

Standards Today

A Journal of News, Ideas and Analysis

A publication of
**CONSORTIUM
INFO.ORG**
GesmerUpdegrove LLP

October – November 2007

Vol. VI, No. 8

COMPLETING THE CONSORTIUM STANDARDS DEVELOPMENT INFRASTRUCTURE

ABOUT THIS ISSUE: [Modern Times](#)..... 3

EDITORIAL: [Leaving Home for Good: It's Time for a Global Consortium Standards Organization](#).....5

Twenty years ago, the IT industry decided that a standards infrastructure built to develop standards for the physical world was inadequate to meet its needs, and created a new type of organization to do the job. But it stopped short of forming a global organization to support these organizations and to maximize their value. It's time now to finish the job.

FEATURE ARTICLE: [A Proposal for a New Type of Global Standards Certification](#)..... 8

The role of the traditional global standards organization has been to adopt standards that have been found to be of acceptable technical quality to those National Bodies with an interest in the subject matter. In the modern world of information and communications technology, new types of certifications for standards development organizations themselves are needed, developed and administered by a new type of global accrediting body.

STANDARDS BLOG: [OOXML Payback Time as Global Standards Work in SC 34 "Grinds to a Halt"](#)..... 19

The consideration of Microsoft's OOXML specification as an ISO/IEC standard has been marred by reports of multiple abuses and gambits, including the last minute upgrading of memberships in SC 34, the ISO/IEC JTC 1 committee with control over the process. After the voting period closed, life should have gotten back to normal. It didn't.

CONSIDER THIS: [Guilt or Innocence, and the Space Between](#)..... 23

The criminal justice system in the United States guarantees the defendant the right

Standards Today is a free bi-monthly electronic Journal sponsored by the Boston law firm of Gesmer Updegrove LLP. The current issue of **Standards Today** and a subscription form may be found at www.consortiuminfo.org/bulletins. Questions or comments about the articles in this issue or about ConsortiumInfo.org may be directed to Andrew Updegrove at updegrove@consortiuminfo.org, or by telephone at 617/350-7800. To learn more about Gesmer Updegrove's standards and open source practice, visit http://www.gesmer.com/practice_areas/consortium.php, or contact Andrew Updegrove.

to be considered innocent until proven guilty – an honorable standard for a society to uphold, to be sure. The problem is that life is rarely so black and white, and the victim is the integrity of the system.

MONDAY WITNESS: [Introducing: "The Monday Witness"](#)..... 26

With the explosion of cable and Web-based media channels of all sorts, there are news feeds to suit every political belief and bias. The result is less neutrality in reporting, more pandering to viewer tastes, greater polarization between those on the left and right, and an increasing feeling of helplessness. What can one person do?

MONDAY WITNESS: [Words, Standards and Torture: What's in a Name?](#)..... 29

Perhaps the oldest standards of all are words – abstract sounds to which we assign specific meanings. Laws rely on words retaining their meanings over time, or laws lose their own.

ABOUT THIS ISSUE:

Modern Times

Two and a half years ago I wrote an issue titled [Revolution Time \(Again\)](#). The premise of that effort was that the consortium-based IT industry was grappling with a number of new challenges (such as convergence and open source software licensing regimes) that a more formal structure might to some extent help address. After examining the creative ways in which consortia were rising to the occasion in my [feature article](#), I closed with this observation:

Still, one cannot help but look back with some nostalgia to a time when the IT industry was a fully committed member of an acknowledged, global system, created for the express purpose of developing non-competing, rationally related, universally adopted standards. Perhaps a way can be found to create structures that would allow the IT industry to enjoy more of the benefits of such a system in the future, without once again becoming constrained by the lack of flexibility that led to the fragmenting of the IT standard setting world some twenty years ago.

Today, consortia are more established than ever in the ICT industry – and they still lack a central organization. Moreover, the standards world continues to offer only the most elementary ability to differentiate standards organizations (they are either accredited or they are not) or standards (they are either globally adopted or they are not).

All of which would be fine, if we were still living in an age of railway gauges and screw threads, rather than global telecommunications networks, worldwide product monopolies, patent inequities between the developed and developing worlds, and the increasing popularity of open source software.

To operate in these more complex modern times, I suggest in this issue that not only is a new global standards organization needed to serve the needs of the ITC industry, but that entirely new types of certification are needed as well – not for standards compliant products, but for standards organizations themselves.

I make the case for these new structures in my **Editorial**, aptly titled **Leaving Home for Good: It's Time for a Global Consortium Standards Organization**. I examine the subject in much greater detail in this issue's **Feature Article**, identifying the areas in which new services are needed, and laying out a suggested framework for providing them.

In this month's selection from the **Standards Blog**, I turn from the solution back to one facet of the problem, describing the collateral damage that occurred to SC 34, an important and (until recently) extremely productive ISO/IEC JTC 1 Committee, when Microsoft's OOXML specification came up for a vote. Sadly, the integrity of the standard setting system has taken a severe hit in that committee, as well as globally, where the voting in many National Bodies was marred by reports of undue

vendor influence, the deliberate spreading of disinformation, and in one case, offers to reimburse business partners for standards body dues as an incentive to buy votes.

In my **Consider This** piece I turn from technical to social standards, and reflect on a different kind of collateral damage to the integrity of another important process created to uphold standards: the American criminal justice system.

And finally, I introduce a new feature in this issue, called the **Monday Witness**, which will focus on the success or failure of governments in upholding the standards we expect of them. Two selections are included in this issue: the first explains the premise for this series, and the second is an example of that premise applied to current events. Each issue I'll include a selection from this new topical series, which you will also be able to find at the [Standards Blog](#).

As always, I hope you enjoy this issue.

Andrew Updegrove
Editor and Publisher
2005 ANSI President's
Award for Journalism

The complete series of Consortium Standards Bulletins can be accessed on-line at <http://www.consortiuminfo.org/bulletins/> It can also be found in libraries around the world as part of the EBSCO Publishing bibliographic and research databases

Sign up for a [free subscription](#) to **Standards Today** at

<http://www.consortiuminfo.org/subscribe/2.php?addentry=1>

EDITORIAL:

Leaving Home for Good: It's Time for a Global Consortium Standards Organization

Andrew Updegrove

Some twenty years ago, information technology vendors began opting out of the accredited standards system with increasing frequency in order to form organizations they called fora, alliances, and (most often) consortia. The reasons for the schism were several, but the development was remarkable in that the separatists presumed that standards could become ubiquitous whether or not they acquired the imprimatur of one of the "Big Is:" the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), and the International Telecommunication Union (ITU). And they were right.

Today, there are hundreds of consortia, and many of these organizations have achieved a size, work output, membership, influence and respect that equal that of their accredited peers. Along the way, the information and (to a lesser extent) communications technology industries have come to rely heavily upon consortia to supply their standards needs. But even as this parallel universe of standard setting has achieved respectability, an interesting trend has developed: more and more standards that have been created by consortia are being submitted to one of the "Big Is" for adoption.

