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Consortium Standards Bulletin

*A **ConsortiumInfo.org** publication*

February 2003
Vol II, No. 2

RAMBUS AND STANDARDS

Editorial: **Rambus - Hard Cases Make Bad Law**

Last year, the standard setting world took comfort when the FTC opened an investigation against Rambus relating to its conduct in the JEDEC standard setting process. The government also issued a warning to all not to "game" the standard setting process. Now, the court that handles all patent case appeals has overturned a lower court's finding of fraud on the part of Rambus - because it found the JEDEC policy to be too vague. Now what happens?

Feature Story: **What Does Rambus Mean to You?**

What does the Rambus decision mean to you, as a standards process participant? As a standard-setting organization? What should an IPR Policy provide for, post-Rambus, in order to be upheld? Does this change the rules of the game, and if so, which ones? And more.

Trends: **Changing Industries/Changing Consortia – I3A (A Case Study)**

It was 1946 when the National Association of Photographic Manufacturers was launched, and chemicals and print paper were the state of the imaging art. Fifty-one years later, the Digital Imaging Group was launched, to lead the industry into a brave new world of electronic files and the Internet. And it was 2002 when the two organizations joined forces to become i3a - the International Imaging Industry Association – which still successfully covers both technologies. It takes the flexibility of a consortium to adapt and meet industry needs which evolve this dramatically.

News Shorts: Wireless behind the wheel; CompTIA jumps to Microsoft's antitrust defense in the EC; Wireless vendors conclude "the more standards compliance the better"; Old Consortia (like Old Soldiers) can Fade Away; What's next after LANs, and WANs? (why MANs, of course); and work on the venerable Single UNIX Specification goes on.; and more.

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

RAMBUS - HARD CASES MAKE BAD LAW

Andrew Updegrove

Law and Society. There is an old saying among those in the legal profession that "hard cases make bad laws". The cases that most often give rise to this maxim involve an appealing victim, a sympathetic judge or jury, and a lack of legal authority for helping the aggrieved party out. The result can be that existing law can be "stretched" or misapplied in order to avoid what seems like an unfair result. All can still be well and good (at least one type of moral perspective) in such a situation, if the outcome is limited to the parties involved. But if the judge elects (or is required) to file the opinion for that case, then it becomes a part of the body of case law that defines the rights of future parties in litigation. Why? Because the courts in America and many other countries around the world are bound to apply the holding of past cases to future actions, where the facts are substantially similar. And since the same system is hierarchical, the higher the court, the greater the number of subordinate courts that are bound by the decision.

All of which brings us to the much-followed litigation between Rambus and Infineon, which proves that strictly following the letter of the law can result in what many observers believe to be a bad result for the standard setting world nonetheless.

Rambus, Infineon and JEDEC. For those who have not followed the complex factual and litigation history of this conflict, the high-level facts are as follows. Rambus, a company that develops technology and licenses it to semiconductor memory device manufacturers, participated formally and informally from December, 1991 through December of 1995 in the standard setting process of the Joint Electron Devices Engineering Council, commonly referred to as JEDEC, which operates under the auspices of the Electronic Industries Alliance (EIA). Prior to joining that body, Rambus filed a broad US patent application. While Rambus was a member, JEDEC developed and adopted a standard for synchronous dynamic random access memory (SDRAM). Rambus dropped its membership prior to the adoption of that standard, but during and after its membership it made additional filings with the US Patent and Trademark Office intended (the jury found) to ensure that anyone who implemented the standard would infringe their intellectual property rights - thereby becoming liable for the royalties which Rambus looked forward to earning as manufacturers built memory devices to the standard.

After adoption of the JEDEC standard, companies did indeed implement it, and Rambus duly notified implementers that they would be required to pay a royalty to Rambus if they wished to continue to do so. One company that refused to comply was Infineon, an SDRAM manufacturer. Infineon counterclaimed against Rambus, alleging fraud on the part of Rambus, based on its alleged "gaming" of the JEDEC process. Rambus filed suit against other recalcitrant manufacturers as well, and in time the US Federal Trade Commission announced that it had opened an investigation into the conduct of Rambus in the JEDEC process.

In its counterclaims, Infineon alleged that Rambus' conduct had been egregious, conscious and calculating, and that this type of conduct should neither be sanctioned nor rewarded by the courts. The jury accepted Infineon's version of the facts, and found that Rambus had committed sufficient bad acts to satisfy the Court's interpretation of fraud under Virginia law. The court also held that Infineon had not in fact infringed the Rambus patents. In light of the fact that the court found that Rambus had not only acted inequitably in its commercial dealings, but had also destroyed evidence and committed other misconduct during the litigation process, it awarded Infineon over $7 million in attorneys fees and expenses.

Due to the popular perception that Rambus had acted in a way that was very harmful to the validity and integrity of the standard setting process, many who are involved in standard setting world felt a sense of satisfaction with this outcome. Thus it was that the standards world was much less pleased when, on appeal, a three-judge panel of the United States Court of Appeals of the Federal Circuit -- which has jurisdiction over all appeals from US patent cases -- held in a non-unanimous opinion on January 26, 2003, that Rambus had not, in fact committed fraud under the laws of Virginia. The court also directed the lower court to reconsider the finding of patent non-infringement, which might well result in a finding of infringement, permitting Rambus to successfully assert its patents against not only Infineon, but other

implementers of the SDRAM standard as well. Finally, the court vacated the award of attorney fees and expenses, and directed the lower court to reconsider the appropriate amount of any award in light of the vacating of the fraud verdict.

