

***Considerations for global business
concerning treatment of Intellectual
Property related to standard-setting***

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Excerpted***



Policy deliberations concerning treatment of Intellectual Property related to standard-setting

I It's a jungle out there

II What is at stake in the policy debates?

III Where are the policy debates?



I *It's a jungle out there*

Standards are important competitive tools that can define, limit and create markets. The shift from national to global markets has made global standards strategy an essential component of overall national competitive and individual business strategy

Competition between and duplication of effort among standards developers creates challenges for global businesses. One aspect of competition between standards developers is patent policy.



II What is at stake in the policy debates?

Tactical Considerations

SDO policies and procedures

Risks of participation

Litigation

Antitrust

Strategic Considerations

National Standards & Government Policies

Global competition

Role of IP as incentive to innovation



II What is at stake in the policy debates?

What is Intellectual Property (IP) related to standards setting?

SDO policies and Procedures

- **Copyright, ownership & availability of the standards document** (not focus of this presentation, however many issues ... ownership of workproduct, sale vs free, support of standards infrastructure, public right to text in laws/regulations, pirates)
- **Patents & Patent Claims** ..Opportunity for those who wish to implement the standard to have access to a license to a essential patent claim(s) required for compliance with that standard Not a “new issue” **August 17, 1932 (ANSI) Committee on Procedure:** *That as a general proposition patented designs or methods should not be incorporated in standards. However, each case should be considered on its merits, and if a patentee be willing to grant such rights as will avoid monopolistic tendencies, favorable consideration to the inclusion of such patented designs in a standard might be given.*



III Where are the policy debates?

Key global Domino SDOs

Courts & Litigation

Policy Entities with IP or Antitrust or Standards focus

Global Trade and Treaty Organizations



III Where are the policy debates?

Key globally oriented domino SDOs

American National Standards Institute

ISO/IEC/ITU (Esp ITU Directors ad hoc on IPR)

Internet Engineering Task Force (IETF)

Institute of Electrical and Electronic Engineers (IEEE)

VITA standards organization

TIA

UNCEFACT

ATIS

W3C

ETSI

OASIS



III Where are the policy debates?

Policy Entities with IP or Antitrust or Standards focus

Government Agencies:

Standards Policy:

DOC/ITA & DOC/NIST; USTR focus for WTO TBT

USTR interagency ad hoc group on IP & Trade Negotiators

Interagency Committee on Standards Policy

Office of Management & Budget

USPTO

Competition Policy:

