

Filing an Amicus Brief

PROCEDURES FOR CONSIDERING WHETHER IEEE SHOULD FILE AN AMICUS BRIEF ON ISSUES AFFECTING THE STANDARDS ASSOCIATION

The IEEE Standards Association (IEEE-SA) recognizes that courts will, from time to time, consider matters affecting standards development organizations or the standards development process. In the United States and other common-law jurisdictions, nonparties have the opportunity to seek leave of court to submit an "amicus curiae" brief -- that is, a "friend of the court" -- on a case that is pending before the court. In some cases, the IEEE-SA may deem it appropriate to submit an amicus brief, either alone or with others who share an interest with the IEEE-SA.

The IEEE Board of Directors has not provided the IEEE-SA with direct and autonomous authority to file amicus briefs. Under IEEE Policies Section 7.9, the decision to submit an amicus brief is vested in the IEEE Board of Directors:

This policy sets procedures for the IEEE-SA's development of recommendations for amicus submissions related to standards development activity.

A. Information Sources

The IEEE-SA may learn of opportunities to participate as an amicus in many ways. Regardless of the source of information about an amicus opportunity, the time from learning about the opportunity to the deadline for submission of an amicus brief will usually be short. Consequently, the IEEE-SA has adopted these procedures.

B. Procedures

1. Inquiries should be directed in the first instance to the Managing Director of the Standards Association who will notify the IEEE-SA President. At his or her discretion, the IEEE-SA President shall call a meeting of the Board of Governors (by telephone or otherwise) to consider whether to recommend that the IEEE file an amicus brief and the content of such a filing.
2. If the Board of Governors recommends that the IEEE file the amicus brief by a majority of the total number of the members of the BOG, the IEEE-SA President shall forward the recommendation to the IEEE Executive Director, along with information regarding the percentage of Board of Governors members who supported the recommendation and substantive comments regarding the Board of Governors' discussion.
3. If the BOG is unable to take action under Section B2, the IEEE-SA President, together with the Managing Director of the Standards Association, may, but is not required to, bring a recommendation to the IEEE Executive Director regarding whether the IEEE should consider filing an amicus brief in accordance with IEEE Policies Section 7.9. When this approach is employed, the members of the BOG will be informed of the action in advance and the communication to the IEEE Executive Director will note that this is the recommendation of only the IEEE-SA President and the Managing Director of the Standards Association.

C. Decisional Factors

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The IEEE-SA will recommend filings of amicus briefs only if consistent with the Decisional Factors noted in IEEE Policies Section 7.9 C. Each opportunity is unique, but the IEEE-SA will typically consider the following factors when considering whether to file an amicus brief on a particular matter:

1. Whether the case may be decided in a way that would impose or increase the risk of liability for standards organizations including the IEEE-SA.
2. Whether the case may result in a legal rule that will materially affect the fair, open, or efficient operation of standards organizations including the IEEE-SA, particularly if the case involves an IEEE-SA standard.
3. Whether the IEEE is already a party to a case whose outcome might be affected by a decision in the case in which an amicus might be filed.
4. Whether an amicus brief would necessarily require taking a position in favor of a party to the dispute (unless taking a position is otherwise in the IEEE's interests, after due consideration of the remaining factors).