As in most things commercial, the reason for this cross-pollination has to do with the customer – some of which have a bias or (in the case of some governments) a mandate to utilize accredited standards where they exist. With so many standards organizations, both accredited and non, and thousands more standards being developed all the time, there is a logical reason to seek a means to differentiate good standards from those that are less so. Today, it is still the case that the only organizations available to vet standards on a global, representative basis are the Big Is.

In a different setting, this situation might resolve itself through some sort of reunion of parent and wayward child. But the consortium movement is no prodigal son. Instead, consortia represent a predictable and healthy evolutionary forking of a well-established "one size fits all" system that had proven to be too restrictive to accommodate a faster moving industry looking for more flexible rules and a lighter weight process. But as the consortium movement matured and consortium standards proliferated, vendors sometimes wished that a global seal of approval could be obtained from one of the Big Is.

In response, processes were created that permit (for example) consortia to submit successful standards to ISO/IEC JTC1, the Joint Technical Committee formed by

ISO and IEC to address the needs of the IT industry, for approval as "Publicly Available Standards."

But bridges such as this have proven to be imperfect, and susceptible to abuse. Currently, SC 34, an ISO/IEC JTC 1 committee, is grappling with DIS 29500 – an ECMA developed standard based upon Microsoft's OfficeOpen XML specification. Many harried participants in the review process have expressed the view that the "Fast Track" program being used to propel the submission through the adoption process (unsuccessfully) from start to finish in just six months was inappropriate for a specification that weighs in at more than 6,000 pages. Moreover, there have been widespread reports of disinformation, vendor pressure, and (in one case) even offers of financial reimbursement to business partners as incentives to join National Bodies in order to vote for approval.

Even absent such extraordinary circumstances, the traditional infrastructure supports a range of industries that is so broad that IT standards consumers are left with less information about the standards they adopt than some would desire. Can a standard be implemented in open source software as well as proprietary products? Was it initially created through a truly open process, or was it processed by a small group of business allies? Can it be adopted on economically equal terms throughout the world, or is it biased towards developed nations? In short, what exactly does adoption by a Big I actually *mean*, and is that enough?

The result, I believe, is that new types of global approvals are needed. Certifications of processes and organizations in more dimensions would allow standards consumers to make better choices among available alternatives, and would assist governments in particular in using their purchasing power to drive the types of commercial behavior that they think will best benefit their citizens. Instead of simply choosing between one standard that is ISO/IEC approved and one that isn't, a government could look for a standard that has been globally certified as meeting low energy consumption goals – and perhaps choose that standards instead. And as between two ISO/IEC adopted standards developed by two different organizations, the fact that one organization, but not the other, have been certified as meeting minimum standards of openness and vendor neutrality could make the final choice clear.

Similarly, as between an ISO/IEC approved standard that does not require payment of a royalty and an equally well-conceived standard that may only be implemented for a fee, a government could specify the one that is both globally approved and royalty free. In so doing, a more level playing field would be created between the first-world nations whose vendors already own huge global patent portfolios and those emerging nations whose nascent industries may never be able to achieve parity in the patent race. First world nations would reap benefits as well, as new powers like China would thereby lose the incentive to create their own "home grown" standards.

Should such new standards be created by the Big Is? They could, but I believe that it would be better for new structures to be created to devise categories, criteria and certifications that would be uniquely appropriate for ICT industries. These certifications need not supplant, but would indeed support, the existing accredited

system, providing the customer with the ability to require compliance with standards that were approved by one global authority, the other, or in the appropriate case, by both. Vendors looking for the right organization to host a new standards project would have choices as well, as they would gain another way to differentiate their products. And well-run consortia would find value as well, by gaining a way to distinguish themselves from their less rigorous and vendor-neutral competitors as well.

In short, I believe that the time is ripe for the consortium child to complete its passage from adolescence to full maturity and independence. With the addition of a new "Big I" to serve the needs of consortia and their members, one that could be uniquely designed for the discrete needs of ITC customers, the process of leaving home would finally be complete.

Copyright 2007 Andrew Updegrove

Sign up for a [free subscription](#) to **Standards Today** at

<http://www.consortiuminfo.org/subscribe/2.php?addentry=1>

FEATURE ARTICLE:

A Proposal for a New Type of Global Standards Certification

Andrew Updegrove

Abstract: *The traditional standards infrastructure was developed over more than a century to meet the needs of developed nations for standards for implementation in physical products. That infrastructure created standards at the national level that could be adopted for global use by one of a number of organizations that evolved to serve the needs of defined market sectors. In modern times, the information technology sector largely opted out of this structure, choosing to develop standards through organizations with global, rather than national, memberships, and only occasionally submitting standards for approval by traditional global organizations. Later, but to a lesser extent, the communications technology sector followed suit. Today, with the ongoing process of globalization, the advent of the Internet and the Web, and the redeployment of most commercial, financial and government services over these new global networks, there is a need not only for a new global standards body to ensure the vitality of ITC standards creation, but for the availability of new types of institutional certifications for consortia and accredited standards organizations as well. Such certifications could provide additional information to differentiate one organization, and its standards, from another, offering governments and end-users with the ability to drive standard setting in more commercially and socially useful directions, thereby increasing choice, and fostering important social goals such as free trade, energy conservation and sustainability of resources. In this article, I identify these needs, and propose new structures that could be created to pursue these salutary results.*

Introduction: The standard setting infrastructure of today includes numerous differentiated but interconnected pieces. At the global level, it includes well-established standard setting organizations, each with its variously narrow (e.g., telecommunications or food) or broad (just about everything else) domain of operation, trade agreements that impose standards-related obligations, and mechanisms for resolving trade disputes based upon violations of those rules.

At the national level, there exists a diverse range of approaches and institutions, from the sector-specific, nationally accredited standards development organizations found in the United States, to the government coordinated efforts of countries such as Germany and China. But regardless of the model, each of these nations is entitled to representation in the major global institutions, such as the [International Organization for Standardization](#) (ISO), founded in 1947, the [International Electrotechnical Commission](#) (IEC), founded in 1906, the [International Telecommunication Union](#) (ITU), which traces its origins to 1865 and now operates

under the aegis of the United Nations, and the [Codex Alimentarius](#), founded in 1963 by two United Nations agencies to develop food standards.

While in some cases national participation in these global bodies is at the government level (as with the ITU) and in others via whatever public or private sector organization has become recognized internationally as the representative of a nation (as with ISO), the structure is hierarchical and democratic, and in many ways the processes are similar.

In consequence, this long-evolving structure has achieved great legitimacy. Those standards that are finally adopted by the global bodies are often preferentially selected for procurement use, especially by governments (as with the ISO and IEC), and even become the basis for international agreements (as with the radio frequencies set by the ITU).

But in addition to this orderly and symmetrical infrastructure a second standard setting regime has evolved over the last twenty years, which operates along similar but not always identical process rules, and which largely addresses the information and communications technology (ICT) sector. These organizations began to be formed in the mid 1980s due to the failure of the existing standards infrastructure to meet the perceived needs of the information technology (IT) industry. Most of the resulting organizations seek to set standards for global adoption, although some address national or regional needs. Organizations of this type, usually referred to as fora, alliances, SIGS (for "special interest groups"), or most frequently, consortia, now number in the [many hundreds](#).