While many were shocked, fewer were surprised by this outcome, since JEDEC (like many standard setting bodies in the early 1990s) utilized what most would agree was a rather skeletal and vague written IPR policy. The majority opinion of the Circuit Court was even more unkind in its assessment of the JEDEC policy, finding that "[T]here is a staggering lack of defining details in the EIA/JEDEC patent policy." While acknowledging that Rambus itself may have felt that it was violating this policy, the majority of the judges nonetheless found that the letter of the policy, in fact, had not been violated. Rambus was thus vindicated (in a sense) against its own will at the time the actions in question were taken.

Of equal concern to those who have read the case closely is the fact that the analysis which the majority followed to reach this conclusion may be read to generally change the rules for the creation and operation of patent policies in the standard setting environment generally. In a forcefully worded dissenting opinion, Judge Prost (the third judge) expressed concern that the majority opinion would greatly increase the analytical burden of not only courts, but participants in the standard setting process as to what patents would, and would not, need to be disclosed. Defending JEDEC's right to set a broad policy, if it so chose, he observed that "[While] the majority may believe that JEDEC's 'might be involved' standard is impossibly amorphous, the majority's restatement of the JEDEC policy might prove impossibly complex." Given that the Circuit Court is, for most intents and purposes, the court of last appeal in patent cases (the Supreme Court could, but would be unlikely, to hear the case if a petition is filed by Infineon to seek its intervention), the opinion of a two out of three judge subset of the entire Court of Appeals will become the ruling precedent by which future cases involving alleged abuse of IPR policies in the standard setting milieu will judged. And while the facts may vary in the future, a clear message has been sent that standard setting IPR policies will receive a very critical review before they are enforced against a patent holder.

The Fallout. How bad is this result? In some ways, it is not bad at all, since it should provide a motivating boost to those standard setting bodies that have thus far shied away from the unrewarding and contentious process of upgrading antiquated and inadequate IPR policies. Whether or not these policies are ultimately tested in court, this type of policy can still provide too little detail, not enough process, or just plain "bad" rules of operation, all of which ill serve the members of such organizations. Many, but by no means all, consortia have remedied this situation since the FTC and Dell computer entered into a much-publicized consent decree in 1996 involving Dell's participation in the Video Electronics Standards Association (VESA).

But in other ways, this hard case makes bad law indeed, in that just when a semblance of order and certainty was beginning to evolve among standard setting bodies about what an IPR policy should say, and what range of acceptable alternative options on given terms can be considered, the Court of Appeals has raised a host of new questions about what is and is not enforceable in an IPR policy, and how much effort must be undertaken by members in standard setting bodies in order to participate. Moreover, the court has held that willful misconduct can, indeed, pay. Hardly a healthy message to send to some participants in a commercial world that has so recently proven itself capable of gross accounting fraud and other abuses.

Had the court wanted to, it could have offered some help by adding more so-called "dicta" to its opinion, giving guidance to the industry on how standard setters could perform their work with assurance the Court of Appeals would uphold the results. Instead, it may take years to resolve these questions through new litigation. While such dicta would not actually bind future courts (or even the Court of Appeals), it would be persuasive to lower courts, and more importantly, it would assist participants in standard setting in guessing what the Court of Appeals itself would uphold in the future.

Where do we go from here? There is one hope for a shortcut to more definitive answers. This week, Infineon filed a petition to the Court of Appeals for a rehearing "en banc", meaning that all of the judges on the Court would reconsider the opinion handed down by only two of its judges in January. The granting of such petitions is infrequent, and therefore the odds of success for Infineon are low. A decision on whether to grant the petition could come as early as March 5, and one element in the Court's decision on whether to grant a rehearing could be the impact that the technology industry fears from the January

ruling. It is expected that "amicus briefs" may be filed by some companies that are very active in the standard setting arena, urging that the full Court consider the fallout which may result from the existing ruling. The purpose and justification for such filings (literally, "friends of the court" briefs) is to permit third parties to bring to the Court's attention any unintended consequences and other considerations that the amici believe should be taken into account before a binding judgment is handed down.

The moral of the story is that the proverbial ounce of prevention can indeed be worth a pound of cure, as implementers of the JEDEC standard have found, to their economic sorrow. Consortia should not, by failing to have robust IPR policies, present courts with a Hobson's choice of making bad law no matter which way they rule. Nor should the industry, as a result, have to share in the consequences.

What you can do: *If you are active in standard setting, or if you are a standard setting organization, consider filing an amicus brief with the Court of Appeals no later than March 5, 2003 urging a rehearing.*

If you would like to join in an amicus brief already in preparation, *in which several standard setting organizations are participating, please contact Andrew Updegrove, whose firm, Lucash, Gesmer & Updegrove LLC, is preparing the brief.*

For additional detail on the Rambus case and relevant decisions which have preceded it, see http://www.consortiuminfo.org/laws/#cases

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FEATURE STORY

WHAT DOES RAMBUS MEAN TO YOU?

Andrew Updegrove

There are many things in life that are both necessary and painful - root canal work, final exams and adolescence, to name just a few. Most people who are involved in standard setting would place agreeing upon intellectual property policies in the same category. But, as the Rambus saga illustrates, the one thing that can be worse than action is the result of inaction. So it is that the latest ruling in the Rambus v. Infineon case is a pointed reminder that those who participate in the standard setting process must pay serious attention to the policies and procedures under which they operate.

