




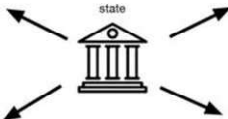
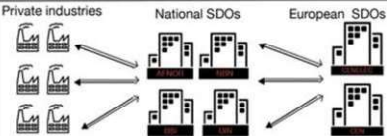

# Developments in SEP Litigation and Licensing In the United States (and more)

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## Setting standards in China, Europe and the US



 <b>CHINA</b> a state-driven process	 <b>EUROPE</b> a structured, market-driven process	 <b>UNITED STATES</b> a loose, market-driven process
		
<p>Coordinated by the Standardization Administration of China (SAC), which lies under the State Administration for Market Regulation (SAMR), an arm of the State Council.</p>	<p>Private industry actors coordinate largely under the auspices of non-governmental standards development organizations (SDOs) at the national and European level.</p> <p>This process typically respects a clear hierarchy.</p>	<p>600 standards development organizations, mostly industry associations, set standards for their industries in the spirit of competition.</p> <p>The American National Standards Institute (ANSI) represents US interests at the international level but plays a comparatively limited role.</p>

Source: John Seaman, "China and the New Geopolitics of Technical Standardization", Notes de l'Ifri, Ifri, January 2020

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## European Commission's Proposal

- Y'all cannot agree on rates, so the government is here to help
- Creation of Competency Center

## Competency Center

1. Registry of SEPs (has to be in registry to assert) – more than just whether the patent is SEP
2. Check essentiality re standards in the registry (sampling methodology)
  - any SEP holder can request they check ~ 100 patents
3. For any standard with any SEPs, at the request of SEP holders, they will set up a 3-person panel to create aggregate royalty rate (**non-binding**)
4. In a dispute, either party can come to the Competency Center and arbitrate dispute to determine a royalty rate.
  - takes no more than 9 months, and during that time cannot assert patents in EU courts; worry is that the other company can go to China and try to get a rate.
  - It is also CONFIDENTIAL as to the rates. Will publish methodology though.

# UK

- Top down: UK Court has been setting global rates *Optis v. Apple* (global rate vs. injunction); UK threatens Apple with injunction if Apple does not allow UK to determine global rate; award of \$56.43M plus interest for past infringements.
- *Interdigital v. Lenovo* did NOT use top down, but rates were low. Lenovo rate was just slightly above what Lenovo asked for.
- Setting a global rate creates a slippery slope: Race to the courthouse in China vs. UK.

# United States



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First appeared as part of the conference materials for the

28<sup>th</sup> Annual Advanced Patent Law Institute session

"SEP Licensing and Litigation Update"