

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



TO CHIEF OF BUREAU

REATIVE MATTER OF

RAMBUS INCORPORATED

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McIntyre, Kevin and Moore, Michael D., National Institute of Science and

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Toth, Robert D., ed., NIST—*Profiles of National Standards Related Activities Spec-*

IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae are Gesmer Updegrave LLP and Andrew Updegrave, an attorney with that law firm. Since 1988, *amici curiae* have represented over sixty standard setting organizations (SSOs), as well as other non-profit organizations that support, promote or

~~advocate in favor of open standards. *Amici curiae* have previously filed various *amicus*~~

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in many standards venues, as a Director of the Free Standards Group, which sets

standards for the Linux operating system, and as a member of the Board of Advisors of

potential gains of engaging in such practices. To fail to include a significant punitive

element in the remedies assessed by the Commission would demonstrate that the

attended getting process, to the detriment of society and the national interest

E2%80%93%20Coordinating%20for%20Results%22 (May 2004). In the technology sector, the role of standards is particularly crucial, as vital infrastructural elements such

in telecommunications, the Internet and the Web literally cannot exist without a common

development and implementation of enabling protocols and other standards

Where such a result is necessary in the interest of justice, the Commission will

impact of that collapse.

It is not the intention of *amici curiae* in this brief to advocate for a particular
remedy or remedies with respect to which the Commission will undoubtedly receive

advice from other sources. Rather, the *amici curiae* represented by this brief wish to

Standards underlie almost all aspects of modern life. They are essential to protect

safety codes and equipment specifications for diverse types of emergency worker
equipment. SSOs swiftly acted to set diverse standards supporting the current Homeland
Security Initiative, and continue to add to a growing list of such standards. SSO

officers and employees that in an extension of it is included in the same way as the other employees

[REDACTED]

This information is classified as "Confidential" because it contains information that is not generally known and its disclosure could result in the identification of sources of information or other individuals who are providing information to the FBI.

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unique standards wherever possible, but to actively participate in the activities of SSO

to facilitate the development of those standards as well. The most important Federal agencies in the United States use hundreds, and even thousands, of SSO maintained standards, and are completing the task mandated by the NTTAA of substituting SSO and

other non-government standards for any existing government standards.

In addition, the Department of Defense has “privatized” thousands of existing government unique standards in areas such as aerospace and electronics by allowing

individual SDOs to take over the further maintenance and evolution of these standards.

The Federal government has also taken actions to facilitate standard setting by SSOs generally. In 2002, the Federal Trade Commission and the Department of Justice held

joint hearings entitled *Competition and Intellectual Property Law and Policy*

manage their processes are given force and effect, and that those participants in SSO activities that are found to violate those rules are convincingly punished for their actions.

C. Leadership in Standard Setting Provides a Vital National Competitive Advantage

As noted by the Department of Commerce, leadership in standard setting is an important factor in maintaining national competitiveness. U.S. Department of

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[REDACTED]

http://public.ansi.org/ansionline/Documents/News%20and%20Publications/Brochures/national_strategy.pdf

More recently, China has been challenging the West with standard

intended to benefit its domestic industries. Updegrave, Andrew, *The Yin and Yang of China's Trade Strategy: Deploying an Aggressive Standards Strategy Under the WTO*, Vol. IV, No. 4 (April 2005), at

By all common definitions, an "open standard" must be available to be implemented by all who desire to do so on "reasonable and non-discriminatory terms" (and ideally, at the lowest cost, in order to provide greater incentives for rapid adoption). Any failure to significantly punish a member (in this case, Rambus) of an SSO that has been found to

have engaged in a course of deceptive conduct directed at its members.

**III. THE INTEGRITY OF THE VOLUNTARY STANDARD SETTING
PROCESS WOULD BE JEOPARDIZED BY THE FAILURE OF THE
COMMISSION TO ADEQUATELY PUNISH THE CONDUCT OF
RAMBUS**

As noted by *The Economist*, predicting the events here at issue with uncanny
accuracy at the very time that the conduct at issue was occurring: "[T]he noisiest of

competitive battles (between suppliers) will be about standards. [I]n the computer

industry, new standards can be the source of enormous wealth, or the death of corporate

empires. "With so much at stake, standards emerge as hot messes." *The Economist*, De

process because it increases the number of... product of the... of these

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CONCLUSION

Due to the severe impact that any weakening of the voluntary consensus standards development infrastructure would have on consumers, participants and the national interest, we respectfully request that the Commission include a significant

~~Whelan certifies that on September 14, 2006 I caused two copies of the foregoing~~

Brief of Amici Curiae on the Issue of the Appropriate Remedy for Rambus's Violations
of the FTC Act, to be served as described below.

~~Service by overnight delivery of three copies, including one original, signed~~