

Taking a Stand on Standards Initiatives

By Joe Danowsky

Industry analysts often debate implementation details of various standards, but more critical attention should be addressed to whether entire standardization programs are well conceived. In this article I offer some lines of thought that readers may find useful in deciding their overall response to a standardization proposal.

While the Open Legal Standards Initiative explored later in the article is an industry-wide example, readers can apply these considerations to in-house standards proposals as well.

Before scrutinizing the detailed workings of a proposed standard, it makes sense to reflect on the stated goals and discernible motives of the initiators.

GOALS OF STANDARDIZATION

Standardization efforts often reflect a confluence of several goals, but one of the following is usually central:

Making the substantive or procedural components of a process identical (interchangeable), or otherwise making the outcome of the process predictable.

For example, clockmakers and then gunsmiths originally provided standardized interchangeable parts to facilitate repairs. This standardization also paved the way for the social invention of assembly-line mass production.

Accounting specialists can of course relate to an even older technology for standardized production: coin-producing mints.

Making components or processes interoperable without otherwise trying to standardize the components.

Interoperability has for decades been a major concern of the military, as evidenced by major programs such as JINTACCS (Joint Interoperability of Command and Control Systems). Modular designs in architectural construction, electronics, computer software, and other fields have similar goals. Lean manufacturing techniques promote the concept of making a multitude of different products by recombining a minimum number of standard parts.

For lawyers, a classic historical example of enforced standard interfaces would be the common law forms of action: a plaintiff could plug into the legal system only via a writ that matched one of the traditionally recognized forms.

Slicing up variegated data or observations into nominally standard categories to facilitate measurement.

Accountants, who routinely classify data into tax-based and managerial accounting categories, are altogether familiar with this type of standardized reality mapping. Lawyers don't have to look far for examples either. A good one is having timekeepers

assign uniform or home-grown task codes to their work, to facilitate comprehensive and auditable billing.

Other examples of classification standards include “therbligs” or other industrial engineering time-study units, regulatory criteria for census taking, and financial performance metrics for law firm ranking.

As discussed later in this article, a problem for other types of standards is that they often wind up being used specifically for performance measurement, even when their design is inappropriate for that purpose.

Sheer regimentation to advance psychological or aesthetic objectives.

Military examples inevitably come to mind. One commander who set up battlefield headquarters in a hotel lobby reportedly could find no regulation permitting marble columns, so he had them painted green. Less ridiculously (if one is disinclined to argue with success), Apple Computer CEO Steve Jobs insisted that all equipment in a new computer factory be exactly color-matched to visually emphasize the integrity of the manufacturing process.

For law firms, logo and letterhead standardization are examples closer to home. The whole notion of “branding” obviously reflects this approach.

MOTIVES FOR STANDARDIZATION

Independently of the ostensible goals for a standardization proposal, it’s useful to discern the originators’ motives. While not always admitted, the key motive is likely one of the following:

Achieving a result that would be impossible without actual standardization.

Familiar examples of facilitative standardization are the MICR coding on checks, the UPC codes on consumer products, and postal ZIP codes. These standards make possible high-volume automated processes that otherwise would not be feasible.

I believe it was Alex Osborne, the popularizer of brainstorming, who wrote inspiringly about an American electric clock inventor. (My brief verification research suggests a possible mythologizing of the work of Arthur French Poole, but I still love the story.) The prototype proved inaccurate, so the inventor investigated further and discovered that electrical utilities had exaggerated their ability to generate AC current at precisely 60 cycles per second — the very basis for the invention. Rather than giving up, however, the inventor adapted his cycle-counting mechanism into a regulator device that utilities could use to actually standardize their current. Next, he traveled around the US, selling the regulator to every electrical utility in the nation. *Then* he sold the clocks.

Getting back to reality, an example of this type of innovation in law firms is standardized formatting of electronic invoices. The LEDES 1998B and newer LEDES 2000 formats make possible not only efficient e-billing but also follow-up accounting and auditing procedures that had been impractical in a paper billing environment.

Making one's own job easier.

The reason this category sounds deprecated is that too often those who initiate standards for this purpose don't bother to ensure that their proposals are also helpful to others, or at least neutral.

Done considerately, however, there's nothing wrong with advancing a standard to make one's own job easier. For example, the recipient of any torrent of input is in the best position to see how various changes would improve the work flow, at least locally. Quality Circles and similar management methods are partly based on this premise.

Local standardization is often purely self-interested. For example, industry-wide standard RFP or IFB formats can benefit an entire supply chain, but unique local standards drive suppliers to distraction by making them repackage their offerings for each potential buyer. Law firms submitting to "beauty contests" for large, highly assertive corporate clients are increasingly faced with this burdensome type of proposal cost.

Making someone else's job easier.

During my own long-ago immersion in IT Standards & Procedures, I ensured that each standard, form, or step-by-step procedure I created was both designed and promoted as a job aid, rather than as an administrative fiat. That orientation, together with active solicitation of user input, greatly improved user acceptance.

In law firms, the LEDES e-billing format is again a good positive example. Even though e-billing is often initiated by clients, this type of standardization functionally benefits law firms as well. (Whether the costs and benefits of e-billing are shared fairly is another question.)

