

IPR @ IETF

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- Apologies to those who have seen this before
It cannot be said often enough
- It is *fundamental* to how the IETF operates
What an individual need to know and do
What a Working Group needs to understand
And, therefore, what WG chairs need to understand
- This is not legal advice
We are not lawyers
Read the IPR RFCs & Note Well yourselves
Get your own legal advice for your own individual positions

Environment

- rulesets:
 - IPR - BCP79 a.k.a. RFC 3979 (from RFC 2026)
 - sanctions - RFC 6701
- your IPR = patents & patent applications
 - owned, assertable or licenseable by you or your employer or sponsor
 - known (or should be known) by you

Enforcement

- IETF enforcement possibilities in RFC 6701
kicked off lists, etc.
- most enforcement by courts
(maybe some by trust regulators)
can lose power to assert patent

Contribution

- what the Note Well Note is all about
- anything you say or write (in any context) that is intended to influence an IETF activity is a contribution
- you agreed to Note Well Note to register for this meeting & to subscribe to a mailing list
- rules apply to ALL contributions
not just “standards track”

What Are the Requirements on Contributors?

Any Contributor who reasonably and personally knows of IPR meeting the conditions of Section 6.6 [of RFC 3979] which the Contributor believes Covers or *may ultimately* Cover his or her Contribution, or which the Contributor reasonably and personally knows his or her employer or sponsor may assert against Implementing Technologies based on such Contribution, must make a disclosure

Disclosures

- your IPR in your contribution: MUST disclose
your IPR in contribution by fellow employee: they MUST disclose
- your IPR in another's contribution & you participate in discussion: you MUST disclose
- your IPR in another's contribution and you do not participate: PLEASE disclose
- you know of someone else's IPR in a contribution: please disclose

Participate

- evolving definition of “participate”
- courts & IETF consensus moving towards including being on the mailing list or in the room
- normal practice for past disclosures has not been limited to active participation

When

- as soon as reasonable after you know
some delay due to corporate lawyers but should not be long (days or weeks max)
- note: in most companies the lawyers insist on making any disclosure

Disclosure Details

- if patent: provide patent number & point to specific parts of IETF contribution
 - same detail not required for patent applications
- blanket disclosures not permitted unless offering unconditional free license
 - e.g., no reciprocity
- licensing information not required in disclosure but encouraged

Getting Disclosures: RFC 6702

- Use the “Note Well” and make sure it is clear
 - Don’t just display it – talk about what it means to the meeting
- Poll the authors for confirmation of IPR status
 - Before WG adoption
 - Before/during WG last call
 - Usually do the poll on the list
 - Example messages in the RFC
- Require information in Shepherd Write-up
 - (7) Has each author confirmed that any and all appropriate IPR disclosures required for full conformance with the provisions of BCP 78 and BCP 79 have already been filed. If not, explain why?
 - (8) Has an IPR disclosure been filed that references this document? If so, summarize any WG discussion and conclusion regarding the IPR disclosures.
- Disclosures called out in IETF last call

Use of Disclosures

- Working Group empowered to think
- can decide whether to adopt technology with IPR claim(s)
or to work around, or drop topic
- but note that all IPR may not be disclosed
e.g., by someone outside IETF
- also, IPR claim may be “exaggerated”

Use of Disclosures, contd.

- WG is informed by email when a disclosure is made
- You can also search for disclosures at
 - <https://datatracker.ietf.org/ipr/search/>
- RFC 2026 lays the foundations for basic principles
 - a) the IETF will make no determination about the validity of any particular IPR claim
 - b) the IETF following normal processes can decide to use technology for which IPR disclosures have been made if it decides that such a use is warranted
- WG needs to consider IPR as part of the consensus process
 - Is the WG willing to go ahead with this work in the light of the IPR disclosure?
 - This is based on individual opinions
- The WG / IETF / WG chairs **MUST NOT**
 - Attempt opinions on the validity of the disclosure
 - Lead the discussion or give specific advice

What are the Bad Cases?

- Disclosures are good things
 - They let us know where we stand
 - They let us choose how to proceed
- Late disclosures can be disruptive
 - We may have to revisit work
 - They are still better than no disclosure
- Very late disclosures can be very disruptive
 - We may have to pull a document back for further WG consideration
 - They may mean revisiting an RFC
 - They are still better than no disclosure

Questions?