Happily, many newly formed organizations have adopted state-of-the-art policies whose terms are informed by the lessons learned from prior legal decisions and the strenuous and public debates that have occurred in fora such as the World Wide Web Consortium. Some existing organizations have already stiffened their backs and slogged their way through updating and upgrading policies that were formulated, borrowed, or casually put in place many years ago when a spirit of cooperation and dialogue in the course of face-to-face meetings may have seemed sufficient to fill in any procedural or definitional gaps.

Unfortunately, there remain many organizations which still have antiquated policies which place their members at risk for a range of woes, ranging from simple uncertainty for well-meaning members to outright abuse by malefactors. If the latest ruling in the Rambus case is not modified, the task of updating policies has just become more complex, and even those companies that have adopted sensible, thorough policies will need to reexamine them in order to determine whether the decision of the Appeals Court has undermined their enforceability.

Unfortunately, the implications of the Rambus case (particularly on the patent side) are quite complex, and detailed recommendations in addressing their import therefore lie beyond the scope of this article. Nevertheless, here are some of the more important elements that an IPR policy should demonstrate in order to minimize the chances that a court will fail to enforce it:

Clarity: Courts can be reticent to apply rules they find to be confusing, contradictory or amorphous. Of equal concern is the fact that vague rules can lead to unpredictable outcomes, when courts are called upon to divine the actual intentions of those who wrote the rules, but failed to explain them adequately. The Rambus court clearly was not disposed to be a stopgap for a policy that, in its words, displayed a " staggering lack of defining details".

Moreover, members themselves are ill served if a policy is insufficiently clear and detailed to define both their obligations as well as their rights. Absent such clarity, a member may fail to alert its partners in standard setting of potential infringement issues to everyone's detriment, or (under some policies) may find that it has inadvertently missed its opportunity to assert its rights at all.

Notice and Agreement: Courts are also reticent to enforce deemed or implied duties of which parties may argue they were unaware. The Rambus court expressly followed this leaning in failing to hold Rambus liable for conduct that even Rambus (according to the lower court's findings) believed to be in violation of JEDEC's rules. It was the missing link of a clear, documented duty to disclose in the JEDEC policy that allowed Rambus to escape the lower court's finding of fraud. There are several mechanical practices can directly address this element of the Court's opinion:

Bind a member contractually to compliance: Unless a member has agreed in writing to follow a rule, it can argue that the rule is not binding upon it, or that the rule was never brought to its attention. As observed by the Court of Appeals in the Rambus decision in concluding that Rambus did not have a duty to disclose, "Here, the parties argued the existence of a duty based on only Rambus's act of joining JEDEC with awareness of the EAA/JEDEC policy. There is no other proper basis for finding the existence of a disclosure duty." Unhappily for Infineon, the Court did not find the mere act of joining sufficient.

At minimum, the application that a member signs to join a consortium or SDO should bind it to abide not only by the bylaws of the organization, but by such policies and procedures as may from time to time be adopted by the Board of Directors. In addition, whenever a member takes part in a particular technical process, it should be given a copy of the policy under which that process operates, and be asked to sign an acknowledgement that it both understand, and will be bound by, those policies, and will operate in compliance with them.

Documented Assertions: All representations by members, whether they are merely to the best knowledge of a member representative or binding on the member itself, should be in writing. A policy should clearly delineate what - and when - a member must state whether or not it has IPR which is relevant to the standard under consideration, and what its options are with respect to that IPR (typically, the choices are to withhold a license; to provide a license on reasonable and non-discriminatory terms which include a royalty; or to provide a license without a royalty, but otherwise on reasonable and non-discriminatory terms).

Require Due Authorization: Not everyone is authorized to bind their employer. At minimum, all documents executed in the course of the standard setting process should include a representation by the signatory that they are authorized to bind their company to the terms of the document in question. It would also be helpful to include an acknowledgement in the original member application that any representative participating in the technical process that signs a document will be deemed to be authorized to do so.

Consider Well the Breadth of Required Disclosure. An additional way in which the JEDEC process was found to be problematic was its failure (in the majority opinion's view) to be specific on what patents and patent applications were required to be disclosed. JEDEC's Spartan language requiring disclosure of patents which were "related to" the specification in question continues to be disturbingly common in the policies of many standard setting organizations today, some of which use words such as "related to", "involved in" and other formulations to a similar effect without establishing clearly what those words are intended to mean. While agreeing upon the exact words in a policy can be difficult and complex (let alone applying them in the breach), it is far better for an organization to do its best to agree in advance on what the groups' intentions are, rather than to argue over them retrospectively, after a dispute has already erupted.

Consider Self-Executing Remedies. There are a number of strategies that can be adopted to make the questions raised by the Rambus decision less troublesome. For example, some organizations have adopted a requirement that all members who enter into a process must agree in advance to license any patent rights which turn out to be relevant under any specification which is finally adopted. Some organizations go one step further, requiring that any such patents will be licensed on a royalty free basis as well, thus making the Rambus concerns irrelevant, as a practical matter. While such rules will not be deemed to be appropriate by all organizations, they will be acceptable to some, either for all of their standard setting activities, or for certain specific processes which they undertake.

