5th Annual IP Data & Research Conference

Session VI: IP, Data, and Digital Platform Governance

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3:20 p.m. - 3:35 p.m. EDT

Remarks by Keith Jansa

So, what does this mean for policymakers and what does it mean for industry?

Three things:

1. Understand what standards are, how standards are created, and participate to shape them;
2. Understand the levers that influence the adoption of standards; and
3. Do not underestimate the potential impact recent policy activity on standards and IP in other jurisdictions has on Canada and Canadian business interests.

Standards establish accepted practices, technical requirements and at times modernize complex policies. They are vital to both business growth and security. They are used across all sectors of the Canadian economy.

Standards have ensured expanded connectivity. When you picked up your cellphone this morning, you interacted with multiple technologies seamlessly and implicated hundreds of standard essential patents. Your use resulted in some organization collecting rents from licensing and others writing cheques as a cost to market.

Recognize each standard has an intended purpose, from facilitating business interactions and providing interoperability to demonstrating due diligence or regulatory compliance.

There are many types of standards. From performance-based product specifications to management system standards helping organizations improve quality, security, and reliability. Standards can be developed as early as an idea. They can begin to codify common nomenclature and definitions in nascent areas and can serve to govern interactions across complex digital ecosystems.

But not all standards are equal when considering their development process.

Standards are developed from many different actors. They can be developed by industry associations, professional societies, standards development organizations, consortia, companies, and governments.

Not all standards however are developed using a formal, consistent, and reliable standards development process. It is important to understand that one development process may be in fact very different from the next. How standards are developed influences whose interests they will serve.

As policy makers, regulators, trade specialists, business leaders, you have several levers that can influence marketplace behaviours and the adoption of standards.

Levers include for example incorporating standards in regulation, certification program, insurance underwriting, research, procurement, and even in determining eligibility for grants, subsidies and tax breaks.

Policymakers in other jurisdictions – the U.S., U.K., and Europe as examples, are combining legislation, regulation, standards, and certification as go-to compliance mechanisms for managing high-risk,

emerging technologies. In addition, they are codifying new standard essential patent frameworks to govern and regulate the inclusion of patent-protected technologies into standards.

Why does this matter to Canadian policymakers and business leaders? Consider where standards are developed. Consider the graph Sean shared on standard essential patents by standard setting organization. The top 3, ETSI, ITU-T and IEEE are standard development organizations outside Canada. Codified rules on the negotiation, licensing, and remedies for standards essential patents in these jurisdictions have the potential to undermine Canadian interests and the organizations that participate on committees within these standards bodies.

As policymakers and as individual businesses, recognize that you can advance innovation by developing and using standards that protect critical capital like intellectual property ownership, freedom-to-operate policies, and competition.

Something to be mindful of as Evgueni, Peter and Karima dive into a discussion on building collaborative data ecosystems – a group here that is no stranger to the intersection between standards, IP, and data. Back to you Michael.