

GTW ASSOCIATES



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George T. Willingmyre, P.E.  
President

Donald S. Clark, Office of the Secretary,  
Federal Trade Commission,  
600 Pennsylvania Avenue NW,  
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by email to: [competitionandintellectualproperty@ftc.gov](mailto:competitionandintellectualproperty@ftc.gov) and to Gail Levine, Deputy Assistant General Counsel for Policy Studies [glevine@ftc.gov](mailto:glevine@ftc.gov)

REFERENCE Comments regarding Competition & Intellectual Property

Dear Sir or Madam:

GTW Associates welcomes the opportunity to offer comments in response to the FTC Federal Register request for information related to the study:

"Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy"

focusing on the implications of antitrust and patent law and policy for innovation and other aspects of consumer welfare.

These comments concentrate on the intersection of appropriate protections for and encouragement of investments in intellectual property with the antitrust and other legal considerations related to the expectations of the participants in writing standards and the users of such standards they will not face undue or unforeseen barriers in implementing such standards.

GTW Associates has completed an inventory of Intellectual Property Rights Policies of policies of selected standards developers at <http://www.gtwassociates.com/answers/IPRpolicies.html>. The page contains links to the IPR policies of key national and international standards organizations such as ISO/IEC; ITU; ANSI, IETF, IEEE, W3C and more

"CONSIDERATIONS IN ASSESSING A STANDARDS DEVELOPING ORGANIZATION'S INTELLECTUAL PROPERTY RIGHTS POLICIES IN ADVANCE OF PARTICIPATION" at <http://www.gtwassociates.com/answers/IPR%20article.htm> are questions based on my career experience in the standards setting process that any company should contemplate given its own circumstances and competitive position before participating in a standards process.

Approaches to influence the IPR policies and practices in US and Global standards setting at <http://www.gtwassociates.com/answers/Approaches.htm> explores various approaches to influence on a global scale the IPR policies of key standards setting organizations.

Having completed the survey of the "Intellectual Property Rights Policies of selected standards developers" and having reviewed those policies according to "CONSIDERATIONS IN ASSESSING A STANDARDS DEVELOPING ORGANIZATION'S INTELLECTUAL PROPERTY RIGHTS POLICIES IN ADVANCE OF PARTICIPATION" GTW concludes there is diversity in the specific approach to Intellectual

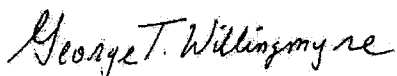
property rights policies of standards developers around the world. Such diversity itself does not equate to a major problem. **The diversity of IPR approaches within standards setting bodies allows these bodies to "compete" for the business of developing standards based on (among many factors) the power of the applicable IPR policy to attract and hold the interest of key stakeholder participants.** There is a balance of the level of risks and costs that that will attract participants to the standards table. At present, it is possible to begin to discriminate among various organizations. **However in many cases there is insufficient information to make a truly informed decision. What is critical for such competition is that it occur in full daylight with clarity and transparency. Several widely respected, strategic national and international organizations setting global precedents for IPR policy are unable to easily identify their standards with associated IPR claims.**

**GTW concludes that FTC could make the greatest positive contribution by assembling its research and findings in a factual report that could have considerable and long lasting positive impact within the Voluntary Standards Community. Such a report could be the focus document of a national meeting of informed and materially interested parties. Such a report could be the stimulus for appropriate evolution of administrative reform in global standards policy and procedures. FTC should work within the standards community as a cooperative participant in reforming any IPR policies that may be appropriately revised WITHIN this system. This action would be consistent with the OMB Circular A-119 Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities While legislation to revise the National Cooperative Research and Production Act is under active consideration in 2002 (HR4849) it also seems reasonable to contemplate appropriate text to encourage both consensus standards bodies as well as joint ventures registering under the NCRP to include procedures for Intellectual property rights.**

This is an arcane and narrow field of focus, but one in which GTW Associates has some competence. GTW Associates is a consulting firm specializing in international trade, standards policy and conformity assessment matters. Previously I was Vice President of Washington Operations for the American National Standards Institute. I was involved in the public and private sector resolution of the early 1990's ETSI IPR Undertaking controversy and advancing private sector views to the government negotiations of the WTO Agreement on Technical Barriers to Trade. I am currently active in the ANSI Patent Group, the ITU/T Directors ad hoc group on IPR; the IETF poised policy discussion list and served for 2 years on the W3C patent group. GTW Associates clients have included Microsoft Corporation; DaimlerChrysler; the European Commission; OECD, the Japan METI and various law firms involved in patent/IPR litigation.

Please do not hesitate to call on me if you have any questions or if GTW Associates may be of further assistance.

Sincerely,



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