Consistency is a Virtue. While a minimal variation in the rules applicable to multiple processes within a single organization may on occasion be needed (whether or not royalties will be permitted is one such variation which some consortia authorize a given subgroup to determine), allowing substantial variations in the rule sets adopted by different work groups invites not only confusion and mistakes, but allows a misbehaving member to assert (honestly or disingenuously) that it thought it was playing by the rules when it moved from one committee meeting to another.

Don't Try This At Home. Finally, it is important to note that many policies that remain in force today were drafted by technical process participants, rather than by knowledgeable lawyers. Other polices were adapted from different organizations which may have had divergent goals or industry norms. Still other borrowed policies may have become corrupted in the process of adaptation, or may have become damaged in the process of later ad hoc amendment. Not only does a defective IPR policy lay an organization open for problems of many types (from confusion to outright abuse), but it can seriously hamper recruitment efforts when potential members are cautioned by their legal departments to either refrain from participation, or demand amendments to the policy as a precondition to joining. Usually, this is as impractical to accomplish as it is burdensome. It is also expensive, when a consortium must involve its attorneys in resolving questions and issues as they arise.

If there is a silver lining to the Rambus decision, it is that every organization that has a deficient policy may now point to Rambus as a reason to convince its members that the time has come for a change. While climbing into the dentist's chair is never a pleasant step to take, it's worth remembering that after the process is over with, at least you'll feel better.

For additional information on intellectual property policies and recommendations on crafting them, see http://www.consortiuminfo.org/ipr/ For additional information on Rambus and other cases involving IPR policies and their enforcement, see http://www.consortiuminfo.org/laws/#cases

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TRENDS

CHANGING INDUSTRIES/CHANGING CONSORTIA: I3A (A CASE STUDY)

Andrew Updegrove

In the last two issues we examined several evolutionary trends in the standard setting world, each of which has manifested itself in the comparatively recent past. In this article, we take a longer view, and focus on a consortium performing important work involving technologies developed as recently as yesterday, and as long ago as the earliest days of print photography

***Context*:** The accepted wisdom is that consortia were created as a short cut to standard setting, in reaction to what was seen as the failure of the more established, officially recognized standards development organizations (SDOs) to adapt to the pace of modern technological innovation and adoption. In light of the frequency of this explanation for the proliferation of consortia, it's easy to forget that there are other important differences between these two types of entities which contribute to the popularity of the consortium model.

Stated most broadly, a second major differentiator between consortia and the SDOs is that while the latter tend to stick to their standard setting knitting, those who create a consortium are free to define broader or different goals, and to conduct their operations accordingly. Additional activities most often involve the promotion of standardized technologies, and indeed there are many consortia that have been formed for the sole purpose of promoting a given standard (or related group of standards) that have been created by the SDO. Currently, several such organizations exist in the wireless arena alone (see http://www.consortiuminfo.org/links/wireless/).

In this case, the SDO and the consortium act synergistically for the benefit of the members they hold in common, with the SDO setting the standard, and the consortium conditioning the market through promotional and educational activities, training, trade show participation and the like. Of course, each member must join (and economically support) two organizations instead of one in order to achieve a single business result.

In other cases, the consortium seeks to perform all of the roles under its own virtual roof, defining and developing standards, and promoting them as well. In other cases, a consortium may be formed to simply promote a new way of doing business. For example, the ASP Industry Consortium, which grew to over 600 members in a matter of months, focused exclusively on promotion and education, creating white papers, best practice studies, and awards programs, among other activities.

Indeed, the proliferation of consortia in the modern world has resulted in part from the convergence of the worlds of trade associations and SDOs. Trade associations have existed for over 100 years to serve the general needs of an industry, providing a place for participants to share knowledge, plan promotional activities, share lobbying expenses, and otherwise further their collective interest. When technology sectors began to proliferate, however, the means to reach the same ends were somewhat different. In this new reality, agreement on standards became part of the necessary strategy to enable the growth of these new sectors, and the furtherance of the collective good.

The review which follows traces some of the steps in the creation and eventual merger of two organizations. Each of was formed for the same high level purpose, but at two very different times, using very different methods to achieve similar ends within the industries that collectively support the capture, preservation, viewing and sharing of pictures. The path of their disparate evolution and eventual combination illustrates the manner in which solutions to problems must organically adapt to meet changing circumstances, and the way in which the flexible consortium model serves to meet this need.

The Old. In 1946, a group of companies came together to form a traditional trade association, intended to promote "the widespread use and enjoyment of photography". The state of the art back then, and for decades thereafter, was print photography using chemical developing agents, and the name adopted for the new organization, appropriately, was the ***National Association of Photographic Manufacturers***. The meetings of the organization were held in places like Las Vegas, with business being conducted over golf as well as in meeting rooms, and cigar smoke was the signature aroma accompanying dinner and drinks. As if to personify the Sinclair Lewis, heartland of America personality of this traditional trade association, its first Managing Director was named William C. Babbit.

But by the late 1990's, it was becoming apparent to the film-based image industry that a new technology - digital photography - had the potential to make serious inroads into the paper print-based world of photography, and some member companies felt that the times demanded a change. In an effort to address the challenges (and opportunities) presented by the new technology, the organization changed its name in July of 1997 to the ***Photographic and Imaging Manufacturers Association (PIMA)***. But the organization did not abandon its roots or activities in the world of traditional photographic processes.

