

# FTC Bill Signed into Law on 29 May 1980

On 7 December 1978, the Federal Trade Commission published in the *Federal Register* a proposed trade regulation rule which, if it had been adopted, would have given the FTC power to regulate the development and application of product standards and the certification of products. Adoption of the proposed rule would have meant that standards-developing groups would be mandatorily required to comply with FTC's procedures. It was obvious to every interested person that this rule would inevitably strangle voluntary standards development in a mass of governmental red tape. Worse, under a "duty to act" provision, the FTC would have the power to exclude an organization from standards development activities, or even to impose heavy fines on an organization that failed to revise or withdraw an already approved standard or to develop a new standard by an arbitrarily set deadline in response to a complaint that a standard or the lack of a standard had raised prices or discriminated against a product.

Something resembling a shockwave went through voluntary-standards-developing groups following publication of the proposed rule. Other interested persons were also quick to see the dangers inherent in the FTC proposal. Samuel Forman in an article entitled "Standards of Value" in the February 1980 issue of *Harper's Magazine* said, "Who could be foolish enough to challenge the 300,000 individuals who volunteer some of their time under the auspices of trade, technical and professional organizations to writing the industrial standards of the nation. I could only conclude that someone at the FTC had gone mad."

## Vigorous Campaign

Publication of the proposed rule sparked a vigorous campaign to eliminate the dangerous possibility of its ever becoming law. Characterized by various critics as an overzealous regulator, the FTC was described by Rep. William Frenzel (R., Minn.) as "a rogue agency run amok."

The SMPTE, one of the prestigious organizations threatened by this ill advised proposal, took action. An open letter by SMPTE President Robert M. Smith to Henry Cabell of the FTC (*SMPTE Journal*, pp. 390-395, June 1979), pointing out the indefensible premise upon which the FTC proposal was based, told Mr. Cabell, "An organization like SMPTE which functions in greatest part by the good-faith voluntary contributions of time and expertise of concerned professionals rather than by dint of paid staff could not possibly continue its functions were it and its committee members subject to such Draconian measures."

Although the immediate danger to the time-tested system of volunteer development of standards has passed, there are no

guarantees that the SMPTE and other standards-developing organizations will not be facing similar disasters in the future. With that unfortunate possibility in mind, President Smith's open letter and a succinct explanation, by SMPTE Engineering Vice-President Roland Zavada, of the proposed rule and its possible consequences in the same issue (p. 389) are well worth reading.

The American National Standards Institute, Inc. (ANSI), which, continuously since 1918, has been dedicated to the development, promulgation and publication of voluntary national standards, led the opposing forces against the FTC proposal through the labyrinth of the legislative process, acting as group representative for standards developing organizations at the FTC hearings and in the courts. A complaint was filed on 9 May 1978 in the U.S. District Court in Washington, D.C., stating that the manner in which the FTC is conducting its proceedings is in violation of the plaintiffs' constitutional and statutory rights to due process and procedural fairness.

## Legislative Process

The legislative process is long, involved and usually fraught with controversy which is often acrimonious and bitter, especially when important issues are involved.

The committee hearings on the FTC Authorization Bill (H.R. 2313 and S. 1991) are well worth study as a typical example of the many pitfalls that can appear between the time a bill is introduced and its signing into law by the President and also of the time and great effort expended by all those involved in the progress of a bill from the floor of Congress to the President's desk.

It is common knowledge, of course, that the FTC is by no means high in the hierarchy of Federal Commissions, its activities having come increasingly under governmental scrutiny. For the last three years, it has been funded under continuing resolutions because of the inability of House and Senate to agree on appropriate measures to reform and guide its activities. However, this in no way minimized the danger that the proposed rule could conceivably be approved in the final vote on the current bill to the detriment of all standards developing organizations and, resultingly, to industry as a whole.

## Section 8

The long-drawn-out vigorous efforts of William Rockwell, ANSI Counsel, on behalf of ANSI and other standards developing organizations, centered around 36 words (Section 8 of S. 1991), "Provided that the Commission shall not develop or

promulgate any trade rule or regulation with regard to the regulation of the development and utilization of standards and certification activities under this section or any other law."

Controversy on Section 8 continued in the Conference Committee on the FTC Bill. On 14 April 1980 William Rockwell issued a memo setting forth the serious objections to the FTC proposed Rule. In the memo he pointed out three major legal objections:

1. Constitutional Objections. Under the "duty to act" section of the Rule, the FTC could force a standards development organization to publish a standard even if they did not want to publish such a standard. Counsel has pointed out that this part of the rule is clearly unconstitutional as violation of the First Amendment of the U.S. Constitution.

2. Adequacy of Existing Law. Council has also made a careful analysis of the existing antitrust laws and has reached the conclusion that the present antitrust laws are adequate to handle any of the legal problems of restraint of trade that might arise in the development and promulgation of standards. There is no need for the rule for this reason.

3. Jurisdiction of FTC. After a careful review of the FTC Act, Counsel has concluded that FTC does not have jurisdiction of ANSI or other standards organization under the FTC Act and this would render the Rule meaningless.

It was not, however, clear sailing from then on out. Although Section 8 of the House bill had been retained in its original wording by a 70 to 28 vote in the Senate on 7 February it was almost wrecked in the Conference Committee. Herculean efforts were required. Meetings were held with Senators and Congressmen and a meeting was held at the White House with Stuart Eisenstat, Assistant to the President for Domestic Affairs and Policy, but, according to ANSI Council, William Rockwell, "It soon became apparent that it would be impossible to restore the Section 8 language due to pressure from the White House motivated by the FTC." This did not mean, however, that the FTC Proposed Rule with all its potential for hampering, if not hamstringing, voluntary standards activities was approved.

