

## **ACT Comments on the Formulation of the Intellectual Property Promotion Plan 2026**

### **1. AI and Intellectual Property Rights**

#### **a. Avoid De Facto Erosion of IP Protections Through AI-Specific Measures**

Discussions surrounding AI governance increasingly include proposals framed as transparency, research facilitation, or accountability measures that would require access to software, models, or data. While these objectives are important, the Promotion Plan should avoid approaches that function in practice as compulsory access regimes for protected intellectual property.

We encourage the Intellectual Property Strategy Headquarters and the Planning Committee to:

- Maintain clear protections for copyrighted software, proprietary AI models, and trade secrets used in AI development.
- Avoid broad or ambiguous exceptions that permit circumvention, access, or reuse of protected AI systems without the authorization of rights holders.
- Recognize that weakening technical or legal protections for AI systems can increase cybersecurity risks, undermine user trust, and deter private investment, particularly among small and medium-sized enterprises (SMEs) with limited resources.

Effective AI governance should be pursued through comprehensive and coherent policy frameworks, rather than through incremental carve-outs that undermine existing intellectual property regimes.

#### **b. Treat Training, Outputs, and Authorship as Distinct Policy Questions**

Questions concerning AI and copyright are often conflated, which risks producing unclear or overbroad policy outcomes. We recommend that the Promotion Plan clearly distinguish between:

- The use of data during the training of AI systems,
- Outputs generated by AI systems in response to user prompts, and
- Authorship and ownership of AI-assisted works.

Each of these issues raises distinct legal, economic, and practical considerations. Prematurely imposing rigid statutory rules, particularly with respect to authorship or

inventorship, risks misalignment with real-world creative and software development workflows. Instead, the Planning Committee should continue to monitor legal developments, support empirical research, and advance principles-based guidance capable of evolving alongside AI technologies.

## **2. New International Standardization Strategy**

### **a. Strengthen Private Sector Participation and Inclusivity in International Standardization**

The Promotion Plan appropriately recognizes that international standards are central to market creation, interoperability, and global competitiveness. To ensure that standards fulfill this role, it is essential to address persistent barriers to private sector participation, particularly for small and medium-sized enterprises and independent innovators.

Effective standards systems depend not only on technical expertise, but also on sustained participation across the full lifecycle of standards development. Smaller firms often face structural disadvantages that limit their ability to engage, despite being important sources of innovation. Addressing these barriers should be treated as a core element of Japan's standardization strategy.

#### **i. Building Awareness of the Value of Standards Participation**

Many small and medium-sized enterprises are focused on product development, commercialization, and day-to-day operations, and may lack visibility into how standards shape markets, procurement requirements, and long-term competitiveness. As a result, they may engage with standards only after key decisions have already been made.

We encourage the Intellectual Property Strategy Headquarters to support initiatives that:

- Clearly communicate why standards participation matters for innovators across different sectors and use cases;
- Provide timely, accessible information about relevant standardization activities and opportunities for contribution; and
- Partner with standard-setting organizations, industry associations, and academic institutions to conduct targeted outreach and education.

Improving early awareness helps ensure that standards reflect diverse technical approaches and real-world implementation needs.

#### **ii. Improving Tools to Track Standards Development Activities**

Tracking standards development across multiple domestic and international bodies presents a significant challenge for smaller organizations with limited staff and

resources. While larger firms often maintain dedicated standards teams, smaller innovators frequently lack the bandwidth to monitor ongoing work, identify relevant committees, or assess the implications of emerging standards.

The Promotion Plan should encourage the development and use of tools and platforms that:

- Aggregate and disseminate information on active and upcoming standardization efforts;
- Highlight opportunities for participation, leadership, and contribution; and
- Provide timely updates on developments that may affect downstream implementation.

Such tools can significantly reduce information asymmetries and lower barriers to entry for smaller stakeholders.

### **iii. Directly Supporting SME Participation in Standards Development**

Despite their importance to innovation, SMEs face persistent financial, logistical, and experiential constraints that limit their ability to participate meaningfully in standards development. These constraints include travel costs, membership fees, and the time required to engage consistently over long development cycles.

We encourage the Promotion Plan to consider measures that directly support SME participation, including:

- Financial assistance or grant programs to offset participation and travel costs;
- Capacity-building initiatives to help SMEs navigate standards processes and governance structures; and
- Efforts to increase the accessibility of standards meetings, including by encouraging international standard-setting organizations to hold meetings and activities in Japan when relevant.

Lowering these barriers will help ensure that standards benefit from a broader range of perspectives and technical contributions.

### **iv. Affirming Private-Sector Leadership and Public-Private Coordination**

The success of international standards has long depended on private-sector leadership within voluntary, consensus-based frameworks. While government plays an essential

enabling role through funding, convening, and international engagement, standards development outcomes should remain driven by industry, academia, and civil society.

The Promotion Plan should explicitly affirm that:

- Government engagement in standards supports, rather than directs, technical outcomes; and
- Public-private coordination mechanisms are designed to enhance transparency, information sharing, and alignment, not to substitute for consensus-based processes.

Establishing clear channels for ongoing public-private communication, including regular information sharing and feedback mechanisms, will help maintain alignment and ensure that standards policy remains responsive to evolving technological and market realities.

