

IPR in the IETF

Personal Thoughts from an AD

Adrian Farrel (adrian.farrel@huawei.com)

Thanks to:
Dave Ward, Ross Callon, Scott Brander,
Jorge Contreras, Joel Halpern

- Apologies to those who have 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
- This is not a tutorial and it is not legal advice
 - I am not a lawyer
 - Read the IPR RFCs yourselves
 - Read the Note Well notice in your registration packs and online
 - Take legal advice

Individuals Have Responsibilities

- Individuals who participates are “Contributors”
- You participate if you:
 - Edit a draft
 - Co-author a draft
 - Present at a meeting
 - Speak at the microphone
 - Send an email to an IETF list
- The responsibilities are your own personal responsibilities
 - You cannot hide behind your company or their processes

Authors and Editors

- Boilerplate is now very simple
 - This Internet-Draft is submitted to IETF in full conformance with the provisions of BCP 78 and BCP 79.*
- BCP 78
 - RFC 5378 “*Rights Contributors Provide to the IETF Trust*”
- BCP 79
 - RFC 3979 “*Intellectual Property Rights in IETF Technology*”
 - RFC 4879 *Third Party Disclosure Procedure*
- By having your name on a draft you are agreeing to conform to these RFCs
 - It is possible that you are legally liable if you do not
 - If you violate these RFCs you are breaking the “IETF contract”

Other Contributors

- The RFCs are phrased wrt “contributors”
- The RFCs form part of the IETF process
 - By participating in the IETF you agree to adhere to the process
 - You may work to change the process!
- The “Note Well” note covers
 - Participation in IETF meetings
 - Participation on IETF mailing lists
- Read the definition in RFC 3979

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

What is a Disclosure?

- Disclosure is easy
 - <http://www.ietf.org/ipr/file-disclosure>
- It is a statement that IPR exists
- It includes a reference any related I-Ds or RFCs
- It includes a licensing statement
 - May be a deferral saying terms will follow later
 - An IPR owner is not required to grant a license
- Third-party disclosures
 - RFC 3979
 - [disclosures] can come from people submitting technical proposals as Internet-Drafts, on mailing lists or at meetings, from other people participating in the working group or from third parties who find out that the work is going or has gone on
 - That means you have to disclose if you know about someone else's IPR
 - This can be really hard for contractors
 - Third-party disclosure is quite vague
 - Named companies/individuals will be contacted by the IETF

When to Disclose

- RFC 3979 defines:
 - "IPR" or "Intellectual Property Rights": means patent, copyright, utility model, invention registration, database and data rights that may Cover an Implementing Technology, whether such rights arise from a registration or renewal thereof, or an application therefore, in each case anywhere in the world.*
- This means don't wait until the patent is granted
- Disclosure is required "as soon as reasonably possible" after publication of an Internet-Draft
 - But you can disclose sooner!
- Pay attention!
 - Failing to disclose on time may possibly
 - Damage your reputation in the IETF
 - Damage your company's reputation in the IETF
 - Reduce your chance of being able to enforce your patent

What Should a WG Do?

- WG is informed when a disclosure is made
- You can 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

Summary

- IPR is a fact of life
- We are all bound by the IETF IPR Policy
 - Read it!
- We are responsible as individuals
 - Interaction with our companies or customers may be very difficult
 - Make sure you understand the IETF's IPR Policy
- If we don't like or cannot conform to the IETF's IPR Policy our only option is to cease to participate in the work covered by the IPR
- Get legal advice

References

- IETF IPR Policy
<http://www.ietf.org/ipr/policy.html>
- RFC 2026
- RFC 3979
- RFC 4879
- RFC 5378
- Dave Ward slides from San Francisco
 - <http://www.ietf.org/proceedings/74/slides/idr-1.pdf>
- Plenary slides from San Francisco
 - http://www.ietf.org/proceedings/74/slides/plenaryw-1/plenaryw-1_files/frame.htm