

## TESTIMONY TO THE TEXAS LEGISLATURE

### **The Need to Recognize and Protect "Civil Information and Communications Technology Rights"**

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Thank you Mr. Chairman, and thank you to the members of your committee.

My name is Andy Updegrove, and I'm a lawyer that has represented over eighty non-profit organizations that develop and promote technical standards for areas such as computer software and hardware. Many of these standards are "interoperability standards." Standards of this type allow people like you and me to be able to choose between products from many different vendors, each competing with the others on price and extra features in an effort to get our business, whether we are buying light bulbs, cell phones or computer software.

Standards like these underlie everything that has to do with technology. For example, they make the Internet and the Web possible. The State's Web site could not serve the needs of Texas citizens without them – assuming that the State's CIO chooses the same standards that the citizens home computers use as well.

Today, we are moving rapidly into a world in which we do less and less face to face, or even over the telephone. Instead, we do more and more on line. Governments are moving aggressively in this direction as well, because they can provide more information to their citizens more quickly, conveniently and inexpensively for all concerned. And not using any paper at all.

In making this important and useful transition, however, we need to be aware that information and communications technology (ICT) can also limit our ability to interact with government, if we go about setting our systems up incorrectly. In fact, we need to take great care that our hard-won civil rights are not inadvertently compromised in the process. For example, if you could only use certain products to log on to a government site and download information or enter data, and could not afford those products, your right to interact with government would be diminished. If you were disabled and house-bound, it might almost be eliminated.

I believe that it is important that we recognize the concept of what I will refer to as "Civil ICT Rights" – rights such as freedom of speech, and freedom of association, that we increasingly exercise on line, rather than in person. I am happy to report to you that certain interoperability standards can play an essential

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role in guaranteeing our Civil ICT Rights. Not surprisingly, I call such standards "Civil ICT Standards." By adopting the right standards, the State can help ensure that any citizen, anytime, and from anywhere, can interact with her government electronically – even with many modern cell phones.

This is why legislators, and not simply state ICT professionals, need to think about standards. Civil ICT Standards are where policy and technology touch at the most intimate level. Much as a constitution or bill of rights establishes and balances the basic rights of an individual in civil society, standards codify the points where proprietary technologies touch each other, and where the passage of information is made possible – or not. Without such standards, only the products of the same vendor can reliably “talk” to each other without expensive customization.

But with the right Civil ICT Standards in place, the following rights can be guaranteed:

- That any citizen can use any product or service, proprietary or open, that she desires when interacting with her government.
- That any citizen can use any product or service when interacting with any other citizen, and to exercise every civil right.
- That any entrepreneur can have equal access to marketplace opportunities at the technical, standards-mediated level, independent of the market power of existing incumbents.
- That any person, advantaged or disadvantaged, and anywhere in the world, can have equal access to the Internet and the Web in the most available and inexpensive method possible.
- That any owner of data can have the freedom to create, store, and move that data anywhere, any time, throughout her lifetime, without risk of capture, abandonment or loss due to dependence upon a single vendor.

One of my clients, a non-profit called OASIS, has created an important standard of this type, called the OpenDocument Format, or ODF for short. Document formats represent one of the most crucial types of Civil ICT Standards, as they not only ensure that every citizen can exchange documents with her government, but do so using the ICT tools of her choosing – many of which today are free. Such standards can also ensure that public records will be accessible in a hundred years – unlike music on eight track tapes. And they can also reintroduce, and are already restoring, innovation and competition to the computer desktop, where they have been sadly lacking for almost two decades.

I believe that governments must act to secure and protect our Civil ICT Rights with the same vigor and determination they have used to protect our hard won traditional rights. Why? Because industry alone cannot be assumed to bring the same degree of attention and concern to this task.

I believe that only by recognizing the existence and differences between traditional civil rights and Civil ICT Rights will we be able to ensure their protection. And only by recognizing the existence and special status of Civil ICT Standards will we be able to adapt the practices of the past to meet the challenges of a future that has already arrived, whether we realize it or not.

Thank you for allowing me to share these thoughts with you today.