

August 26, 2026

The Honorable Ted Budd
Chairman
Subcommittee on Science, Manufacturing, and Competitiveness
Committee on Commerce, Science, and Transportation
United States Senate
Washington, District of Columbia 20510

The Honorable Tammy Baldwin
Ranking Member
Subcommittee on Science, Manufacturing, and Competitiveness
Committee on Commerce, Science, and Transportation
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RE: Subcommittee hearing, "Measuring What Matters: Science, Standards, and Strategic Competition"

Dear Chairman Budd and Ranking Member Baldwin,

The Association for Competitive Technology (ACT) writes regarding the Subcommittee's hearing, "Measuring What Matters: Science, Standards, and Strategic Competition." The Association for Competitive Technology (ACT) is a trade association for startups and small technology businesses that develop software and connected devices powering the modern digital economy. The ecosystem ACT represents is valued at approximately \$1.8 trillion and supports 6.1 million American jobs.¹ ACT members are innovators that create the software bringing your smart devices to life. They also make connected devices that are revolutionizing every industry from healthcare to agriculture to public safety to financial services.

ACT appreciates the Subcommittee's attention to the relationship among science, technical standards, and strategic competition. The Subcommittee's jurisdiction over standards and measurement, the National Institute of Standards and Technology (NIST), science and technology policy, manufacturing, trade, exports, and workforce development places it at the center of the policy choices that will determine whether the United States continues to lead in critical and emerging technologies (CET).

American innovation in emerging technologies often involves building on consensus-based and industry-led technical standards for interoperability and safety. These standards now underpin critical internet of things (IoT) and artificial intelligence (AI) solutions across all industries. The goal of establishing technical standards is to provide an efficient and interoperable base for technology developers to create new inventions across multiple market sectors. Because our members both build on and contribute to consensus-based technical standards, they are directly affected by how the United States organizes, resources, and defends its standards system.

The United States must maintain its leadership in global standards for emerging technologies through collaborative, inclusive, and well-funded efforts. Policymakers should measure whether the standards system remains private-sector-led, open, globally influential, and usable by

¹ The Association for Competitive Technology (ACT), *The State of the App Economy*, https://actonline.org/wp-content/uploads/Fast-FactS_Website.pdf.

American innovators, particularly startups and small businesses. This statement focuses on the practical steps Congress can take to preserve that system, fully support NIST, expand meaningful participation, strengthen the standards workforce, and ensure that standard-essential patent (SEP) licensing practices do not turn open standards into barriers to entry.

The Private-Sector-Led, Voluntary Consensus Standards System is a Strategic Asset the United States Must Preserve

Technical standards foster innovation, enable interoperability, and support safety and security across technology ecosystems. Standards create an efficient and interoperable foundation for technology development that can be used by any industry participant willing and able to comply with the standard and fairly compensate the relevant patent holder. For small technology companies, standards often provide the infrastructure on which innovation occurs. A small business may not build a telecommunications network or foundational computing platform, but it can create valuable products and services that interoperate with those systems.

The U.S. standards system is, and must remain, led by the private sector. This principle has underpinned U.S. competitiveness and innovation for decades. While government has a critical role to play, particularly through funding, convening, and coordination, standardization should remain grounded in the voluntary, consensus-driven leadership of industry, academia, and civil society. Government actions, including international engagement, should support, not direct, standards development processes and outcomes.

The United States must also balance national security imperatives with the openness that makes its standards system a source of global influence. U.S. policies that broadly exclude adversarial entities from standards-setting organizations (SSOs), or restrict U.S. companies from participating in SSO processes involving those entities, risk reducing U.S. influence in global standards development. The Bureau of Industry and Security's (BIS) July 2024 interim final rule, which revised the scope of "standards-related activities" under the Export Administration Regulations (EAR), is a practical example of a balanced approach, enabling U.S. companies to participate actively in international standards development while protecting national interests.²

Congress Should Fully Fund NIST and Support U.S. Leadership in Critical and Emerging Technology Standards

NIST's non-partisan technical expertise makes it a vital resource in informing, but not controlling, standards-setting processes. Chronic underfunding has hampered NIST's ability to meet its growing responsibilities.³ Congress should continue to reject calls for NIST to take on tasks that would require it to pick winners and losers in standards development; at the same time, lawmakers should fully fund the agency so that it can perform its core functions, which are critical to American leadership and competitiveness globally.

The current Administration has organized its AI policy around the AI Action Plan and the goal of sustaining and enhancing America's leadership in artificial intelligence. In comments submitted to

² Standards-Related Activities and the Export Administration Regulations, 89 Fed. Reg. 58,265 (July 18, 2024), <https://www.federalregister.gov/documents/2024/07/18/2024-15810/standards-related-activities-and-the-export-administration-regulations>.

