

# 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