluntary consensus standards bodies are often appropriate for use in achieving federal policy objectives and in conducting federal activities, including procurement and regulation. The policies of OMB Circular A-119 are intended to: (1) encourage federal agencies to benefit from the expertise of the private sector; (2) promote federal agency participation in such bodies to ensure creation of standards that are useable by federal agencies; and (3) reduce reliance on government-unique standards where an existing voluntary standard would suffice. [Supplementary Information, Part I]

Current Government Practice and Confusion: Combined, OMB A-119 and its administrative history would seem to clearly indicate that consortia and SDOs should enjoy a level playing field in government procurement. For example, OMB A-119, "Policy," Section 6.g. contains the following question and answer:

> **Does this policy establish a preference between consensus [i.e., SDO developed standards] and non-consensus standards that are developed in the private sector?**
>
> This policy does not establish a preference among standards developed in the private sector. Specifically, agencies that promulgate regulations referencing non-consensus standards developed in the private sector are not required to report on these actions, and agencies that procure products or services based on non-consensus standards are not required to report on such procurements.

And consider the following extract from the explanatory comments which were issued by OMB in explaining the final revisions made in response to suggestions offered during the public comment period:

> 36. A commentator inquired whether the use of non-voluntary consensus standards meant use of any standards developed outside the voluntary consensus process, or just use of government-unique standards. The intent of the Circular over the years has been to discourage the government's reliance on government-unique standards and to encourage agencies to instead rely on voluntary consensus standards. It is has not been the intent of the Circular to create the basis for discrimination among standards developed in the private sector, whether consensus-based or, alternatively, industry-based or company-based. Accordingly, we added language to clarify this point. [Emphasis added; See: http://www.whitehouse.gov/omb/circulars/a119/a119fr.html#1]

If all of the above sounds dispositive, it may come as a surprise that the author is aware of instances in which his clients have been told by government agencies that "only SDOs" meet the OMB A-119 standard. And consider the following example, excerpted from the comments recently delivered by George Willingmyre (a standards consultant) to Robert Tracci, Counsel Committee on the Judiciary, and the principal draftsperson of H.R. 1086:

> Recently the OMB A-119 Circular was cited as a reason for a government sponsored activity not to use the standards from a consortia [sic]. The Geospatial Applications and Interoperability (GAI) Working Group of the Federal Geographic Data Committee (FGDC) is developing a reference model to aid federal geospatial procurements in the applicability of geospatial standards: The Geospatial Interoperability Reference Model (GIRM). In response to the call for comments on the model the FGDC received the following:
>
> > *"An 'important audience' for this document is identified as 'federal program managers engaged in procurement development and program execution.' However, the GIRM conflicts with federal guidance found in OMB Circular A-119 that directs federal managers to use "voluntary consensus standards" in the execution of their programs, particularly procurements. Throughout the GIRM there are recommendations to use other specifications when there are voluntary consensus standards available for the stated purpose. Given the guidance in Circular A-119, the GIRM has no applicability whatsoever for federal managers in the execution of their programs. It can serve only as a suggestion for what federal agencies might want to work toward as part of their continued participation in the voluntary consensus standards efforts and the applicability statement needs to state that clearly"*

What H.R. 1086 Says: Given that Congress rarely speaks to the issue of standard setting, H.R. 1086 could provide a valuable opportunity to reinforce the message of OMG A-119 that non-SDO standards may be adopted in government contracting. And, appropriately enough, H.R. 1086 uses OMB A-119 as a starting point, referring to the principles of "openness, balance, transparency, consensus, and due process" as contained in OMB A-119. However, it then goes on to supply its own definitions for those principles, giving the following as requirements, rather than examples, of the attributes of an appropriate process:

> (A) notice to all parties known to be affected by the particular standards development or modification,
>
> (B) the opportunity to participate in standards development or modification,
>
> (C) balancing interests so that standards development activities are not dominated by any single group of interested persons,

(D) readily available access to essential information regarding proposed and final standards,

(E) the requirement that substantial agreement be reached on all material points after the consideration of all views and objectives, and

(F) the right to express a position, to have it considered and to appeal an adverse decision

While these principles at first blush may sound innocent enough, consider the following facts and questions:

(A) Notice: What constitutes sufficient notice? Many consortia have very limited financial resources, and are unable to give broad distribution of information, beyond their websites. While publication by a well known SDO with decades of history at its website may constitute appropriate notice, what would be the duty of a small consortium developing a narrow niche standard, with no staff, a budget of a few tens of thousands of dollars, and which receives little notice in the technical press?

(B) Opportunity to Participate: Someone has to pay the bills for standard setting, test suite development, certification and promotion. Some consortia have memberships of fewer than a hundred companies, but budgets in excess of $1 million. Indeed, some consortia also provide for a public comment period. But the ultimate vote to accept a final specification is limited to those members that have paid for the privilege of doing so. How does one prevent economic "free ridership" if anyone can participate for a nominal, or no cost? If free ridership is possible, who would be willing to pay the higher fees necessary to support the organization? Note also that a standard which is viewed as being proprietary is unlikely to be widely adopted, and hence even a limited field of participants is aware that its work product must meet the needs and approval of a broad commercial audience. As a result, the consortium-based process has its own commercial checks and balances.