In 1997, digital photography was still very much over the horizon as a consumer product reality, and many impediments still stood between the perceived potential for electronic images and broad adoption in the marketplace. Not least among those impediments was the need to create the comprehensive suite of standards that would enable manufacturers of diverse types of equipment - from cameras to printers to scanners - to create a rich variety of products that could be used together. Just as significantly, additional standards were needed to permit digital photographers to take advantage of the Internet to transmit their photos to those half a world away, thus providing additional incentives to opt for digital equipment over traditional gear.

By the late 1990s, of course, this type of drill had become a recognized and familiar process, and the elements necessary to enable not only the rapid launch of interoperable products, but the swift generation of a broad market desire for those products, was well known. That mixture of fast technical process, conjoined with integrated promotional efforts by heavily involved and motivated players, clearly indicated the need for an organization equipped to perform both tasks. In other words, a consortium.

The New. Thus it was that only two months after the new PIMA name was announced, a group of leading camera, hardware, silicon and software companies (including the Eastman Kodak Company, Adobe, Intel and IBM), announced the formation of the Digital Imaging Group at the September Seybold Fair. The goal of the new organization was "to grow the market for digital imaging through collaborative 'infrastructure development' and market education". Alexis Gerard, a recognized expert in the emerging digital technology area, soon became its first President and chief spokesperson.

In the years that followed, both PIMA and DIG adapted to the rapidly changing realities of the imaging marketplace. DIG, which had been formed on a traditional multi-class model, adopted a novel "initiative" process, which permitted subgroups of members to propose projects which could either be undertaken by the organization as a whole, or funded by a subset of interested members who would take part in the work at hand. PIMA, for its part, found that its members' needs increasingly were tilting towards the digital world, but that the need for print photography programming continued as well.

The Common Road Forward. Not surprisingly, both the activities as well as the membership of the two organizations increasingly overlapped, as more and more traditional vendors began to offer, or consider offering, digital goods and services. By 2002, it had become clear that the needs of the members of both PIMA and DIG would benefit from the existence of a single organization that could provide a unitary voice for the entire industry.

The result was the combination of the old and the new organization into a new venture called ***i3a*** - the ***International Imaging Industry Association***. Its new mission: "To accelerate imaging market growth by providing an open forum for streamlined development of global imaging infrastructure standards, promoting technology adoption, and serving as the industry voice on issues of common interest to members." Notwithstanding the new high-level goal, a number of traditional programs would continue. Today, i3a supports programs that not only address cutting edge digital technologies, but projects that serve processes as traditional as silver-halide photography and the recycling of photographic materials.

The new organization took advantage of the resources of both its predecessors, and the best aspects of each. Lisa Walker, the President of DIG, became the President of both organizations following a transitional period sharing management with the historical Executive Director of PIMA (now no longer with the organization). The combined organization also maintains a bi-coastal presence, with Walker on the West Coast, and the former PIMA office in New York serving administrative and other infrastructural services. The composition of Board of Directors of the combined organization demonstrates that it is a meeting ground of all interest groups, rather than being dominated solely by large manufacturers. Companies represented include many nationalities, and diverse business interests including cameras, printers, film, software and content (see i3a At a Glance, at the end of this article).

The DIG initiative process was also retained, as were the relevant committees and standards processes of each organization. As noted by Walker, " The Initiative process was born out of the need from the digital side of the house to utilize a more market driven standardization approach. The emerging digital market needed infrastructure support quickly, and could not afford the 5 year cycles typical of formal standardization methods." Moreover, allowing subsets of interested members to launch and support initiatives of vital interest to their aspect of the evolving imaging market helped avoid competition for resources and the need to pursue only those processes that were of more or less equal importance to all members.

Flexibility in the types of topics and programs being created was also better suited to a young, fast changing market, where some members saw the need to address some goals before others. The initiative process currently supports not only evolutionary, but revolutionary projects as well. In the former category, Walker points to the IT 10 Electronic Still Picture Imaging committee, which specifies storage media, device interfaces and image formats, and has developed the Picture Transfer Protocol, a transport and platform independent standard. In the latter category, i3a has launched the MPV initiative, which will enable the playback and exchange of collections of photo-video content.

But i3a also continues to administer and fully supports formal standards programs as well - an activity arising from the PIMA organization. When time is less of an issue and gaining global or governmental acceptance is of greater concern, projects can be channeled through these processes instead of the less formal initiative process. The organization serves as the Secretariat for several ISO processes, and is an ANSI-Accredited Standards Development Organization as well. i3a also serves as the principal industry interface with a number of US government agencies.

Sometimes, even more flexibility has been needed, and i3a has been creative in adapting appropriately. In 2002, for example, a group of members saw the need to launch an initiative to make it easier to attract consumers to digital photography, and launched the Common Picture Exchange Environment (CPXe) initiative. The goal of this initiative is to create interoperability standards and an open network environment which would enable consumers to obtain photographic prints and other innovative digital photo services from participating providers "using any digital camera, from any location, via any online photo site, from any retail printing service or printer" (www.pictureservices.org). In order to achieve this end, both a promotional as well as a technical effort would be needed, with the latter requiring a significant expenditure of funds to meet the business plan which several members proposed.

