

July 12, 2024

The Honorable Dr. Laurie Locascio  
Director  
National Institute of Standards and Technology  
100 Bureau Drive  
Gaithersburg, Maryland 20899

**Re: Response of ACT | The App Association on Request for Comments on the Draft Implementation Roadmap for the United States Government National Standards Strategy for Critical and Emerging Technology (USG NSSCET)**

Dear Director Locascio:

ACT | The App Association (the App Association) appreciates the opportunity to provide comments to the National Institute of Standards and Technology (NIST) request for feedback on the Implementation Roadmap for the United States Government National Standards Strategy for Critical and Emerging Technology (USG NSSCET).<sup>1</sup>

**I. Statement of Interest**

The App Association is a policy trade association for the small business technology developer community. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology. The small businesses and startups we represent both participate and seek to participate in the international standard setting process to contribute and build on important technical standards. App Association members are active in new platforms, like Web3, develop using indispensable technologies (i.e., artificial intelligence [AI]), and innovate on top of technical standards. The value of the ecosystem the App Association represents—which we call the app economy—is approximately \$1.8 trillion and is responsible for 6.1 million American jobs, while serving as a key driver of the \$8 trillion internet of things (IoT) revolution.<sup>2</sup> As lead innovators in critical and emerging technologies (CET), small businesses must be a part of this conversation.

**II. ACT | The App Association Feedback to The Draft Implementation Roadmap For The USG NSSCET**

We appreciate the opportunity to provide feedback on the draft Implementation Roadmap for the USG NSSCET. The App Association provided detailed comments to NIST on December 22,

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<sup>1</sup> National Institute of Standards and Technology, U.S. Government National Standards Strategy for Critical and Emerging Technology (June 26, 2024), <https://www.nist.gov/document/draft-usg-nss-cet-implementation-roadmap>.

<sup>2</sup> The App Association, State of the U.S. App Economy 2020, 7th Ed., <https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL-1.pdf>.

2023, regarding the implementation of the USG NSSCET.<sup>3</sup> After reviewing this draft roadmap, we wish to highlight several key areas of concern and suggest actionable improvements.

While we appreciate NIST's effort to develop a detailed implementation roadmap for the USG NSSCET, the broad policy objectives diverge from the current private sector-led standards development approach in the United States. NIST should focus on supporting U.S. leadership and participation in international standards development rather than directing it. The public and private sectors should determine the critical and emerging technology standards for NIST to prioritize.

In addition, instead of merely stating its established activities, the roadmap should highlight how NIST is excelling or can improve its established activities. NIST should recognize that the private sector already has a significant role in raising awareness about and invoking international standards development and participation among stakeholders and should support this role by facilitating public information on international standards, rather than taking over a crucial component of the private sector-led approach.

#### A. Provide Clarity on Private Sector Leadership

While the draft roadmap recognizes the significance of private-sector participation, it falls short of fully appreciating the crucial role that small and medium-sized businesses (SMBs) play in the standards development process. It is imperative that the roadmap explicitly endorses a private sector-led approach, ensuring that government actions do not unintentionally overshadow or supplant the innovative contributions of private enterprises. The roadmap should eliminate any ambiguity regarding the role of the private sector, which is fundamental to the U.S. standards system. For instance, when addressing the theme of enhancing coordination with foreign governments and collaborating with like-minded partners and allies to ensure CET standards,<sup>4</sup> the roadmap should explicitly define the role of the private sector.

The roadmap correctly highlights the importance of improved coordination among federal agencies and between public and private sector entities. However, it must clearly outline the mechanisms for this coordination and make stronger commitments to avoid the shortcomings of broad policy descriptions that lack actionable details. Additionally, it should acknowledge the diversity of standards organizations and their development models, ensuring that the implementation strategies in the roadmap reflect this diversity.

#### B. Recharacterize Objectives for Pre-Standardization Activities

NIST's objective to support pre-standardization activities provides a skewed understanding of what is conducted in practice. Through this roadmap, NIST seeks to identify opportunities to increase and support pre-standardization research and development (R&D) through strong and sustained funding, which the agency states will lead to impactful participation and contributions to standards development. For many private sector entities, pre-standardization R&D does not need additional support. While compiling pre-standardization research is valuable for developing

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<sup>3</sup> See <https://www.regulations.gov/comment/NIST-2023-0005-0106>.

<sup>4</sup> National Institute of Standards and Technology, U.S. Government National Standards Strategy for Critical and Emerging Technology, 8 (June 26, 2024), <https://www.nist.gov/document/draft-usg-nss-cet-implementation-roadmap>.

a standard, it is not specifically targeted towards standards development. Moreover, government-led pre-standardization research is typically conducted in collaboration with the private sector. NIST should focus funding and support for pre-standardization activities on identifying gaps where research between public and private sectors is lacking. Identifying and narrowly directing support for collaborative pre-standardization activities between the public and private sectors is a more defined and palpable goal for the agency to drive U.S. participation in standards development.