(C) Balancing of Interests: Which interests? And how is a consortium to persuade those interests to participate? If a consortium were to set distance learning standards (as some of our clients do), how would they ensure that all interests relevant to the standard were heard, and still finish a standard within budget, and on time? Would the participation of K-12 administrators and teachers be mandatory?

(D) Readily Available Access to Proposed Standards: One valuable right of membership in a consortium is the right to receive advance access to standards in the process of development. Absent this benefit, there is again less incentive for commercial enterprises to fund standards development activities. Indeed, even some organizations that regard themselves as SDOs, or which are accredited by SDOs, operate at times under confidentiality restrictions.

(E) Substantial Agreement on all Material Points: If the alternatives are (i) no standard at all, (ii) an ineffective (but consensus based) standard, or (iii) an effective standard supported by a majority of process members and later adopted almost universally, which is better for the end-user? In fact, the process of standard setting is often quite contentious, and perhaps even beneficially so. Especially where existing instantiations of a new standard are a requirement for submission (in order to enable rapid market implementation of adopted standards) there are likely to be winners as well as losers, and it is unlikely and unrealistic to expect a vendor and its allies to vote in favor of a competitor's submission.

(F) The Right to Voice a Position, Have it Considered, and Appeal a Decision: Consortia follow the first two precepts (with respect to the paid membership), but few, if any, provide for the final -- and arguably superfluous -- appeals step. If the first two steps have been followed in proper fashion, there should be no need for a final appeal. In fact, many consortia provide that a technical committee vote to adopt a standard must be approved by the Board of Directors. Part of the reason is to permit the Board to consider any contentions that the adoption process has been flawed.

What H.R. 1086 Would Mean: The fact of the matter is that the principles espoused by H.R 1086, if they become the norm by which standard setting is judged, will have numerous deleterious effects, including the following:

- The principles raise more new questions than they answer, which will lead to great confusion as to whether a given organization's filing under the NCRPA could be challenged on grounds of eligibility. Indeed, some SDOs might not meet one or more of the principles!

- Crucially important consortia, such as the W3C, might be ineligible to seek protection under the NCRPA, as amended by H.R. 1086. Given the strategic importance of the World Wide Web, it is vital that an organization such as this, as well as its many members, can conduct its activities with the greatest degree of immunity from both strategic, competitive lawsuits as well as innocent mistakes.- As shown by the experience with the GIRM model submission, government agencies are already confused by their duties as respects standards. Due to the many references to OMB A-119 in H.R. 1086, and the ingrafting of several OMB A-119 definitions into the NCRPA itself, these principles may be seen as an additional indication that only SDO-developed standards may be specified by government agencies.

- The consortium movement was founded for the very purpose of avoiding the constraints of some of these same principles. In short, if strict adherence to these principles had been viewed by commercial enterprises to be tolerable, consortia would never have come into existence.

- The government itself has adopted -- and in many areas (such as GIS standards) -- is increasingly dependent on consortium-developed standards. It would be highly disruptive for the government as well as the commercial community if those organizations were required by their members to either restructure themselves to meet the H.R. 1086 requirements, or disband and reform themselves as working groups under an existing SDO.

Conclusions: In and of itself, agreeing upon best practices for standard setting is a worthwhile endeavor. However, there is danger as well as opportunity in such an exercise. The current effort in Congress is proceeding with very little publicity or input from the industry, and perhaps none to date from the myriad consortia that set standards. If Congress is to be allowed to determine what a "good" standard setting organization is, it should be advised by far more extensive and diverse testimony than it has received to date. Its time for the progress of H.R. Bill 1086 to pause so that interested parties can be made aware of what is intended. More voices must be given the opportunity to advise Congress on the necessity of enacting a broader bill that will truly serve the best interests of government, industry, and end-users alike.

Lucash, Gesmer and Updegrove intends to actively raise its voice in support of its standard setting clients in an effort to broaden the scope of H.R. 1086. If you would like to be involved, or to better understand the issues, please feel free to contact the author at updegrove@lgu.com. We would also encourage you to let your congressional representatives know that you believe that Congress should provide equal protection to all types of effective standard setting organizations -- both consortia and SDOs alike. The bill's co-sponsors may be viewed at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h1086ih.txt.pdf

Comments? updegrove@consortiuminfo.org

INCITS: THEN AND NOW

Andrew Updegrove

Abstract: *As the commercial realities of technology development have evolved, SDOs have found it necessary to evolve along with them. Those SDOs that have served their niches well have grown and become more influential, sometimes becoming the hubs of activities involving many SDOs. Faced with competition from the proliferation of consortia, some SDOs -- like INCITS -- have adapted by providing a link between consortium-originated standards and the international de jure bodies, such as ISO/IEC. The result of such cooperation is a more effective global standards infrastructure.*