While most such organizations (I will use the word "consortia" to refer to all of them) were initially formed to achieve narrow goals, or even to develop and maintain a single standard, many now cover technical domains that are very wide, and may host fifty or more working groups at any point in time. These consortia have become as well-respected and institutionalized as their accredited peers, which in some cases have lost influence and standards market share to these new competitors. In the case of the IT industry in particular, consortia have become the venue of choice for the development of the majority of new standards.

Over time, a degree of formal and informal integration has evolved between the traditional infrastructure and this new, less structured population of non-accredited organizations. At the informal level, both consortia and accredited organizations establish liaison relationships with those organizations that have similar or overlapping missions with little regard to the nature of these neighbors. And on the formal level, some traditional global organizations have established mechanisms whereby a consortium may introduce one of its standards for consideration and approval. In so doing, the consortium may achieve a degree of stature for a standard that can lead to broader uptake, in particular by government users.

While helpful, these bridges provide an incomplete solution for the needs of the ITC industry, and indeed for the achievement of certain international trade goals and matters of social equity for developing nations. Moreover, because there is no accrediting process for consortia, there is no easy way to tell (for example) what influence may have been brought to bear upon the creation of a given standard, or

how much protection the intellectual property rights policy (IPR) of the organization that created it may offer against later unpleasant surprises. In this article, I will explore these areas of deficiency, and suggest new mechanisms that could provide the pieces to complete the evolution of a fully-functional, global, consortium-based standards development infrastructure.

I Issues and Opportunities

As can be inferred from the very brief historical and structural overview above, there are some elements of standards development that are generic, and others that are sufficiently sector-specific to generate the need for independent organizations. At the micro level, this generates roughly similar peer organizations that differ primarily in the specific industry niche that they serve. At the macro level, there are sufficient differences between the realities of certain major industrial groupings (food, telecommunications, and manufacturing) that several, rather than one global organization exist, although this is partly as a result of historical forces as well.

That the IT industry should have forked off from a system that was already highly evolved before the computer industry became well launched is therefore not surprising, if only because the speed of innovation and the lifespan of technology generations is far shorter in IT than in farm machinery, abrasives and plumbing fixtures. Moreover, while globalization is now profoundly affecting all areas of industry, the need for universal adoption of ITC standards continues to outstrip the need for single-solutions in many other industries, in part due to the advent of the Internet and the Web, but also because of the degree to which interoperability standards can accelerate and expand opportunity.

Regardless of whether the causes for the original schism remain prevalent today (many would say that the speed of standards development within both accredited organizations and consortia, for example, is now roughly equal), it seems highly unlikely that any reunion of the two systems will occur, or that the vendors that are the major instigators of new standards projects will suddenly decide to preferentially bring their work to accredited organizations rather than consortia. Nor are they likely to seek accredited status within the traditional system for the new consortia that they create.

There are several reasons for this final conclusion: first, there are now hundreds of consortia with global membership already in existence that offer a one-step path to global implementation. Any perceived affiliation with a single country (e.g., as a result of becoming accredited by a national body) would undercut the perception of geographic impartiality that such a goal demands. Many of these organizations, such as the World Wide Web Consortium (W3C), Organization for the Advancement of Structured Information Standards (OASIS) and Open Geospatial Consortium (OGC) are well staffed, well funded, well respected, and expert in their respective domain areas. Moreover, consortia have a greater freedom in setting their processes and policies relating to intellectual property rights (IPR) than do organizations that are accredited by (for example) the American National Standards Institute (ANSI).

For all these reasons and more, it makes sense for consortia to continue to evolve in such a way as to optimize their value to the ITC sector, and for the organizations formed to serve the needs of more traditional industries not to strain their own processes and policies to serve so broad a range of industries as to serve none of them well. The result is that the ITC industry needs to continue to follow its own way, and to complete the evolution of its own stand alone infrastructure in any remaining ways necessary.

Completing the build out of the consortium-based standards development infrastructure would permit a number of current problems to be addressed, as well as provide solutions for concerns that no existing standard structure, accredited or otherwise, is currently equipped to offer, and I will discuss these issues next.

Issues: The ITC world is characterized by dynamism of many types. Consequently, the demands and expectations that are placed upon the standards development infrastructure change over time, and often rapidly. The consortium infrastructure has already adapted to this reality in many ways, including by accommodating a wide range of membership, governance and financial structures and by creating "metaconsortia" that create not standards, but profiles of standards that can address complex market demands (instantiated in the form of "business cases") that cannot be met by any single standard setting body. But new issues continue to arise, including the following:

- **"Openness:"** The traditional world of standards development has evolved a detailed process and rule set that is intended to accomplish a number of meritorious goals, one of which is to attempt to ensure that the interests of all stakeholders are identified and met. The result is a unitary definition of "openness" that is well suited for the originally intended use, but which is proving to be too inflexible to meet the needs of the ICT world. For example, new industry methodologies, such as open source development, are based upon very different, merit-based, fully transparent models that do not always welcome non-technical input.
- **Credibility:** While consortia have the benefit of flexibility, they also have the burden of establishing their credentials as truly open organizations, due to the absence of any outside accrediting authority to vouch for their processes and policies. At the same time, ISO/IEC Joint Technical Committee 1 (JTC1), the main body for the adoption of IT standards for both ISO and IEC, has been as willing to accept as Publicly Available Standards, or through a similar program called the Fast Track process, standards that have been developed by all types of processes, from very accessible and open consortia with quite large memberships, such as OASIS, to others, such as ECMA, that have much smaller and less diverse memberships, and rules that permit existing members to vote on whether or not to accept new vendors into full voting membership, to single-vendor developed standards, such as Adobe's Portable Document Format, that may or may not have been the subject of a consortium vetting process at all. Once these specifications are accepted by JTC1, the obligation of the National Bodies of eligible members is to work towards adoption, regardless of the degree of industry input that went into the original creation of the specification in question. The resulting standards, if finally approved, all have equal approval status in the

marketplace, regardless of their origins, because the scope of review is purely technical.

