



U.S. Department of Justice

Antitrust Division

*Office of the Principal Deputy
Assistant Attorney General*

Washington, D.C. 20530

March 7, 2018

Patricia Griffin, Vice President and General Counsel
Amy Marasco, Chair, IPRPC
American National Standards Institute
25 West 43 Street, 4th Floor
New York, NY 10036

VIA EMAIL

Dear Ms. Griffin and Ms. Marasco,

I write regarding the ANSI Executive Standards Council Summary Decision released on February 23, 2018. The Division sincerely appreciates ANSI's willingness to provide a DOJ representative with the opportunity to observe the February 5 hearing. It also commends the ExSC for its efforts to draft a thoughtful decision that leaves to patent holders and implementers the ability to determine what licensing terms are appropriate in particular standards, subject to the terms of the relevant ASD's patent policy.

I note with interest the establishment of a Task Group to evaluate whether there is a continuing need for ANSI to receive statements of assurance from ASDs, and if so, whether ANSI should reinstate a standardized form of assurance. Should ANSI determine to adopt a standardized form of assurance, the "check the box" options on the form could, depending on the options that are included and how they are worded, materially affect the rights of the patent holders who choose from among the available options, as well as the rights of implementers who wish to license technology subject to the available options. As Assistant Attorney General Delrahim has said, "the Antitrust Division will . . . be skeptical of rules that SSOs impose that appear designed specifically to shift bargaining leverage from IP creators to implementers, or vice versa."¹

Although ANSI is not itself an SSO, it is similarly important for ANSI to have balanced representation in its decisional bodies so that their actions are not susceptible to the outsized influence of one group or another. To achieve that balance, and to ensure that the output of the Task Group is reflective of the full range of views, the Division

¹ Remarks of Assistant Attorney General Makan Delrahim at the USC Gould School of Law (November 10, 2017), available at <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-usc-gould-school-laws-center>.

respectfully suggests that ANSI and the IPRPC include in the Task Group members with diverse interests in the area of standard setting.

The Division appreciates that ANSI's mission is to promote and facilitate voluntary consensus standards, and shares with ANSI the belief that this goal is furthered when standard setting is attractive to both patent holders and implementers.

Sincerely,

A handwritten signature in blue ink that reads "Andrew C. Finch". The signature is written in a cursive style with a large, stylized "A" and "F".

Andrew C. Finch