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INAUGURAL ISSUE

Editorial: **IPR Policies: A Call to (Lay Down) Arms**

Rambus sues Infineon for patent infringement; Infineon sues Rambus for abuse of the JEDEC standards process; The Federal Trade Commission opens an investigation against Rambus for standards process abuse, and considers industry-wide guidelines to regulate the standards process. Meanwhile, the members of scores of consortia are haggling over their intellectual property policies. Is this any way to run a consensus-based process? Of course not. Its time for the standards industry to agree on a Standard IPR Policy.

Featured Story: **Standards Come of Age: CIO Magazine Includes Berners-Lee and Schell in "20 Who Made It Possible" Awards**

What do Tim Berners-Lee, Director of W3C and David Schell, President of OpenGIS Consortium, have in common with billionaires Bill Gates, Michael Dell, Larry Ellison, Lou Gerstner and Scott McNealy? CIO Magazine put them all in the category of the 20 most influential individuals in enabling information technology revolution. In doing so, the *CIO* editors recognized the vital role that standards have come to play in society as well as technology.

Trends: **Consortia Merge As IT Budgets Remain Tight**

A consortium, like its members, has to maintain a strong value proposition in order to attract and hold members. Due to budgetary pressures and the evolution of the marketplace, a wave of consolidation is continuing as consortia compete for scarce membership dollars.

News Shorts: I3A and Industry Leaders launch new On-line Digital Photo Services Registry and supporting Consortium; IFAN releases results of survey: Who Uses Standards? IFAN releases study of International Standards use; OASIS reaches out to involve Governments World-wide in standards work; 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

IPR POLICIES: A CALL TO (LAY DOWN) ARMS

The following editorial is adapted from a keynote address delivered by Andrew Updegrove on July 22, 2002 at "Boundaryless Information Flow: The Role of Web Services," a conference organized by The Open Group

When a group of consortium member representatives meets to engage in standard-setting, the goal is to collaboratively agree on a piece of technology which they hope everyone - non-members as well as members alike - will adopt. The hope is that by achieving this end, the members themselves will be able to sell goods and services more certainly, more widely, more economically, and more quickly than otherwise would be the case. Standard setting is about making safer strategic decisions.

If that is the goal, why does the standard-setting process have to be so difficult? Isn't the marketing challenge intimidating enough?

In the last few years, consortium after consortium has become an intellectual property rights ("IPR") battle ground upon which some of the largest member companies attack, counterattack, and seek to outflank each other in order to secure their favorite terms. In the meantime, the process of adoption slows, and the potential for "gaming" the system increases. Actual litigation (most recently between Infineon and Rambus) has ensued, and we are aware of other situations where allegations of improper conduct have been made which have not yet broken into public view.

Not surprisingly, the Federal Trade Commission has begun taking an active interest in the situation and has opened an investigation into the conduct of Rambus. More tellingly, the FTC has also publicly stated that all who would engage in standard setting are on notice that their behavior may be investigated if it is alleged to be improper.

What gives rise to this behavior? We propose that the root cause is the failure of some standard setting participants to realize that the gains to be achieved from successful standard setting will almost always outweigh the economic impact (usually a foregone royalty opportunity rather than an economic loss) which the adoption of a standard is likely to have on their patent portfolios. When preexisting patents do read on a standard, there is near universal agreement that a patent holder participating in the standard setting process has the right to withhold a license, so long as it is disclosed in timely fashion.

This is not to ignore the fact that there are a significant number of difficult issues that must be wrestled with in order to create an IPR policy that all can live with. But there is nothing to be gained by fighting the same battle over and over again. The entire standard setting concept is based upon resolving differences once so that companies can get on with the more important challenge of bringing products to market. Why should it be any different when it comes to setting IPR policies?

Its time for the IPR policy wars to stop, and for the standard setting world to set a standard for itself - a standard policy by which it will handle IPR. With such a policy available, a new consortium could look forward to getting started on the technical adoption process business immediately, rather than only after a long, contentious and divisive battle over the rules of submission and adoption.

What's needed is for the industry to have a "constitutional convention" to set a standard policy - a policy which will have alternative terms for a limited number of situations where alternatives are truly needed, but also a well articulated rationale for each alternative, stating where and why that alternative is appropriate. Its time for the industry to compromise once, and agree many times thereafter. Once this is accomplished, the industry can get back to the far more important business of standard setting, rather than arguing about how to do it.

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FEATURED STORY

STANDARDS COME OF AGE: *CIO MAGAZINE* INCLUDES BERNERS-LEE AND SCHELL IN "20 WHO MADE IT POSSIBLE" AWARDS

Andrew Updegrove

The most successful standards are those that become taken for granted. After all, only by becoming universally adopted can a standard achieve its full utility. When it has achieved that status, the standard becomes not an option, but a veritable design law of physics. None may build, specify or use the relevant technology but in compliance with the successful standard. And no one would think of doing so, either. Thus it is that those who labor behind the scenes to create standards work to ensure their own invisibility.

