

Module 4: Legal Issues with Private Standards

Learning Objectives:

- Understand in depth the legal issues raised by industry standards-primarily antitrust, patents, and incorporation by reference
- Understand how industry standards can also play a role in contracts, torts, international trade, and criminal law
- After a brief introduction, understand how trade associations and private standards conflict with antitrust laws, with case studies to demonstrate
- Understand the role of Standard-Essential Patents, the problems of “Patent Ambush” and “Hold UP,” as well as some solutions
- Understand the role of Patent Policy and problems associated with it, such as, enforcement issues, causation issues, selling SEP Rights, disclosure challenges, the timing problem, the action problem, and FRAND challenges
- Explore incorporation by reference with examples
- Understand the nuance and debate concerning copyright and incorporation by reference and discuss the legality and role of public access
- Understand the significance of agency support through standards recognition, highlighting the FDA and medical devices

Readings:

- Coglianesi, Cary. "Standards and the Law." *Standardization: Journal of Research and Innovation* 2.2 (2023): 15-20
- Contreras, Jorge L. "From private ordering to public law: the legal frameworks governing standards-essential patents." *Harv. JL & Tech.* 30 (2016): 211
- Layne-Farrar, Anne. "How to Avoid Antitrust Trouble in Standard Setting: A Practical Approach." *Antitrust* 23 (2008): 42
- Bremer, Emily. "Introducing Incorporation by Reference." *The Regulatory Review*. August 14, 2022. [Introducing Incorporation by Reference | The Regulatory Review](#)
- *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872 (9th Cir. 2012)

Possible law classes that could incorporate this module: Any Law and Technology courses, Consumer Protection Law, Intellectual Property Law, Administrative Law, Law and Policy courses, and Business Ethics