

May 27, 2009

**ANSI RESPONSE TO NATIONAL SURVEY QUESTIONS  
ON U.S. STANDARDS POLICIES**

**QUESTION 1:** Given the impact of Globalization, is there a need to change current United States policies for development of private-sector technology standards; *i.e.*, that the private sector will provide the leadership and resources for development of such standards, as necessary, and the government will play a supporting role? If so, what specific changes should be made to roles of the private and public sectors in developing such standards?

**RESPONSE TO QUESTION 1:** No change to the current private sector-led and public sector-supported standardization system is warranted. As shown below, the current system works **well** and has been adapted to the integrated global economy through the United States Standards Strategy. Indeed, the U.S. government recently endorsed the current standardization system and stated that it does not endorse further government intervention.

**A. The Current Private Sector-Led Approach Is Working Well**

By way of introduction, ANSI serves as the coordinator of this nation's private-sector led and public-sector supported standardization system and oversees the creation, promulgation and use of tens of thousands of standards, norms, guidelines, and conformance activities that directly impact businesses and consumers in nearly every industry sector. ANSI and its members cooperate with government agencies at the federal, state and local levels to achieve optimum compatibility between government laws and regulations and the voluntary standards of industry and commerce, as well as ensuring that voluntary consensus standards provide for government needs in their procurement of goods and services.

The success of the current private sector-led U.S. standardization system is evidenced by the National Technology Transfer and Advancement Act of 1995, Public Law 104-113 (the "NTTAA"). The NTTAA directs federal government agencies to use, wherever feasible, standards and conformity assessment solutions developed or adopted by private, voluntary consensus standards bodies in lieu of developing government-unique standards or regulations. The voluntary consensus standards are to be used for both agency regulatory purposes as well as in their procurement activities.

The NTTAA was the logical consequence of the Clinton Administration's push to eliminate the tremendous waste caused by the use of unique government standards by the military and elsewhere. The differences in the public and private specifications led in too many cases to the Federal government having to procure custom products when functionally similar products were readily available in the commercial marketplace. This led to reform by the incoming Clinton Administration and their strong support for passage and implementation of PL 104-113 and the replacement of thousands of uniquely public sector standards throughout the government with ones developed by the private sector.

Almost immediately after enactment of PL 104-113, the Clinton Administration Office of Management and Budget (“OMB”) moved aggressively to implement the NTTAA through a major update of OMB Circular A-119: *Federal Participation in the Development and Use of Voluntary Consensus Standards in Conformity Assessment Activities*. The OMB process rigorously pushed for a national consensus through extensive public comment both in writing and in public hearings. This process went into much greater detail than was possible in the statute and led to a document laying out the parameters of public/private cooperation that has stood the test of time. OMB Circular A-119 confirms that close interaction and cooperation between the public and private sectors are critical to developing and using standards that serve national needs and support innovation and competitiveness and allowed for continuation of the extensive participation of all interested parties in standards development, a factor often credited with giving the United States the most objective and rigorous standards in the world. “Voluntary consensus standards bodies” are defined in the Circular broadly so as to include both ANSI-accredited Standards Developing Organizations (“SDOs”) and a wide range of consortia. In accordance with the tenets of the United States Standards Strategy (see below), ANSI recognizes a “multiple path” approach to standardization and continues to reach out to non-ANSI-accredited organizations to explore areas for collaboration in serving U.S. needs.

The NTTAA also encourages the agencies to be active participants in the standards development process. The NTTAA directs the National Institute of Standards and Technology (“NIST”) to “bring together federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on in-house standards.”

Since the NTTAA became law in 1995, the U.S. federal government has saved millions of dollars by using consensus standards for procurement purposes and mitigating overlap and conflict in regulations and industry benefits by being able to manufacture one product both for public and private sector users. During the last decade, great progress has been made in the cooperative standardization efforts of industry and government, including significant accomplishments in such critical areas as health and safety, security and defense, protection of the environment and technological advancements.

It is ANSI’s view that public policy should build upon the demonstrated successes in this area and continue to encourage government, consumers, industry, and voluntary standards developers to rely upon the public-private partnership model to explore consensus-based solutions to key national priorities.

The key to a successful partnership is active participation, which requires support and resources from government policy makers at all levels.

Under the current private sector-led approach, the federal government is already a key player in the U.S. standardization system. The thousands of agency representatives who participate in the standards development process are instrumental in ensuring agency compliance with the NTTAA and OMB Circular A-119.

In ANSI’s view, the current private sector-led and public sector-supported standardization system works exceptionally well and the continued strength of the U.S. standardization system depends upon the ongoing effective cooperation of government and industry. There is no reason to alter in any way the current balance between private and public sectors in developing standards.

