



March 16, 2009

The Honorable Peter R. Orszag
Director
Office of Management and Budget (OMB)
Office of Information and Regulatory Affairs
Records Management Center, Office of Management and Budget
Attn: Mabel Echols, Room 10102
NEOB, 725 17th Street, NW.
Washington, D.C. 20503

Via e-mail: oir_submission@omb.eop.gov

Dear Director Orszag:

On behalf of the Computing Technology Industry Association (CompTIA), we thank you for the opportunity to submit written comments concerning the improvement of the processes and principles of government regulation. In sum, CompTIA urges careful adherence to the guidance and philosophy contained within Executive Order 12866 (Mon., Oct. 4, 1993, "Regulatory Planning and Review"). Specifically, we invite your attention to the sections emphasizing the efficient use of the regulatory process only consistent with the prerogatives permitted under the law, *i.e.*, the U.S. Congress through the federal legislative process.

The Computing Technology Industry Association (CompTIA) is the voice of the world's \$3 trillion information technology industry. CompTIA membership extends into more than 100 countries and includes companies at the forefront of innovation; including, the channel partners and solution providers they rely on to bring their products to market, and the professionals responsible for maximizing the benefits organizations receive from their technology investments. The promotion of policies that enhance growth and competition within the computing world is central to CompTIA's core functions. Further, CompTIA's mission is to facilitate the development of vendor-neutral standards in e-commerce,

customer service, workforce development, and ICT (“Information and Communications Technology”) workforce certification.

“The American people deserve a regulatory system that works for them, not against them . . . policies that recognize that the private sector and private markets are the best engine for economic growth.”

So begins Executive Order 12886 (“E.O.”) as it outlines a number of sound “good government” philosophies and principles that guided the then-Administration during a period of record U.S. economic prosperity. CompTIA urges adherence to these policies in order to usher in a new period of domestic economic prosperity. In our role of representing some of the country’s most innovative software and hardware companies, we wish to emphasize a few points that impact our industry, as well as, the nation’s economy as a whole.

Accordingly CompTIA urges new federal agencies carefully review the principles and philosophies contained within the E.O. and exercise restraint as they begin their regulatory processes. One example from our industry may illustrate these points. The ICT industry, and Americans in general, have benefitted from the governance frameworks embodied by various OMB Circulars, such as A-119. In our view, Circular A-119 is a textbook example of how the branches of government work in concert toward the goals of (1) an efficient and enlightened regulatory process; and, (2) respect of the legislative mandates of Congress.

OMB Circular A-119 provides a model and sound regulatory framework. It implements the provisions of the “National Technology Transfer and Advancement Act of 1995” (Public Law No. 104-113, Mar. 7, 1996). Through this legislation Congress provided specific guidance to federal agencies, “Utilization of Consensus Technical Standards by Federal Agencies” (The Act, §12(d)). Congress mandated the following:

All Federal agencies and department shall use technical standards that are developed or adopted by voluntary consensus standard bodies, using such technical standards as means to carry out policy objectives or activities determined by the agencies or departments . . .

Congress thus spoke through legislation that the policy of the U.S. is for federal agencies to use voluntary consensus standards instead of government-mandated standards (though some exceptions exist). This Circular also defines “voluntary consensus standards” such that includes standards from a range of standards-setting organizations (*e.g.*, formal standards bodies, informal consortia, etc.) and concerning certain basic criteria, *i.e.*, “openness”, “balance”, “due process” and “consensus.” It states the following:

For purposes of this policy, “voluntary consensus standards” are standards developed or adopted by voluntary consensus standards bodies, both domestic and international. These standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties. For purposes of this Circular, “technical standards that are developed or adopted by voluntary consensus standard bodies” is an equivalent term.

- (1) “Voluntary consensus standards bodies” are domestic or international organizations which plan, develop, establish, or coordinate voluntary consensus standards using

agreed-upon procedures. For purposes of this Circular, “voluntary, private sector, consensus standards bodies,” as cited in Act, is an equivalent term. The Act and the Circular encourage the participation of federal representatives in these bodies to increase the likelihood that the standards they develop will meet both public and private sector needs. A voluntary consensus standards body is defined by the following attributes:

- (i) Openness.
- (ii) Balance of interest.
- (iii) Due process.
- (vi) An appeals process.
- (v) Consensus, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments.

In CompTIA’s view, the Circular highlights OMB’s good practices and adherence to sound and efficient regulatory philosophy and principles. As a result, the U.S. continues to enjoy strength, robustness, and dynamism in the ICT global industries. CompTIA and its members have long advocated that consensus technical standards contribute to promoting efficiency, interoperability, and innovation. Without a doubt, the U.S.’ innovation and entrepreneurship is the envy of the world.

Regrettably, often every action has an equal and opposite reaction, as physics teaches. Many who wish to thwart the U.S.’ leadership and strength in the ICT industry propose radical policies in the standards arena. For example, many jurisdictions and foreign governments proffer a new definition of “open standards.” In our view, “openness” plainly refers to the process, not to the status of the intellectual property underlying the resulting standard (e.g., patents covering inventions). Unfortunately many wish to discourage U.S. innovation, entrepreneurship, and R&D by advancing the fallacy that “openness” is contrary to Intellectual Property Rights (“IPR”) (e.g., patents, copyrights, and trademarks). The misinformers seek a disgorgement of one’s IPR rights, often with the goal of free or royalty-free software. The notion that the term “open standards” is synonymous with free and/or no-charge software is also a myth. As CompTIA has explained in its White Paper, *“Interoperability and Open Standards: A Road Map for Policymakers,”* “open” describes the process of adoption, not the use, of standards.”¹ Where “open standards” represent a process for achieving a standard, this in itself, does not guarantee a result about the total cost of ownership for the resulting software product. CompTIA urges policy-makers that nothing in the regulatory process permits an abrogation of the Copyright Act (17 U.S.C. §

¹ *Interoperability and Open Standards: A Road Map for Policymakers*, at 12 (July 2006).

101 *et seq.*), the Patent Act (35 U.S.C. § 1 *et seq.*), or the other intellectual property statutes and protections.

Such false “openness” arguments often rise in the context of ICT procurement. Government procurement is best served by a competitive choice among ICT technologies, whether or not covered by standards. CompTIA has long urged policy-makers to abide by the following technology neutral principles:

- Procure software on its merits, not through categorical preferences;
- Promote broad availability of government funded research;
- Promote interoperability through platform-neutral standards; and,
- Maintain a choice of strong intellectual property protections.

Certainly, these principles are consistent with OMB Circular A-119, the “National Technology Transfer and Advancement Act of 1995,” and the will of the U.S. Congress. As OMB continues its regulatory planning and review, we urge you to stay true to the principles and philosophies articulated in E.O. 12866. Any changes to Circular A-119, federal standard-setting conventions, or the ICT procurement process must be consistent with federal legislation and include input from all stake-holders.

It is uncontested that the U.S. ICT industries are the finest anywhere and the envy of the world. The importance of the ICT industries and their impact on U.S. workers is as important, if not more crucial, today as in the early 1990s. The future of our economic prosperity begins with a new “digital prosperity.” This is a direct result of OMB’s stewardship of the regulatory system.

Again, thank you for your consideration of these comments, and we are happy to be a resource as the Administration continues its critical work on the challenges ahead and advancing the IT industry.