IETF 87
BCP79bis BOF-2

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BCP79bis Goals

- Conform with current IETF organizational structure

- Fix bugs identified over the past 8 years

- Clarify provisions that have led to repeated inquiry

- Take on-board learning from other SDOs, litigation and regulatory agencies

BCP79 Chronology

- RFC 2026 [10/96]
- RFC 3979 [3/05]
- -01 draft [1/13]
- BOF at IETF 86 (Orlando) [3/13]
- -05 draft [6/13]
- BOF2 at IETF 87 (Berlin) [7/13]

Consensus

1. Contributions

- What "contributions" trigger patent disclosure?
  - Anything intended to influence the IETF Standards Process [1.c, 5.1.1.A]
  - Oral statements [oral declaration is ok] [5.7]
  - Other organized IETF venues (BOFs, design team, web site, etc., but not "hallway" conversations) [1.c]
  - Information intended to be used in IETF Standards Process

2. Patent Details

- What patent information must be disclosed?
  - Delete non-patent disclosures (copyright, database rights) (1.h)
  - Provisional applications count (1.d)
  - Fix phrasing of 'foreign' filings (5.4.2.B)

Current Discussion

2. Patent Details (cont.)

- What patent information must be disclosed?
  - Names of inventors [5.4.1] [raised by 3 lawyers…]
    - Only after publication?
    - Make this optional?

3. Participation

- What level of participation in IETF activities is required to trigger patent disclosure obligations (the "lurker" question) [1.k]
  - Making a Contribution, or
  - "acting in order to influence the discussion relating to the IETF Standards Process"
  - Participating in part of a live session = participating in the whole session
    - Merely attending a live session ≠ participating
  - Emailing a list = participating in that email discussion and successor discussions
    - Merely subscribing to a list ≠ participating

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) (5.4.2.C)
  - Material change to IETF document causes more patents to apply (5.4.2.A)
  - Publication of unpublished application (5.4.2.A)

5. Licensing Statements

- Voluntary statements about patent licensing made in IPR disclosures
  - Still not mandatory [i.e., no "FRAND" minimum]
  - 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 (failures to disclose)
  - which do not override other legal remedies
- [NEW] How to treat format noncompliance?
  - References to multiple docs
  - Failure to list specific patents
  - Should these be posted as "General" disclosures?

7. General Disclosures

- [NEW] How to treat "General" disclosures?
  - Why do we allow them?
  - Is IETF obligated to publish them?
    - Is there any filter (relevance, rationality?)
  - Should these be mentioned in policy? [They do exist]
  - What effect, if any, do they have?
    - Purely informational?
    - Noncompliant?
    - Simple publication pass-thru?

8. Normative References

- Are IPR disclosures required for normative references? [Harald A.]
  - If so, who must make the disclosure?
  - Should we say that they are/are not required?

9. Technical Corrections

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

- Changed references to IETF Exec. Dir. to Secretariat

- Allows Alternate Stream managers (IAB, IRTF, Independent) to adopt these rules and policies (Sec. 11)