Introduction: Looking back at the International Committee for Information Technology Standards (INCITS) at its inception is a bit like opening an IT industry time capsule. The attendees at the inaugural meeting of the "Accredited Standards Committee X3, Information Technology," as it was then named, included former IT powerhouses Honeywell, NCR and Sperry/Univac, and the seven initial work topics included (then) cutting-edge technical areas like Magnetic Ink Character Recognition, Programming Languages, and Terminology. Punch cards were state of the art, and Bill Gates was five years old.
Fast forward through two-thirds of the computer age, and INCITS is still focused on IT, but its technical committees now number over 50, and the technologies it is addressing include SCSI interfaces, multimedia, GIS, databases and security. In between these two endpoints in time, a sampling of its areas of activity yields a representative snapshot of the evolution of information technology:

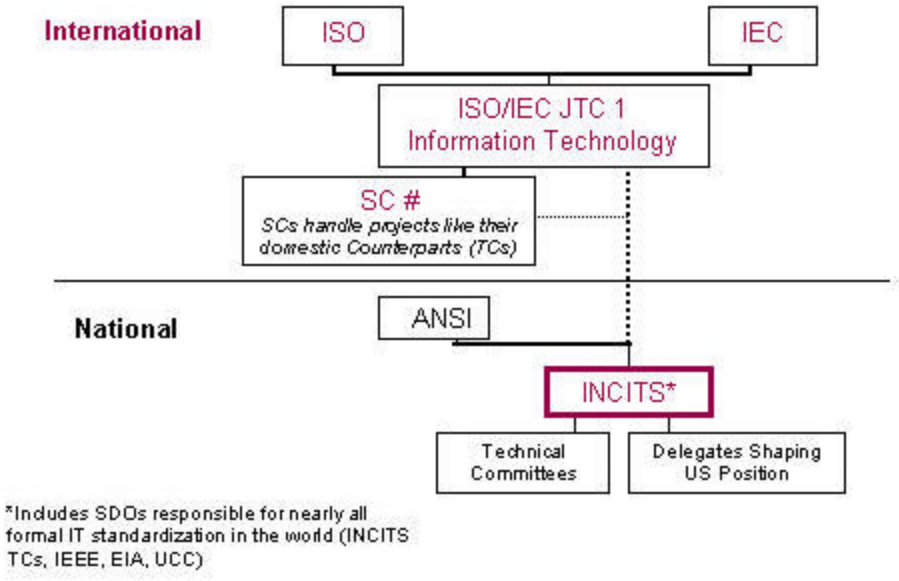
Early 60's –	7-bit ASCII, Magnetic Tape storage, COBOL, OCR
Early 70's –	Fortran
Mid to Late 70's –	Flexible Disk Cartridges
Early 80's –	Data Encryption Algorithm, Optical Media, C, SQL
Mid to Late 80's –	SCSI, Fibre Channel, 8-bit ASCII, C++, JPEG and MPEG, SGML
Early 90's –	GIS, ISO/IEC 10646 (Unicode)
Late 90's –	Common Criteria for IT Security
Early 00 –	Biometrics, Serial Attached SCSI, Serial AT Attachment

During the same forty-two years, INCITS was evolving its role in the global standards infrastructure, adapting as the world of standards development itself evolved. Today, besides acting as an SDO in its own right (it has been accredited by ANSI since its inception), it plays an important role in both further developing consortium-originated standards, as well as introducing those standards into acceptance by ISO/IEC. Most recently, it has assumed a role at the center of the major IT SDOs.

Taking a closer look at the more recent evolution of INCITS also provides one way to better understand important factors in the evolution of the entire global standards infrastructure -- such as the way in which SDOs interrelate, and the way that consortia and SDOs are finding to productively work together.

INCITS Today: The latest transformation of INCITS is indeed recent: INCITS entered 2003 with a stronger link to ISO/IEC, and acquired responsibility for the Joint Technical Committee 1 (JTC1) Technical Advisory Group (TAG), which had formerly been a separate organization with SDOs, vendors and users as members. Other ANSI-accredited standards organizations integral to the "new" INCITS in its JTC1 TAG role are the Institute of Electrical and Electronics Engineers (IEEE), the Electronic Industries Alliance (EIA - itself an alliance of six major standards bodies), and the Uniform Code Council (UCC). The collective standards output of this grouping -- which includes EIA's Home Electronic Systems (HES) HomeGate, IEEE's 802.11 family of wireless standards, and the UCC's barcode-related standards -- accounts for nearly all of the SDO-based IT standardization work in the world. The only international IT standards that top INCITS-related standards in sales are the ISO 9000 series of quality standards.

As a result, INCITS finds itself in the middle of a great deal of standards setting activity involving diverse organizations. The following diagram seeks to represent INCITS in the context of the formal standards bodies:



A Bridge Over Troubled Waters: But while INCITS was busy with its own activities in the closing fifteen years of the last century, another method of standard setting was becoming pervasive in the market place. Unlike other areas of standard setting (such as health and safety), the need for IT standards is often urgent, and the jockeying of individual companies is frequently intense. Partly as a result of these forces and because few IT standards are subject to regulation, many companies began banding together in the late 1980s to create interoperability and other standards using a more informal process. The resulting organizations became known as "consortia," and over time this method became increasingly popular with companies that a few years before would have automatically brought their standard setting proposals to an SDO.

With time, it has become increasingly accepted that the marketplace should seek to take advantage of the best of both the SDO as well as the consortium methodologies. Today, both consortia and SDOs are more frequently opting to cooperate. The reasons vary, depending upon the type of organization.

