

January 13, 2021

President-elect Joseph Biden
Vice President-elect Kamala Harris

RE: Recommendations for the Biden-Harris Administration on Standard-Essential Patent Licensing Policy Priorities & Actions

President-elect Joseph Biden outlined a strategy and vision for economic growth in the United States centered around a manufacturing future that is “Made in All of America.” In order to achieve this, we urge the incoming administration to ensure American innovators can access emerging technologies like 5G, Internet of Things (IoT), and artificial intelligence. But the transformative power of these technologies can only be achieved if the underlying technical standards upon which they are built can be used by all interested players on reasonable and non-discriminatory terms. Patents covering technology that is essential to using these standards -- known as Standard-Essential Patents (SEPs) -- must be available for American manufacturers to license in a fair and balanced framework, as promised by the owners of these patents when the standards were set.

To the detriment of American manufacturers and consumers, the previous administration’s policies over the past four years have drastically disrupted this balance and tilted the scales of leverage away from promoting products that build on these emerging technologies and in favor of royalty-seeking licensors. The desire to avoid high litigation costs and business risk can cause businesses to either accept excessive and abusive licensing terms or exit the market entirely. The impact of such decisions is felt by consumers in the form of reduced choices and higher costs.

To restore the balance to SEP licensing, and make sure American manufacturers can license the technologies needed to compete, we urge the Biden-Harris Administration to:

- **Support a broad range of procompetitive SEP licensing practices and actively combat anticompetitive practices**, including updating or withdrawing the 2019 *Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/FRAND Commitments*, withdrawing the 2020 “supplement” to the Department of Justice Antitrust Division’s Business Review Letter (BRL) originally issued to IEEE in 2015, and withdrawing the improperly issued Avanci BRL and countering the previous Administration’s SEP amicus filings.
- **Promote the ability of U.S. companies to innovate and compete in markets around the world**, including championing the U.S. government’s opposition to foreign courts forced global SEP portfolio-based licensing.

- **Create a conducive environment within the U.S. government for federal agencies' support of, adoption, and use of emerging connected technologies**, including enabling standard setting organizations to develop and adopt balanced and reasonable intellectual property policies that best address an organization's needs.

Our attached position paper provides more detail on these objectives. We look forward to working with you to help deliver on President-elect Biden's promise to Build Back Better.

Sincerely,

ACT | The App Association

Computer & Communications Industry Association (CCIA)

High Tech Inventors Alliance (HTIA)

Fair Standards Alliance (FSA)

Public Knowledge

Software & Information Industry Association (SIIA)