

STANDARDS AND CONSORTIA ROUNDTABLE

Sponsored by



April 7 and 8, 2011
Arizona State University's Downtown Campus
Walter Cronkite School of Journalism and Mass Communication
Executive Board Room (Room 444)
555 North Central Avenue, Phoenix, AZ 85004

OVERVIEW OF ROUNDTABLE:

The Standards & Consortia Roundtable ("Roundtable") is intended to be an open forum during which invited participants from academia, industry, and law firms can collaboratively discuss and evaluate some of the current issues associated with forming and operating technology standards development organizations and similar technology consortia.

On Day 1, we'll first explore the wide diversity of methods (both formal and informal) for standards development worldwide, with an aim of (a) identifying common models, and (b) assessing the costs and benefits of different approaches from both a commercial and public policy perspective. We'll then turn to the question of how these different models can co-exist, and the benefits and drawbacks of different models of co-existence, focusing on both the interaction of informal organizations with formal SDOs, and the interaction of informal organizations with each other. Finally, we'll examine how various government stakeholders view this diversity of approaches to standardization, considering perspectives from the E.U., China, India and the U.S. A goal in connection with each topic is to explore both pragmatic, practice-oriented issues and also higher level policy concerns.

Day 2 is optional for all participants. On Day 2 certain academic participants and others who have current standards-related research or research project ideas will discuss their work. We also have invited the scholars who will be visiting from India and China to provide informal comments about standardization issues in their region.

The Roundtable's goal is to call upon the varied experiences of the participants (from ICT companies, outside counsel, and academic scholars with varied disciplines) to collectively examine select issues with current standard-setting processes. We hope to identify points of consensus around suggestions for improving particular aspects of standard-setting, including potential "best practices." Further, we hope to stimulate new longer-term research projects and collaborations to study and improve standard-setting procedures.

The Roundtable has been structured to maximize the opportunity for dialogue and open discussion among the participants. Participants engage in their individual capacity; no contributions should be attributed to an individual's company, firm, organization or institution. We request that participants refrain from identifying other individual participants in any public commentary about the event, unless the identified individual expressly grants permission.

PROGRAM AGENDA:

DAY 1 – THURSDAY, APRIL 7, 2011

8:00 a.m. – 9:00 a.m. **Continental Breakfast & Networking**

9:00 a.m. – 9:15 a.m. **Welcome and Opening Remarks**

Gary Marchant

Lincoln Professor of Emerging Technologies, Law and Ethics
Executive Director & Faculty Fellow, Center for Law, Science & Innovation
Sandra Day O'Connor College of Law at Arizona State University

9:15 a.m. – 11:00 a.m. **Session #1** **Standards development processes and methodology**

Moderators:

Brad Biddle

Standards Counsel
Intel Corporation

Michele Herman

Partner
Davis Wright Tremaine LLP

Formal standardization processes, such as those managed by ITU, ISO and other formal standards development organizations (SDOs), are generally well understood. Informal specification development efforts, while critically important to the information and communications technology (ICT) industry, are less understood. During this first session we will:

- Identify different models for specification development, using various case study examples
- Explore the legal and organizational structures of these various models.
- Consider the relative importance of different models for different segments of the ICT industry.
- Discuss emerging trends, such as an increasing number of organizations that both create technical specifications and distribute software code.
- Consider the costs and benefits of various models, from both a commercial and public policy perspective.

Our goal for the session will be to capture inputs from participants as part of development of a white paper addressing these topics. Interested participants will be invited to participate in development of the white paper.

11:00 a.m. – 11:30 p.m. **Break and informal discussions**

11:30 p.m. – 2:00 p.m. **Session #2:** **Co-existence and cooperation among diverse standards setting organizations**

Moderators: **Timothy F. Haslach**
Shareholder (Partner)
Schwabe, Williamson & Wyatt

Frank X. Curci
Shareholder (Partner)
Schwabe, Williamson & Wyatt

Increasingly, different standards setting organizations are engaging with each other. The question of how and when a formal SDO could utilize a specification of a Consortium or other more informal standards developer is a particularly hot topic in Europe. Among Consortia, an emerging trend seems to be the desire of one organization to utilize the specification of another organization, in ways that go beyond the traditional “incorporate by reference” approach. During this second session we will:

- Discuss the public policy implications of formal SDOs adopting specifications developed by Consortia
- Consider various criteria which have been proposed for Consortia to qualify for such treatment, and explore how such criteria apply to different informal standardization models.
- Identify the practical issues that must be addressed if a Consortia specification is to be adopted by a formal SDO, such as IPR issues and compliance and interoperability (C&I) testing.
- Explore various ways that Consortia engage with each other, particularly situations where there is ongoing engagement to synchronize specification development or compliance testing.