- **Process:** The current progress of DIS 29500, a document format standard introduced by ECMA to JTC1 via the Fast Track process and based upon Microsoft's OOXML specification, has been the subject of many complaints of process abuse in National Bodies throughout the world. These recent events highlight weaknesses in trust-based processes that are not usually subjected to such pressure. At the same time, the publicity that these events have attracted has also drawn attention to significant variations in the rules employed by National Bodies around the world, demonstrating that concepts of openness vary considerably. Many National Bodies, for example, do not make public the deliberations or votes of their non-elected members, thus denying citizens the ability to know how or why their nation voted as it did. Once again, the final result will be binary: either a specification will be approved or it will not.
- **IPR:** The traditional standards development model strikes a balance between the rights of patent owners, on the one hand, and standards implementers and end users, on the other. This balance generally disfavors, but does not prohibit, the inclusion of technology that, if implemented, would infringe upon patents, so long as the IPR is available to would be implementers on "reasonable and non-discriminatory," or RAND, terms. The result is that sometimes implementers must pay royalties or other fees to patent owners. Many participants in the ICT industry are becoming less tolerant of the need not only to pay patent fees, but to enter into multiple license agreements as well in order to implement a standard. Indeed, some ITC products, such as mobile devices, now implement so many different technologies and capabilities (and therefore standards) that the theoretical economic burden of obtaining necessary license rights, if most such standards bore royalty obligations, would exceed the value to end users of the device many times over. While patent pools alleviate this burden in some cases, the creation and operation of such tools adds complexity, and the creation of a pool does not invariably result in the capture of all patent claims. Finally, some technology areas, such as the Web, have evolved strong royalty-free cultures that have been instrumental in achieving their explosive success. Similarly, open source software under most commonly utilized licenses could not implement many RAND standards at all. Consortia such as the W3C, OASIS and others have amended their IPR policies in such a way as to ensure, to the greatest extent possible, the creation of royalty free standards that can be implemented in open source software, either in every case (as with the W3C) or on an elective working group by working group basis (as with OASIS). Currently, a similar policy would violate the accrediting rules of ANSI.
- **Disclosure:** A related problem involves when, and to what degree of detail, the existence of patent claims and related licensing terms must be disclosed during the standard setting process. Some multinational IT companies have advocated that standards organizations should be free to permit or require early and detailed disclosure of patent claims and terms, in order to allow organizations to approve standards that can be implemented with the least

bureaucratic and economic cost. In pursuit of that goal, they have urged antitrust regulators in the U.S. (with success) to clarify the pro-competitive potential for such "ex ante" disclosure, and also lobbied IT standards organizations (once more with success), such as VITA and IEEE, to amend their policies to require or permit such disclosure, respectively.

- **Free trade:** Currently, most ITC patents are owned by major, multinational corporations headquartered in the developed world, while most ITC products are manufactured in developing countries that are patent-poor. Many such products are built to multiple standards, some of which require manufacturers to make patent license payments, which can be substantial. The result is that the vendors based in developed nations reap large profit margins on such products, while those in developing nations realize very small ones. A predictable result is that China is increasingly creating "home grown" standards that reverse the patent payment stream. A final and equally predictable result is the existence of trade disputes over such standards, based upon the Agreement on Technical Barriers to Trade under the WTO. Such disputes can be expected to increase and sustain until vendors based in emerging nations become as adept at participating in standards development activities as their competitors in developed nations, and until their patent portfolios swell sufficiently in size to give them equal negotiating power.
- **Other criteria:** While some standards can be created expressly to achieve societal goals, such as energy efficiency, the process of global standards approval itself is most often values neutral.¹ As a result, while individual organizations may create programs to certify that products are energy efficient, or that the economics of coffee production have been fair at the grower level, or that the wood in a piece of furniture has been harvested on a sustainable basis, additional areas of concern such as these are not currently addressed within the existing global standards bodies in a systemic fashion.

Opportunities: At the same time, there are real opportunities that could be taken advantage of if a more multi-faceted global standards infrastructure were to be put in place. These favorable results could be achieved through free market, rather than regulatory, forces, using the very substantial power of government procurement, which has the ability to influence the standards-based behavior of major ITC vendors.²

This could be achieved through the following devices:

- **Process improvement:** It is not uncommon today for there to be more than one globally-approved standard to address the same basic task. While the needless duplication of standards is an issue in itself, the situation is not likely to be resolved at any time in the near future. Moreover, while standards may overlap for some purposes, there may be differences in market needs and applications that make one alternative uniquely suited for

¹ There are exceptions. In recent years, ISO has undertaken the creation of standards for corporate responsibility.

² A current demonstration of this dynamic is the submission of Microsoft of its OOXML format to ECMA, and then to ISO/IEC JTC1, after OASIS secured adoption of its OpenDocument Format by the same body.

some purposes and not others, further increasing the incidence of duplication.³ The result is that an implementer may have a choice between two globally approved standards, and no policy reason or statutory imperative to choose one over the other.

At the same time, one of the two alternatives may have been the product of a very open industry collaborative effort, while the other may be essentially a re-packaged, single-vendor specification contributed by a company with a monopoly position in the relevant market, and this power may be perpetuated through wide uptake of the standard. If an "openness rating system" existed, a government would have an incentive to adopt a policy that directed its agencies to preferentially choose products based upon the standard that was created through the more open process. The result would be that vendors would have a greater incentive to direct their standards efforts to organizations that received minimum grades, and the overall process quality of widely used standards would increase.

- ***Social criteria:*** Currently consortium standards are almost uniformly values-neutral, because with rare exceptions (such as the W3C), consortia do not include any degree of social consciousness in their charters. Since there is no way for a given organization to demonstrate that it meets social goals, there is less incentive to craft standards that achieve other than technical objectives. With both the reality as well as the intractability of global warming now established, it is clear that there will be no single solution, magic bullet approach to slowing down, let alone avoiding a significant degree of climate change. As a result, a multiplicity of solutions will be needed, one of which will be energy efficiency, both in production of products as well as in the design of products themselves. A readily available set of standards, conjoined with an easily satisfied conformity testing process and clear purchasing preferences on the part of government and other purchasers would once again provide both the tools, as well as the market incentives, for creating more environmentally responsible standards where there is a technical opportunity to do so.
- ***IPR approach:*** A clear ranking of IPR process and rules alternatives, and a means of accrediting compliance with these options, would enable governments to steer the market towards standards that were not only available on a RAND basis, but free as well. This would have the effect of lowering the prospect for trade disputes, particularly if the WTO were to amend the Agreement on Technical Barriers to Trade to require international use of only standards that were royalty-free. Consortia that adopted rules that were highly intolerant of other than FRAND (free, as well as reasonable and non-discriminatory) patent assertions should therefore attract the participation of vendors from developing countries, because the standards issued by such organizations could be implemented on a more level playing field than those created by royalty-tolerant organizations.

³ Indeed, when new technologies are evolving rapidly and product cycles are short, it can be useful for a standards "competition" to result, allowing both products and standards to evolve in parallel, rather than in sequence, with market processes determining which standard "wins."

- **Neutrality and representation:** Development processes can be lenient or strict, with the latter incurring costs in bureaucracy, time and effort. A strict process would be unduly burdensome in most cases, but could be valuable in others, to ensure vendor neutrality and the avoidance of undue influence. Similarly, those involved in a process can be self-selecting and narrow, or recruited and broadly representative. Currently there is a bias towards pursuing some standards efforts through accredited bodies due to their commitment to participation by all types of stakeholders.⁴ However, even for these organizations, actual breadth of responsibility may be low, due to lack of interest on the part of (for example) end users, and the burdens of participation. Nonetheless, with the advent of the Web, there is the opportunity for much greater involvement on at least a comment basis by a broader range of stakeholders, and those consortia that put processes and mechanisms in place to enable such input could be recognized, giving them a greater ability to compete for standards work in areas such as public safety and public health.