It is for this reason that we believe it is noteworthy that not only Tim Berners-Lee, the founder and Director of the high visibility **World Wide Web Consortium**, but David Schell, the founder and President of the **OpenGIS Consortium**, were honored by inclusion in the "**20 Who Made it Possible**" list of the October 1st, 2002 issue of CIO Magazine. Included in the same short list were billionaire industry icons Bill Gates, Michael Dell, Larry Ellison, and Scott McNealy, as well as equally prominent (if less monied) high-profile individuals such as Lou Gerstner, who most would credit with saving IBM from an uncertain fate.

Not only is this recognition noteworthy, but pleasing as well. The modern world is increasingly dependent on standards, but most who are not directly involved in technology are oblivious to their existence, except in the rare cases where they become useful in marketing new products. Witness, in that regard, the **IEEE 802.11** specification, more popularly known as "**Wi-Fi**." Holiday shoppers this year are being regaled with references to this standard in full page ads promoting wireless home network servers. Few shoppers are aware, however, that the success of these products is dependent in part on the existence of the **Wi-Fi Alliance**, a 193 member consortium that has certified 522 products as interoperable since its inception.

So also with David Schell's OpenGIS Consortium. While many have heard of Berners-Lee due to his status as the inventor of the World Wide Web, few are aware of the growing influence that Schell and the OGC have on their lives. As noted in the CIO article, **geographic information systems** (the "GIS" in the "OpenGIS" name) represent "the technology that tells us where things are." Some of the most significant software and Internet based innovations of recent years depend on an awareness of "where things are," and many of the most heralded services just over the horizon will be similarly dependent.

To give but one example: as a result of OGC's efforts, when you view a map on the web, the data making up that map may be flowing not from a single point source, but from several different sources at various locations around the world. In the near future, your "location aware" wireless device -- giving you directions to your destination or hailing emergency services to where you are stranded on a country road -- will provide these services seamlessly as you roam from one carrier's service area to another. Similarly, maps and earth images are appearing more often now wherever bits make pictures, because,

thanks to OGC, the data can flow smoothly among different vendors' systems. When Web Services come into wide use, through the work of OGC these services will include capabilities for every kind of geographic rendering and analysis, even enabling "spatial search engines."

Already, emergency response, agriculture, forestry, sustainable development, and homeland security operations (among many others) are increasingly reliant on geographic information, which is of little use if it can't be shared. A stark and important example of the importance of instantly locatable and shared data was provided on 9/11. Within hours of the collapse of the Twin Towers (which included the loss of New York City's Emergency Operations and GIS Center), teams of IT professional volunteers were assigned to hastily assembled batteries of workstations on Pier 92. Over the ensuing week, this team recreated essential GIS capabilities and fielded hundreds of requests on a daily basis for precise GIS based data to locate gas lines, building footprints, subway tunnels and other features amid the rubble in order to help make rescue operations possible.

Afterwards, at the request of New York City officials, OGC members applied the lessons learned from the City's recovery effort to develop new levels of interoperability to better discover, access, integrate and apply the many data sources necessary to plan for, detect and respond to future emergencies. Without the standards cooperatively created by the more than 230 government, industry and academic organizations in over 25 countries and four continents that constitute the OGC membership, the emergency efforts that followed 9/11 would have been immeasurably more difficult.

OGC's achievements are particularly impressive given the technical and diplomatic challenges which stood in the way of attaining them. Few in the general population have reason to be aware of how many diverse ways of measuring and referencing the earth are in use, and how many different strategies programmers have employed to model the geometry and attributes of geographic features and phenomena in software. The task of rationalizing and integrating these diverse methodologies was made all the greater by the bitterly competitive atmosphere which has typified the GIS and Earth imaging software industry niches for the last thirty years.

As the experience of OGC and its members demonstrates, the development of standards is never easy. For even as standards in a given area become more essential, new impediments to achieving consensus arise with each diverging and proprietary solution which commercial opportunity inspires. Standard setting is a constant struggle between the centrifugal forces of commercial opportunity and the centripetal realization that, ultimately, everyone must agree on a final platform or interface in order for anyone to win.

It is finally worth noting that the organizations that Tim Berners-Lee and David Schell lead are consortia, rather than the officially sanctioned Standards Development Organizations that long preexisted, and still coexist, with them. While not meaning that the SDOs are destined to irrelevance, the CIO awards do recognize the efficacy which single purpose organizations, rapidly organized by those that have an immediate and active interest in rapid adoption, can have in the standard setting world.

