

The Relationship between the OIX and NSTIC

Overview

This document provides a high-level survey of the relationship of the National Strategy for Trusted Identities in Cyberspace (NSTIC) and OIX. Through an explanation of the Public-Private Partnership (PPP) rulemaking process, the document will identify the programs and actions called for in NSTIC and demonstrate how OIX's programs and tools will support the strategy's development.

This material is intended to explore the complimentary roles and relationship of the US federal government and the commercial sector in the quickly evolving data/identity markets. After a brief review of NSTIC, this material explores the policy leadership issues from a policy-making *process* perspective. The policy process is presented in the form of an empirical analysis of the five stages of rulemaking in the public/private context, borrowed from policy sciences literature.¹ The five stages of rulemaking are: *agenda setting* (discussion of issues), *problem identification* (focusing on relevant variables), *decision* (define future action items), *implementation* (focus on deployment), and *evaluation* (assessment of implementation and new *agenda setting* cycle). This material avoids the role of individual stakeholders, but only for purposes of this discussion, and not to diminish the critical importance of that stakeholder group. The substance will maintain a particular emphasis on the interests and rights of individuals.

OIX began modestly in response to a call from the US CIO. As the data/identity markets have quickly evolved, new and expanded roles for OIX have suggested themselves, each with benefits for different stakeholder groups. Because at least one agency of the US government (the GSA), has already recognized OIX as fulfilling a market leadership role (through its TFPAP process), and because OIX organization and operation is intended to provide neutral, broad data/identity market support, OIX is a natural candidate for consideration toward helping to coordinate policy and rules development at the commercial/governmental interface.

OIX has been structured for maximum transparency in organization and operations. OIX offers efficiency in the form of a highly developed Trust Framework development tool set. Finally, legitimacy is established by nature of the membership of OIX, its links to international data/identity initiatives, and its demonstrated ability to generate programs and tools to enable Trust Frameworks and in supporting the maturation of the data/identity markets.

Conclusion

The materials conclude that, even though the OIX programs and tools were originally put in place in response to the call by the GSA to address US government credentialing and identity system needs, those same OIX programs and tools (and the new markets that they support) can be of value to all data/identity system stakeholders, not just to the U.S. in its role as a “relying party” as emphasized in GSA’s FICAM program. Not only can

¹ In particular, the article “Self-regulation as policy process: The multiple and criss-crossing stages of private rule-making” by Tony Porter & Karsten Ronit (Policy Sciences, 2006)(Ronit 2006), is relied upon for the basic structure reflected here. That article surveyed dozens of hybrid public/private rule making settings in various countries to derive the five stages reflected here.

OIX help to “unpack” data/identity value elements and structured benefits to all stakeholders, but OIX is in a good position to help “coordinate” the identification and preparation of stakeholder rules that balance stakeholder interests.

NSTIC

NSTIC is a request for assistance. Just as the US government doesn't manufacture its own trucks, airplanes and guns, it also will not produce its own identity system infrastructure. NSTIC provides a set of guiding principles,² and provides a vision statement: “Individuals and organizations utilize secure, efficient, easy to use and interoperable identity solutions to access online services in a manner that promotes confidence, privacy, choice and innovation.” NSTIC provides four goals³ and establishes nine high priority actions to pursue those goals. NSTIC introduces the concept of an “identity ecosystem” that can be variously called a commercial market, a social community or a political governance structure depending on the context in which the data/identity system is being applied. This “identity ecosystem is at the core of the current future data/identity systems that OIX members operate.

I. Stage 1 - Agenda Setting

The rulemaking process at the center of PPPs suggests that NSTIC-based initiatives will likely proceed through five stages. Agenda setting is the first stage where different groups raise issues in related areas and where different groups identify and explore conflicts with other groups. Successful agenda setting for data/identity rules will be a hybrid of public and private processes. For maximum efficiency and to enable greatest stakeholder participation, the different rulemaking processes should be loosely coupled into separate but coordinated efforts. A substantial part of the current data/identity discussion is locked in the agenda setting process. Since NSTIC has a strong public component, success will go to the market participants that can help provide solutions to public concerns. But since those concerns are ill defined, so the exercise is as much about expectation setting as anything else.

The advantage of a PPP at this stage is that it offers greater flexibility and informality in rulemaking than public law. In a PPP situation, there can be agreed-upon aspects of system legal development that can be developed in either the private or the public sphere to match the context giving the process flexibility.

That OIX membership does not include all potential IDP players is not a problem; greater normalization of any sub-part of the market through the development and adoption of standard rules will have potential benefits to all stakeholders. The work of OIX, as stated in its purposes, is to benefit and improve conditions in the industry generally. If any businesses are interested in participating in the future they are free to join OIX.

² Those principles are: that identity solutions will be secure and resilient; that they will be interoperable; that they will be privacy enhancing and voluntary for the public; and will be cost effective and easy to use.

³ The four goals are: 1. Develop a comprehensive identity ecosystem framework, 2. Build and implement interoperable identity infrastructure aligned with the common identity ecosystem framework, 3. Enhance confidence and willingness to participate in the identity ecosystem, and 4. Ensure the long term success of the identity ecosystem.

II. Stage 2 – Problem Identification

Problem identification is the stage where issues raised during “agenda setting” are narrowed to those that lend themselves to the crafting of rules and solutions for the stage 3 Decision. The second stage exercise of “problem identification” can be thought of as the capturing and specification of issues/problems “signal” from the “noise” of agenda setting. In other words, the improvement of the “signal to noise” ratio does not require that any stakeholder agenda items be ignored, only that they be coordinated with other issues into problem identification “slots.”

The OIX working groups structure was designed to allow the easy separation of issues/discussions into groups and subgroups as needed to foster efficient, transparent and participatory development. Each OIX working group is separate, can determine its own IPR and governance policy, and is able to follow its own work plan at its own pace.