The impact of Globalization does not dictate a different approach, it shows even more clearly that the current system is working. Every year many U.S. national standards are adopted as International Standards. Every year more and more overseas participants join U.S. standards developing committees and more and more foreign governments enter cooperative agreements with U.S. standards developing organizations. Indeed, the framework for U.S. participation in international standards was agreed to by all interested parties in 2005, when ANSI, working in conjunction with stakeholders, in government, industry standards developing organizations, consortia, consumer groups and academia, developed the United States Standards Strategy (“USSS”) which reflects a commitment to a sector-based approach to voluntary standardization activities and a recognition of the need for standards designed to meet stakeholder needs irrespective of national borders. The USSS was designed to meet the need for a statement of purpose and ideals and to provide a vision for the future of the U.S. standards system in today’s globally competitive economy. The USSS expressly recognizes that “global standardization goals are achieved in the United States through sector-specific activities” and a “market-driven, private sector-led approach.” [Link to the USSS.](#)

#### **B. The U.S. Government Supports the Current Private Sector-Led Approach to Standardization Which Provides Unique Advantages**

The U.S. government recently endorsed the current private sector-led U.S. standards system in a presentation by the United States Patent and Trademark Office (“USPTO”) to the World Intellectual Property Organization (“WIPO”) Standing Committee on Law and Patents (“SCP”) meeting on March 25, 2009. In that presentation, the U.S. government took a firm stand that “there is NOT a crisis, as claimed by some, in standard setting” in this country. Specifically, the presentation stated:

In [the U.S. government’s] view, the standard setting process should be voluntary and market-driven. Unnecessary government intervention can impair innovation, standards development, industry competitiveness, and consumer choice....The U.S. government recognizes its responsibility to the broader public interest by providing financial support for, and promoting the principles of, our standards setting system globally. U.S. industry competitiveness depends on standardization, particularly in sectors that are technology driven. The United States doesn’t encourage government intervention. The issues have long been discussed and are rejected because they hinder innovation, standards development, U.S. industries’ competitive advantage and attendant benefits to consumers. (Emphasis added.)

See USPTO Statement to WIPO, in the attached annex. See also [Link to USPTO Statement to WIPO.](#) As detailed in part 2(d) below, the U.S. government also encourages and endorses the use of “Open Standards” as “traditionally defined,” that is those developed through an ANSI-like open and collaborative process.

#### **C. The Relationship Between the Voluntary Consensus Standards Process and Obama Administration Initiatives**

While we strongly feel that the basic U.S. approach to standards should not be changed, we are pleased with the new administration’s promise for openness in government and increased cooperation with the private sector and look forward to exploring ways that our existing public/private partnership in standards can be

made stronger. In this regard, we have two suggestions. First, standards development, since the development of the Internet and related software improvements, went through a revolution. By using the Internet extensively in standards development, many Standards Development Organizations are able to develop standards in a fraction of the time it took just a few years ago. We feel that finally the true promise of PL 104-113 can be harnessed by exploring new ways in which SDOs can be advised of government needs for new or revised regulation at the beginning of the regulatory process and in time to update standards to meet these government needs before final regulations are promulgated. We feel that such an arrangement could benefit the government and the private sector with a more precise match between standards and regulation. We would suggest that this opportunity is already within the scope of PL 104-113. We also would like to suggest that government explore whether the current reporting requirements related to standards and other appropriate subjects meet the needs of public and private users and consider whether current web-based reporting requirements could or should be modified accordingly.

**QUESTION 2:** Given increased attention to national standards education programs around the world, should the United States increase its support for U.S. standards education programs in order to maintain or enhance its competitive position in the global marketplace? If so, what are your organization's specific recommendations for increased standards education support in the private, public and academic sectors? Does your organization currently have an existing standards education program?

**ANSWERS TO QUESTION 2:**

**A. The U.S. Should Increase Support for U.S. Standards Education Programs**

Yes, the United States should increase its support for U.S. standards education programs in order to maintain or enhance its competitive position in the global marketplace. ANSI endorses Strategic Initiative 10 of the United States Standards Strategy (which provides: "Establish standards education as a high priority within the United States private, public and academic sectors.")

**B. ANSI's Recommendations for Increased Standards Education Support**

ANSI's specific recommendations for increased standards education support in the private, public and academic sectors is set forth in detail under the USSS, Strategic Initiative 10 as follows:

- Develop new or significantly enhance existing standards education programs that address the significance and value of standards to the well-being of the United States and global economies.
- Develop or significantly enhance standards education programs that address the needs of specific groups within the United States. These programs must reflect the multidisciplinary environment in which standards development takes place and address national and international standards development procedures; the relationship between private and public sector standards; the environment, health, safety, sustainability, international trade, public policy, competition, legal, economic benefits, and strategic considerations; and how to balance the interests of stakeholders.

- Develop a national database of standardization case histories. The database should be jointly managed by the American National Standards Institute and the U.S. Department of Commerce.<sup>1</sup>
- Encourage universities and colleges within the United States to create standardization education programs in fields of study such as engineering, science, medicine, technology, government and public policy, business, economics and law.
- Facilitate and enhance the creation of a communications network for standardization education programs among all interested parties in the private, public and academic sectors. Utilize Internet technology to the fullest extent possible to facilitate the development of e-learning and standardization education programs.