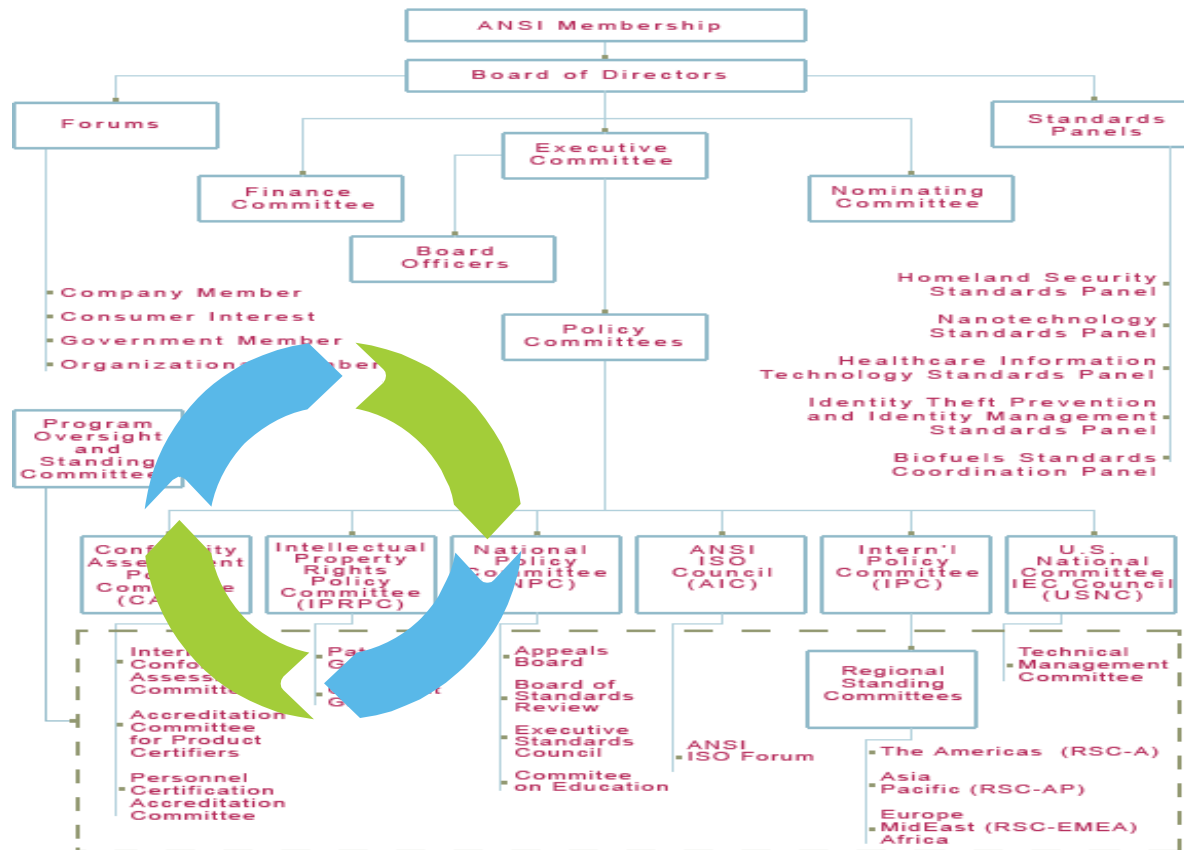
FTC and DOJ

Private Entities other than SDOs

ABA committees, NAM, US Chamber, AIPLA; AAI; Academia



III Where are the policy debates? Policy Entities with IP or Antitrust or Standards focus ANSI IPR PC



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ANSI Intellectual Property Policy Committee (IPRPC)

The IPRPC is responsible for broad-based policy and position decisions regarding national, regional and international intellectual property matters, including the global trade and public policy aspects of such matters. The IPRPC is responsible for developing Institute positions on issues relating to the incorporation of essential patents or other proprietary intellectual property in national, regional or international standards and for developing Institute positions relating to exploitation rights to the copyright in standards and the recognition of copyright protection for standards by courts, legislation, regulatory bodies and the industry.



*III Where are the policy debates?
Policy Entities with IP or Antitrust or Standards focus
Global Trade and Treaty Organizations (WTO)*

World Trade Organization AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

World Trade Organization AGREEMENT ON Technical Barriers to Trade (TBT)

World Trade Organization AGREEMENT ON Government Procurement (AGP)



***III Where are the policy debates?
Policy Entities with IP or Antitrust or Standards focus
Global Trade and Treaty Organizations (WIPO)***

World Intellectual Property Organization (WIPO) Excerpt from WIPO Report ***Standards and Patents***

(http://www.wipo.int/edocs/mdocs/scp/en/scp_13/scp_13_2.pdf)

150. When technologies under standards are protected by patents, some specific competition concerns may arise. Once a standard has been adopted covering a technology under patent protection, a patentee may be in a position to demand higher royalties or other unreasonable terms and conditions for licensing his technology to the implementers of such a standard in view of the absence of alternative technology.

See also <http://www.gtwassociates.com/alerts/WIPOS CP.html>



III Where are the policy debates?

*Policy Entities with IP or Antitrust or Standards focus
Global Trade and Treaty Organizations
Internet Governance Forum*

Procurement in Support of Interoperability and Open Standards emerging from the 2008 IGF in Hyderabad, India, including a list of endorsers

<http://igf-dcos.org/dcos-statement-on-procurement-in-support-of-interoperability-and-open-standards/>