³ Letter from the Association for Competitive Technology (ACT) to Congressional Leadership on NIST Funding (Oct. 10, 2024), <https://actonline.org/2024/10/10/letter-from-act-the-app-association-to-the-congressional-leadership-on-nist-funding/>.

the Office of Science and Technology Policy in March 2025,⁴ ACT urged the Administration to ensure that unnecessarily burdensome requirements do not hamper private-sector AI innovation and to preserve the longstanding U.S. model of private, voluntary, and consensus-based standard setting. ACT further emphasized that the federal government should support industry-led AI standardization through research, coordination, international engagement, and policies that prevent SEP licensing abuse from undermining innovation and competition across CET-driven markets.

Consistent with that record, ACT urges the Subcommittee to ensure that implementation of the AI Action Plan and related federal standards policies:

- **Explicitly affirm the private sector as the leader in AI and critical and emerging technology standards development**, with government efforts clearly framed as supporting private-sector priorities;
- **Focus government-supported pre-standardization research and development on identified gaps in public-private collaboration**, rather than duplicating or displacing private-sector efforts;
- **Establish robust channels for regular updates, feedback, and collaboration between the public and private sectors** on standards activities, government priorities, and opportunities for private-sector participation;
- **Support U.S. participation and leadership in international standards development**, including through financial support for small businesses, U.S.-hosted standards meetings, and streamlined visa and travel processes; and
- **Prevent SEP licensing abuse from undermining AI standardization and U.S. competitiveness**, including through appropriate limits on exclusionary remedies and refusals to license, international engagement to address SEP-related hold-up abroad, preservation of the Supreme Court's *eBay* framework, and coordination among NIST, the International Trade Commission (ITC), the United States Patent and Trademark Office (USPTO), and other relevant agencies.

Small Business Participation in Standards Development is Essential to U.S. Leadership

Despite being important innovators in CET standards, small businesses face financial, bandwidth, and experience constraints that prevent them from participating in standards development fora. Larger companies are typically more engaged with, and better informed about, every stage of the standards-setting process, while resource asymmetries leave many smaller U.S. innovators unaware of standardization activities that directly affect them. To develop infrastructure that increases inclusivity in standards processes, policymakers should address critical barriers at each point in the standard setting process by:

- **Making the case for standards.** Small businesses require direct outreach and educational opportunities from government and private-sector groups to advance an appreciation of why participation in and use of standards are in their interest;
- **Augmenting awareness tools and efforts that track standard-development activities**, which will primarily benefit smaller entities that do not have the bandwidth or resources to track standardization activities relevant to them;

⁴ Association for Competitive Technology (ACT), *Comments in Response to the Request for Information on the Development of an Artificial Intelligence Action Plan*, 90 Fed. Reg. 9,088 (Mar. 14, 2025), <https://actonline.org/wp-content/uploads/ACT-Comment-re-AI-Action-Plan-14-Mar-2025-w-appendix.pdf>.

- **Directly supporting small business standards-development participation**, including targeted grant programs to defray travel and participation costs for small business and independent innovators, and recognition and award programs tailored to early-career professionals and small business contributors; and
- **Investing in the standards workforce**, including mentorship programs that connect early-career professionals with experienced leaders in CET standards, embedding standards education into science, technology, engineering, and math (STEM) curricula, and reinvigorating the NIST Standards Coordination Office Curricula Development Cooperative Agreement Program.⁵

Congress should also advance legislation like the Promoting United States Leadership in Standards Act (S. 1269, 119th Congress)⁶ to make international standards development meetings more accessible to American small businesses, which generally lack the budgets to send personnel overseas.

SEP Licensing Abuse Undermines U.S. Standards Leadership and Presents an Economic and National Security Imperative

In general, when a patent holder chooses to declare their patented technologies essential to the implementation of a technical standard, they voluntarily provide SSOs with a commitment that they will license their SEPs on fair, reasonable, and non-discriminatory (FRAND) terms. SSOs often seek these commitments for SEPs in order to address the market power SEP ownership confers and the inherent antitrust risks that ensue when the makers of goods and services must take a license from SEP holders in order to interoperate with a given standard.

Unfortunately, opportunistic SEP holders have distorted this system by taking advantage of SSO policies that have ambiguous definitions of FRAND to manipulate a fair licensing negotiation process by, for example, overcharging or refusing to license to certain entities in a supply chain. Since SSOs facilitate access to technical standards that touch various industries, these opportunistic SEP holders plague many verticals, always looking for the next market to extract additional and unrelated value for their SEP. The anticompetitive harms experienced in the SEP licensing ecosystem disrupt fair usage of technical standards that support efficient innovation.

