

Standards are the unsung heroes of innovation. Much of technology’s cross-functionality depends on them. Debating whether to plug a phone into the computer or charge from the outlet? We have both the USB and the electrical outlet standards to thank for that choice. Away from Wi-Fi—another standard—and need to access email? One might hop on a 4G LTE network—that’s yet another standard.



Innovators Compete on Top of Standards

Open and consensus-based technological standards fuel innovation. Trusted standards-setting organizations (SSOs) develop these consensus technology standards to promote interoperability between products and services as well as to ensure end user safety, among other reasons. Because of the role of standards as baselines to innovation, small businesses need to utilize these standards to compete in the market. And while a technology standard develops within the SSOs, companies voluntarily offer their patented technology to be a part of the standard. Small businesses using the standard need to license the patents in order to utilize the standards that contain them. A patent needed to practice a standard is generally considered “essential” to the standard (called a standard-essential patent, or SEP).

Antitrust Law Safeguards Innovation

Having a patent essential to a standard confers market power on a SEP owner, so commitments to license access to those standards on fair, reasonable, and non-discriminatory (FRAND) terms are necessary to discipline that market power and prevent SEP owners from gouging innovators that use standards. Without FRAND constraints, experience has shown that some SEP owners will perpetrate market distortions that ultimately harm consumers by reducing the quality and quantity of end products and services. As part of the FRAND commitment, SEP holders volunteer to license their patents on FRAND terms to any future parties that wish to utilize the standard and need access to a patent license. In short, FRAND promises are an important check on anticompetitive abuse, and ignoring them can constrain competition in a way that harms competitors and consumers, which antitrust law generally prohibits.

With the United States as a leader, an international consensus that allows SEP owners to routinely violate commitments to license SEPs under FRAND terms can pose a significant threat to competition has developed across every key market in the world. The FRAND commitment is central to facilitating technological progress in both established (automotive, telecommunications, etc.) as well as nascent markets (internet of things, smart wearables, etc.). That's why industry players from automotive manufacturers and suppliers to retailers have joined the App Association in advocating for strong competition law enforcement to ensure compliance with FRAND principles. Standards, which will be vital to the development of next-generation networks and the internet of things, will only remain strong if the U.S. standards ecosystem balances the interests of those that work to build standards with those that utilize them to innovate.

To Support the Growth and Potential of the Dynamic American Economy, We Urge Congress To:

- Recognize the importance of FRAND commitments.
- Understand that violations of FRAND commitments pose negative implications for competition.
- Protect U.S. standards leadership through upholding a FRAND commitment's meaning as established through U.S. antitrust law.