

Driving Innovation By Standardizing IPR

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Standardization is Pro-competitive

“Industry Standards are widely acknowledged to be one of the engines driving the modern economy. Standards can make products less costly for firms to produce and more valuable to consumers. They increase innovation, efficiency, and consumer choice...”

DOJ/FTC 2nd IP Report (April 2007)

IPR Protection is Pro-competitive

“Intellectual property laws...provide a complex system of affirmative rewards for an important type of pro-competitive behavior innovation.”

AAG Pate (June 3, 2005)

“Property rights promote innovation by allowing intellectual property owners to prevent others from appropriating much of the value derived from their inventions or original expression. These rights also can facilitate the commercialization of these inventions or expressions and encourage public disclosure, thereby enabling others to learn from the protected property.”

DOJ/FTC 2nd IP Report (April 2007)

Including IPR in Standards is Pro-competitive

- Allows standard implementers to gain access to and knowledge of superior technology
- Permits innovative technology and products to become more widely available
- If properly addressed, creates incentives for greater investment in innovative investments

Balancing Interests

- Key = balancing interests of stakeholders, e.g. patent owners and implementers
- Patent owners must have incentive to contribute patented technology, and continue investing in the development of innovative technology
- Implementers must be assured of the opportunity to implement a standard incorporating patented technology

Stakeholders

- Types of stakeholders are diverse, e.g.,:
 - Innovators (upstream) - monetize IPR
 - Vertically integrated firms (upstream and downstream) - may or may not monetize IPR depending on business model
 - Manufacturing implementers (downstream) - IPR represents a cost
 - Ultimate consumers of standardized products and services - consider various factors, e.g., performance, features, cost

Balancing Interests in Different Types of Standards Bodies

- Different standards bodies seek to achieve balance in different ways:
 - Traditional open SDOs
 - Consortia
 - Special Interest Groups/Promoter Groups

IPR Policies

Nature of policy may impact balance of interests:

- Degree of flexibility in IPR rules and policies may depend on purpose of standardization effort, nature and scope of standards activity, membership, technology
- Flexible approach may be appropriate (e.g., RAND)
- Mandatory RAND is sometimes used
- Imposed mandatory licensing rules and terms (e.g., royalty free, exhaustive licensing) may create disincentives for contribution of technology

Conclusion

- Different standards bodies have different purposes
- Treatment of IPR may depend on the variables of the standards body
- How IPR is treated may impact innovation and competition

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