The final meeting of the Conference Committee, held 30 April, approved the following language: "The Federal Trade Commission shall not have any authority to use any funds which are authorized to be appropriated under this Act to develop or promulgate any trade rule or regulation with regard to the regulation of the development and utilization of the standards and certification activities pursuant to Section 18 of the Federal Trade Commission Act (15 U.S.C. 57A)."

Although effectively stopping any immediate FTC interference in voluntary standards development, this was a far cry from the unequivocal language approved by the House as Section 8 of H.R. 2313. Especially, the omission of the words "under any other law" opened the door to possible future rulemaking by the FTC "with respect to unfair methods of competition in or affecting commerce."

Since the FTC's (very infirm) basis for

the Proposed Rule was that "the standards forum has been little more than a playground for special interests," further alleging that consumer interests were inadequately represented in the standards process — an easily refuted allegation — it is clear that the FTC may by some future maneuver again threaten the orderly development of voluntary standards by concerned organizations described by Samuel C. Florman as "a placid yet powerful community

whose history is one of the triumphs of American democracy."

The FTC Authorization Bill containing the dubious wording was signed into law by the President on 29 May 1980. According to William Rockwell, "This is not total defeat but it is a setback which provides a strong incentive for continuing activity aimed at protecting the American system of voluntary standards against any further assaults in the future." — RH

## Minutes of the Special Meeting of Voting Members of the SMPTE

Scarsdale, New York, 7 May 1980

The meeting was called to order by the Chairman at 10:30 a.m. The Executive Director having in his possession 1014 signed proxies a quorum was declared to be present in person and by proxy.

The proposed amendments to the Bylaws were read, and the meeting proceeded to vote. The text of the amendments and the total votes follow:

### 1. VICE-PRESIDENT FOR PHOTONIC AFFAIRS.

#### **Bylaws, Article III, Sec. 1. Number and Term of Office, Paragraph 5**

*Amend to read:* January 1 of each even-numbered year shall begin a term of office for the Engineering Vice-President, Financial Vice-President, Sections Vice-President, Vice-President for Educational Affairs, Vice-President for Photonic Affairs, Vice-President for Motion-Picture Affairs, Vice-President for Television Affairs, and the remaining approximate one-half of the Governors as specified in Article III, Sec. 2, Subsec. B.

For: 998                      Against: 16

### 2. VICE-PRESIDENT FOR PHOTO-INSTRUMENTATION

#### **Bylaws, Article IV, Sec. 12**

*Amend to read:* Sec. 12. Vice-President for Photonic Affairs. The Vice-President for Photonic Affairs shall be responsible to the President, Executive Vice-President, and the Board of Governors for representing the instrumentation, high-speed photography, and other photonic interests of the members of the Society. His duties shall be to seek out, study, and recommend worthwhile Society activities in this field; to cooperate with the Engineering Vice-President and Sections Vice-President in furthering the Society's contributions to instrumentation, high-speed photography, and photonic affairs; and to perform such additional duties as the President may direct.

For: 991                      Against: 23

### 3. SECTION ELECTIONS

#### **Bylaws, Article IX, Sec. 5, Section Elections**

*Amend to read:* The officers and managers of a Section shall be voting members of the Society. All officers and managers shall be elected to their respective offices by a plurality of ballots cast by the voting and Associate members residing in the geographical area of the Section. Not later than the

last Monday of February, nominations shall be presented to the Board of Managers of the Section by a Nominating Committee appointed by the Chairman of the Section, consisting of seven members, including a chairman. The Committee shall be composed of the present Chairman, the Past-Chairman, two other members of the Board of Managers not up for election, and three other voting members of the Section not currently officers or managers of the Section. Nominations shall be made by a three-quarters affirmative vote of the total Nominating Committee. Such nominations shall be final, unless any nominee is rejected by a three-quarter vote of the Board of Managers, and in the event of such rejection the Board of Managers will make its own nomination.

The Chairman of the Section shall then notify the candidates of their nomination. From the list of acceptances, not more than three names for each vacancy shall be selected by the Board of Managers and placed on a letter ballot. A blank space shall be provided on this letter ballot under each office, in which the name of any voting member other than those suggested by the Board of Managers may be written in. Appropriate space is provided in which to indicate a single choice of candidate for each office. Not later than the third Monday of March the ballots shall be mailed to each voting and Associate member of the Society residing in the geographical area covered by the Section.

The ballots which have been returned to the Secretary at Headquarters in accordance with accompanying instructions before or on the last Monday of April shall be delivered to the Committee of Tellers appointed by the President. Said committee shall tabulate the votes not later than the Monday following the designated closing date for the poll. The election of candidates shall be by plurality vote and in case of tie, the choice shall be decided by lot. Announcement of the results shall be communicated promptly to the respective Sections.

The newly elected officers and managers shall take office on 1 July of the same year.

For: 992                      Against: 22

There being no other business, the Chairman called for a motion to adjourn. A motion was made, seconded, and passed, and the Chairman declared the meeting adjourned at 10:45 a.m.

Respectfully submitted,  
Donald F. Broidt, *Executive Director*