

July 14, 2025

American National Standards Institute (ANSI)  
1899 L Street, NW, 11th Floor  
Washington, DC 20036

**RE:    Comments of ACT | The App Association on the Draft 2025 United States Standards strategy**

ACT | The App Association (the App Association) appreciates the opportunity to submit feedback on the June 30, 2025, draft of the United States Standards Strategy (USSS). As the representative voice of thousands of small business innovators and software-driven companies creating the tools and technologies that power today's connected economy, we strongly support the strategy's reaffirmation of private-sector leadership, openness, and transparency in U.S. standards development.

The App Association represents an ecosystem valued at approximately \$1.8 trillion domestically, supporting 6.1 million American jobs.<sup>1</sup> Our members lead innovation across critical and emerging technologies (CET) such as artificial intelligence (AI), connected health, cybersecurity, and more. Their ability to participate meaningfully in standards development, domestically and internationally, depends on an ecosystem that is consensus-driven, market-oriented, and accessible to stakeholders of all sizes. We commend the strategy's emphasis on these foundational principles and offer the following recommendations to ensure its continued success and alignment with U.S. economic and national security priorities.

**I.    General Recommendations on the Draft United States Standards Strategy**

The USSS should focus on removing and preventing barriers to private sector participation in standards development, which includes more investment in CET, facilitating communication between public and private sectors on standards, and educating a new standards workforce. The USSS should also focus on strengthening U.S. representation and influence in international standards governance and leadership. The App Association supports both priorities and commits to bring the U.S. small business CET innovator community to the table to accomplish these goals in partnership ANSI.

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<sup>1</sup> <https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL-1.pdf>.

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 ANSI to address critical barriers at each point in the standard setting process:

1. **Making the case for standards.** Small businesses are often forced to focus on their product development and day-to-day operations, and need help in understanding why the standards they can contribute to and that they rely on are so important. ANSI already does great work in this department, and its implementation of the USSS should build on those efforts to connect with small businesses across the country, and across verticals and use cases, to advance an appreciation of why participation in and use of standards are in their interest. ANSI should work with SDOs and private-sector groups to develop a pipeline and augment resources and tools to regularly provide U.S. stakeholders, including small and medium-sized businesses (SMBs), with public information about standardization activities more quickly and efficiently. While larger companies may be more involved and educated about all stages of the standards setting process, many small and medium-sized U.S. innovators face resource asymmetries that prevent them from being informed about important standardization activities, including in the standards development process. SMBs generally have a more difficult time tracking the standards process, including what standards are applicable to them. SMBs require direct outreach and educational opportunities from government and private-sector groups.
2. **Augmenting awareness tools and efforts that track standard development activities.** Such activities which will primarily benefit smaller entities that do not have the bandwidth or resources to track standardization activities relevant to them. Tracking these developments is a major challenge for small businesses, so implementation of the USSS appropriately calls this out and we commit to collaborate with ANSI and other stakeholders to help the small business community together.
3. **Directly supporting small business standards development participation.** Despite being important innovators in CET standards, SMBs face financial, bandwidth, and experience constraints, which prevent them from participating in the standards process. SMBs are stunted in the standardization process without further support. There are several ways that USSS can and should support small business participation in standards directly. First, ANSI should provide financial resources to American small businesses to robustly engage in standards processes relevant to them to address the resource constraints our community faces. But also, ANSI can do much to remove barriers to participation: as a leading example, because U.S. agencies and private-sector stakeholders are more likely to participate in international standards where relevant standards meetings are accessible, ANSI should work enable international SDOs to host standards meetings and activities in the United States by identifying what international standards are critical for U.S. innovation, how to support their activities in the United States, and what obstacles SDOs might face to host standards meetings and activities in the United States, including visa and other travel restrictions.
4. **Providing certainty to the standard setting organizations ANSI accredits** by resolving uncertainties with respect to the incorporation by reference of standards into regulation, and in providing partnership and guidance on what a pro-competitive framework for

standards development is, with the room for flexibility to craft policies that respond to unique needs of a given SDO's membership.<sup>2</sup>

5. **Mitigating well-demonstrated barriers to the use of standards**, which most acutely impact small businesses that lack resources that large companies with large legal departments and budgets. Our community has, and is increasingly facing, abusive tactics by those who voluntarily infuse their patents, known as standard-essential-patents (SEPs), into open standards with a promise to provide a fair, reasonable, and non-discriminatory (FRAND) licenses to those patents, which are required in order to use the standard itself. The U.S. government has already recognized that some of these SEP barriers are being driven by gaps and ambiguities in U.S. policy, while others are being exacerbated by domestic policies in important markets abroad.

