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Information Flow*

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Open Standards - Open Source

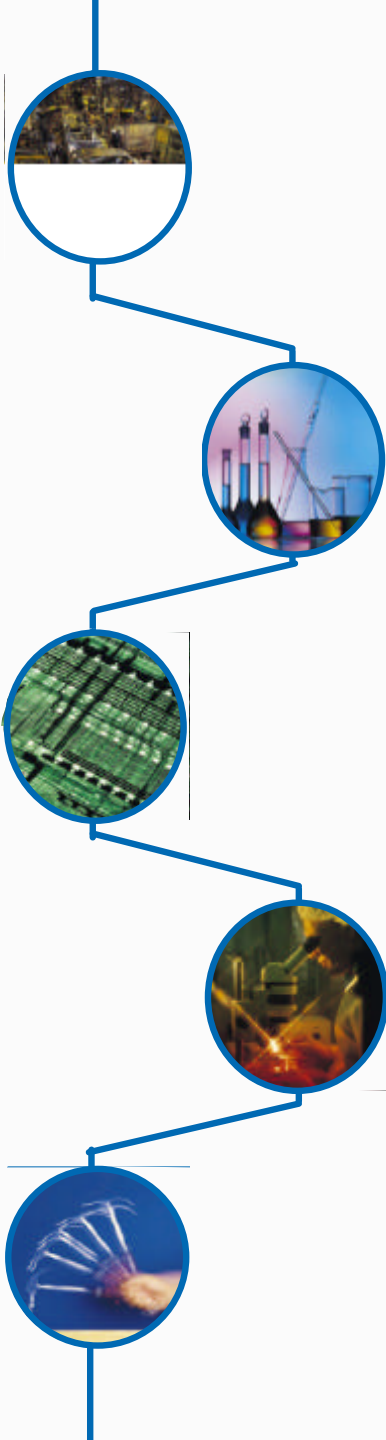
The Business, Legal, and Technical Challenges Ahead

June 24-25, 2003, Minneapolis, MN, USA

In association with



UNIVERSITY of ST. THOMAS



ANSI, Standards and IPR

The Open Group Meeting

June 25, 2003

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What is ANSI?

- ANSI is the established forum for the U.S. voluntary standardization community
- Among other things, ANSI
 - Works with industry, government, trade associations and professional societies, consumer interests, other stakeholders.
 - Accredits standards developing organizations (SDOs), U.S. Technical Advisory Groups (TAGs) and conformity assessment systems
 - Approves standards as American National Standards
 - ANSI requirements for openness, due process and consensus must be met
 - Is the U.S. member body to the major non-treaty international and regional standards organizations such as ISO and IEC
 - Serves as a neutral policy forum



ANSI's Patent Policy

- Similar to that at ISO/IEC and the ITU
- Requests that patent holders of technology “essential” for implementation of the standard provide a patent statement
 - Statement provides an assurance that either
 - A license to use the technology will be made available to applicants without compensation (RF) to the patent holder, or
 - A license will be made available on reasonable and non-discriminatory (RAND) terms and conditions
 - ANSI has no formal policy with regard to copyrighted material
 - Copyright and patent rights are different
 - Inclusion of copyrighted material addressed on a case-by-case basis



FTC/DOJ Review

- Throughout most of 2002, the FTC and DOJ conducted a series of jointly-sponsored hearings to look at (among other things) the intersection of IP law, antitrust law and standards-setting activities
- FTC and DOJ will likely issue a report by the end of 2003



IPR Policies

- Some recent situations (such as the *Rambus* litigation) have prompted people to question whether stricter “rules” should be instituted or greater obligations implied with regard to patent and IPR policies
 - Suggestion that industry participants in the process should have more defined duties regarding disclosure
 - Suggestion that standards developers should have a greater responsibility to ensure that all relevant IPR – and proposed licensing terms - are identified before the standard is finalized
- ANSI’s position is that a one-size-fits-all approach will eliminate necessary flexibility to devise individual IPR policies that best accommodate the objectives of the standards-setting project and the consensus of its participants
 - In addition, recent enforcement actions have highlighted that IPR policies and compliance with their terms do not define improper conduct from an antitrust perspective



ANSI and Consortia

- National Standards Strategy
 - Welcomes diversity in approaches to standards-setting
 - Notes that the U.S. will be further strengthened if there are overall common objectives
 - Encourages exploration of linkages between the formal system and consortia
- ANSI National Policy Committee (NPC) Ad Hoc formed
 - Will analyze whether and how closer interaction between the formal standards-setting environment and consortia activities could add value to both
 - Centralized and searchable information regarding standards (both finalized and in progress)?
 - Long-term maintenance of standards?
 - Alternative deliverables under the formal standards umbrella?
 - Other?



ANSI and Consortia

- One example: Homeland Security Standards Panel (ANSI-HSSP)
- Formation announced on February 5, 2003
- Emphasis is on:
 - Inclusion
 - Promoting and facilitating a cooperative partnership between the public and private sectors
 - Soliciting participation from sectors and groups outside the formal standards system
 - Providing the venue where all agree to cooperate
 - Recognizing the significant work that is already underway or that has been completed by a vast array of standards-setting bodies
 - Coordinating and facilitating interoperability among the many homeland security standards solutions being proposed



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