### **a. Specific Recommendations**

#### **I. Enhance Private Sector Participation**

The roadmap highlights the need for better communication and information sharing between the public and private sectors, including the creation of resources to support stakeholder engagement. However, it lacks a specific mechanism for achieving this. Therefore, NIST should develop a comprehensive strategy to streamline standardization activities for SMBs. This strategy should include creating a public database with detailed information on relevant standard-development organizations (SDOs), standards activities, and standard-essential patents (SEPs). The database should be designed with input from stakeholders to ensure it is user-friendly and comprehensive. Many SMBs face imbalances in access to resources and information, hindering their participation in the standards process. By providing easy access to detailed and relevant information, SMBs can make informed decisions and actively contribute to the standards development process.

#### **II. Support SMBs in Standards Development**

The roadmap underscores the importance of sustained funding for CET research and development (R&D) and standards development activities. It proposes financial support for hosting international standards meetings in the United States, including the potential development of grant programs. This aligns well with our request for a private grant program to facilitate such meetings. Specifically, NIST should establish a grant program to support SMB participation in international standards meetings and activities. This program should cover travel costs, accommodation, and other related expenses, and provide training and assistance programs to address financial and experience constraints. SMBs are vital innovators but often lack the financial resources to fully participate in standards development. Direct financial support and training programs will enable SMBs to engage effectively, ensuring their contributions are represented in international standards.

#### **III. Improve Communication and Transparency**

NIST should enhance communication between the public and private sectors by establishing a robust platform for regular updates, feedback, and collaboration. This platform should enable the sharing of information on current and upcoming standards activities, government priorities, and opportunities for private sector involvement. Effective communication is essential to ensure all stakeholders are informed and can participate meaningfully. A dedicated platform will provide transparency and foster collaboration, addressing concerns about the generalization of issues and the lack of clear roles and responsibilities.

#### IV. Address SEP Licensing Abuse as a Well-Known Barrier to Standards

We are encouraged by NIST's acknowledgment of a fair, reasonable, and non-discriminatory (FRAND) commitment as a mechanism used by SDOs to facilitate widespread and efficient licensing between SEP holders and other standards users seeking to take a license. The App Association provided its detailed position of SEP licensing abuse to a joint agency (ITA-NIST-USPTO) request for comments on the Collaboration Initiative Regarding Standards.<sup>5</sup> We also submitted a multi-organization letter detailing that a successful implementation of the USG NSSCET includes addressing well-known barriers to the use of international standards, including abusive SEP licensing practices carried out by opportunistic SEP holders seeking to maximize licensing profits by pursuing unreasonable and, often, discriminatory, royalty rates from technology developers that need to use the standard.<sup>6</sup> This abuse is carried out by some SEP holders who, despite offering to license their SEPs on FRAND terms in exchange for their patents' inclusion in standards, abuse their inherent market power gained through standardization to demand excessive royalties, threaten market exclusion through injunctions or exclusion orders, or otherwise exclude potential licensees, holding up standards-based innovation for critical U.S.-based markets.

In line with the NSSCET's commitment to develop infrastructure to increase inclusivity in standards processes, as well as further steps to provide certainty in fair and open approaches to standards participation, we urge NIST to identify SEP abuse as a critical barrier to standards participation by American companies. NIST should continue to work with the International Trade Administration (ITA) and the United States Patent Office (USPTO) to develop a national SEP policy statement that provides standardized technology developers, including App Association members, with more transparency to operate within the standard-setting process. This national SEP policy statement should directly coordinate with the goals of the USG NSSCET.

#### V. Promote U.S.-Hosted Standards Meetings

The roadmap should highlight how NIST will facilitate the hosting of international standards meetings in the United States by addressing visa processing challenges and providing financial support for organizing these events. This includes collaborating with relevant agencies to streamline visa applications for international participants and offering grants for event preparation and related costs. The roadmap underscores the importance of sustained funding for CET R&D and standards development activities, proposing financial support for hosting international standards meetings in the United States, including the potential development of grant programs. We support the agency in providing support for U.S.-hosted standards meetings to drive U.S. leadership and participation in international standards. Hosting standards meetings in the United States enhances accessibility for U.S. stakeholders and promotes U.S. leadership in the standards development process. Addressing visa and financial barriers will ensure these events are successful and inclusive.

### **j. Conclusion**

The App Association looks forward to continuing our collaboration with NIST to refine the implementation of the USG NSSCET. Our recommendations aim to enhance the roadmap by

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<sup>5</sup> See <https://www.regulations.gov/comment/PTO-C-2023-0034-0057>.

<sup>6</sup> See <https://www.regulations.gov/comment/PTO-C-2023-0034-0051>.

clarifying how private-sector leadership will drive the goals of the USG NSSCET, improving coordination and communication, supporting SMB participation, addressing SEP licensing challenges, and promoting U.S.-hosted standards meetings. We believe these actions will strengthen the U.S. standards system and ensure it remains a driver of innovation and competitiveness.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brian Scarpelli', with a stylized flourish at the end.

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