It has become increasingly evident that foreign SEP holders are able to harm U.S. businesses and U.S. consumers through SEP licensing disputes, extracting billions of dollars out of the U.S. economy. Companies such as Huawei, Nokia, Ericsson, and Abu Dhabi-backed Fortress Investment Group continue to use the U.S. International Trade Commission (ITC) and foreign courts against U.S. businesses that are locked-in to key technical standards (e.g., 5G and Wi-Fi).

ACT has repeatedly urged NIST and other federal agencies to acknowledge SEP licensing abuse as a critical barrier to Americans' ability to benefit from standards and to coordinate opposition to SEP abuse with the International Trade Administration (ITA), the Department of Justice (DOJ), and the United States Patent and Trademark Office (USPTO). A successful implementation of the national standards strategy includes addressing well-known barriers to the use of international

⁵ National Institute of Standards and Technology (NIST), *NIST Standards Coordination Office Curricula Development Cooperative Agreement Program* (updated Aug. 19, 2026), <https://www.nist.gov/standardsgov/nist-standards-coordination-office-curricula-development-cooperative-agreement-program>.

⁶ Promoting United States Leadership in Standards Act of 2025, S. 1269, 119th Cong. (2025).

standards, including abusive SEP licensing practices carried out by opportunistic SEP holders seeking unreasonable or discriminatory royalty rates.

Startups and small businesses that leverage technical standards often operate with minimal information and resources when negotiating a FRAND-encumbered SEP license. It is common for certain SEP holders to require potential licensees to sign overly restrictive non-disclosure agreements (NDAs), withhold basic information about their deemed essential patent, and require a license under unreasonable terms and excessive fees. A survey conducted by Charles River Associates found that more than two-thirds of U.S. businesses are concerned that SEP holders may behave opportunistically, charging excessive royalties or imposing non-FRAND terms, and that 73 percent of respondents would support government intervention to ensure that SEPs are being licensed on FRAND terms.⁷ This scenario leaves a small business with two options: leave the market after significant capital has been invested in research and development (R&D) and manufacturing capacity, or pay an excessive fee that is ultimately passed on to consumers, raising prices.

American small businesses require strong national FRAND licensing policies and antitrust enforcement to protect their ability to advance critical industries with innovative products. The FRAND commitment is a unique mechanism intended to support competition in a market that would otherwise enable monopolistic activity. When the FRAND commitment is skewed or not adhered to, standardization no longer sustains an open and industry-led approach to innovation. ACT maintains that the following principles underlie a universal understanding of the FRAND commitment:⁸

- **Injunctive Relief Should be Exceptional:** Injunctions and exclusion orders for FRAND-committed SEPs should be granted only in rare circumstances, such as where monetary damages are inadequate. The threat of market exclusion distorts good-faith licensing negotiations.
- **The FRAND Commitment Means License to All:** A holder of a FRAND-committed SEP must license it to all who wish to implement the standard.
- **Royalties Must Reflect the Invention's Value, Not the Standard's:** A FRAND royalty should be based on the value of the patented technological contribution itself, not on the value of the standard as a whole or downstream product features unrelated to the invention.
- **Licensing Transparency:** Greater transparency in FRAND-encumbered SEP licensing should be required to balance inherent informational asymmetry, preventing discriminatory practices and fostering market predictability.

Conclusion

Protecting the ability of American startups and small businesses to use and contribute to critical technical standards is essential to advancing American-led industries, restoring significant

⁷ Buehler, Dr Benno and Zimmermann, Samuel, SEP Licensing in the United States: Understanding the Impact on U.S. Business: U.S. Business Survey (Mar. 9, 2023), Charles River Associates, <https://media.crai.com/wp-content/uploads/2023/03/10163335/ACT-US-Business-Survey-Report-2023-03-09.pdf>.

⁸ The Association for Competitive Technology (ACT), Standards, Patents, and Competition Policy to Drive Small Business Innovation, <https://actonline.org/wp-content/uploads/ACT-SEP-Gen-Position-Paper-sent-081619.pdf>; see also CEN/CENELEC Workshop Agreement (CWA 95000), Core Principles and Approaches for Licensing of Standard Essential Patents, <https://2020.standict.eu/sites/default/files/CWA95000.pdf>.

revenue to the U.S. economy, and defending against technology warfare by foreign adversaries. Foreign adversaries continue to benefit from decades of an unclear SEP licensing landscape to strategically extract undeserved revenues from good faith American innovators. By fully resourcing NIST, preserving private-sector leadership in standards development, and reinforcing the FRAND commitment through strong policy and antitrust enforcement, Congress can ensure that the United States remains a global leader in innovation and economic resilience.

Thank you for your attention to this critical matter. We look forward to supporting the Subcommittee's efforts to address these pressing issues and stand ready to provide additional data and member perspectives.

Respectfully submitted,



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