As a result, it was decided that i3a would conduct the specification development aspect of the initiative, while a group of interested members (Agfa-Gevaert AG, Eastman Kodak, Hewlett-Packard and Silverwire) would launch a new, affiliated not-for-profit membership organization called Picture Services Network, Inc. PSN's goal is to create an on-line, UDDI-based registry of vendors utilizing the CPXe specification to provide services to those who wish to create, use, and share digital images over the Internet. The organization has been incorporated and funded, and hopes to go on-line in June of 2003.

The CPXe Interoperability Specifications v. 1.0 and the formation of PSN were publicly announced in a press release by i3a this morning (February 27, 2003)]

The Future. The years ahead will present unique challenges to the businesses of the members of DIG. The tools for creating print-based images and the services for developing them continue to generate billions of dollars of revenues for those involved, from camera and film manufacturers to the retail outlets that provide developing services. Indeed, for retailers such as Walgreens, print developing represents a very desirable, high margin business that would be sorely missed if electronic storage of images were to totally replace print photographs, with no remaining role for a service provider in between.

In that regard, the current crisis in the music business, where sales of pre-recorded CDs plummeted by some 62 million units in 2002, provides a sobering reference point. If today's emerging consumers are conditioned to rip off music files via the Internet, burn them on their computers at home, and listen to them in MP3 form on their iPods, how long will it be before they prefer to transmit instant images via their camera enabled, digital phones?

While the industry can scarcely hope to stem the tide of consumer preferences, it can hope to understand those preferences better through sharing knowledge, and influence their direction through the generation of enabling standards and coordinated promotion. The benefit to those involved in the industry is clearly that those who can best anticipate the future are most equipped to react appropriately, with attendant avoidance of risk and realization of potential gain. By maintaining an organization such as DIG and working to evolve it to meet the fast pace of change in the imaging world, all of those who have a stake in the future of that industry will be more likely to succeed.

Conclusions: The flexibility which the consortium concept incorporates provides the ability to take a "holistic" approach to a commonly-defined business need. Those who identify a need may specify the approach needed to meet that need, and may evolve that approach in real time to address rapidly changing market realities, without being constrained by pre-defined expectations or rigid rules of conduct. i3a represents an example of how an industry which had lived within a particular technology for many years was able to adapt productively and quickly. A crucial enabler of that rapid response was the utilization of an organizational structure which was easily created, adapted, and even combined, rapidly and without complicating constraints.

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i3a at a Glance:

Date of formation	1946	
Current members	50	
Number of classes of membership	Three: Strategic, Participating, Associate	
Number of countries represented by current members	c. 10	
Currently Hosted Iniatives	CPXe	Common Picture eXchange environment
	MPV	MultiPhoto Video (joint effort with OSTA)

	WITI	Wireless Image Transmission Initiative
	DIG35	Metadata standards
	DIG2000	File format technologies
	IIP	Internet Imaging Protocol
	IT1	Film Paper and Plates
	IT2	Image Evaluation
	IT4	Photochemicals and Processing
	IT7	Instructional Audiovisual Systems
	IT9	Physical Properties and Permanence of Imaging Materials
	IT10	Electronic Still Picture Imaging
	IT13	Equipment Communication, Networks and Protocols for Photoprocessing Equipment
Number of issued standards or specifications	Administers over 250 ANSI and 300 ISO 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 Supported Websites	Two: www.i3a.org (i3a site) www.pictureservices.org (PSN site)	
Member Companies Represented on the Board	Agfa-Gevaert N.V. Digimarc Corp. Eastman Kodak Co. Felix Schoeller Jr., GmbH Ferrania Imaging Technologies Fuji Photo Film Gelita Hewlett-Packard Konica Graphic Imaging Riccardo Genta, Ferrania Imaging Technologies	
Number of Staff	6	
President	Lisa Walker	
Director of Standards and Technology	Jim Peyton	
European Coordinator	Jean Barda	

NEWS SHORTS

Certification and Branding

The Open Group Introduces Certification for Its Architecture Framework

San Francisco, California, February 5, 2003 - The Open Group today introduced a certification program for The Open Group Architecture Framework Technical Edition (TOGAF 7). The new certification program enables the industry's architecture service providers and tools vendors to demonstrate how their products and services support the IT Architect using TOGAF Version 7. TOGAF 7, a detailed method and a set of supporting tools, is described in a document published by The Open Group on its public web server, and may be used freely by any organization wishing to develop an information systems architecture for use within that organization.

For the full press release, see: http://www.opengroup.org/press/5feb03-a.htm

Consortium Transitions

Memory Consortium Fades Away

CNET News.com, February 20, 2003, 6:06 AM PT - "Three years ago, Intel and the major memory manufacturers formed a group to hammer out future memory standards. Today, there's nothing left but a couple of folding chairs and some PowerPoint handouts...." *[In this article, Michael Kanelhos looks back on an unusual experiment in standards, consortia and litigation: how a consortium was formed in an effort to ameliorate the Rambus/JEDEC/Infineon debacle through a new organization (see the lead article above on Rambus for further background.)]*

For the complete story, see: http://news.com.com/2100-1001-985260.html?tag=fd_top

INCITS Enters 2003 as New Organization

Washington, D.C., February 10, 2003 - Following nine major announcements on new standards and projects, the InterNational Committee for Information Technology Standards (INCITS) stated today that it has become a new organization. INCITS, which boasts members from industry-leading technology companies such as Hewlett-Packard, Network Appliance and Oracle, now has a strengthened link to the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC). The new standards body supplants both 41-Year-Old INCITS (formerly ANSI-accredited X3) and Joint Technical Committee 1 Technical Advisory Group (JTC 1 TAG). The latter had carried the US position on many IT standards to ISO/IEC—a function that will now be performed by INCITS.