II Creating the Infrastructure

As can be seen from the above, there is a wide range of practices and results that could potentially be impacted by the exercise of government purchasing, as compared to regulatory action. When socially conscious consumer purchasing is added into the mix in areas such as energy conservation, the cumulative effect on standards development practices could be substantial – assuming that there was an infrastructure in place that provided standards by which consortia could be judged, and a means to audit compliance with those standards. Such a structure might be constructed as follows:

A new "Big I": A new global organization would be needed that would be oriented towards consortia, but available to all interested standard settings organizations. It would have an appropriate name, such as the International Standardization Foundation (ISF). The ISF would have a balanced governing council of relevant stakeholders: governments, vendors and NGOs, among others, and might have additional Advisory Boards and committees made up of individual categories of stakeholders. It would perform and host a number of functions:

- **Standard setting:** The ISF would host committees formed to create specific standards within its area of competence, and maintain those standards and committees on an ongoing basis.
- **Charter accrediting bodies:** The ISF would develop criteria for accrediting bodies, and charter suitable organizations to perform that function on a regional basis.
- **Registry:** The ISF would maintain a master registry of the certification status of audited organizations.

⁴ For example, the U.S. Congress chartered ANSI, and not one of the many existing IT consortia, to manage the process of creating new standards for electronic health records, in part due to the importance of such work to ordinary citizens, and the desire to ensure that those who would be affected by the deliverables of this initiative would have an opportunity to be heard.

- **Liaison:** The ISF would maintain appropriate liaison relationships with existing global standards bodies, UN agencies, and other organizations relevant to its mission.
- **Education:** The ISF would host committees focusing on other relevant initiatives, such as best practices.
- **Advocacy:** The ISF could, if desired by its members, take public positions on issues such as patent reform, and draft and distribute white papers and sponsored research.
- **Branding:** The ISF would own and license certification marks in support of its mission. Standards organizations would be entitled to use these logos to indicate their certification, and products compliant with standards created under certified programs could also bear logos where advantageous (e.g., in the case of energy efficiency).
- **Communication:** Unlike accredited organizations, consortia do not have a forum in which to gather to discuss matters of common concern, trade information and best practices, and receive training.

New standards: ISF committees would create both institutional and process standards, including the following:

- **Openness:** Standards to assess processes regarding eligibility, reasonability of membership costs by type of stakeholder for technical voting membership, transparency of process, and similar practices and policy issues.
- **IPR:** Alternate standards that may be chosen depending upon the goals of the organization, differentiating on key features such as *ex ante* disclosure, FRAND vs. RAND, and compatibility with open source licenses.
- **Social criteria:** Energy efficiency, carbon output, sustainability, FRAND, etc.

Accrediting bodies: Accrediting organizations would be created (or existing organizations accredited) to audit compliance with the new standards. In order to avoid the appearance of any bias towards a single country or region, there should at minimum be three accrediting organization: one in North America, one in Europe, and one in Asia. Already existing organizations (e.g., ANSI in North America) that already possess auditing expertise would be eligible to become accredited to fulfill this role.

III Desired Outcomes

If such a system were in place today and governments demonstrated a procurement preference for standards produced by well-rated organizations, what positive changes might we expect to see?

Existing organizations: Once a third party means of differentiating organizations was available, existing well-run, open organizations willing to make minor changes

to their processes would logically seek to gain recognition of their superior status. Those that were poorly run, maintained closed membership policies, or used IPR policies likely to lead to unpredictable results would be motivated to choose between revamping their operations or see their reputations, membership, and standards uptake suffer accordingly.

New organizations: New organizations as they were formed would have an incentive to structure themselves based upon the best practices and certification guidelines issued by the ISF. Potential members would be able to make more informed decisions about whether or not to join a new organization, depending upon whether it had, or had not, formed itself with an eye towards achieving certification.

Developing countries: Vendors in developing countries would logically gravitate towards those organizations that were FRAND and "open" certified, because the standards developed by such organizations would be more likely to offer a level playing field. Governments of developing countries would be less likely to launch "home grown" standards efforts in competition with global standards, where new efforts were launched in FRAND/Open organizations, rather than RAND organizations.

Interoperation with other "I"s: Certification by the ISF would complement, rather than compete, with preexisting standards organizations, because the ISF would certify *standards organizations*, and not *standards*. The major difference that existing organizations might see would be that the progress of standards from certified organizations through their own approval processes would be smoother and swifter, as a result of their higher quality and lower likelihood of undue influence by a single vendor or group of vendors.

Government procurement: Interested governments would have a richer, multidimensional set of criteria to employ in order to motivate, rather than regulate, standards development, permitting governments (for example) to promote or facilitate openness, open source software development, energy efficiency, sustainability, free trade, and other worthy goals.

Social impact: Vendors would have new incentives to create socially beneficial standards, and consumers would have new ways to exercise social awareness by purchasing certification-branded products.

IV Summary

ICT products and services, and therefore ICT standards, are becoming increasingly essential to every facet of modern life, from health and safety to the operations of government, education, commerce, the financial markets and much more. In consequence, optimizing the infrastructure that creates these standards should be a matter of common concern. But without standards to define improvements optimization would be difficult. Similarly, without ways to measure progress and market incentives to reward it, there will be no motivation for standards organizations and their vendor members to upgrade their processes, or to align their goals with those of society.

Today there is no mechanism available to measure traditional standards organizations in areas such as openness in other than a binary fashion, and in the case of consortia, there are no mechanisms or metrics of any kind to either measure or motivate their processes, policies or standards, other than to the extent that they can offer their final standards for approval by organizations such as ISO and the IEC.

Notwithstanding this lack of tools, the evolutionary experience of consortia over the last twenty years has been remarkable, not only when measured by the number of organizations founded and standards created and implemented, but also by the creativity displayed in devising new structures and solutions.

While it would be counterproductive to inhibit future evolution and innovation, it would be beneficial to build vertically upon the horizontal structure already in existence in order to maximize the value that consortia continue to create. The same structure developed to serve consortium needs could be of equal utility to traditional standards organizations seeking to differentiate themselves and the standards they create. Less directly, a new "I" could provide a healthy dose of competition to existing global standards organizations, which have had little incentive to innovate or streamline their operations for some time.

Creating a new global organization and accrediting a handful of existing standards bodies to serve as regional accrediting organizations would be neither a difficult nor an expensive task, and the ongoing maintenance of such a body would not be burdensome. As with most standards organizations, the costs could be borne primarily by the vendors that would make the greatest use of its services, and that could hope to gain increased sales of goods and services benefited by standards that were more widely and swiftly adopted.

Viewed from a historical perspective that takes into account both the evolution of the existing global standards bodies as well as the explosive phenomenon of consortium formation, it is clear that a new global body could be useful, and perhaps has been needed for some time. It is to be hoped that an effort to assess interest in the formation of such an organization may be mounted sooner rather than later, for the benefit of end-users, vendors, and indeed society at large.