In general, a patent holder has the right to exclude others, for the term of the patent and within the territory or territories the patent is issued in, from commercially making, using, distributing, importing, or selling their protected invention, unless their consent is otherwise given. However, when a patent holder volunteers their patented technology to a technical standardization process, they are placed in an inherent gatekeeper position to the use of the standard based on their claims of essentiality (in other words, one cannot implement the standard without exercising the patent claimed as essential to it). These patent holders will therefore agree to curtail some of these rights, in an open commitment to the SDO, agreeing to make the patent available to anyone seeking to use the standard on FRAND terms in order to ensure that anyone can use the standard. Therefore, by contributing to the standardization process, a SEP holder understands and agrees to not exclude others, including competitors, from innovating on top of a technical standard past requiring a FRAND license. As we have discussed above, the impact of SEP-related abuses are most pronounced on the small business community and without targeted action to address rampant SEP abuses across CET markets, the goals of the USSS will be significantly undermined. The App Association's position paper on **Standards, Patents, and Competition Policy to Drive Small Business Innovation**,<sup>3</sup> and the **CEN/CENLEC Workshop Agreement (CWA), Core Principles and Approaches for Licensing of Standard Essential Patents**,<sup>4</sup> offer a comprehensive discussion of the central role SEP licensing plays in the success of standards, including CET standards, and recommendations on how SDOs and government policies can and should promote competition across markets leveraging standards to promote competition and innovation.

SEP licensing abuse is a significant threat to the success of the USSS; in a recent study by Charles River Associates (CRA) asking a sample of U.S. businesses about the current SEP landscape, 73 percent of respondents stated that they would support government intervention to ensure that SEPs are being licensed on FRAND terms.<sup>5</sup> Further, a recent

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<sup>2</sup> E.g., <https://actonline.org/2021/11/15/fifty-two-small-business-members-of-act-the-app-association-affirm-their-support-for-ieee-sas-2015-patent-policy/>.

<sup>3</sup> Available at <https://actonline.org/wp-content/uploads/ACT-SEP-Gen-Position-Paper-sent-081619.pdf>.

<sup>4</sup> Available at <https://2020.standict.eu/sites/default/files/CWA95000.pdf>.

<sup>5</sup> Buehler, Dr Benno and Zimmermann, Samuel, SEP Licensing in the United States: Understanding the impact on U.S. business: U.S. Business Survey (March 9, 2023), Charles River Associates,

paper conducting research on practicing entity versus non-practicing entity (NPE) opportunism in technical standards found that NPEs leverage the standards development process to abuse the market later by declaring their patents “essential” to the standard late in the development process, which often puts into question whether their patents are truly essential or valid.<sup>6</sup> The research notes that while large technology companies hold principal control of the standards development process, more than two-thirds of SEP enforcement during the study were from NPEs.<sup>7</sup> This evidence only strengthens the concern for patent privateering, which holds that practicing patent holders are off-loading, potentially weak or invalid, patents to NPEs, to assert against unfavorable market competitors and strengthen the practicing entity’s ability to control to market. If the United States is not a strong participant in standards development, monitoring and taking steps to prevent opportunistic SEP holder behavior, its critical markets will cripple to the detriment of U.S. businesses and consumers. SEP abuses that undermine standards are therefore trade barriers.

The App Association encourages the ANSI to consider several leading academic studies related to SEP abuses and the role of SDOs in mitigating the harms they produce:

- Love, Brian J. and Lefouili, Yassine and Helmers, Christian, Do Standard-Essential Patent Owners Behave Opportunistically? Evidence from U.S. District Court Dockets (November 8, 2020), <https://ssrn.com/abstract=3727085>.
- Love, Brian J. and Helmers, Christian, Patent hold-out and licensing frictions: Evidence from litigation of standard essential patents (July 2023). Available at <https://www.sciencedirect.com/science/article/pii/S0167718723000590?dgcid=author>.
- Love, Brian J. and Helmers, Christian, Are Non-Practicing Entities Opportunistic? Evidence from Litigation of Standard Essential Patents (August 4, 2023), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4540908](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4540908).
- Carrier, Michael A., Innovation, Invention, and Standards (September 28, 2023), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4594882](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4594882).
- Simcoe, Timothy S. and Zhang, Qing, Does Patent Monetization Promote SSO Participation? (November 29, 2021), <https://ssrn.com/abstract=3973585>.

## **II. ANSI’s United States Standards Strategy Should Affirm Private-Sector Leadership as the Foundation of the U.S. Standards System**

The strategy appropriately recognizes the vital role of private-sector stakeholders in standards development. However, we believe the strategy should go further in clearly affirming that the U.S.