For the complete press release, see: www1.internetwire.com/iwire/release_html_b1?release_id=51040

New Standards/Specifications

XACML Access Control Markup Language Ratified as OASIS Open Standard; Universal Language for Authorization Policy Enables Secure Web Services

Boston, MA, USA, 18 February 2003 - The OASIS interoperability consortium today announced that its members have approved the Extensible Access Control Markup Language (XACML) as an OASIS Open Standard, a status that signifies the highest level of ratification. XACML allows developers to express and

enforce policies for information access over the Internet....[The standard] is designed to enable the interoperability of a broad range of administration and authorization products by providing a universal language for authorization policy....Coupled with secure mechanisms for carrying requester attributes--such as SAML assertions, Java permissions, or WS-Security tokens--XACML is a key component in an authorization infrastructure that can span Web services, J2SE, and other e-business environments.

For the complete press release, see: http://www.oasis-open.org/news/oasis_news_02_18_03.shtml

Storage Networking Standard Wins Approval

CNET News.com, February 13, 2003 (09:21 EDT) - "A key standards body has given its blessing for a technology that allows storage area networks to be built using existing Ethernet networking. The Internet Engineering Task Force (IETF) has approved the iSCSI standard...." *[This unattributed article reports on the adoption of the SCSI interface, and assesses its benefits in comparison to the competing, and already established Fibre Channel Protocol.]*

For the complete story, see: http://rtnews.globetechnology.com/servlet/ArticleNews/tech/RTGAM/20030213/gtiscsi/Technology/techBN/

OGC Approves GML 3

Wayland, MA, USA, February 6, 2003 - The Open GIS Consortium (OGC) announces the approval and release of Geography Markup Language version 3.0 (GML 3). GML 3 defines a data encoding in XML that allows geographic data and its attributes to be moved between disparate systems with ease. The new release is modular, meaning that users can select out only the parts necessary for use, which simplifies and minimizes the size of implementations. New additions in GML 3 include support for complex geometries, spatial and temporal reference systems, topology, units of measure, metadata, gridded data, and default styles for feature and coverage visualization. GML 3 is almost entirely backwards compatible with GML 2, so that developers and users familiar with GML 2 can begin working immediately with GML 3. Like GML 2, GML 3 will play a key role in both spatial data encoding and transport, and in the description of geographic objects for geospatial Web services....The GML 3 specification was submitted by OGC member organizations CSIRO Australia, Galdos Systems (Canada), interactive instruments (Germany), BAE SYSTEMS Mission Solutions (U.S.), US Census Bureau, POSC (U.S.), MapInfo Corp. (U.S.), Oracle Corp. (U.S.), NTT Data Corp.(Japan), and Laser-Scan Ltd. (UK).

For the complete press release, see: www.opengis.org/pressrm/pressrelease/20030205_GML3_PR.htm

The Open Group Announces Test Development for Single UNIX® Specification 3

San Francisco, California, February 3, 2002 - The Open Group has announced general availability of complete test coverage for the Single UNIX® Specification Version 3. These test suites are integral to the certification program for the Single UNIX Specification Version 3, due to be deployed in the first half of 2003....The certification program for the Single UNIX Specification Version 3 builds upon the existing source application program interface (API) test tools. The test suites utilize The Open Group's Test Environment Toolkit and the VSXgen generic test frameworks, which provide a consistent and extensible environment for test execution.

For the complete press release, see: www.opengroup.org/press/03feb03-b.htm

Open Source

Embedded Linux Consortium unveils landmark standard

San Francisco, Calif., February 19, 2003 - The Embedded Linux Consortium (ELC) today released the ELC Platform Specification, aimed at rallying the industry around a single Linux development standard for new embedded products. The specification delivers a unified open platform for embedded operating systems, rewarding developers by substantially decreasing the time and expense needed to add differentiating value to their applications. Because Linux by its nature encourages widespread interoperability, the ELCPS can help unify the deeply fragmented embedded marketplace.

For the complete press release, see: www.embedded-linux.org/pressroom.php3#90

For a related news story, see: http://news.zdnet.co.uk/story/0,,t269-s2130789,00.html?rtag=zdnetukhompage

IBM's Newest Enterprise Storage Server Drives Open Standards

ARMONK, NY (INTERNET WIRE), February 3, 2003 - IBM today announced the delivery of the first industry standard interface for the IBM Enterprise Storage Server (codenamed "Shark") based on "Bluefin," a specification designed to help customers more easily manage storage systems in a multi-vendor storage network. IBM is also expanding storage support for mainframe customers running the open Linux platform, one of the fastest growing customer segments....As the use of Linux across customer's e-business infrastructure expands, storage needs will grow, especially in mainframe environments. IBM's ESS now supports IBM eServer zSeries customers running the Linux operating system with new FICON attachment for increased throughput, FlashCopy support for copying data and Peer to Peer Remote Copy support for disaster recovery.

