The Emerging Role of Standards Bodies in the Formation of Public Policy

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Conventional public policymaking institutions (i.e., congress, the courts, and regulators) have been struggling for years to deal coherently with the social and public policy issues caused by rapid technological advances, particularly in the field of telecommunications. The legislative process is driven largely by powerful competing special interests, and it has ultimately played only a minor role in policymaking, with a legacy of default to judicial processes. As anyone who has watched C-SPAN for any duration of time can tell you, most legislators lack the technical expertise to evaluate these rapidly advancing technologies and are frequently presented with the testimony of convincing but conflicting technical experts.

The Policymakers

Regulatory policymakers, particularly government agencies, have a tendency to become too sympathetic to the interests of the bodies whom they were created to regulate, and this situation does not serve the public interest. The courts, as the forum of last resort, have too often been called upon to make public policy, providing direction in the absence of clear legislative or administrative policy, leadership. For instance, it was left to Judge Harold Green to break up AT&T, causing the restructuring of the telephone industry, after many years of administrative and regulatory frustration. Litigation and the court system are based heavily on precedent, but the issues brought on by technology are unprecedented.

Who can effectively represent the public interest and make policy in a progressively technical environment? The task is increasingly falling into the realm of standards bodies. Before examining some of the issues that standards committees are involved in today, it is useful to look at the historical roots of public policymaking and the idea of the "public sphere."

The "Public Sphere"

The concept of the public sphere has been described by political philosophers, such as Jurgen Habermas and Hannah Arendt, as a gathering of private citizens coming together in a public place— where reasoned public discourse and search for consensus among peers could take place—to discuss

and debate the important policy issues of the day. The 18th century period of Enlightenment is a fine example of this public sphere, where in London coffee houses and Parisian salons, a certain core of educated and involved citizens spawned public discussions from which emerged many of the concepts of freedom and liberalism that are the cornerstones of today's democratic societies. In essence, this constituted the original public policy institution for modern Western society, and it is important to note that it existed wholly apart from government.

A New Role for Standardization

Originating largely from the specific needs of private enterprise, contemporary standards groups have to consider not only technical issues (such as communication protocols and interoperability), but also broader social issues, including safety, security, privacy, quality, and consumer and environmental policy. The standards groups comprise what is essentially a "grassroots" democratic forum, where voluntary standards are developed through an open-door consensus process and achieve their credibility by virtue of the participation of the stakeholders, often with contrasting or even opposing interests. A few examples follow.

Accredited Standards Committee X9 on Financial Transactions has had to struggle with the thorny issue of encryption standards and citizen privacy vs. government responsibility for law enforcement. ISO Technical Committee (TC) 207 on Environmental Management is developing ISO 14000, a new class of standards that address management systems rather than technical standards. The Advisory Committee on Safety (ACOS) is establishing liaison with many ISO and International Electrotechnical Commission (IEC) technical committees. The Information Infrastructure Standards Panel (IISP) is currently trying to get a handle on the Information Superhighway, which involves considering a vast array of public policy issues ranging from intellectual property to universal access, privacy, data security, and access for the handicapped.

The Private and the Public

In the current political atmosphere of privatization, deregulation, and reduction of reliance on government institutions, it is likely that the role of the voluntary consensus standards process will become even more important. The keys to its success will be maintaining openness and involving all of the stakeholders in the process. Within the standards process, a body of private parties come together to solve technical problems, and then often find themselves drawn into dealing with the broader problems of society that have been created. Whatever the reason for their creation, these bodies appear to have many of the necessary attributes to constitute a renewed public sphere in the context of today's technological society.

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Policy Example-Encryption and Government Access

The Clinton administration has continued to champion a policy begun under the Reagan and Bush administrations to standardize nationally a new encryption technology known as the "Clipper" chip. Developed by the National Security Agency (NSA), the Clipper chip would provide improved

communications security but at the same time would also provide a "trap door" by which law-enforcement agencies could eavesdrop. Administration efforts to enlist broad support for this policy have met stiff resistance from both citizens and industry, and a vigorous debate has ensued in the press and on the Internet.

In October 1994, the issue landed in the X9 Committee on Financial Transactions. The X9 Committee is concerned with the standardization of electronic financial and banking activities. Its participants include banks, financial service providers, the telecommunications industry, computer industry, software manufacturers, the Federal Reserve, the NSA and the Electronic Frontier Foundation (EFF). The committee has been considering whether or not to proceed with what is known as the Triple DES (Data Encryption Standard), an upgrade to the international standard and a competitor with the administration's Clipper policy.

The Triple DES vs. Clipper debate illustrates how an arcane technical protocol issue has become entwined with basic social questions, and more important, how government "policy" has become removed from the public and why the public sphere must exist outside the government.