



# **Moderated Sign Up for Consortia Membership**

**Ensuring Compliance with  
Policies and Best Practices**



Standards setting organizations are, by necessity, increasing the degree of formality they observe around policies and procedures that mandate conformance to antitrust laws and protect and articulate the organization's intellectual property rights policy. This paper summarizes the issues relating to the **rights and obligations of membership in technology standards consortia and their implications for operations**. It also offers a strategy for designing and implementing a sign-up process that ensures that new members have agreed to abide by anti-trust laws, the organization's bylaws, IPR policy and membership policies before they can log in to the organization's private web site and begin to participate in activities that are governed by written policies. This document then describes the process for administering that system for the benefit and protection of the organization and its members.

## ***Why Standards Consortia are Formalizing their Processes***

### **Consortia documents govern operations and behavior**

Standards setting organizations incorporated under US tax codes as nonprofit corporate entities vary widely in their structure, their degree of formality, and in their policies and procedures. Regardless of the differences, they all must create, publish and abide by the documents that describe their legal structure and their covenants with member companies.

According to Andy Updegrave at the law firm of Gesmer Updegrave, a properly formed consortium will have in place the following documents:

- **A Certificate of Incorporation**, containing the limited number of rights and rules which by law must be set forth in this document.
- **Detailed Bylaws**, which contain the legal and procedural rules of operation, the governance structure, the classes of membership and their rights, and other provisions which enable the day by day operation of the organization.
- **An Intellectual Property Rights Policy**, which is typically adopted by the Board of Directors, and defines the high level rules of the organization and its technology adoption process.
- **The Policies and Procedures of the Technical Committee**, which is a detailed document setting forth all of the day by day rules of the technical process, such as notice and quorum requirements, meeting rules, chairperson duties, and so on.
- **A Membership Application**, which is the legal contract by means of which a company or other applicant becomes a member and agrees to be bound by the rules of the organization<sup>1</sup>.

In order to operate within legal bounds, avoid situations in which members "game" the system by withholding essential IP with impunity, and to abide by its own policies and procedures, a standards consortium must make absolutely certain that:

1. each member understands and acknowledges their understanding of all formal policies and procedures as a precondition of participation in standards setting activities
2. that the standards development process and membership sign up process reinforce those policies and procedures.

Following this set of practices requires organizational discipline. The court case described below illustrates why structure and formality are so important.

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1 Consortiuminfo.org "Forming a Consortium", Andrew Updegrave



## Rambus Case as a Wake-up Call

A recent FTC antitrust case brought into focus just how important it is for standards consortia to have unambiguous and consistently enforced policies in place before engaging in IP disclosures and consensus-building activities. Rambus Incorporated, a member of the JEDEC semiconductor standards organization, allegedly withheld essential intellectual property from JEDEC during the creation of a standard for DRAM interconnects, manipulated the standards process to ensure their IP was used in the specification, waited for the industry to adopt the standard, and then began to bill DRAM makers for royalties on undisclosed patents that Rambus held. Rambus claimed that it did not understand the requirement to disclose because JEDEC's IPR policies were unclear and inconsistent with their operating procedures and verbal guidance. An administrative law judge supported Rambus on all counts in a preliminary hearing. Appeals are in process.<sup>2</sup>

Regardless of the eventual outcome of the Rambus case, publicity surrounding it served as a wake-up call to members, potential members, and consortia officers. This scrutiny and additional complexity comes at a time when participation in consensus standards efforts is of growing strategic importance to technology companies.<sup>3</sup> Widespread adoption of new technologies today occurs rarely without the support of published standards and the existence of interoperable solutions from a variety of vendors. Rambus brought the following issues to the forefront:

- **Heightened concern about IP risks**

In addition to the specific issues brought forth in the Rambus case, legal scrutiny of membership agreements and IPR policies of many organizations brought to light some of the other risks associated with joining a standards consortium without a thorough evaluation of the organization's policies and agreements and a formal corporate approval process before any membership agreement could be signed.