For a consortium, a number of reasons may lead it to consider partnering with an SDO at some point in its life cycle. One is that SDOs -- by design -- tend to be very broad and comprehensive in their scope. In contrast, consortia often have a narrower focus, and are sometimes formed to create a single standard. Due to the breadth of interest of SDOs, there is usually an appropriate and potentially interested SDO available if a consortium wishes to work with one. The consortium's reason for doing so may be that its development work is done, and it does not wish to continue in existence for purely maintenance purposes, or that the financial commitment of its members is waning, or because it desires to achieve ISO/IEC acceptance for its standard.

At the same time, the proliferation of consortia has provided a level of competition that was unknown to SDOs before the late 1980s. Maryann Karinch, communications advisor to INCITS, identifies attracting new work as one of the greatest challenges facing INCITS today. That challenge arises, she says, "because many IT producers would prefer the venues where they have the greatest influence over projects and members." In short -- consortia, with their relative flexibility of operation, as compared to SDOs, with their more established and mandatory process and policies.

How should an SDO react to the launch of consortium efforts in the same general technical space as one of its existing technical committees? Commencing a work group to solve the same problem would rarely serve anyone well. At best, confusion and inefficient usage of resources will result. At worst, overlapping

standards efforts can result in duplicative and divisive standards. Often, it simply makes more sense for both sides if a standard originates in one system, and is later transferred into the other.

According to Karinch, INCITS has taken the prevalence of consortia into account in creating its strategic vision, noting: "As an SDO, INCITS [has] committed to an expanded program of work, which allows for more productive collaboration with consortia." She believes that INCITS is affected both positively and negatively by the competitive shifts among consortia. On the positive side, some consortia have found ways to team up with INCITS to further develop their specifications and fast track them to ISO/IEC -- often with the encouragement of major IT companies which are often on the Boards of both organizations.

On the negative side, she notes that some of the projects that would fit within the purview of existing INCITS Technical Committees end up being permanently addressed by consortia, sometimes resulting in redundant efforts.

Recent collaborations between INCITS and consortia include successful efforts with the SQL/XML Group and the BioAPI Consortium. While the former worked well as an independent effort for two years, its members eventually opted to trade out of their informal mode of operation. As a result, representatives from member companies asked INCITS' H2 to establish a new Task Group so that future proposals linked to the SQL/XML specification could be developed within the de jure standards environment.

Similarly, when INCITS' M1 took on the BioAPI spec for fast tracking, Cathy Tilton of SAFLINK, who chairs the BioAPI Consortium, stated: "It has always been one of the [BioAPI] Consortium's goals to eventually transition the BioAPI to a formal standards body. INCITS provides a great vehicle for doing just that; and we feel that with the release of Version 1.1 of the specification, it is the right time to move forward with that goal."

Once adopted for its fast track process, a consortium-originated standard can become approved by ANSI with INCITS' help in as little as four to six months. Moreover, participation can be broadened once INCITS steps in, since voting membership in the process is only $800. INCITS has also tried to make itself more competitive with consortia. For example, it) annually revisits processes with its Technical Committee (TC) chairs at a TC Symposium. This has resulted in streamlining standards reviews and approvals. INCITS has also worked to create a more direct relationship with ISO/IEC, so that it can make it easier and faster for standards promoted by it to be accepted internationally.

Life as an SDO in a Changing World: INCITS has had to react to member expectations, as well as competition from consortia. Karinch summarizes the situation as follows: "Customers recognize the value of interoperable equipment and are insisting on it. Producers have streaked past many user expectations with innovations, and now need to write specs to encourage market acceptance of them. INCITS has had to evolve -- in a substantive way -- to remain distinct among the complementary (as well as competitive and redundant) standards groups trying to meet the needs of both savvy customers and inventive vendors. Every INCITS Executive Board agenda has action items that drive to that end; at the same time, INCITS centers itself with its time-tested procedures."

There are other pressures as well. INCITS reports that it is feeling the increasing pressure from the European SDOs which are stepping up pressure within international bodies to adopt standards originated through their regional processes. While most IT SDOs in the US include many member companies that are global in operations, INCITS believes that it remains important to its members to assert a US position, in order to ensure the competitiveness of US headquartered business in overseas markets. INCITS' expanded role internationally and its efforts to strengthen its links to ISO/IEC are intended in significant measure to accomplish this goal. INCITS believes that these efforts have been effective: Karinch reports that INCITS was instrumental in ensuring that the two latest secretariats in JTC 1 are US led (SC 36 – Learning, Education and Training, and SC 37 – Biometrics).

Summary: While consortia have provided competition to INCITS in the last 15 years, INCITS has stayed a vital, and indeed increasingly influential, player in the global IT standards infrastructure. With the increasing popularity of the Open Source methodology, consortia as well as SDOs will need to adapt, and doubtless in the future additional ways will evolve to help companies bring sophisticated, interoperable products to end users. To its credit, INCITS has reacted to changing times by providing a process where

they can work with consortia, rather than present the marketplace with a pure "us or them" value proposition.