Note that collaborative work practices often depend heavily on effective standardization. As a regrettably vivid example of how *lack* of standardization impairs teamwork, consider the error-prone whisper-down-the-lane method by which most parts of the medical establishment seek to deliver the right dose of the right medication to the right patient at the right time. The Institute for Safe Medication Practices has found that the great majority of medication errors reflect systemic packaging and procedural design problems rather than individual carelessness or incompetence.

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After considering the goals and motives associated with a standardization proposal, an evaluator should assess other factors as well. One's decision to support or oppose a standards proposal may turn in part on its expected practicality, apparent costs and benefits, or predictable unintended consequences.

A CURRENT INITIATIVE: OLSI AND ITS 'AGENDA'

One industry-wide standards effort now underway is the Open Legal Standards Initiative (OLSI), which was co-founded in 2005 by the non-profit Association of Corporate Counsel (ACC) and a for-profit corporation called The Corporate Legal Standard (CLS). OLSI seeks to standardize process work flows and related performance metrics for

corporate law departments, outside law firms, and government departments (in that order, contrary to earlier plans). OLSI is also collaborating with the ACC, CLS, WestLegalEd, and the Practising Law Institute to run a series of symposia focused on process and metrics innovation.

In a parallel development, CLS is about to start beta testing the first deliverable modules of its workflow software product, the Agenda Solution™. Implemented as a Microsoft SharePoint® portal, which runs in association with Microsoft SQL Server, the Agenda Solution is a collection of customizable wizard-style workflow job aids. Each job aid is designed to support one of OLSI's standard process categories. Conversion and synchronization tools are planned to link the Agenda Solution with legacy software — a large programming project in itself.

While the Agenda Solution's embodiment of the "Open" OLSI standards allows for customization, it will not itself be open in the "open software" sense. Proponents of the Open Document Format, another emerging standard, might argue that this misses a ground-floor opportunity to make a new category of software vendor independent.

Meanwhile, here's a sample of the kinds of cycle-time, cost, and process-efficiency metrics that OLSI is advancing. Metrics defined so far are specifically for corporate law departments, but the selected metrics and some others clearly affect outside firms as well.

- Cost to resolve matter (excluding liability)
- Average cost to resolve matter (law-firm specific)
- Outside legal expense per in-house attorney
- Ratio of cost of legal research conducted internally as compared to externally
- Ratio of cost of legal research conducted by outsourcing firms as compared to law firms
- Percentage of matters for which prior work product is located and applied
- Percentage of matters handled under alternative fee arrangements

Raw numerical scores for such performance indicators have little significance. For example, a low "Cost to resolve matter" is clearly desirable when a matter was resolved favorably. But what if the matter was resolved unfavorably? Did the pennywise solution cut the company's losses (good), or did it *cause* the unfavorable outcome (bad)?

At minimum, such sets of metrics need to come with thoughtful interpretive guidelines that explain desired interrelationships. Nena Wong, Esq., the CEO of CLS, agrees, noting that discussion of such nuances is part of the ongoing symposia. (The symposia are conducted by Webcast and are being made available for replay.)

Wong points out that the metrics are intended largely for benchmarking, and that major surveys are planned for that purpose. When an outside firm proposes a budget for a particular matter, for example, a law department would like to have some idea of whether the budget is significantly out of line with other firms' budgets for similar matters.

Even with nuanced guidelines, and even with benchmarking as the major goal (vs. individual performance evaluation), the use of statistical metrics for performance ratings is intrinsically problematic. Unlike light bulbs being subjected to statistical quality control when they come off a production line, people have anxieties. People being statistically rated — the President of the US included — plainly feel enormous pressure to adjust their behavior to keep their numbers in range.

Notice, for example, that all matters appear to be equally weighted in these metrics. As a result, the law-firm specific “average cost to resolve matter” metric might well pressure an outside firm to (a) divert attention from time-consuming critical matters and (b) give short shrift to other matters.

How should outside firms respond to the OLSI program? Since the initiators of OLSI are primarily seeking to reduce corporate law department expenses, it’s clear that OLSI proposals affecting outside firms should not be *assumed* to reflect the needs of those firms. Nor should the reverse assumption be made, of course, since some client-initiated changes have substantially benefited outside firms as well.

According to Wong, OLSI welcomes participation of outside firms. OLSI memberships are available at modest to pricey levels, from Associate up through a retroactive “Founding Member” status. Interested readers can email info@openlegalstandards.org, or link to OLSI membership information from www.openlegalstandards.org or www.corplegalstandard.com.

As of June 12, 2006, the OLSI working group for law firm standards has circulated discussion drafts outlining major work flow processes and metric categories. There should still be adequate time for newcomers to comment on these and provide input on the drafting of specific metrics.

CONCLUSION

All change is potentially disruptive, so proposed new work flows, metrics, and other standards should be designed with a view to acceptance. Those on the receiving end of proposed standards should attempt to view the initiative objectively, bearing in mind the kinds of considerations discussed in this article. Finally, all stakeholders should seek opportunities for participation in the standards development process: it’s a lot easier to influence a working draft than a completed structure.

Joe Danowsky is the Editor-in-Chief of *Accounting & Financial Planning for Law Firms*.