#### **b. Safeguard Open Standards Through Balanced IP Practices**

As international standards increasingly incorporate patented technologies, predictable and balanced intellectual property practices are essential to ensure that standards remain open, widely adopted, and supportive of innovation across the economy. These considerations are particularly important for small and medium-sized enterprises, which often lack the legal, financial, and organizational resources of larger firms.

In general, patent law appropriately grants patent holders the right to exclude others from making, using, selling, or importing a patented invention within the scope and term of the patent. However, when a patent holder voluntarily contributes patented technology to a technical standardization process and declares that patent to be essential to the implementation of the standard, the patent holder assumes a distinct role. Because implementers cannot comply with the standard without practicing the declared essential patent, the patent holder occupies an inherent gatekeeper position with respect to market access.

For this reason, standard-setting organizations typically require contributors of standard-essential patents to commit to licensing those patents on fair, reasonable, and non-discriminatory (FRAND) terms. By making such a commitment, a standard-essential patent holder agrees to limit its exclusionary rights in exchange for the benefits of inclusion in a widely adopted standard, including access to a larger market that would not otherwise exist. This balance is foundational to the success of open standards and to competition and innovation built on top of them.

In practice, however, abusive licensing tactics related to standard-essential patents have emerged in some markets. These practices can include excessive royalty demands, refusal to license, strategic delays, or the assertion of patents whose essentiality or validity is questionable. The impact of such conduct is most acute for

small businesses, which are often unable to absorb prolonged licensing disputes or litigation risk. When standard-essential patent commitments are not honored in practice, standards cease to function as neutral platforms for innovation and instead become barriers to entry.

Empirical research and industry experience demonstrate that these concerns are not theoretical. Studies have shown that abusive behavior by certain standard-essential patent holders, including non-practicing entities, can distort standardization outcomes and shift enforcement costs onto implementers. Evidence also suggests that a significant share of standard-essential patent enforcement activity originates from entities that did not meaningfully participate in the development of the underlying standard, raising concerns about late declarations, patent privateering, and strategic monetization practices. These dynamics undermine confidence in the standards system and can discourage participation, particularly by smaller innovators.

For these reasons, the Intellectual Property Promotion Plan 2026 should recognize that abusive standard-essential patent practices function as barriers to trade, interoperability, and innovation. Clear expectations regarding the meaning and enforceability of FRAND licensing commitments are essential to preserving the integrity of international standards.

Therefore we encourage the Intellectual Property Strategy Headquarters and the Planning Committee align with the following principles to support small business innovation in AI standards and R&D:

- **The FRAND Commitment Means All Can License** – A holder of a FRAND-committed SEP must license that SEP to all companies, organizations, and individuals who use or wish to use the standard on FRAND terms.
- **Prohibitive Orders on FRAND-Committed SEPs Should Only Be Allowed in Rare Circumstances** – Prohibitive orders (federal district court injunctions and U.S. International Trade Commission exclusion orders) should not be sought by SEP holders or allowed for FRAND-committed SEPs except in rare circumstances where monetary remedies are not available.
- **FRAND Royalties** – A reasonable rate for a valid, infringed, and enforceable FRAND-committed SEP should be based on the value of the actual patented invention itself, which is separate from purported value due to its inclusion in the standard, hypothetical uses downstream from the smallest saleable patent practicing unit, or other factors unrelated to invention's value.
- **FRAND-committed SEPs Should Respect Patent Territoriality** – Patents are creatures of domestic law, and national courts should respect the jurisdiction of foreign patent laws to avoid overreach with respect to

- SEP remedies. Absent agreement by both parties, no court should impose global licensing terms on pain of a national injunction.
- **The FRAND Commitment Prohibits Harmful Tying Practices** – While some licensees may wish to get broader licenses, a SEP holder that has made a FRAND commitment cannot require licensees to take or grant licenses to other patents not essential to the standard, invalid, unenforceable, and/or not infringed.
- **The FRAND Commitment Follows the Transfer of a SEP** – As many jurisdictions have recognized, if a FRAND-committed SEP is transferred, the FRAND commitments follow the SEP in that and all subsequent transfers.

We encourage the Intellectual Property Strategy Headquarters and the Planning Committee to support policies that:

- Reinforce the central role of fair, reasonable, and non-discriminatory licensing commitments in standardization;
- Promote transparency and predictability in standard-essential patent licensing practices without mandating disclosure of confidential business information;
- Encourage standard-setting organizations to adopt and maintain clear patent policies that reduce uncertainty for implementers; and
- Coordinate internationally to mitigate cross-border inconsistencies that can exacerbate licensing disputes and disproportionately burden smaller firms.

By safeguarding balanced intellectual property practices within standards development, the Promotion Plan can help ensure that international standards continue to serve as engines of competition, interoperability, and inclusive innovation.

### 3. Data Distribution and Utilization

AI innovation depends on access to data, but data governance frameworks must carefully balance innovation, confidentiality, and security. We recommend that the Promotion Plan:

- Promote trusted data-sharing environments and interoperable data governance standards;
- Avoid mandatory data-sharing or access obligations that compromise trade secrets or confidential business information; and
- Support voluntary and secure mechanisms for data collaboration across sectors.

Such an approach enables responsible AI development while respecting intellectual property rights and commercial realities.