Of course, INCITS hardly intends to concede the standard setting field to consortia. It believes that it continues to provide an excellent, and increasingly streamlined, venue for standards efforts to be launched in the first instance. As differentiators, it is quick to note its low costs of participation for interested companies, its established process and its ability to progress a standard to international status. All of which, it believes, make it as appropriate a venue for the creation of the next wave of IT standards as it has been for the innovations of the last 42 years.

Comments? updegrove@consortiuminfo.org

INCITS at a glance:

Date of formation	1961
Number of Current members	More than 700 organizations and 1800 representatives
Number of classes of membership	Membership at the Executive Board and the Technical Committee levels; both allow for Voting and Advisory (non-voting) membership
Number of countries represented by current members	17 countries
Number of Technical Committees	More than 50 standing committees; see www.incits.org for names
Number of issued standards or specifications	675 standards
Other Significant Relationships	Primary imaging industry interface with: US Environmental Protection Agency (Silver Advocacy) US Occupational Safety & Health Administration Transportation Security Administration (Airport X-ray warning program) US Department of Commerce (Industry Statistics)
Number of current initiatives	More that 100 active open projects
Other types of work product	Technical Reports
Website address	www.incits.org
Companies currently represented on the Executive Board	A Apple Computer, Center for Global Standards Analysis, CRC Enterprises, Data Interchange Standards Association (DISA), DDC-I, EIA, Farance Inc., Food Marketing Institute (FMI), Hewlett-Packard, IBM, ICCP, IEEE, Intel, Microsoft, Network

	Appliance, NIST, Office of the Secretary Defense /S&T/ JEOD KTOD ACTD, Oracle, Panasonic, Purdue University, Sony Electronics, Sun Microsystems, the Uniform Code Council, and Unisys.
Officers	Karen Higginbottom, Executive Board Chairperson
Staffing	The INCITS Secretariat function is provided by the Information Technology Industry Council

RAMBUS

UPDATE: THE STAGE SHIFTS TO THE FTC

Christine M. Santariga

Abstract: *The final outcome of Rambus v. Infineon and its implications for anti-trust and intellectual property issues is now on hold while Infineon petitions the Supreme Court to intervene. But today the attention shifts to the Federal Trade Commission, as the FTC begins to present its own case in court against Rambus for alleged federal antitrust violations. If the FTC is successful, a measure of trust will be restored to the standard setting process. If Rambus wins again instead, the impact on the integrity of the system will be significant.*

Regular readers of the Consortium Standards Bulletin are aware that we have been following the case of ***Rambus v. Infineon*** and its potentially significant impact on standards organizations and their technical processes (Rambus Update: It May Not Be Over Yet, March 2003; Rambus - Hard Cases Make Bad Law, February 2003). The case and all of its final implications for anti-trust and intellectual property issues will not be known until the last decision is handed down. Since our last issue, the date that this will happen has been postponed, as a result of Infineon's filing a motion, granted by the Appeals Court on April 11. That motion will freeze the effectiveness of the Appeals Court decision while Infineon seeks to have the Supreme Court grant "certiorari," i.e., to consider one or more aspects of the case.

However, the more immediate concern for Rambus begins **today** as the Federal Trade Commission brings its own investigation against Rambus to trial. This part of the Rambus saga began in June of 2002, when the FTC charged Rambus with federal antitrust violations and deliberate and deceptive anti-competitive practices regarding its intellectual property rights. The FTC asserts that Rambus' actions would have direct and indirect impacts adversely affecting standard setting organizations and activities.

While the FTC's case, like the Infineon case, involves Rambus' participation in JEDEC's SDRAM standard setting work and its non-disclosure of relevant patent rights, the charges and laws involved in each case are distinct; possibly distinct enough to allow for a very different outcome for Rambus. For example, in *Rambus v. Infineon*, which was tried under Virginia state law, Infineon was required to support its claims based on a "clear and convincing evidence" standard of proof. The FTC, by comparison, bases its claims on alleged violations under federal antitrust law. Under this body of law, the government will be required to prove its case under the less stringent "preponderance of the evidence" test.

Furthermore, the burden of proof in regard to evidence in the FTC trial today will rest more heavily on Rambus than in the Infineon case as a result of determinations already made by the administrative judge presiding over the suit. Earlier this year, the FTC requested a default judgment against Rambus, claiming that the company had destroyed evidence related to the investigation and that it should therefore forfeit its right to trial. On March 5, 2003, administrative law judge James Timony denied the FTC's request, but

agreed that Rambus had indeed destroyed or failed to preserve required evidence and therefore will have the burden of proving its innocence on certain points during the trial that begins today. In his statement, the judge wrote, "...it is clear that Rambus should not be rewarded for its gross negligence concerning, or reckless disregard of, its obligation to maintain documents potentially relevant to litigation and (to) inventory those documents destroyed." In other words, on some key points the Judge has already held that Rambus is "guilty until proven innocent."

The outcome of the FTC investigation will have widespread consequences monetarily for the organizations involved. Should the FTC prevail in its antitrust claims, Rambus would be forced to forfeit the right to receive what may potentially be as much as a billion dollars in license and patent-infringement fees. The stakes for standard setting organizations are also high. If Rambus is convicted, some measure of trust will be restored to the standard setting process. If Rambus is successful in defeating the FTC as well as Infineon, the reverberations will be far-reaching indeed.