Most participants and contributors in standards consortia are not attorneys. They are more likely to be engineers, technologists, or marketing professionals without formal training on antitrust issues or a thorough understanding of the implications of consortia IPR policies. There have been many cases in which a company representative will sign a membership agreement which binds his company to the terms of the consortium IPR policy without ever having read it. This is every corporate IP attorney's worst nightmare as it threatens the value of corporate IP. Yet it happens routinely.

- **Necessity for active involvement of corporate legal staff in joining, forming consortia**

As a result of the dust storm stirred up by the Rambus case and a growing sensitivity toward the risks associated with some IPR policies, corporate counsel is now very often deeply involved in evaluating whether or not their company should join a given organization. A thorough examination of the consortium's IPR policy, membership agreement and the organization's ability to enforce those policies often precedes an agreement to join. Satisfying the concerns of prospective members is now an essential step in building membership and participation in a standards consortium.

## ***Setting and Enforcing Participation Eligibility Requirements***

While it is very tempting for technical people to skip the formalities and just get down to doing the work of specification drafting, the temptation needs to be resisted until such time as the structure is in place to ensure that policies are enforceable. A well-run organization will make sure that no one participates in or contributes to the working group process until their signed membership agreement is in place and they

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2 For more information, see the presentations from the experts at [www.standardsconference.org](http://www.standardsconference.org)

3 Presentations on the importance of standards for technology companies are available at <http://seminar.kavi.com/past/200410/>



have acknowledged an understanding of the IPR and other policies in writing. Access to information without the necessary disclosure obligations can make it possible for non-participating members to file patents that burden the evolving standard with royalties that need not be reasonable or nondiscriminatory.<sup>4</sup>

Operating a consortium that abides by these principles means putting processes in place that helps ensure that all members are on record as having signed off before they get access to information or participate in meetings. This implies having defined a membership sign up process with discreet and verifiable steps, and information technology to help implement that process. Implementing these practices without overwhelming your staff and volunteer resources requires some business process automation.

### Defining a membership sign up workflow

Parts of a membership sign up process can be automated. However, the term 'moderated' as applied here means that **human involvement and decision-making is a key part of the process**. Specifically, a membership administrator will have to handle the receipt of signed legal documents, determine if they are in order, take the appropriate action if they are not, inform the system that they have been received, file them, and take the steps necessary to activate a new member's accounts to provide site access and open the door to their participation in committee meetings.

Technology's contributions to the process are mainly to reduce the 'administrivia', speed up the process, reduce the possibility of human error and provide an archival record of actions taken. Opportunities for automation include:

- the presentation of the legal documents in electronic form
- online membership application forms that are backed by database tables
- email notification to the moderator(s) that their attention/action is required
- data logging of actions taken by administrators (in case of audits)
- presentation of bills, invoices and receipts
- collection of credit card payments
- easy conversion of 'pending' memberships into active memberships
- issuance of valid passwords
- deactivation of accounts that are out of compliance
- generation of activity reports

Below is a generalized workflow diagram that should cover most standards consortia's requirements and keep it operating within its bylaws.

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<sup>4</sup> Consortiuminfo.org "Creating an SSO Technical Process", Andrew Updegrove