Copyright 2007 Andrew Updegrove


Sign up for a [free subscription](http://www.consortiuminfo.org/subscribe/2.php?addentry=1) to **Standards Today** at

At <http://www.consortiuminfo.org/subscribe/2.php?addentry=1>

OOXML Payback Time as Global Standards Work in SC 34 "Grinds to a Halt"

Andrew Updegrove

Date: October 16 2007
Views: 18,615

One of the more egregious behaviors observed in the recent global vote on OOXML was the sudden and last minute surge to join not only various National Bodies just before they voted on OOXML, but also the relevant committee of ISO/IEC for the same purpose. At the latter level, not one but two unusual membership changes occurred. During the voting period, more and more countries joined SC 34, the committee within ISO/IEC's Joint Technical Committee 1 (JTC1) that addresses document formats, at the Observer (O) level. Then, in the final weeks and days before the voting closed, many of these new members as well as some longer term members suddenly upgraded their status to Principal (P) membership, thereby gaining greater influence in the final vote under the complex rules under which the committee operates (those rules are described in detail [here](#)). 

SC 34 is one of the more important and active committees in JTC1, and has a constant stream of standards under active consideration and balloting. In anticipation of the OOXML vote, its membership surged – with 23 new National Body members, and the number of P members spiking by 11. When almost all of the new members voted for adoption (most of those countries that were long term P members voted against adoption, with comments), many felt that the standard setting process had been abused.

Unfortunately, the damage has not stopped there: since the OOXML ballot closed on September 2, not a single ballot has received enough votes to count in this important committee. Why? Because the last minute arrivals to SC 34 are not bothering to vote.

The resulting gridlock of this committee was as predictable as it is unfortunate. The extraordinarily large number of upgrades in the final months, and particularly in the final days, therefore seemed attributable not to an abiding investment and interest in the work of SC 34, but in the outcome of a single standards vote. That conclusion is now certain, given the voting performance of the upgraded members since they cast their votes on OOXML.

The specific problem arises from the rules under which JTC1 committees operate, which are intended to ensure that specifications do not become approved unless there is sufficient interest in them, as well as adequate review, to merit issuance as global standards. One of these rules is that at every balloting stage, at least 50% of the P members eligible to vote must in fact return a ballot. Even this requirement,

however, does not set a high bar, because a member is permitted to return a ballot of "Abstain," and inadequate review to form an opinion is accepted as a valid reason to abstain. As a result, returning a vote of "abstain" constitutes at best only the most minimal level of good citizenship.

Sadly, even that level of responsibility has been lacking in the newly upgraded members, whose numbers have dramatically raised the number of P members required to vote in order to advance a standard towards final approval. While I'm told that 90% of committee votes have achieved the necessary 50% return in the past, the current numbers tell a far different story: the three most recent ballots ([SC 34 N 870](#), [SC 34 872](#) and [SC 34 N 874](#)) have all failed because of P member apathy. As I read the tallies at those links, only one recent P member responded to a single ballot, even after some votes had been reissued for a second or even a third time. Had it not been necessary to include the new P members in the calculations, the second two votes would have passed (the first related to establishing a liaison relationship with another organization, and not a standard).

The result is that a very important committee has, in the words of its Secretariat Manager in frequent pleas to the non-responsive members, "ground to a halt." The impact is significant, since this is the committee that controls standards such as RELAX NG (ISO/IEC 19757 Part 2), Schematron (ISO/IEC 19757 Part 3) and Topic Maps (ISO/IEC 13250) – not to mention ODF (if will be interesting to see if participation increases when Microsoft's PDF-competing XML Paper Specification advances to SC 34 from Ecma, where it is currently in preparation). It is also a committee that attracts top talent on behalf of its traditional members, such as Ken Holman, Jon Bosak, Murata Makoto, Steve Pepper, Patrick Durusau, Francis Cave, Martin Bryan, and Rick Jelliffe, to name only a few.

It's a sad story, and one that at present does not have a happy ending in sight. For now, those that want to advance the cause can only grow increasingly frustrated. If you want to sample the depth of that frustration, read the excerpts reproduced below from Secretariat Manager Ken Holman's plaintive weekly memos. And if you know anyone involved in standard setting in Malta, Cyprus, Lebanon, Cote d'Ivoire (and so on), do everyone a favor and ask them to consider either voting, or dropping back to Observer membership.

* * * * *

8/26/2007

This week I am excited to report an additional five (count 'em!) participating memberships in our committee, adding Malta, Venezuela, Pakistan, Poland and Egypt to our ranks. We also have a new observer membership from Indonesia. We welcome all of these new members to our committee and look forward to their contributions.

Speaking of contributions, please remember that participating members have an obligation to participate in **all** ballots for the subcommittee and not just in some of the ballots. There was a disappointing response to the last ballot, and so far a disappointing response to the ballot that is due in the week ahead.

9/7/2007

This week we welcome six new P-members to JTC 1/SC 34, three of them new: Lebanon, New Zealand and South Africa, and three of them as transfers from O-membership: Romania, Sri Lanka and Chile. We look forward to their contribution to our committee.

Regarding contributions, last week I tried to remind all participating members that you have an obligation to participate in **all** ballots for the subcommittee and not just in some of the ballots you might be interested in. My comments went unheeded and as a result the outstanding letter ballot 870 regarding Category A Liaison membership for the XML Guild failed due to a lack of response.

Directives 9.1.10 explicitly indicates "if more than 50% of the P-members have not voted, the vote will have failed." Until we get 50% of **all** P-members responding to ballots, the work of SC 34 will grind to a halt. Please consider your obligations of P-membership.

In the next few days I will re-issue the liaison ballot, this time for 1 month. This is the third time this question has been put forward to the membership of SC 34

9/18/2007

In the past week we have had two new ballots issued from WG 3, and a (second!!) reissue of the liaison request from the XML Guild. Until we get sufficient response on committee ballots, the work of SC 34 will grind to a halt and all insufficiently-responded ballots will have to be reissued. This is a critically important issue to our committee and I commend all P-members to assess their responsibility to respond, and to consider changing their membership to Observer status if they do not plan on participating in the work of our committee. Please remember that abstention is a valid vote and will help the committee continue its progress.

9/30/2007

You will see at that link that (as of Sunday evening) only 7 member bodies of our 38 participating members have actually submitted a ballot response....Since the recent influx of new P-members to SC 34, not a single ballot has been able to be processed...

It is critically important that P-members remember their obligations: if we do not get 20 responses per ballot, the work of SC 34 will grind to a halt....If you do not plan to participate in the work of SC 34, please consider changing your membership to Observer status. For those national bodies that joined in the interests of DIS 29500 Ecma 376 OOXML, remember that P-member/O-member status in SC 34 has no effect on attendance and voting at the Ballot Resolution Meeting being held in February. If this is your only interest, it would serve SC 34 well to change your membership status to O-member.

10/7/007

Regarding the two ballots that closed in the last week, even with all of the reminders I sent out we still fell short of the required number of ballot responses for either ballot to have their results considered. ...Since the recent influx of new P-members to our committee, not a single ballot has had a sufficient number of responses to be considered.

