

**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, web site, 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