We will continue to follow the case and update you on further developments as they occur.

NEWS SHORTS

Advocacy

3G Americas Supports Regulator's Decision on Brazil's PCS Spectrum

Sao Paulo, Brazil, Bellevue, WA, April 11, 2003 - The recent decision by Brazil's Agência Nacional de Telecomuniçacões (ANATEL) to reaffirm the sole use of 1800 MHz for Personal Mobile Services (SMP) licenses will sustain continued growth of mobile services in not only Brazil, but in other countries in the Americas, in the opinion of the wireless association 3G Americas.

For the full story, see:
http://www.3gamericas.org/English/News_Room/DisplayPressRelease.cfm?id=468&s=ENG

GSM Europe calls on Telecom Council to support Rollout of new mobile services

Brussels, Belgium, March 27, 2003 - GSM Europe, the European Interest Group of the GSM Association,...urges Member States to actively support the EC's mission to encourage new mobile service and network rollout. It warns that national regulation could hamper the development of new service business models and that regulatory intervention should be kept to the minimum necessary level bearing in mind key principles of sustainability and proportionality GSM Europe welcomes the Member States' recognition of the importance of electronic communications in achieving the Lisbon goals - to make Europe the most competitive and dynamic knowledge-based society in the world by 2010. GSM Europe's 130 network operator members also fully endorse the Commission's recognition that the mobile sector, in helping to achieve these goals, is best served by self-regulation and market innovation.

For the complete press release, see: http://www.gsmworld.com/news/press_2003/press_10.shtml

Antitrust, Litigation and Policy News

New Standards Guidelines for Europe

http://www.dvb.org/, 28 Mar 2003 - European standardization policy has been brought up to date today as the result of the adoption of new guidelines between the European Commission (EC), the European Free Trade Association (EFTA), and the three official European Standards Organizations (ESOs).

For the full press release announced by the Digital Video Broadcasting Project, see: http://www.dvb.org/index.php?id=10&nid=24

Certification and Branding

OMG and the UML Technology Institute Announce UML Certification Program

Tokyo, Japan, April 17, 2003 - The Object Management Group™ (OMG™) and the UML Technology Institute (UTI) announced today at UML 2003 Forum in Tokyo, Japan, a joint Unified Modeling Language™ (UML™) Certification Program. The program will provide formal certification of expertise in UML. Targeted at analysts, programmers, developers and architects worldwide, UML certification will serve as a touchstone for enhancing levels of productivity and for determination of skill level for those hiring or wishing to measure their knowledge of UML. Since UML is the underlying de facto standard for

analysis and design that drives the growing Model Driven Architecture™ (MDA®) standard, proficiency in UML is, and will continue to be, a highly valuable skill for IT professionals to possess.

For the full press release, see: http://www.omg.org/news/releases/pr2003/04-17-03.htm

Two CMS and Additional PacketCable™ Devices Get Certified/Qualified in Wave 25

Louisville, Colorado, April 11, 2003 - Marking a second major PacketCable™ milestone, Call Management Servers (CMS) from Cisco and Syndeo gained qualification status. A total of nine PacketCable™ devices were certified or qualified in the CableLabs® Certification Test Wave 25 that concluded recently. These PacketCable devices are focused on helping cable operators deliver voice communications using Internet Protocol (IP), an efficient and cost effective means of service delivery.

For the full press release, see: http://www.cablelabs.org/news/pr/2003/03_pr_pc_cw25_041103.html

For a related news story, see: Thirteen More DOCSIS® 2.0 Modems Gain CableLabs® Certified™ Status http://www.cablelabs.org/news/pr/2003/03_pr_docsis_cw25_041003.html

General

With the decision in Rambus v. Infineon, consortia would be wise to pay close attention to their voting and patent assertion processes. One way to be sure that patent positions are well documented is to implement an adequate platform to conduct the process electronically. See the following to see how this can be done.

Kavi Software Powers Expanded Web Portal for Global Standards Consortium: New System Allows 2,000+ Members in 100 Countries to Collaborate Virtually on Web Services and XML Standards

Portland, Ore, April 29, 2003 - Kavi Corporation announced the launch of an expanded web portal for OASIS, www.oasis-open.org, which supports OASIS' operations, the activities of more than 50 technical committees and serves as OASIS' communications and collaboration hub. The portal will facilitate voting, communication, and documentation across multiple organizations and locations.

For the full press release, see: http://www.kavi.com/press/

BSI Warns UK Business Ignoring Terrorist Threat to Information Security

http://www.bsi-global.com/, April 28, 2003 - In the wake of comments that only 85 UK companies have followed DTI and security service advice to meet the BS7799 Information Security (Infosec) Standard, and that the Government may fine businesses that fail to put infosec systems in place, BSI (the leading authority on BS7799) is calling for action.
For full press release, see: http://www.bsi-global.com/Corporate/News+Room/GRBS7799.xalter

Airlines Look to Recommended Practices for Disinfection and SARS Protection

New York, April 18, 2003 - The recent outbreak of Severe Acute Respiratory Syndrome (SARS) has drastically affected travel and tourism in Southeast Asia, most notably in the air travel industry. As

concern about the disease is felt around the world, the public is asking the air transport industry what kinds of precautions are carried out to protect the health and safety of passengers and crew.