Traditional rulemaking will likely result in the perpetuation of jurisdictional silos, raising compliance costs for data/identity service providers and other stakeholders across multiple jurisdictions. However, a PPP can leverage large firm reach to allow policy transfer across jurisdictions, especially with regard to data/identity services which play an increasingly important role in many industries that these bridges are available. Comprehensive trust frameworks are the cheapest to build, since more parties promises to perform duties in accordance with a given standard of care are available as the “currency” to pay to other participants.

III. Stage 3 - Decision making

Decision making involves the selection of stage 2 “problems” to address and the making of decisions and new rules of how to deal with them. PPP begins to show its truly unique value at this stage, as it elevates all participants to the role of virtual “members of the legislature,” providing access to mechanisms of rules creation to parties affected by the rules. Getting a chance to comment on government legislation and regulation is good. Getting a chance to draft policy (and to let others comment on it) is better.

The OIX working group structure makes it easier to compare progress across and among initiatives. The OIX working group community provides the benefit of seeing how others handle various issues. One area in which NSTIC seeks to guide the decision making process is through its promotion of FIPPs-based legislation. The Department of Commerce Green Paper suggests that an updated set of FIPPs is a necessary starting point for decision making, and a PPP arrangement would allow a variety of perspectives and approaches to the question of FIPPs standardization. In addition, to the working group, OIX has produced the “FIPPs Analysis Tool” to take on the question of how FIPPs might be operationalized at the lowest cost with the maximum stakeholder benefit.

IV. Stage 4 – Implementation

During stage 4, implementation, the focus shifts from rulemaking system to deploying systems, which involves issues of applying incentives and penalties to coax participation.

PPPs enable standardization of legal rules to help support standardization of technology tools. If private parties are involved in rule setting, they can better configure new rules to integrate them in more easily, thereby helping to defray the educational and other deployment costs that plague government-only rulemaking. PPP can encourage membership (particularly of reluctant larger firms), by encouraging other entities to adopt PPP-derived rules. If such peer pressure doesn't work, industry can always fall back on the capacity and expertise of public sector enforcement capabilities.

V. Stage V - Evaluation

During the evaluation stage there is assessment and reporting of the activities engaged in during implementation. Evaluation involves both the review of prior actions and the initiation of corrective actions. Governmental rulemaking in the form of legislation or regulation does not typically anticipate being subject to dynamic alteration based on effectiveness reviews. In addition, private evaluation processes are atypical simply because they are infrequently bothered with during process planning. Where PPP processes are engaged in, the evaluation steps can be more formalized, making possible better evaluation, and improved process improvement, with the anticipation that private involvement makes corrective changes easier.

VI. Other Considerations

- There is precedent for government action where the accumulation of market power, even by innocent and fair practices, still led to a situation where the ill effects of a lack of competition were felt by other consumers and other market participants. The accounting profession had a long tradition of self regulation (being left alone by government) that it lost in the wake of the Enron scandal. NSTIC allows IDPs to preemptively act to prevent command and control federal regulation.
- The US government is involved in the process of seeking reform in the regulation of the financial and healthcare areas. These are two large relying party groups that would be subject to RP-BP based duties in a data/identity ecosystem. A PPP can help coordinate such reform initiatives. Relying parties include several developed industries that are well organized into long-standing consortia. Like all groups, relying parties will want to push increased responsibility onto other parties in the system, including the identity providers.
- IDPs can act now to increase their organization and cohesion, and to take advantage of the NSTIC opportunity, so that when liability issues arise, they can be addressed structurally (through the control of the rules effort), not just through individual negotiations of indemnity provisions and other secondary strategies. This type of international system to save compliance and dispute costs cannot be achieved by a single company, and it is not instrumented by a single country.
- A market that is not fully functioning has potentially negative effects on participants. For instance, is consumer “consent” to a social network terms of service a valid way

to test consent if the consumer has only one choice of service? It is possible to continuously improve market conditions to the benefit of all participants if the market itself can be brought into service in the effort. In other words, to move the market, it is necessary to move (business and individual) consumer expectations. The current PPP discussion might therefore offer a rare opportunity when government will support organized effort of market participants to help create standards that can affect market expectations and thereby help to continuously re-set market structure.

Potential Benefits of a PPP to IDPs

Cost effective compliance (e.g., for privacy and security requirements)	Mitigated government regulation
RPBP	Consumer Product Market Development (maturation and refinement of products)
Data-related Systemic Risk Management benefits	Data-related Systemic Liability Management benefits
Safe harbor legislation	Investment, tax and other incentives
Decreased international legal compliance costs	Increased geographic market penetration, and leveraged market growth across jurisdictions

XII. More on OIX

OIX is intended to provide members with an opportunity to participate in the market structuring exercise, and to support the creation and broad publication of tools and programs to enable stakeholders to participate, leading to a broadly open and competitive market that encourages a “race to the top.”

- First, the advisory board is intended to establish a relationship with recognized experts in related fields to provide multiple perspectives regarding developing and then maintaining a market in which Trust Frameworks play a central role.
- Second, by maintaining the OIX knowledge center (formerly the risk wiki), current market information and product development ideas are brought into a central resource to help inform individual stakeholder product development and purchase decisions.
- Third, the OIX working group community brings a great deal of development activity under the general auspices of OIX, even if the working groups have greatly different governance and IPR structures.

OIX working groups have the ability to draft their own governance documents, IP policies, etc. They can invite participation of all stakeholder groups, and they can craft Trust Framework materials of any scope desired (including those intended for national domestic application such as the US Trust Ecosystem). By becoming part of the OIX WG community, there is greater access to OIX tools, the advisory board, and a close relationship to a more transparent, open market.