For further blog entries on ODF and OOXML, click [here](#)

Bookmark the Standards Blog at <http://www.consortiuminfo.org/newsblog/> or set up an RSS feed at: <http://www.consortiuminfo.org/rss/>

Copyright 2007 Andrew Updegrove

Sign up for a [free subscription](#) to **Standards Today** at

<http://www.consortiuminfo.org/subscribe/2.php?addentry=1>

CONSIDER THIS:

#51 On Guilt or Innocence, and the Space Between

Andrew Updegrave

The Western world prides itself on its secular system of justice, rightly pointing to the promise of equal, humane justice for all as a hallmark of an enlightened society. And while individual nations, states or courts may from time to time fall short of their ideals, those that are subject to the rule of law never lose sight of their constitutionally guaranteed rights, nor differ much on the essential details of what equal protection under the law should mean.

At the very heart of the concept of justice is the presumption of innocence until proven guilty. And who could fail to be comforted by the pristine, irreducible certainty that such a binary concept offers? Either a prosecutor meets, or does not meet, the legal standards established to define guilt: "beyond a reasonable doubt," in the case of a criminal charge, or "by a preponderance of the evidence," in the case of a civil suit. If the evidence as evaluated by a jury of one's peers, does not meet the appropriate standard, then one is, as a matter of law, declared innocent.

And yet... Is it possible that the application of such a time-honored standard could harbor within its few words a danger to society itself? As a matter of fact, the answer is yes, although the devil lurks in the implementational details, and not within the rule itself.

Consider this: what happens when someone is arraigned, and must stand before a judge accused of a crime? The answer is that the accused must enter a plea, and that plea is similarly binary: guilt, or innocence. There is no third choice, because after the district attorney has determined the charge, the law does not recognize any space between.

And there's the rub, for how many connections between motive and action in life can be judged in so black and white a fashion, let alone the facts and emotions that may lie behind what may be a crime of passion? Unlike virtually all other situations where one is called upon the carpet, whether by a parent, a spouse, a supervisor or a friend, it is rarely wise to use the word "but" in court followed by a rendition of extenuating circumstances. Why? Because extenuating circumstances are usually only relevant as between levels of punishment for certain crimes, such as involuntary manslaughter and manslaughter.

True, extenuating circumstances may be introduced in the sentencing phase, at least in those situations where the judge has discretion to decide the severity of the sentence and is not bound by mandatory sentencing rules. But since guilt or innocence is determined before sentencing becomes necessary, there is no opportunity to first argue that, notwithstanding admitted facts, one should not be found to be guilty at all, by virtue of extenuating circumstances. Instead, the accused invariably plays it safe, and pleads innocence rather than guilt.

This gives rise to a number of unintended consequences, the most obvious of which is that someone that knows that she is guilty must nonetheless plead innocent in self-defense, because the risks of pleading guilty and not having the extenuating circumstances taken fully into account are too high. Worse yet, those that sit in court, or read about the case in the press, are treated to the spectacle of someone that may be clearly guilty being defended by an attorney who is demonstrably seeking to portray the facts as other than all suspect them to be, because that offers the only alternative to automatic conviction.

When the attorney succeeds in this endeavor, an injustice of a different type occurs – a defendant that actually committed a crime escapes punishment entirely. But regardless of the outcome, when the defendant believes that the charge does not match the reality, she is left with a system that offers no middle ground other than a plea bargain, which places great power in the hands of the district attorney, while still leaving the defendant vulnerable to the judge that must accept the plea, and who retains the freedom to impose a stricter sentence than the DA recommends.

The result is a travesty of justice that plays out in courtrooms throughout the country every day – defendants that might actually plead guilty to a lesser charge than the prosecutor is willing to accept, or wish that their attorney could present the full facts and circumstances as they are, but cannot afford to take the chance.

The system also places both defendant and defense attorney in a hopeless position: the defendant is entitled to tell his attorney anything in confidence, but under the rules of ethics the attorney is not permitted to plead to a judge that her client is guilty if she knows her to be guilty in fact. The result? Either the client must lie to her attorney about her guilt, or the attorney must either lie to the judge, or ask to be relieved from the case. The binary system once again offers no middle ground.

And, of course, even the jury is drawn into the same morass, because it is trapped by the strict definition of the elements of the crime as well. Faced with a compelling defendant and circumstances that the jurors to believe in their heart of hearts that justice would only truly be served by an acquittal, they are faced with an illogical and seemingly unfair choice: to convict someone who their common sense tells them is innocent, or to acquit a defendant that the law tells them is guilty.

These types of paradox can only be damaging to the public perception of the rule of law. A system that starts on the highest moral ground possible finds its ethics undermined, renders cynical those who are subject to the system, and forces those who agree to defend the guilty, often for free, to compromise their own integrity by participating in a charade where they are forced to say one thing in court, even if they believe another in their hearts.

In a better world, perhaps there would be not just a defense attorney to guard the rights of the accused and a prosecutor to protect the interests of society, but a third advocate to defend the integrity of the system itself. That person, acting as a mediator, would hear both the accused and the prosecutor and would be bound to maintain the disclosures of each in confidence from the other, but could use that knowledge to negotiate with defendant and DA alike in order to seek to arrange a

plea and a proposed sentence that truly reflected the circumstances as well as the crime.

Copyright 2007 Andrew Updegrove

Read more ***Consider This...*** entries at: <http://www.consortiuminfo.org/blog/>

Sign up for a [free subscription](#) to ***Standards Today*** at
<http://www.consortiuminfo.org/subscribe/2.php?addentry=1>

MONDAY WITNESS:

Introducing: "The Monday Witness"

Andrew Updegrove

Date: November 05 2007

Views: 771

Regular readers will know that my interest in standards is not limited to those that help make information and communications technology work. Over the years I've written about standards created to address concerns more directly relevant to the human condition, such as [human rights](#) standards, [social responsibility](#) standards, and [much more](#). The world being what it is, I think that it's time I did so on a regular basis, and that's what this blog entry is all about.

At the heart of many of my past non-technical writings lies a concern over whether the standards of conduct (personal, institutional, international) that we encounter in the modern world are adequate to protect ourselves, our children and our future. All too clearly, the reality too often is that they are not. Our environment continues to degrade, our governments often act in ways that we do not support, and we feel that we are powerless to make a difference.

My own political consciousness was formed by the Viet Nam war and the civil rights movement, and the social protests that erupted in connection with those events. It was in many ways a messy time, but one that was inspiring as well. Thousands, and eventually millions, of citizens made their opinions known through protests and other public actions, sometimes at the expense of a night in jail, and sometimes at the cost of something worse. Their efforts changed the future of our country in ways both immediate and long lasting.

Unfortunately, one thing that did not prove to be long lasting was this new tradition of public activism. Whether due to complacency, a greater sense of disengagement, or simply increasing social discomfort over rocking the boat, the voices of protest have continued to diminish in number, even in the face of events that in times past would have brought multitudes into the streets.

One result, in my view, is that our government is less responsive to public opinion, even when polls show that the electorate no longer supports a failed policy. Another seems to be a greater and greater schism between the liberal and conservative media. When Americans could receive only three channels of television, those channels could not afford to alienate either the right or the left. But with the recent explosion of media channels – cable, talk radio and on line – has come the opportunity to serve niche markets of all kinds. Even many of the editorial columnists of the *New York Times* have abandoned any pretense of neutral presentation in favor of left-leaning stridency. The *Wall Street Journal* reciprocates in kind from the right.