For the complete article, see:
http://www.ansi.org/news_publications/news_story.aspx?menuid=7&articleid=382

New Consortia

Physical and IT Security Leaders Collaborate

SAN FRANCISCO, CA, RSA Conference, April 14, 2003 - Four leading security solutions providers today announced the formation of the Open Security Exchange, a collaborative group that is defining best practices and promoting vendor-neutral specifications for integrating the management of security devices and policies across the enterprise. By promoting more effective exchange of enterprise-wide security data, the Open Security Exchange will enable organizations to significantly reduce both their exposure to a diverse range of threats and their total operation costs. Initially, the Open Security Exchange will focus on the integration of physical and IT security technologies. Lack of assimilation between these two primary aspects of enterprise security is perhaps the most glaring example of how security management remains fragmented at most organizations today.

For the full press release, see:
http://www.smartcardalliance.org/industry_news/industry_news_item.cfm?itemID=759

For a related story, see: http://www.informationweek.com/story/showArticle.jhtml?articleID=8800116

Tech Titans Team for 'Trusted Computing'

CNET News.com, April 9, 2003, 4:18 AM PT - A bevy of the biggest computer hardware and software companies, formerly members of the Trusted Computer Platform Alliance (TCPA), announced on Tuesday that they had reconstituted themselves under a new name: the Trusted Computing Group. *[In this article by Robert Lemos, the author details what led a new organization to be formed to succeed to the work of the Trusted Computing Platform Alliance, of which Microsoft and some other TCG founders are members. He also tells how the action caught some members of the old organization by surprise.]*

For the complete story, see: http://zdnet.com.com/2100-1105-996032.html

For the new Group's own press release, see:
http://www.trustedcomputinggroup.org/events/news/2003_04_08_tcg_formed.pdf

New Initiatives

Meeting Emergency Communications Needs - Project MESA Approves Aggressive Roadmap for Technical Development

Ottawa, Canada, 28 April 2003 - An aggressive work plan to revolutionize communications for organizations within the public protection and disaster relief sector has been adopted by Project MESA, foreseeing completion of technical specifications in 2004. Project MESA is a partnership project between the European Telecommunications Standards Institute (ETSI) and the Telecommunications Industry Association (TIA) of the USA.

For the complete press release, see:

http://www.etsi.org/frameset/home.htm?/pressroom/Previous/2003/MESA.htm

OASIS Guides Development of Global Electronic Procurement Standardization

Boston, MA, 28 April 2003 - The OASIS interoperability consortium announced that it is providing a forum for government agencies, organizations and companies to guide the coordinated development of global e-procurement standards. The OASIS Electronic Procurement Standardization (EPS) Technical Committee will work to analyze requirements for electronic procurement processes, identify gaps, and recommend new standards as needed.

For the complete press release, see: http://www.oasis-open.org/news/oasis_news_04_28_03.php

Additional Information:
OASIS EPS Technical Committee:
http://www.oasis-open.org/committees/tc_home.php?wg_abbrev=eps

Cover Pages Technology Report: Electronic Procurement Standardization:
http://xml.coverpages.org/eps.html

Further documentation on the EPS Technical Committee, see: http://lists.oasis-open.org/archives/members/200304/msg00004.html

OASIS Members Form Web Services Business Process Execution Language (WSBPEL) Technical Committee

Boston, MA, USA; 29 April -- Members of the OASIS open standards consortium will advance a specification to formally describe interoperable business processes and business interaction protocols for Web services orchestration....BEA, IBM, Microsoft, and SAP intend to formally submit BPEL4WS version 1.1 under royalty free terms to the new OASIS Technical Committee at its first meeting on 16 May 2003. The committee is open to submissions of other in-scope contributions and will establish liaison relationships with related Web services efforts within OASIS and other standards organizations including the World Wide Web Consortium (W3C).

For the full press release, see: http://www.oasis-open.org/news/oasis_news_04_29_03.php

For a related story, see: http://www.cbdiforum.com/public/news/index.php3?id=1232

Additional Information:
OASIS WSBPEL Technical Committee: http://www.oasis-open.org/committees/tc_home.php?wg_abbrev=wsbpel

Also see a related press release by the Liberty Alliance below under "New Standards/Specifications"

OASIS Members Collaborate to Address Security Vulnerabilities for Web Services and Web Applications

San Francisco, CA (RSA Security Conference), April 14, 2003 - Members of the OASIS interoperability consortium announced plans to define a standard method of exchanging information concerning security vulnerabilities within Web services and Web applications. The new OASIS Application Vulnerability Description Language (AVDL)Technical Committee will address the challenge of how businesses manage ongoing application security risk on a day-to-day basis.

For additional information on the OASIS AVDL Technical Committee, see:
http://www.oasis-open.org/committees/tc_home.php?wg_abbrev=avdl

For additional information on application security, see: http://xml.coverpages.org/appSecurity.html

INCITS Biometrics Workload Drives Formation of Four New Groups: Demand for Biometrics Standards Soars Due to Heightened Security, ID Theft Concerns

Washington, D.C., April 3, 2003 - The International Committee for Information Technology Standards (INCITS) announced today that it has launched four new Task Groups to handle increased activity in biometrics. The Task Groups are part of INCITS Technical Committee M1, formed in November 2001, which currently has 55 organizational members from business, government, and academia.

