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

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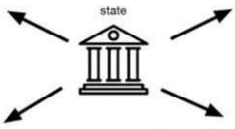
Setting standards in China, Europe and the US

CHINA

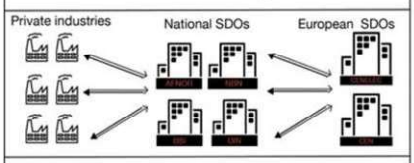
a state-driven process



Coordinated by the Standardization Administration of China (SAC), which lies under the State Administration for Market Regulation (SAMR), *an arm of the State Council.*

EUROPE

a structured, market-driven process

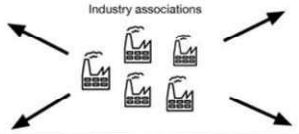


Private industry actors coordinate largely under the auspices of non-governmental standards development organizations (SDOs) at the national and European level.

This process typically respects a clear hierarchy.

UNITED STATES

a loose, market-driven process



600 standards development organizations, mostly industry associations, set standards for their industries in the spirit of competition.

The American National Standards Institute (ANSI) represents US interests at the international level but plays a comparatively limited role.

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

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. Appl*e (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 infringments.
- *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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