'One price for all' - an unfair and regressive approach

Why value-based FRAND licensing is so important to European innovation and open standards

Licensing practices based on Fair, Reasonable and Non Discriminatory terms work: they are proven. In light of this, there is no justification for government regulations that would mandate the same royalty rate to be paid to a patent holder for all products and applications that use their invention; such price regulation is inappropriate, contrary to market-based economics and would undermine the open standards ecosystem.

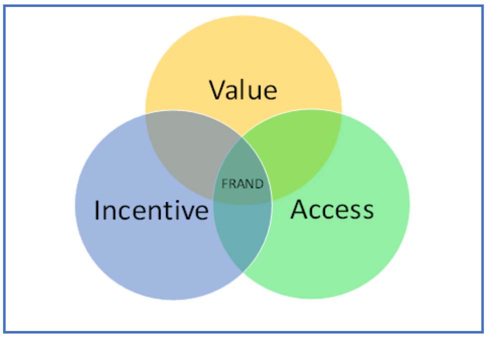
Ensuring a level playing field

Creating open standards technologies is a long-term voluntary and collaborative activity, requiring billions of euros in up-front investment for R&D. Such investments can be risky: not all the technology developed will feature in the agreed standard. This expense and risk means relatively few companies are involved in developing open standards technologies. However, large numbers of companies implement standardized technologies in their products, helping them achieve significant profits.

Technology innovators typically make patented standardized technology accessible on *Fair, Reasonable and Non Discriminatory* terms (FRAND). This ensures the technology implementers have fair access to the technology while the creators/developers receive reasonable royalties: *a level playing field for all.* However, this system is at risk.

Market background

'Fair' royalties reflect the value of a patented invention: this is generally undisputed. 'Reasonable' royalties balance the need to incentivize investment and, importantly, re-investment in standards against the need to provide access to, and ensure wide deployment of, the standards.



Fair and reasonable royalties already:

- Reflect the ***value*** of an invention in the context in which it is used
- Are high enough to provide ***incentives*** for developers to continue investing in standards
- Are low enough to make standards ***accessible*** to implementers

'Non-discrimination' means that similarly situated competitors must be offered equivalent licenses. It is, of course, essential to maintain a level playing field between competitors in each market - whether that's mobile phones, self-driving cars or smart vending machines. Licensors should not be allowed to play favourites and distort competition within a market.

Why move from fair and reasonable to unfair and unreasonable?

Some industry interests, mainly implementers of the new technology or innovation, are arguing that FRAND means the value of a technology *should be the same regardless of its application*. They believe technology should have the same price for all different types of products: 'one price for all'. However, this is neither fair nor reasonable.

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Such an approach would overturn decades of value-based FRAND licensing practice and undermine a system that has provided society with, for example, the advanced mobile devices that are now integral to our daily lives. Looking ahead, such a change could be disastrous for the entire open standards ecosystem, especially in the context of technologies such as 5G and Internet of Things (IoT), and could affect the emergence of a Digital Single Market (DSM).

Value-based pricing: a fair and sensible approach

The principle is simple: the value of a technology depends on its application. This means *what type of product it is used in, and how*. It is recognized commercial practice for technology developers to base royalties on the value their patented innovation brings to a product, with royalties varying based upon the product and context.

For example, a mobile wireless technology can be incorporated in a vending machine to occasionally report stock levels. The same technology can feature in a self-driving car. In the former, the tech is used occasionally and provides a moderate benefit to vending machine owner. In the car, the same technology is used continuously and is responsible for mission-critical and safety features that benefit consumer, manufacturer and society at large: the tech is significantly more fundamental. In other words, it adds *more value* to the car than to vending machine.

Risks to investment and market access

The flexibility of variable value-based pricing lies at the heart of open standardization. By contrast, a 'one price for all' approach compromises both market access and investment in standards. If technology innovators were obliged to charge the same price for patented technologies based on the value in a self-driving car, then other implementer products such as vending machines would be priced out of the market. Access to the standards would be reduced, not optimized.

Alternatively, if innovators had to charge the same price based on the value of a patent in a vending machine, license revenue from self-driving cars would decrease, providing less incentive to invest in standards. The billions of euros needed to develop the next generation of wireless standards technologies in a 5G and IoT world will not be supported by license fees based on the value in vending machines alone.

Why 'one price for all' should be opposed

Value-based pricing has worked successfully for decades and is sound industry practice; royalties for smartphones are naturally higher than for phones that only provide basic multimedia and Internet functionality. There have been different prices for the same technology in dongles and laptops. This is not 'discrimination' because the different pricing reflects very different applications – not different implementers competing in the same space. Competition between implementers in the same field is not in any way undermined.

Market economies depend on value-based pricing: the most efficient pricing mechanism known. In the context of standards, value-based pricing for licensing patented technology is already constrained by FRAND, which requires reasonableness and non-discrimination.

In reality, *there is no feasible justification to introduce any kind of government regulation that would mandate the same royalty rate for all products and applications*. In fact, such price regulation is contrary to market-based economics and would undermine a healthy open standards ecosystem. It could could have a serious negative effect on technology innovation in Europe and also impact on the emergence of Europe's Digital Single Market. Any proposed changes should be resisted strongly.

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