The goal for this session, in addition to perspective-sharing on the policy issues, will be to identify “best known methods” for engagements between (a) Consortia and formal SDOs, and (b) two (or more) Consortia.

NOTE: During Session 2 we will break and obtain lunch (to be provided), then continue Session 2 over a working lunch

2:00 p.m. – 2:30 p.m.

Break and informal discussions

2:30 p.m. – 4:30 p.m.

Session #3: Government perspectives on standardization

Moderators: **Gary Marchant**
Lincoln Professor of Emerging Technologies, Law and Ethics
Executive Director & Faculty Fellow, Center for Law, Science & Innovation
Sandra Day O’Connor College of Law at Arizona State University

Andrew (Sandy) Askland
Professor of Law
Director & Faculty Fellow, Center for Law, Science & Innovation
Sandra Day O’Connor College of Law at Arizona State University

At the risk of oversimplification, government perspectives on standardization historically have ranged from strongly “bottom-up” or market-driven (the U.S. model) to strongly “top-down” or government-controlled (the Chinese model), to something in between (the E.U. model). Increasingly these simple stereotypes seem to be out of synch with real world behavior, however. We see the U.S. government taking a hands-on approach in certain areas, just as we see the Chinese government increasingly looking to industry for leadership on standards in some situations. During this session we will:

- Evaluate recent developments related to standards in the E.U., China, India and the U.S.
- Explore whether these developments demonstrate changing perspectives on the role of government in connection with standards
- Discuss different views on what the role of government *should* be in connection with standards.

4:30 p.m. – 4:45 p.m.

Day 1 wrap up

Moderator: Gary Marchant

7:00 pm – 9:00 pm

Dinner at Sam’s Café

Arizona Center
455 N. 3rd St. #114
Phoenix, AZ

DAY 2 – FRIDAY, APRIL 8, 2011

8:30 a.m. – 9:00 a.m. **Continental Breakfast & Networking**

9:00 a.m. – 9:05 a.m. **Welcome and Opening Remarks**

Gary E. Marchant

Lincoln Professor of Emerging Technologies, Law and Ethics
Executive Director & Faculty Fellow, Center for Law, Science & Innovation
Sandra Day O'Connor College of Law at Arizona State University

9:05 a.m. – 10:00 a.m. **Regional perspectives**

Comments on the relationship between IPR and Standards from an Indian perspective

T. Ramakrishna

Professor of Law
National Law School of India, Bangalore

Comments on standards-setting activities in China

Qishan Zhao

Lecturer, Intellectual Property School
Shanghai University

Comments on [U.S.] National Academies standards research

Stephen Merrill

Executive Director of the National Academies' Board on Science, Technology, and Economic Policy

10:00 a.m. – 10:55 a.m. **Standards and Global Politics**

"Standards as Law: Legal Pluralism in the Global Information Economy?"

Jane Winn

Charles I. Stone Professor of Law
Director for International Programs, Law, Technology & Arts Group
University of Washington School of Law

Opening Standards: The Global Politics of Interoperability (MIT Press 2011) (forthcoming book)

Laura Denardis

Research Scholar, Lecturer, and Executive Director, Information Society Project
Yale Law School

World Rule: Accountability, Legitimacy and the Design of Global Governance (University of Chicago Press, 2010)

Jonathan Koppell

Director, School of Public Affairs
Lattie & Elva Coor Presidential Chair
Arizona State University

10:55 a.m. – 11:05 a.m.

Break

11:05 a.m. – 12:00 p.m.

Research ideas and works-in-progress

"An empirical analysis of the VITA ex ante license disclosure policy"

Jorge Contreras

Acting Director, Intellectual Property Program and Senior Lecturer in Law
Washington University in St. Louis School of Law

"Public Policy, Antitrust, Safety and Potential Liability Issues"

Don Purcell

Adjunct Faculty, Schools of Engineering and Law
Catholic University of America

"Standardizing Intellectual Property Disclosure Data"

Tim Simcoe

Assistant Professor of Strategy & Innovation
Boston University School of Management

THE ROUNDTABLE'S PLANNING COMMITTEE

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