IETF 86

BCP 79bis BOF

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IETF’s Patent Policy - Background

• Today we are discussing PATENTS, not COPYRIGHT (avoid imprecision of “IPR”)
• Pre-1996, policy was different (RAND licensing based on ANSI)
• RFC 2026 (1996) established basis for current IETF Patent Policy
  – Requires disclosure of standards-essential patents
  – No licensing commitment
  – Optional licensing disclosure with patent disclosure
  – Royalty-free is nice but not required
Patent Policy – Background, cont.

• Updates in 2004 (RFC 3668), 2005 (RFC 3979) and 2007 (RFC 4879 – minor)

• In the ~7 years since last major update of BCP79 (RFC 3979, 2005), there have been many developments
  – Complete overhaul of IETF Copyright rules (RFC 5378, 2008)
  – Creation of IETF Trust
  – Institutionalization of alternative document “streams”
  – Increasing concern over/sensitivity to patents by IETF participants, regulators and litigants
BCP79bis Goals

• Conform with current IETF organizational structure
• Fix bugs identified over the past 7 years
• Clarify provisions that have led to repeated inquiry
• Take on-board learning from other SDOs, litigation and regulatory agencies
Specific Updates/Revisions
1. Contributions

• What kind of “contributions” trigger patent disclosure?
  – Informational documents?
  – Oral statements?
  – Other organized IETF venues (BOFs, design team, website, etc., but not “hallway” conversations)
  – Information intended to be used in IETF Standards Process

• Sections 1.b, 1.c, 5.1.1.A, 5.7 (oral contributions)
2. Participation

• What level of participation in IETF activities is required to trigger patent disclosure obligations (the “lurker” question)
  – Attendance at a live meeting?
  – Signing a blue sheet?
  – Participating in an online/email exchange?
  – Subscribing to a mailing list?

• Sec. 1.k
3. Patent Details

• What patent information must be disclosed?
  – Delete non-patent disclosures (copyright, database rights) (Sec. 1.h)
  – Provisional applications (when they have claims) (Sec. 1.d)
  – Foreign counterparts? (Sec. 5.4.2.B) (word “foreign” to be changed to “in subsequent countries”)
  – Inventor names to be added (Sec. 5.4.1)
4. Updating Disclosures

• When must a patent disclosure be updated?
  – Participant becomes aware of new IPR covering Contribution (e.g., due to job change or acquisition of companies/patents) (Sec. 5.4.2.C)
  – Material change to IETF document causes more patents to apply (Sec. 5.4.2.A)
  – Publication of unpublished application (Sec. 5.4.2.A)
5. Licensing Statements

- Voluntary statements about patent licensing made in IPR disclosures
  - Still not mandatory
  - But if made, are irrevocable (Sec. 5.5.C, 5.4.2.D)
  - Royalty-free is often preferred, but disclosers may also include a statement about royalties (Sec. 7, 5.5.A, 5.5.B)
  - WGs should not engage in collective license negotiation (Sec. 7, last para.)
6. Noncompliance

• Added paragraph 3 of Sec. 6 referencing new IESG administrative penalties for noncompliance (which do not override other legal remedies)
7. Alternate Streams

• Allows Alternate Stream managers (IAB, IRTF, Independent) to adopt these rules and policies (Sec. 11)
8. Other Corrections

• Removed boilerplate requirements (most moved to Trust Legal Provisions in 2009) (former Sec. 5)

• Changed references to IETF Exec. Dir. to Secretariat