



ANSI Legal Issues Forum  
Patented Technology  
in Standards

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# Economics of RAND and Negotiation

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# Disclaimer

- ❑ FTC has long taken an interest in issues of patents in standards, and appropriate policy
- ❑ Significant number of cases and policy statements
- ❑ If you want to know FTC positions, consult those
- ❑ I'll briefly give some of my own views
- ❑ Mostly here to listen



# Attempt to bridge the panel sessions

- RAND best understood in normal market framework
  - ex ante negotiation as reflection of that
  - Some economic efficiency properties
  - Some conflicting economic consequences
- Ex ante negotiation best appreciated in light of flaws in implementing RAND
  - Replicating market forces later is hard
  - Inevitable flaws
    - and perhaps other ones



# Normal market process

- ❑ Buyers choose among offerings, in light of pluses, minuses, and including prices
  - Can be negotiation rather than posted prices
  - Apt to go wrong if choice mis- or un-informed
  - Sometimes defer details (UCC)
- ❑ Whose problem if deferring details goes awry?
  - Would like to see more discussion on this



# Difficulties in enforcing RAND commitment

- ❑ My point here isn't to point out errors in implementation, but to stress that it's difficult
  - Willingness to pay hard to calculate, varies across users, and is interdependent
  - Substitutes and complements complicate this...
- ❑ Just as “ordinary” markets work best when prices are clear to buyer up front, no reason why the same shouldn't be true of technology markets or when SSO is the “buyer”



# Conclusion

- ❑ In normal markets, competition works better when prices are clear to buyers up front, than when all sellers merely say that their prices are “reasonable”
- ❑ No evident reason why this is so different
- ❑ Sometimes this may be infeasible or too hard
- ❑ Then, “reasonable” is sensible stopgap
- ❑ But it can raise concerns ex post, and can blunt competition ex ante
- ❑ Reminder: Not speaking for the Commission