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CONSORTIA MERGE AS IT BUDGETS REMAIN TIGHT

Andrew Updegrove

The number of consortia being formed rises and falls not only with the advent of new technologies, but with the economy as well. In the later years of the Internet bubble, promotional as well as technical consortia proliferated as new technologies, industries and business models were launched. With the bursting of that bubble, economic reality set in, and many consortia have either folded or, as has become increasingly common, merged into more viable organizations.

In some cases, these consolidations have been the product of logical combinations of duplicative or overlapping efforts. In others, the hype that occasioned the rapid growth of a new consortium was followed by a wave of member non-renewals, as hype inevitably gave way to the grinding challenge of creating demand for the commercial products and services that were being promoted. In still other cases, the major mission of the organization may have been accomplished, and members were not interested in contributing the same level of human and capital resources to the maintenance of the standards that they had dedicated to developing them. And in some instances, fatigue simply set in or turn-over took its toll, where most of a consortium's work had been performed on a voluntary basis.

But underlying most of these combinations is the additional fact that there are a very large number of consortia today, and members are watching their membership fee budgets far more closely, now that budgets are tight. Too often, dollars spent on standard setting seem like "soft dollars," rather than the essential investment in the future that in fact they are. Regardless of one's opinion on that point, if the same result (or most of it) can be obtained through membership in one organization rather than two, then the topic of investigating appropriate mergers is bound (and appropriate) to be raised.

While it has seemed that there have been almost as many mergers of existing consortia announced in the last 18 months as new consortia, the recent merger of the Mobile Wireless Internet Forum (MWIF) into the Open Mobile Alliance (OMA), announced on November 4, 2002, well illustrates this trend. OMA itself was the product of the earlier merger in June of 2002 of the Open Mobile Architecture Initiative and the WAP Forum.

Although it is not widely known, many consortia register for a level of antitrust protection under the National Cooperative Research and Production Act of 1993. Once they do so, they must make regular filings with the Department of Justice and the Federal Trade Commission in order to maintain the protection of that Act. These filings are public, and reviewing them provides an easy way to track the rise and fall of membership at registered consortia.

In its final (as of August 16, 2002) filing before its merger with the OMA, the MWIF reported that in the 90 preceding days, it had gained 7 members and lost 48, for a net loss of 41. In its own most contemporaneous filing, the OMA reported a gain of 8 members and a loss 24, for a net loss of 16. As of the date of this writing, the OMA, which numbered fewer than 200 members at the time of its creation in June, now lists a healthy 323 members at its website.

In a similar way, the Organization for the Advancement of Structured Information Standards (OASIS), has absorbed the initiatives of multiple organizations in the current calendar year, having taken on the work formerly conducted by the PKI Forum (November 4), UDDI.org (July 30) and LegalXML (March 28). During the same period, OASIS also launched many new initiatives, both internally and in cooperation with other organizations.

As a result of these and prior combinations, OASIS has broadened its mission from its roots in 1993 as SGML Open to become a global organization of 600 corporate and individual members in over 100 countries, furthering the development, convergence and adoption of diverse e-business standards. Those standards include specifications addressing security, Web services, XML conformance, business transactions, electronic publishing, topic maps and interoperability within and between marketplaces.

Many similar examples of consolidation can be called to mind, representing a more healthy trend than in years gone by, when a consortium with flagging membership was more likely to quietly die in the dark. With consolidation becoming an increasingly accepted option, worthwhile specifications and initiatives can be transitioned to successor organizations that will sustain the value created by the investment of the original membership.

By imitating the consolidation practices of the industries that consortia serve, newly formed consortia are able to maintain the nimbleness that the traditional standard setting organizations sometimes lack. Later, by merging with preexisting, "umbrella" consortia, these same initiatives can achieve the stability and longevity that has been a hallmark of the SDOs.

For more information on the consolidations listed above, see the following press releases:

- MWIF/OMA
- OMAI/WAP
- PKI/OASIS
- UDDI/OASIS
- LegalXML/OASIS

To view recent NCRPA filings, see:
www.ansi.org/public/federal_notices/national_cooperative_research.html

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NEWS SHORTS

New Consortia

Smart Active Label Systems Consortium (SAL-C.org)
LONDON, England, Nov. 25, 2002 - A group of technology suppliers, standards bodies and associations, and potential users from a wide variety of industries today announced the formation of the Smart Active Label (SAL) Consortium to promote smart active label solutions and create standards to benefit supply chain management, asset tracking and the daily lives of consumers in a wide range of industries. Smart active labels--defined as thin and flexible data carrying devices that contain a power source and utilize radio frequency identification (RFID) technology--can remotely monitor, process, store and may also transmit data over extended communications ranges of up to hundreds of meters. The Consortium was founded on the belief that smart active label systems are a next generation technology, providing customers with complete, real-time inventory visibility and significant improvements in profitability….

