Intellectual Property Rights

What Everyone’s Talking About
Topics for Consideration

- New harmonized patent policy for ISO, IEC, and ITU
- Current issues relating to patents
- ISO TMB consideration of copyright form
- Current issues relating to copyright
- I will not talk about detailed implementation by ISO or IEC
ISO/IEC/ITU Policy

- A common (almost) policy and form approved by ISO, IEC, ITU-T and ITU-R
- Does not break new ground
  - Patents are allowed
  - Holder must provide written assurance of (a) license at no charge, (b) license on RAND terms, or (c) will not license on these terms
  - If not (a) or (b), cannot include in standards
ISO/IEC/ITU Policy

• Does not break new ground (cont)
  – Patents or patent applications are covered
  – Details desired, but not required
  – Licensing left to the parties involved

• Issues raised at ITU and not resolved yet
  – From China: disclosure requirements, RAND
  – From ECMA: Who decides validity?
Current Patent Issues

• Issues that keep coming up
  – What is RAND? Historically not a problem, but “fairness” issues are now being raised
  – Who determines whether a patent claim is essential? What happens if the technical group does not believe it is essential? How does it decide?
  – What happens if a negative declaration (or a refusal to respond at all) is received after the standard is published?
  – Does the assertion apply if the patent is sold?
Current Patent Issues

• Raised in ISO/IEC, ITU, ANSI, ETSI,....

• Largely based on a shift in importance/influence from holders of intellectual property toward standards users
  – Increased influence of IPR-poor small firms
  – Increased influence of IPR-poor countries
  – Increased requirements to incorporate patents
Current Patent Issues

• Ex ante declarations. What can a standards developer require?
  – Optional statement of licensing terms (IEEE)
  – Required statement of licensing terms (VITA)
  – FTC, Department of Justice believe ex ante declarations can be pro-competitive
  – Does not necessarily imply any negotiation in the standards process or by the standards group; most groups prohibit such activity
Current Patent Issues

- Patent searches (VITA asks for more, but not formal search; where is the boundary?)
- Disclosure time limits with penalties for failure to disclose
- Requirement for royalty free licensing (absolute or as punishment for failure to disclose)
Proposed ISO Copyright Form

• Acceptance of terms and conditions integrated into meeting sign-in form
• Exclusive assignment for ISO exploitation rights
• Allows continued use of your contribution only if it does not negatively impact ISO’s exploitation
Current Copyright Issues

• Adoption of standards into law
  – The Veeck issue; “losing” copyright
  – Quiet these days

• The more general question of whether standards can/should be protected by copyright
  – Some activity in academic community
  – Some narrow legal decisions
Current Copyright Issues

• Commercial terms and conditions
  – Digital Rights Management
    • More and more usage
    • Watermarking very popular
    • Being used as educational tool, not as enforcement
  – Definition of derivative works
    • At what point is permission required? At what point does it stop being “the same thing”
    • 5% no, 95% yet, where is the boundary?
Current Copyright Issues

• US Government Copyright
  – Urban myth: USG documents are public domain
  – Law (with some exceptions) prohibits USG from copyrighting material in the US
  – But not outside (e.g. ISO in Switzerland)
  – Example: DOC report claims “international copyright” to raise awareness
Current Copyright Issues

- **US Government Copyright**
  - What can/must participants do if they wish to submit material created by USG to ISO or IEC?
  - What can/must government participants do in terms of agreeing to ISO or IEC requirements for licensing/assignment?
  - The ANSI Copyright Group has requested clarification from the ANSI Government Member Forum