



NAS Symposium on Management of Intellectual Property in Standards Setting Processes

E-Government Procurement Policies

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OMB Circular A-119

- Applies to federal procurement and regulatory activities
- Sets policies for standards and conformity assessment activities
- Developed following years of government experience in using standards
- Impacts standards organizations, industries and trade as well as government
- Currently under consideration for revision by the Office of Management and Budget

Basics of the Circular

- Purpose: improve internal management of the executive branch
- Directs federal agencies to use voluntary consensus standards in lieu of government unique standards
- Guides agencies on participation in voluntary consensus standards bodies
- Describes reporting requirements

Goals of the Circular

- Eliminate the cost to the government of developing its own standards and decrease the cost of good purchased and the burden of complying with agency regulations
- Provide incentives and opportunities to establish standards that meet national needs
- Encourage long term growth for U.S. enterprises and promote efficiency and economic competition
- Further the policy of reliance on the private sector to supply government needs for goods and services

Policy Guidance on IP in Standards

- OMB Circular A-119:
 - Includes policies relating to owners of relevant IP in voluntary consensus standards
 - Directs agencies to observe and protect the rights of the copyright holder and any other similar obligations when using an publishing a standard in an agency document

Policy Guidance on IP in Standards

- **NSTC Subcommittee on Standards**
 - Recommends that agencies give consideration to the following attributes of standards organization processes: Access to and availability of standards and clear intellectual property rights policies
- **White House Policy Memo on Principles**
 - Agencies should take into account the impact of their standards-related choices on innovation and the global competitiveness of U.S. enterprises, including the impact of intellectual property incorporated in standards

E-Government Efforts

- Since 2002, have relied on standards - preferably private sector, consensus-based standards - for deployment of innovative, web-based information technology (IT) services
- Standards are necessary to ensure interoperability and security between government agencies, businesses and citizens
- At the direction of OMB, NIST identified best practices for private sector standards selection for use by agencies
- Latest cross-government initiative is “Informing Consumers through Smart Disclosure

Analysis Model for Selection of Private Sector Consensus Standards for E-Gov Applications

Applicability

Availability

Completeness

Implementations

Interoperability

Maturity

Source

Stability

Legal Considerations:

- Are there any patent assertions made to this standard?
- Are there any IPR assertions that will hinder USG distribution of the standard?

Elements of OMB Federal Register Notice on OMB A-119

- Agency implementation
- Standardization activities
- Conformity assessment
- Protection of copyright associated with standards
- Voluntary consensus standards and cost-benefit analysis
- Using and updating standards
- Use of >1 standard or CA procedure
- Implications for federal agencies of the role of consortia in standards development

Status of OMB Considerations

- No decision yet on whether to re-visit the Circular
- Continues to receive input from the private sector
- Meetings with federal standards executives; agency regulatory, procurement and trade contacts to consider potential changes or additions based on written and oral public input