### [Link to United States Standards Strategy](#)

#### **C. ANSI's Existing Standards Education Program**

ANSI, through its Committee on Education (“COE”), has implemented several recent or ongoing initiatives dedicated to the fulfillment of Strategic Initiative 10. Specifically, ANSI has:

1. Re-launched ANSI’s [www.standardslearn.org](http://www.standardslearn.org) which is a free and publicly-available resource providing ANSI-developed educational content to a broad audience.
2. Developed a series of case studies on the technological and economic impact of standards which are freely available via [www.standardslearn.org](http://www.standardslearn.org).
3. Launched the University Outreach Program introducing globally-recognized and adopted standards into universities to incorporate information about standards and conformity assessment, as well as knowledge of the appropriate standards, into their unique curricula.
4. Sponsored (along with NIST, ICES and ASTM International) an education workshop on *Global Perspectives and Strategies for Education about Standardization*.
5. Supported a NIST workshop on *Promoting Education about Standardization in North America*.
6. Supported an International Standardization Case Study Competition, the purpose of which is to: (a) promote education about standardization among universities; (b) provide an opportunity to make students aware of the issues surrounding standardization from corporate strategy, industry, regional, and international perspectives.
7. Created a forum for discussion among academics and practitioners that builds a “community of learners.”

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<sup>1</sup> The database is intended to support the overall objective of enhancing existing standards education programs that address the value of standards in this country and abroad.

#### **D. Education About the Confusion Between “Open Standards” and “Open Source”**

In addition to these educational programs implemented through ANSI’s COE, ANSI recommends broad-based educational outreach to all industry sectors related to the often misused and misunderstood definition of “Open Standards.” That term is often mistakenly confused with one method of possibly implementing a standard via “Open Source”<sup>2</sup> Software.

In order to maintain ANSI accreditation, standards developers are required to consistently adhere to a set of requirements or procedures known as the “*ANSI Essential Requirements*,” which govern the consensus development process. Due process is the key to ensuring that American National Standards (“ANS”) are developed in an environment that is equitable, accessible and responsive to the requirements of various stakeholders. The open and fair ANS process ensures that all interested and affected parties have an opportunity to participate in a standard’s development. It also serves and protects the public interest since standards developers accredited by ANSI must meet the Institute’s requirements for openness, balance, consensus and other due process safeguards.

That is why American National Standards are usually referred to as “Open Standards.” In this sense, “open” refers to a process used by an entity or organization for developing and approving a standard. The Institute’s definition of openness has many elements, but basically refers to a collaborative, balanced and consensus-based approval process. The content of these standards may relate to products, processes, services, systems or personnel.

The term “Open Standard” has been used, incorrectly in ANSI’s view by some, to describe a standard that may be copied, used and distributed for no fee and/or whose embedded technology is available on a royalty-free basis. This definition has created some confusion among standards developers and users because it is contrary to the definition of “open” and “openness” long held by ANSI and many other recognized standards bodies who understand the term to describe a collaborative, balanced and consensus-based approval process for the promulgation of domestic or international standards. These same features are central to the policies of well-recognized regional and international standards bodies, such as the ITU, ISO, IEC and ETSI, as well as to Annex 4 of the Second Triennial Review of the WTO/TBT Agreement.

By using the term “Open Standard” to define a standard whose sole quality is that it is unconditionally and freely available to those who wish to implement it is misleading for two reasons. First, it ignores the fact that holders of embedded intellectual property have the right to decide how they will license such property. The terms and conditions used in the development of “Open Standards” should balance the interests of those who will implement the standard with the interests and voluntary cooperation of those who own the IP rights that are essential to implementation of the standard. This is the balance provided under the ANSI Patent Policy which governs all American National Standards, and a similar requirement is expressed in OMB A-119 and some federal agencies’ patent policies (*e.g.*, the Federal Communications Commission). Such terms and conditions should readily promote, and not unreasonably burden, accessibility to the standard for implementers. To achieve such balance, the payment of reasonable license fees and/or reasonable and nondiscriminatory license terms may be required by the IP rights holders.

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<sup>2</sup> Open Source generally refers to principles and practices commonly applied to the collaborative development of source code for software that is made available for public use.

Second, an Open Standard may involve the payment of a fee to obtain a copy of the standard. Such fees are usually used to offset the costs associated with managing open standards development processes.

To educate the standardization community about the appropriate use of the term “open” when used to describe a standards process, ANSI has formulated a “critical issues paper” which it posts to its Website and circulates to third parties when relevant, including the European Commission and the Government of India, last November. [Link to Critical Issues Paper](#).

It is noteworthy that the U.S. government has recently endorsed ANSI’s definition of “Open Standards” in the USPTO’s presentation on March 25, 2009 to WIPO:

The United States supports and strongly encourages the use of open standards as traditionally defined, that is, those developed through an open, collaborative process whether or not intellectual property is involved.... Open standards systems offer a balance of private and public interests that can protect IP with fairness, disclosure policies and reasonable non-discriminatory licensing. When developed by broadly accepted bodies or organizations, even voluntary standards can become widely adopted. Because of these benefits, use of open standards in the traditional sense is strongly encouraged whenever practical. (Emphasis added)

See USPTO Statement to WIPO, annexed hereto. See also [Link to USPTO Statement to WIPO](#).