For the full press release, see: www.sal-c.org

International Imaging Industry Association, Leading Imaging Companies Form Consortium to Develop and Operate CPXe Directory of Digital Photofinishing Services

San Francisco, California, October 17, 2002 — The International Imaging Industry Association (I3A) and leading imaging companies Agfa-Gevaert Group, Eastman Kodak Company, FotoWire Inc. and Hewlett-Packard announced the formation of a consortium that will create and operate an on-line directory of digital photography services as part of the Common Picture eXchange Environment (CPXe) - an initiative designed to make printing digital images as convenient as using film. The Directory Service,

in union with CPXe interoperability standards, will allow any adopting company to list and then connect their compliant devices, applications and services with those of other participants. Companies that will benefit from the new Directory Service include photo-enabled device manufacturers; photo-enabled Web sites and portals; independent software vendors; traditional and non-traditional photo retailers; online photofinishers; and photofinishing system integrators. The CPXe Initiative will provide a reliable and secure business-to-business environment that will enable participants to conduct business transactions. In addition, through the CPXe Directory Service, consumers will be able to quickly locate desired services using familiar search criteria such as a zip code or type of service…

For the full press release, see: www.i3a.org/pr_10_17_02.html

Note: *Since the date of this press release, the name of the new organization has been changed to the "Picture Services Network"*

Security and IT Industry Leaders Form Organization for Internet Safety; New Alliance Will Propose Best Practices for Handling Security Vulnerabilities
Sept. 26, 2002 — The Organization for Internet Safety (OIS), an alliance of leading technology vendors, security researchers and consultancies, today announced its formation. The OIS was formed to propose and institutionalize industry best practices for handling security vulnerabilities to ensure that security and technology vendors, and security researchers, can more effectively protect Internet users. Founding members of the OIS include @stake, BindView Corp., Caldera International, Inc. (The SCO Group), Foundstone, Guardent, Internet Security Systems, Inc., Microsoft Corp., Network Associates, Oracle Corporation, SGI and Symantec.

Currently, there are no widely accepted industry best practices for reporting and managing security vulnerabilities. The absence of common processes and best practices can make it extremely difficult for security researchers and vendors to efficiently resolve security issues and keep Internet users and security professionals informed and armed with the most up-to-date security tools. The OIS is founded on the principle that standardized, widely-accepted processes will allow security vulnerabilities to be handled in a way that reduces the dangers they pose and will help security vendors and researchers to more effectively protect Internet users and critical infrastructures. OIS is actively working to develop guidelines for handling vulnerability information that will be useful for security researchers and technology vendors alike. The organization expects to release drafts of the standards in early 2003....

For full press release, see: www.oisafety.org/pr092602.html

New Initiatives

OASIS Members Form e-Gov Technical Committee
Boston, MA, USA; 4 December 2002 - The OASIS interoperability consortium today announced that it is providing an international forum for governments to voice their needs and requirements with respect to XML-based standards. Bringing together government representatives from around the world, the OASIS e-Gov Technical Committee will support the modernization of government and assist in the electronic delivery of services to citizens and businesses through the coordination and adoption of XML standards.…

For the full press release, see: www.oasis-open.org/news/oasis_news_12_04_02.shtml

Specification News

ISO/IEC and The Open Group announce international approval of the joint revision to POSIX® and the Single UNIX® Specification

San Francisco, CA/Geneva – November 14, 2002 – ISO/IEC Joint technical committee has approved the joint revision to POSIX® and the Single UNIX® Specification as an International Standard. Designated as ISO/IEC 9945:2002, the joint revision forms the core of The Open Group's Single UNIX Specification Version 3 (IEEE 1003.1-2001, POSIX.1). The standard reflects a collaborative effort of industry and formal standardization within the Austin Group, currently chaired by The Open Group's Director of Certification, Andrew Josey. The initiative has included a wide spectrum of participants from industry, academia, government, and the open source community….

For the full press release, see: www.opengroup.org/press/14nov02.htm

General

Who Uses Standards? IFAN releases study of International Standards use

IFAN (the International Federation of Standards Users) has conducted a survey on how International Standards are being used and is making the results available online. Through a questionnaire made available on the Web sites of IFAN, ISO (International Organization for Standardization) and IEC (International Electrotechnical Commission), 288 respondents from 52 countries spoke up on the uses of International Standards and the possible areas for their improvement…

For the full story, see:
www.ifan-online.org/isoportal/livelink/fetch/2000/2035/36282/36500/presscentre/Surv_report.htm