IETF IPR
Some info and considerations

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(some material taken from sob and sbrim)

Agenda

1. **What an Individual contributor understand**
2. **What a WG needs to understand**
3. **What is *NOT* in the RFCs**

THIS IS NOT A TUTORIAL OR SPOONFEEDING OF THE IPR RELATED RFCs – read them yourselves and seek legal advice

Read the Note Well in your packet and online

History of IETF Patent Policy

- RFC 1310 (1992)
  - required written RAND or RF licensing commitments by known patent holders – ANSI model
- RFC 1602 (1994)
  - required signed license agreement with ISOC plus RAND licensing commitment to all implementers
- RFC 2026 (1996)
  - mandatory disclosure of known patents, but no licensing obligation
- RFC 3669 (2004)
  - Guidelines for Working Groups
- RFC 3979 (2005)
  - updated/clarified language in RFC 2026

IPR, contd.

- IETF IPR (patent) rules (in RFC 3979)
  - require timely **disclosure** of your own IPR in your own submissions & submissions of others
    - No definition of time period
  - "**reasonably and personally**" known to the WG participant
    - i.e., no patent search required
- **WG *may*** take IPR into account when choosing solution
- Push from open source people for Royalty Free-only process
  - IETF consensus to ***not*** change to mandatory RF-only
    - but many WGs **tend** to want RF or IPR-free
    - or assumed IPR-free

WG consensus rules!!

Disclosure Obligation

- An IETF participant *must* disclose any known patent that he/she or his/her sponsor controls and that covers any IETF Contribution

- An IETF participant or anyone else *may* disclose third party patents that they believe may cover IETF Contributions

Timing of Disclosure

- Disclosure is required "as soon as reasonably possible" after published as an Internet-Draft
  - IPR holder determines what is reasonably possible
- If an IETF participant first learns of a patent after publication of the affected I-D, a disclosure must be made as soon as reasonably possible
  - A new application is filed,
  - An existing patent/application in the company portfolio is newly "discovered" by the participant
  - A patent is acquired by the participant's sponsor, through company acquisition or otherwise

Updating Disclosures

- Disclosures may be updated voluntarily at any time
- Disclosures must be updated when:
  - an IETF Document changes such that its coverage by a disclosed patent/application changes
  - the claims of a patent/application are amended so that their coverage of IETF Documents changes
  - Not required for every rev of an I-D
  - Very often updated when I-D becomes RFC for clarity

Licensing Statements

- *IETF does NOT require disclosers to commit to license their patents*
- However, this is encouraged and may be (and often is) considered by Working Groups in evaluating documents (see RFC 3669)

- Possible licensing statements
  - No enforcement
  - Royalty-free licensing
  - RAND licensing
  - Willing to license, but on terms TBD
  - Not willing to commit at this time
  - Will not license

What's a WG to do?

- Every WG can have different mode of operation
- IPR is just a criterion, like scalability
- Look for IPR early and often
- No judgement of IPR claim validity
  - Can't be sure, but rarely need to be
  - Evaluate risk
- Rough Consensus rules decision-making
- A WG does not have to have a written or stated IPR policy (e.g. royalty-free, IPR unencumbered, No considerations, etc)
  - May be unstated and part of the WG culture and obvious from history

When a WG generally considers IPR

1. When WG receives notification
2. When examining a technology, and deciding whether to initiate work on it.
3. When deciding whether to adopt a draft as a working group document.
4. When choosing between two or more working group drafts that use different technologies.
5. When deciding whether to depend on a technology developed outside the working group.
6. When you receive a liaison from another SDO concerning this technology

NOTE: Easily turns into DDOS attack via rumor-mongering. Stick to the facts

Negotiating licensing terms from Jorge Contreras

- Under any circumstances there will be no permission or encouragement of collective negotiation of licensing terms with patent holders
  - Conversation will be SHUT DOWN
- Such collective negotiation can be a violation of antitrust laws
  - DOJ has warned IEEE
- The negotiation of terms is ***NOT*** to occur as part of consensus making

What is NOT in the RFCs

The next section goes through some common questions and scenarios not discussed in the RFCs

There are many more items that are not described in the RFCs that cause confusion

The lack of clear rules and process is a large issue for everyone at the IETF

Common questions – 1

- *Can a WG make a decision to "allow" IPR encumbered specifications to be considered?*
  - Yes
- *Can a WG decide that a set guidelines for licensing terms that must be followed?*
  - Generally its a bad idea for a WG to get deep into licensing terms but it does happen
  - Decide via consensus
    - the patent does not apply
    - mutual destruction is ok
    - the WG tries to devise a work around
    - the WG decides that the technology with the IPR is so much better than any alternative that its OK to go with the IPRed technology
  - No collective bargaining
  - Everything is a case-by-case basis but, there are dependencies
  - A WG is bound by the RFCs

Common questions – 2

- *Are the WG chairs the right people to notify if you believe there is IPR encumbering a specification?*
  - No, make a disclosure
- *Before accepting as a WG doc and then before WG LC the chair should send a request for info, awareness or knowledge of IPR?*
  - this has been discussed a number of times and there is not a consensus to require this

Common questions – 3

- *The secretariat announces to the WG chairs, ADs that an IPR disclosure was filed on technology in the WG.*
  - The Chair may notify the WG (the tools also do that) and ask if there is any desire for further action and see what discussion happens
  - No IETF requirements that a discussion must occur and a (re)claim of consensus

- *If IPR is thought to be known but, no disclosure has been filed*
  - if your own IPR is "in the works" to the point that a application has been filed you must disclose
  - if its not to that point yet then a disclosure is not required (until the application is filed)

Common questions – 4

- *If one happens to be trolling various patent search engines and it appears that non-disclosed overlapping IPR is found*
  - Send a note to the WG list but there are no specific guidelines in current IETF rules

What happens if?

- *What is the repercussion of not following the rules*
  - the fact of not following the rules can come up if the IPR holder tries to sue someone
    - there is no impact within the IETF other than social consequences
  - There is precedent that if a patent is not disclosed on a standard (not draft) and there is a law suit, the patent is revoked
- *Individuals can discuss that a specification that is not encumbered be considered vs a doc w/ IPR*
  - WGs can always discuss alternative technologies
  - There is no IETF requirement that a WG must choose a technology that is not encumbered. WG consensus rules.

What happens if?.2

- *Disclosure occurs after WG LC but before RFC published?*
  - no specific guidance in existing IETF rules
  - Area Directors/WG Chairs have leeway to unilaterally remove from publication process/queue and send the doc back to WG LC
- *Disclosure occurs after RFC published*
  - no specific guidance in existing IETF rules
  - WG will be notified by the system and consensus rules

NOTE: The IESG may publish guidelines on what to do in the event of "late IPR disclosures." Timeline of publication currently unclear

Summary

- Think about IPR early and often
- Evaluate risk, like any other factor
- Understand that WG consensus rules
- Licensing terms are important
- There's a lot more in the RFCs
- There is a lot more NOT in the RFCs
- ***The IETF's IPR rules and processes are completely broken***

NOTE: I am not a lawyer