



**ITUKALEIDOSCOPE**

NANJING 2017

*Challenges for a data-driven society*

# **GOVERNANCE WITHIN STANDARDS DEVELOPMENT ORGANIZATIONS: WHO OWNS THE GAME?**

**Olia Kanevskaia**

TILEC, Tilburg Law School

[o.s.kanevskaia@uvt.nl](mailto:o.s.kanevskaia@uvt.nl)

Nanjing, China

27-29 November 2017





## Main findings of the paper

- Importance of procedural guarantees in standard-setting
- Disconnect between standards development processes and governance processes
- Importance of an adequate dispute resolution mechanism in SDOs



# Standards for Technical Interoperability

- Technical specifications that codify technologies or prescribe methods applied in electronic devices
- Impact on technology and society (i.e. Internet standards; IoT, 5G)
  - Technical, strategic and regulatory importance
- Legal issues associated with standards development
  - Inclusion of proprietary technology
  - Human rights concerns
  - The rights of stakeholders in standards development
- Standards Development Organizations (SDOs)
  - Industry-driven
  - Consensus-based; serve common interests and act on behalf of their membership
  - Formal organizations and informal consortia
  - Voluntary



# Examples of Governance and Standards Development in SDOs

## Governance

- Establishing patent policies
- Establishing membership rules
- Establishing voting rules/quorum
- Dispute resolution/appeal system

## Standards Development

- Voting in the Working Groups
- Voting for standards approval
- Overarching procedural requirements for standards development in national and international legal frameworks (i.e. ISO, ANSI, WTO)



## Importance Governance Processes

- Coordination standards development and hence, standardization results
- Modification of SDOs' operational rules
- Also subject to transparency, openness and consensus?



## **Study of SDOs' governance, dispute settlement and standard-setting processes**

- European Telecommunications Standards Institute (ETSI): i.e. **GSM**
- IEEE- Standards Association (IEEE-SA): i.e. **Wi-Fi WLAN**
- Internet Engineering Task Force (IETF): i.e. **TCP/IP Protocols**
- The World Wide Web Consortium (W3C): i.e. **http, html**
- Bluetooth Special Interest Group (**Bluetooth SIG**)



