



Department of Justice

Office of Public Affairs

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Public Comments Welcome on Draft Policy Statement on Licensing Negotiations and Remedies for Standards-Essential Patents Subject to F/RAND Commitments

The Department of Justice announced today that it is requesting public comment on a [new draft policy statement](#) concerning standards-essential patents (SEPs) that seeks to promote good-faith licensing negotiations and addresses the scope of remedies available to patent owners that have agreed to license their essential technologies on reasonable and non-discriminatory or fair, reasonable, and non-discriminatory (F/RAND) terms. The Justice Department worked with U.S. Patent and Trademark Office (USPTO) and the National Institute of Standards and Technology (NIST) in responding to [President Biden's recent Executive Order on Promoting Competition in the American Economy](#), which encouraged the agencies to review the [2019 Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments](#) to ensure that it adequately promoted competition. Together the agencies, after consulting with the Federal Trade Commission, are now issuing a revised draft statement for public comment.

"The department looks forward to working with our agency partners," said Assistant Attorney General Jonathan Kanter of the Justice Department's Antitrust Division. "We are committed to taking a principled, transparent, and balanced approach at the intersection of intellectual property and antitrust law."

The draft statement is open to public comment for 30 days and provides a framework to facilitate good-faith licensing negotiation between SEP owners and potential licensees. It also discusses what remedies may be available when SEPs subject to voluntary F/RAND commitments are infringed. The draft statement indicates that good-faith negotiation that leads to widespread and efficient licensing between SEP holders and those who seek to implement standardized technologies can help to promote technology innovation, further consumer choice, and enable industry competitiveness. The draft statement will not be finalized until the agencies consider all stakeholder input.

In particular, the agencies are interested in comments addressing the following questions:

1. Should the [2019 Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments](#) be revised?
2. Does the draft revised statement appropriately balance the interests of patent holders and implementers in the voluntary consensus standards process, consistent with the prevailing legal framework for assessing infringement remedies?
3. Does the draft revised statement address the competition concerns about the potential for extension of market power beyond appropriate patent scope identified in the [July 9, 2021 Executive Order on Promoting Competition in the American Economy](#)?
4. In your experience, has the possibility of injunctive relief been a significant factor in negotiations over SEPs subject to a voluntary F/RAND commitment? If so, how often have you experienced this?
5. Are other challenges typically present in negotiating a SEP license? If so, what information should be provided or exchanged as a practical matter to make negotiation more efficient and transparent?
6. Are small business owners and small inventors impacted by perceived licensing inefficiencies involving SEPs? If so, how can licensing be made more efficient and transparent for small businesses and small inventors that

either own, or seek to license, SEPs?

7. Will the licensing considerations set forth in the draft revised Statement promote a useful framework for good-faith F/RAND licensing negotiations? In what ways could the framework be improved? How can any framework for good-faith negotiations, and this framework in particular, better support the intellectual property rights policies of standards-setting organizations?
8. What other impacts, if any, would the draft revised statement have on standards-setting organizations and contributors to the standards development process?
9. The draft revised statement discusses fact patterns intended to indicate when a potential licensee is willing or unwilling to take a F/RAND license. Are there other examples of willingness or unwillingness that should be included in the statement?
10. Have prior executive branch policy statements on SEPs been used by courts, other authorities, or in licensing negotiations? If so, what effect has the use of those statements had on the licensing process, outcomes, or resolutions?
11. Are there resources or information that the U.S. government could provide/develop to help inform businesses about licensing SEPs subject to a voluntary F/RAND commitment?

Interested parties, including attorneys, economists, academics, consumer groups, industry stakeholders or other members of the public may submit public comments to [Regulations.gov](https://www.regulations.gov) until Jan. 5, 2022. Information about the draft revised statement can also be found on the [Antitrust Division's website](#).

Attachment(s):

[Download sep_policy_statement_final_12.6.21_12pm.pdf](#)

Topic(s):

Antitrust

Component(s):

[Antitrust Division](#)

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