For the complete press release, see: www1.internetwire.com/iwire/release_html_b1?release_id=50782

Desktop Linux Consortium Nears Launch

Internet, February 2, 2003 - *[Peter Wiliams provides an update on the status of the formation of this newly-announced Linux effort, reporting on the anticipated structure, interim leadership, and emerging goal definitions of the DLC.]*

For the complete story, see: http://www.vnunet.com/News/1138607

Legal Issues

CompTIA Says New EC Microsoft Inquiry Request Is Unnecessary

Washington, DC, February 11, 2003 - "CompTIA believes that it is unnecessary to expand the current European antitrust inquiry into Microsoft's business. The European Commission (EC) has placed Microsoft under its microscope for nearly four years, and has appropriately limited its current investigation. Though its ruling has yet to emerge, CompTIA is hopeful that the EC will seize the opportunity to reach expeditious settlement, instead of dragging the dispute out further as requested by a small minority of Microsoft's competitors….The peculiar underpinning of the newest complaint is that Microsoft has included too many features in Windows XP. The US Court of Appeals specifically held, however, that this practice is lawful, that it is pro-competitive, and, most importantly, it benefits consumers. Being a third-party intervener in Microsoft's EC antitrust case, CompTIA respectfully asks that

the EC deny the new request to expand the scope of the current case. Consumers and the ICT industry deserve a consistent, timely and final decision, and broadening the scope of the investigation at this time would substantially delay and frustrate any final outcome."

The press release comprises an extended quote by Lars Liebeler, Computing Technology Industry Association (CompTIA) antitrust counsel.

For the complete press release, see: www.comptia.org/pressroom/get_news_item.asp?id=193

Wireless

[Consistent with our recent focus on wireless standards and the degree of activity which is current in that market niche, we will report on this area as a separate category while the situation continues]

Bluetooth SIG Unveils Mobile Operators Strategy

3GSM World Congress 2003, Cannes, France, February 18, 2003 – The Bluetooth SIG announced today that it is providing mobile operators with a range of new measures and technologies designed to speed the adoption of Bluetooth™ wireless technology in the mobile market place. These efforts include a newly released version of the Hands-Free profile that allows car drivers to make mobile phone calls without taking their hands off the wheel…, and support for the N-Gage Bluetooth wireless enabled gaming device from Nokia….[T]he Bluetooth Hands-Free profile will open the way for a host of in-car applications, such as internet-based infotainment, telematics, remote diagnosis of mechanical problems, electronic toll collection and the ability to make calls without taking your eyes of the road. This last feature will be particularly critical as governments move towards legislation restricting or banning the use of mobile phones at the wheel, for safety reasons…Announced earlier this month, the Nokia N-Gage™ mobile game deck is a wireless gaming platform that allows users to enjoy rich, console-quality games in either a near-distance multiplayer environment using Bluetooth wireless technology, or a wide-area environment using cellular networks. It also features a digital music player (MP3/AAC) and stereo FM radio, as well as a tri-band GSM 900/1800/1900 mobile phone.

For the complete press release, see: www.bluetooth.com/news/press/sigpress.asp?A=2&PID=549&ARC=1&WHERE=&TENS=s

Standards: Truce Pays Off for Rivals

CNET News.com, February 7, 2003, 4:00 AM PT – "As fast wireless technologies hit store shelves, networking companies that survived an earlier standards war in the booming market are determined to prevent another one from erupting…" [In last month's issue of Consortium Standards Bulletin, we reported on the proliferation of wireless standards, including the multiple Wi-Fi specifications. In this article by CNET News.com staff writers Wylie Wong and Richard Shim, the authors report on efforts by vendors to adapt to the fast-evolving Wi-Fi specifications. One strategy is to build multiple-specification enabled devices in order to provide immediately available products, thereby avoiding consumer confusion and disillusion in the evolving wireless marketplace.

For the complete story, see: http://news.com.com/2009-1033-982341.html?tag=cd_mh

New Wireless 11g 'Standard' Ends in Tears

Newswireless.net, February 2, 2003 (08:43 GMT) - "It is nearly a year since NewsWireless Net warned of the disasters looming if American wireless manufacturers went ahead with 802.11g - the go-faster WiFi

standard. Now, we hear of incompatibility problems between rival 11g products - discovered in "secret" testing sessions. Are we really supposed to be surprised?... *[In our previous issues, we have noted the vital importance of launching products which are credibly interoperable, and the damage which can be done to the credibility of new technologies and the products based upon them if this imperative is not given due respect. In this article, Guy Kewney takes a jaundiced [re]view of the situation, reporting on the potential adverse impact of premature claims of interoperability, efforts to launch products before final standards are released and compatibility testing becomes available, and the efforts of groups like the WiFi Alliance to deal with the situation.]*

For the complete story, see: http://212.100.234.54/content/59/29250.html

IEEE Advances Wireless MAN Standard

Internetnews.com, January 31, 2003 - "The Institute of Electrical and Electronics Engineers (IEEE) this week passed a key amendment to a standard which may open the floodgates for the creation of wireless metropolitan area networks (MANs)…." [In this article, Thor Olavsrud analyzes the possible impact of the approval by IEEE of 802.16a, an amendment to the 802.16-2001 standard approved in April of 2002. The new amendment makes the much-awaited advent of building-focused, fixed Broadband Wireless Access more real, thus providing a solution for the "last mile" transmission speed gap between the fiber optic backbone and the office network. The crucial gap which the amendment fills is the ability to go beyond "line of sight" access.]

For the complete story, see: http://www.internetnews.com/xSP/article.php/1577591