SDO	ETSI	IEEE-SA	IETF	W3C	Bluetooth SIG
<b>Members</b>	NSOs, network operators, service providers, manufacturers, users, research bodies, administrations, governmental bodies	individual experts/professionals, commercial entities, trade associations governmental agencies	no formal membership, individuals wishing to contribute join the mailing lists of working groups	organizations, in some cases also individual experts	firms, corporations, or other legal entities with a demonstrated interest in the activities of the consortium
<b>Membership types</b>	full (CEPT countries); associates and observers (non-voting)	individual or corporate	N.A.	4 host organizations (non-Members); entity-members; member consortium; affiliate members (individual experts)	Promoters (voting members), Associate Members and Adopter Members
<b>Contributors to standards development</b>	full and associate members (via representatives)	individuals and entities (via representatives), no prior membership required	software engineers, individuals affiliated with network operators and networking hard- and software vendors, academics, representatives of computer and trade press	organizations via representatives; individuals	Associate Members and Promoters in Working Groups, and all membership in Expert or Study Groups.
<b>Body/bodies responsible to develop and update rules, procedures and policies</b>	<b>General Assembly</b>	* IEEE-SA Standards Board Bylaws (policies for management and standards establishment) - SASB, <b>Standing Committees</b> and BoG; * IEEE-SA SASB Operations Manual (working procedures for SASB) - SASB; * IEEE-SA Operations Manual (objectives of IEEE standardization) - BoG	Dedicated Working Groups, deciding by consensus; the rules are published as BCP RFCs	The <b>Advisory Board's</b> Process Task Force in the Revising W3C Process Community Group; approved by the W3C Membership	<b>Board of Directors</b> , typically by unanimous consent
<b>Members of the policy-making body/bodies</b>	all full and associate members; voting by qualified majority	*BoG - members elected s by IEEE voting members; *SASB- appointed by the BoG; * <b>Standing Committees</b> - members appointed by SASB chair	Members of the dedicated Working Group(s)	<b>Advisory Board</b> : elected by <b>Advisory Committee</b> (all W3C Members)	All Promoters and up to 4 Associate Member Directors
<b>Dispute settlement and appeal body/bodies</b>	<b>General Assembly</b> assists in finding mediators (typically other ETSI Members or the Secretariat)	SASB; final appeals handled by BoG	IAOC and IESG; the final and highest appeal body is <b>IAB</b>	<b>Advisory Board</b> , after Working Group Chair and Domain Leader were unsuccessful	N.A.
<b>Members of the dispute settlement and appeal body/bodies</b>	appointed by the <b>General Assembly</b> /selected by parties in conflict	*SASB appeal - SASB members appointed by the SASB Chair; * BoG appeal - three voting members of the IEEE-SA BOG	*IAOC - volunteers selected directly or indirectly by the IETF community and ex officio members from ISOC and IETF leadership; *IESG - IETF Chair, the Area Directors (AD) selected by the <b>Nominating Committee</b> and approved by the IAB; *IAB-members selected by the <b>Nominations Committee</b> and approved by the ISOC Board, and the IETF chair with no voting power	elected by <b>Advisory Committee</b> (all W3C Members)	N.A.
<b>Body/bodies responsible for standards approval</b>	For EN: <b>General Assembly</b>	SASB (advised by <b>Standing Committees</b> ), after sponsor balloting and public review	IESG, after an IETF-wide Last Call (applies only for approval of Internet Standards)	<b>Advisory Committee</b>	<b>Board of Directors</b> , typically by majority voting
<b>Members of standards approving body/bodies</b>	For EN: the votes of National Delegations count	SASB- appointed by the BoG;	IETF Chair, the Area Directors (AD) selected by the <b>Nominating Committee</b> and approved by the IAB	All W3C Members	All Promoters and up to 4 Associate Member Directors



## Findings and explanations

- Caveats: different institutional settings; different types of standards: therefore, comparison is rather limited
- Working groups can adopt their own charters/procedural rules, as long as those are not in conflict with the rules of the SDO
- Processes for modification of SDOs' operational frameworks/procedures
  - Should modified rules be subject to public review or membership consultations?
  - i.e. IETF Patent Policy 2017
- Governance processes are not (always) based on consensus among all members/stakeholders
- SDOs are self-regulatory bodies...
- ...But ill-designed procedural frameworks that do not allow to voice members' concerns may undermine achievement of consensus and affect SDOs' composition and quality of standards





## Examples disputes in governance and standards development processes

- IEEE-SA Patent Policy 2015
  - New rules are not followed by patent-holders (i.e. negative and missing LOAs)
  - Increased uncertainty in working groups
  - Delay of standards development (i.e. 802.11ah)
- *Trueposition, Inc. v. LM Ericsson Tel. Co*
  - ETSI and 3GPP rules allowed for manipulation of standard-setting processes?
  - Lengthy and costly litigation, ended up with a settlement
- Appeal of the decision to approve EME Recommendation in W3C
  - Objections of opposing members not adequately addressed?
  - Requirements for consensus in appeal voting not met?
  - EFF withdrawal from the membership



## Conclusion

- Standardization as a political process
  - Various conflicting interests
  - Technical and regulatory decisions
  - Consensus, concessions and compromise
- Procedural guarantees should be respected in standards development and governance processes
- Governance processes should be inclusive and address the views of concerned actors
  - Improving the quality and general acceptance of standards



**ITUKALEIDOSCOPE**

NANJING 2017

*Challenges for a data-driven society*

Thank you for listening!

Contact: [o.s.kanevskaia@uvt.nl](mailto:o.s.kanevskaia@uvt.nl)