For the full press release, see: http://www.incits.org/press/2003/pr200304m1tgs.htm

WS-I Charters Basic Security Profile Working Group

PALO ALTO, Calif., April 1, 2003 - The Web Services Interoperability Organization ("WS-I") today announced the formation of the Basic Security Profile Working Group (BSPWG). The BSPWG was chartered following the organization's fourth plenary session held recently in Salt Lake City... The Basic Security Work Plan Working Group, formed in late November 2002, created a work plan prioritizing and scoping key security interoperability issues. The Basic Security Work Plan Working Group presented its recommendations to the membership at the recent plenary session.

For the full press release, see: http://www.ws -i.org/docs/20030401wsipr.htm

For related stories, see: http://xml.coverpages.org/ni2003-04-01-a.html
http://www.eweek.com/article2/0,3959,988799,00.asp
http://www.infoworld.com/article/03/04/01/HNwsisecurity_1.html

New Standards/Specifications

Leading ITU Specification Language Delivers Major Advances: New version of ASN.1 incorporated in biometrics and banking standards

Geneva, 25 April 2003 - The latest version of industry shaping specification language Abstract Syntax Notation 1 (ASN.1) has now been released by ITU. One of the first areas to benefit is biometrics, the practice of verifying identity based on physiological or behavioral characteristics, such as fingerprints, handwriting or retinal scans. ASN. 1 is also increasingly being used outside the telecommunication industry in areas such as security, transportation, banking or genetic research.
For complete press release, see: http://www.itu.int/newsroom/press_releases/2003/14.html

International Benchmark for Personnel Certification Schemes

http://www.iso.ch/, April 14, 2003 - A new International Standard aims to harmonize the various procedures used around the world for certifying the competence of personnel in different professions. It will provide a global benchmark for certification schemes to ensure that they operate in a consistent, comparable and reliable manner worldwide, thus establishing an environment for the mutual recognition of schemes and facilitating the global mobility of personnel.

For the full press release, see: http://www.iso.ch/iso/en/commcentre/pressreleases/2003/Ref847.html

ISO/IEC Finishes Fast-Track Standardization of ECMA Standards for C# Programming Language, Common Language Infrastructure ITWeb

Johannesburg, April 7, 2003 - The publications for C# and CLI were enabled by ECMA International, which secured industry support and fast-tracked the specifications through the relevant ISO procedures. Specifications for each technology were developed by Microsoft and co-submitted by Microsoft, Intel, and Hewlett-Packard.

For the complete story, see: http://www.itweb.co.za/sections/software/2003/0304070751.asp

Liberty Alliance Submits New Web Services Specification to OASIS

http://www.infoworld.com/, April 15, 2003 - "OASIS to Get BPEL4WS Jurisdiction. Web Services Specification Finally Goes to Standards Body." Microsoft, IBM, and BEA Systems plan to submit their Web services choreography and business process specification to a standards body later this week; the Business Process Execution Language for Web Services (BPEL4WS) specification is expected to be submitted to Organization for the Advancement of Structured Information Standards (OASIS).

For the complete story, see: http://infoworld.com/article/03/04/15/HNbpel_1.html

For a related story, see: http://www.infoworld.com/article/03/04/11/HNlibert_1.html

For a related article on this story, see: http://www.atnewyork.com/news/article.php/2189821

Liberty Alliance Releases Phase 2 Specifications, Demos Vendor Interoperability

San Francisco, April 15, 2003 - The Liberty Alliance released Phase 2 of its draft identity-based Web services specifications and demonstrated interoperability of services with 20 of its member companies.
For the complete story, see:
http://www.crn.com/sections/BreakingNews/breakingnews.asp?ArticleID=41292

For related coverage, see: http://news.com.com/2100-1013-997019.html?tag=lh

For related coverage, also see: http://www.eweek.com/article2/0,3959,1025551,00.asp

Open Source

Linux Founder Opens Door to DRM

CNET News.com, April 24, 2003 - Linus Torvalds, the founder of the Linux operating system, threw a curve ball to the open-source programming community. In a posting sent to a key Linux-focused e-mail list, Torvalds outlined a controversial proposal: Nothing in the basic rules for the Linux operating system should block developers from using digital rights management (DRM) technology.
For the full story, see: http://news.com.com/2100-1016-998292.html

OpenOffice.org Releases Version 1.1 Beta for Open Source Office Productivity Suite

http://www.coverpages.com/, March 28, 2003 - OpenOffice.org version 1.1 Beta has been released, incorporating many new features and changes introduced with the developer builds over the past year. It supports new import/export formats such as PDF, Macromedia Flash, DocBook, several PDA Office file formats, flat XML, and XHTML. Complex Text Layout (CTL) now supports languages such as Thai, Hindi, Arabic, and Hebrew. The product uses open-component based APIs and an XML-based file format.

For the complete story, see: http://xml.coverpages.org/ni2003-03-28-a.html