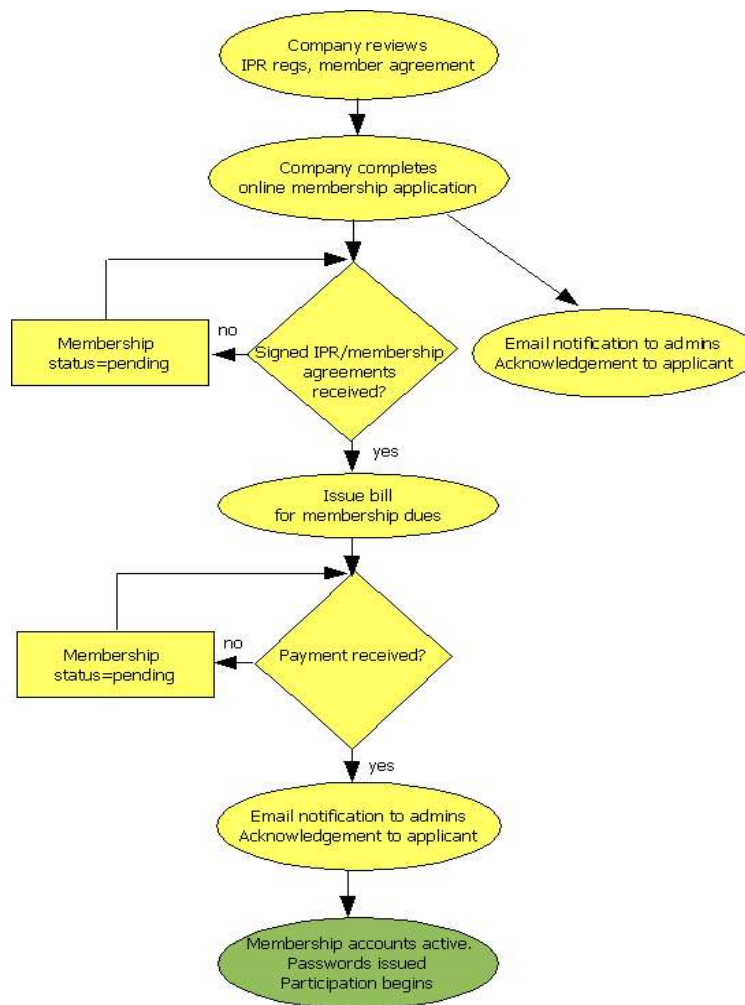


Figure 1. Moderated sign up workflow diagram

The intent, of course, is to make sure that all prerequisites are satisfied before any representatives from a new member company are allowed access to the standards setting tools, documents and processes or attend consortium meetings. Typical prerequisites include:

1. having signed the organizational membership agreement and the IPR policies thereby acknowledging an understanding of their rights and obligations as members
2. paying the organization's membership dues.

While some parts of this sign up process can be automated or facilitated by technology, compliance with best practices still means that someone with administrative privileges will have to assume the responsibility for verifying that key documents have been signed and filed away in the organization's archives and authorize the issuance of user names and passwords.



## Configuring the Consortium Web Site to Support the Workflow

The Consortium's membership management system and web site infrastructure should be configurable to support moderated sign up with the following set of functions:

- Make the membership documents, IPR policy and other legal documents available for viewing and/or download on the public side of the consortium Web site. This makes it easier for prospective members to read the documents and complete a thorough legal review so that their rights and obligations are clearly understood.
- Present a membership application form that captures the prospective member's data and desired membership level and creates a record with a "pending" status. Organizational administrators can then easily change the state of the applicant's record to "current" or "rejected" depending on the outcome of the moderation process.
- Send notification email to the appropriate site administrators requesting specific action with links to the specific record upon which action is required when a membership application enters the system and when the status of that application changes.
- Make it simple to convert pending memberships into active memberships when prerequisites are met
- Facilitate payment of the membership dues and other fees by presenting an online bill, providing online or off line payment options, collecting payment by e commerce and providing a receipt for online payments
- Allow immediate deactivation of accounts for any company that is not in compliance with consortium policies

## Conclusions

It is vitally important that all members acknowledge their understanding of the SSO's policies and procedures before any representative of that member company is allowed access to the organization's tools, documents and processes. Success requires organizational discipline, a well-trained staff and the right set of business process automation tools. Organizations who operate with the necessary discipline will find it easier to recruit and retain members and accomplish their standards setting goals. A moderated sign up process helps ensure that a standards setting organization follows its bylaws, treats all members fairly and openly, achieves the appropriate level of IP disclosure and reduces its risk of running afoul of antitrust laws.

For more information, visit:

<http://www.kavi.com/standards/>  
<http://www.kavi.com/newsroom/>  
<http://www.consortiuminfo.org>  
<http://www.standardsconference.org>

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