In consequence, more and more people seek, and can easily find, news that tells them what they want to hear, rather than serious, neutral analysis intended to truly get to the bottom of things.

The result seems to be that to the extent that people care at all, they care about being fed what they want to hear. Worse, people in everyday life increasingly shy away from talking about politics and current events at all, because the risk of giving offense has increased, and the chance of having a productive give and take has plummeted.

For me, this has been a cause of increasing frustration in the face of the ongoing horror of the Iraq war, ineffectual efforts to address global warming, and general avoidance of the issues of the day.

What can anyone do, in such a situation? Yes, there are organizations to which you can send checks, tiny demonstrations to join in that go unnoticed, elections in which to cast votes, and very, very occasionally, someone to vote for that might have some measure of real courage and integrity. Little enough, it would seem.

Little or not, I strongly believe that those of us that live in effective democracies must take responsibility for what our governments do in our names, and use whatever reasonable tools we have at our disposal to make a difference. Even if all we can do is to bear public witness to what we believe is right.

In my case, this blog is the tool that I control that can project my voice the farthest. And unlike so many media channels today, its audience is not self-selected to be conservative or liberal politically. What this tells me is that I have the opportunity, and perhaps the responsibility, to use this platform when appropriate not to tell people what to think, but to raise questions that need to be thought about, and encourage others to do the same.

Accordingly, this is the first in a series of pieces that you can expect to appear on Mondays on an irregular basis, each introduced with the name "The Monday Witness." The topics will vary, but the common theme will be to highlight instances of action and inaction in the world today that violate widely held standards of human decency. Sadly, I won't be lacking for topics, and hopefully you'll react the way one reader did to a piece I posted a few weeks ago called [Words, Standards and Torture](#):

As a regular reader of your blog, I come to your site for news and informed opinion on standards.

Never the less, far from being put off by your post on torture, I thank you for that post. As one of the more shameful (and certainly more under-reported!) stories of this year it is good to see those with an audience writing about it.

If you choose to read what I write in this series, spend a moment thinking what you, too, might do in some small way to make it harder for all of us to shirk responsibility for what is done in our names. And by all means, share your comments on whatever I write.

If you're game, I'll see you here next Monday.

For further installments of The Monday Witness, click [here](#)

Bookmark the Standards Blog at <http://www.consortiuminfo.org/newsblog/> or set up an RSS feed at: <http://www.consortiuminfo.org/rss/>

Copyright 2007 Andrew Updegrove

Sign up for a [free subscription](#) to **Standards Today** at

<http://www.consortiuminfo.org/subscribe/2.php?addentry=1>

Words, Standards and Torture: What's in a Name?

Andrew Updegrove

Date: October 14 2007

Views: 3,076

Tor · ture *noun*: the act of causing great physical or mental pain in order to persuade someone to do something or to give information, or as an act of cruelty to a person or animal - [Cambridge Dictionaries Online](#)

For the purposes of this Convention, the term torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession,...or intimidating or coercing him or a third person,...when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. - [Part I, Article 1, Section 1, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)

On October 4, the *New York Times* [broke the story](#) that the U.S. Justice Department had issued secret legal opinions approving interrogation techniques such as simulated drowning; concluding that such practices did not meet the legal definition of torture. On October 7, the *Times* ran an editorial titled [On Torture and American Values](#). The piece read in part as follows:

Once upon a time, it was the United States that urged all nations to obey the letter and the spirit of international treaties and protect human rights and liberties. American leaders denounced secret prisons where people were held without charges, tortured and killed. And the people in much of the world, if not their governments, respected the United States for its values.

The Bush administration has dishonored that history and squandered that respect. As an article on this newspaper's front page last week laid out in disturbing detail, President Bush and his aides have not only condoned torture and abuse at secret prisons, but they have conducted a systematic campaign to mislead Congress, the American people and the world about those policies....

The White House could never acknowledge that. So its lawyers concocted documents that redefined "torture" to neatly exclude the things American jailers were doing and hid the papers from Congress and the American people. That allowed the White House to claim that it did not condone torture, and to stampede Congress into passing laws that shielded the

interrogators who abused prisoners, and the men who ordered them to do it, from any kind of legal accountability.

Why I am I writing about this topic in something called "The Standards Blog?"

Besides the obvious fact that every American must take personal responsibility for what the American government does in his or her name, there is this: perhaps the oldest standards of all are words. Most standards are, after all, otherwise arbitrary and meaningless things that become distinctive and valuable only because we agree upon what they are supposed to mean. There is nothing inherently significant about 60 watts as compared to 55, and 32 ounces of fluid has no greater cosmic significance than 31. Even the otherwise rational elements of the metric system are divided or derived from arbitrarily chosen physical coordinates, such as the distance from the poles to the equator.

Words, like weights and measures, also have meaning and value only to the extent that we share the same understanding of what they mean. When we depart from those commonly understood meanings, we fail to communicate effectively, either innocently to mutual disadvantage, or deliberately with the intent to deceive. And sometimes, we do worse.

When we play fast and loose with standards such as weights and measures (e.g., at a gas pump) or with the purity or composition of materials (as in manufacturing), we are likely to break the law. Laws, of course, are made up of words and not numbers. Some of those words are given definitions in the laws in which they appear. This is because breaking the law can, and should, have severe consequences, and words used in laws must therefore be used precisely and consistently.

In order for there to be laws capable of providing protection beyond the boundaries of a single country, the words used in laws must also be agreed upon internationally. But if, having reached such an agreement, individual nations can arbitrarily redefine the meaning of a word that is at the crux of a law, then the international system of law, and indeed the prospect of having any global system of laws at all, breaks down entirely.

The Twentieth Century bore brutal witness to what a world without common and enforceable laws, based upon a fundamental and inviolable sense of human dignity and human rights, can look like. Already, the Twenty-first Century is demonstrating an all-too great willingness to assume the same face. Must this sad start be the prelude to an unbroken future of more of the same?

If this century is not to be an unconscionable replay of the last, we must not only agree to agree – but also to continue to agree – upon those words upon which the global protection of human dignity and individual survival is based. No nation should be any more above the definition upon which a law is based, than above the law itself.

When words become part of international law, it should be a violation of international law to unilaterally reinterpret them. And when we allow our

government to engage in such behavior without speaking up, we become complicit in the same illegal behavior.

Late last year, I dedicated an issue of my eJournal to human rights standards. If you'd like to read more about the relationship between legal standards and the protection of human rights, you can find that issue [here](#).

For further installments of The Monday Witness, click [here](#)

Bookmark the Standards Blog at <http://www.consortiuminfo.org/newsblog/> or set up an RSS feed at: <http://www.consortiuminfo.org/rss/>

Copyright 2007 Andrew Updegrove

Sign up for a [free subscription](#) to **Standards Today** at

<http://www.consortiuminfo.org/subscribe/2.php?addentry=1>