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<https://media.crai.com/wp-content/uploads/2023/03/10163335/ACT-US-Business-Survey-Report-2023-03-09.pdf>.

<sup>6</sup> Love, Brian J. and Helmers, Christian, Are Non-Practicing Entities Opportunistic? Evidence from Litigation of Standard Essential Patents (August 4, 2023), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4540908](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4540908).

<sup>7</sup> *Id.*

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 enabling 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.

To that end, we recommend the strategy include explicit language clarifying that government actions, including international engagement, should support, not direct, standards development processes and outcomes.

### **III. ANSI's United States Standards Strategy Should Expand Support for Small and Medium-Sized Business Participation**

The strategy makes important commitments to broadening stakeholder participation in the standards ecosystem. We strongly support efforts to reduce barriers for small and medium-sized businesses (SMBs), which face distinct challenges in standards engagement due to resource constraints, travel limitations, and knowledge gaps.

We recommend the strategy include specific support mechanisms such as:

- Targeted grant programs to defray travel and participation costs for SMBs and independent innovators;
- Recognition and award programs tailored to early-career professionals and SMB contributors; and
- Ongoing partnerships with standards development organizations (SDOs) to co-host high-priority international meetings in the United States.

Expanding such initiatives will ensure that the standards system reflects the diversity and dynamism of the U.S. innovation ecosystem.

### **IV. ANSI's United States Standards Strategy Should Establish Clear Channels for Public-Private Coordination and Transparency**

While the strategy acknowledges the importance of collaboration, additional mechanisms are needed to ensure structured, ongoing public-private communication. We recommend the establishment of a centralized platform to:

- Share information on priorities and international standards engagements;
- Provide updates on participation and leadership opportunities in SDOs; and
- Facilitate regular feedback from private-sector stakeholders on implementation progress and coordination needs.

Such a platform will help maintain alignment, enhance transparency, and ensure that all stakeholders, particularly SMBs, have access to timely, actionable information.

### **V. The United States Standards Strategy Must Enable ANSI to Address SEP Licensing Abuses as Barriers to Open and Inclusive Standards Participation**

We are encouraged that the strategy recognizes the importance of intellectual property (IP) licensing practices in facilitating innovation and access to standards. However, it does not address the well-documented harms of abusive licensing behavior by some holders of SEPs. The FRAND licensing commitment made by SEP holders is essential to ensuring innovators can lead in emerging technologies. It plays an important role in technical standards to enable competition and innovation that directly benefit consumers.

As we have detailed in prior submissions to the U.S. government,<sup>8</sup> such conduct, including excessive royalty demands, refusal to license, and litigation threats, chills participation by small and mid-sized technology developers in standards development. 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 (prohibitive orders), or otherwise exclude potential licensees, holding up standards-based innovation for important CET markets.

Patent policies employed by ANSI-accredited SDOs should guide standards users in negotiating and concluding a fair SEP license. When these policies lack clear examples and explanations of the FRAND commitment, the SEP licensing parties do not have a sufficient reference to determine if a license is FRAND-compliant. In practice, ambiguous patent policies have led to SEP disputes being handled by courts, some of which point to the fact that the licensing parties are in the best position to determine what constitutes a FRAND dispute.<sup>9</sup> In order for SDO patent policies to be strong, ANSI must provide its SDOs with guidance and flexibility to be responsive to these issues. Small technology developers, such as App Association members, are often excluded from the development of a standard, and therefore unable to raise concerns about significant deficiencies in an SDO's patent policies. We believe that the principles of FRAND, highlighted in the CWA 95000, and referenced above, set a strong foundation for any SDO patent policy, and that ANSI should provide similar guidance to its SDOs.

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<sup>8</sup> See <https://www.regulations.gov/comment/PTO-C-2023-0034-0057>.

<sup>9</sup> *Interdigital Technology Co. v. Lenovo Group Ltd.*, p. 16, [2023] EWHC 539 (Pat); para. 53 (“observe that this sort of FRAND case is not well suited to adversarial litigation because there is (and was in this case) very little, if any, exploration of the middle ground between the positions taken by the two sides”).

## VI. Conclusion

The USSS provides an important vision for advancing American leadership in standards development at a pivotal moment. We appreciate the strategy's reaffirmation of foundational principles and call for action to modernize and strengthen the U.S. standards ecosystem.

We thank ANSI for the opportunity to provide input and look forward to continued engagement to ensure the U.S. standards system remains an engine of innovation, competition, and prosperity.

Sincerely,



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