

Welcome to the World of Standards



SYMPOSIUM ON MANAGEMENT OF IP IN STANDARDS-SETTING PROCESSES

**Session 1: Policies, Practices, and Experience of Leading Standards
Organizations: Discussion from an ETSI viewpoint**

These slides express the views of the author, not necessarily those of ETSI

Dirk Weiler, Chairman of ETSI General Assembly and IPR Special Committee

- **World-leading standards developing organization for Information and Communication Technologies (ICT)**
- **Independent, not-for-profit organization, created in 1988**
- **700+ members worldwide (50+ from US), big and small, from more than 60 countries on 5 continents**
- **Home of world class Standards (e.g. GSM/UMTS/LTE, DECT, DVB, TETRA...)**
- **Focus on Interoperability**
- **30 000 + publications (3000 in 2011) – freely available**

- **Simplification of a complex, multilayer environment (supplier, manufacturer)**
- **Stimulate innovation & competitiveness**
- **Create product interoperability**
- **Ensuring quality and reliability of products & services**
- **Increase efficiency (reduce costs, economy of scale)**
- **Increase Trust**
- **Load sharing / Cost saving**
- **Fight technical barriers to trade**

- **Encouragement of innovation and diffusion of innovation are common objectives of Standards and IPRs.**
 - **but there is also by definition a tension between IPRs and Standards**
 - IPRs are destined for private, exclusive use
 - Standards are intended for free, collective use
- **Conflicts may arise when the technical content of a standard falls within the scope of a patent - Essential IPR**
- **"ESSENTIAL" as applied to IPR means that it is not possible on technical grounds to make, sell, lease, otherwise dispose of, repair, use or operate product which comply with a standard without infringing that IPR.**

- **IPR Policies of SDOs aim to solve the tension between IPRs and Standards, based on the underlying legal system**
- **Making the standardization process transparent and patented technology accessible**
- **Taking into account the interests of the stakeholders**
 - **IPR owners: in exploiting benefits from the legitimate exclusive right conferred by a patent**
 - **Implementers: having the right to make and sell standard compliant products under reasonable conditions**
 - **Public use: seeking the widest possible choice among affordable and interoperable products**
- **Securing a legal environment in order to facilitate the implementation of a standard**

- **No technical reservation for the inclusion of IPRs in standards.**
- **Early identification and disclosure of essential IPRs.**
- **Ensuring the future applicability of the standards in full respect of the rights of the IPR owner by requesting irrevocable FRAND licensing undertaking.**
- **No involvement of ETSI in any commercial discussion on IPR matters (i.e. terms and conditions of the licenses to be determined by the parties of the agreement).**
- **Voluntary, unilateral, public ex ante disclosures of licensing terms for the sole purpose of assisting members in making informed (unilateral and independent) decisions in relation to whether solutions best meet the technical objectives, are not prohibited under the ETSI IPR Policy. In this context, ETSI provides a depository for URLs of IPR owners, which contain the relevant information.**

The current IPR policy is successfully guiding most but not all licensing negotiations. Some members ask for more guidance from the policy:

- Should ETSI provide guidelines/principles for compensation elements under the FRAND commitment?
- Should ETSI further clarify reciprocity?
- Should ETSI define under which conditions a patent owner will refrain from pursuing injunctive relief?
- Transfer of a Patent Subject to a FRAND Licensing Commitment

- Its very good to have such a comprehensive overview of various SSO IPR policies.
- The study uses surprisingly subjective attributes for a fact-based analysis aiming to be neutral, e.g.:
 - p4: significant royalties, abuse of consumers,
 - p103: In point of fact, providing a definition would not be difficult.
- The European Commission's competition authorities, as well as independent legal advice confirm that ETSI's rules and statutes are in line with relevant laws and guidelines.
- From a standardization perspective the recommendations and conclusions focus too much on optimizing the IPR aspects without taking due account of the primary goals of standardization, see next slide

- 3.1 ...based on solutions which best meet the technical objectives of the European telecommunications sector, as defined by the General Assembly. In order to further this objective the ETSI IPR POLICY seeks to reduce the risk to ETSI, MEMBERS, and others applying ETSI STANDARDS and TECHNICAL SPECIFICATIONS, that investment in the preparation, adoption and application of STANDARDS could be wasted as a result of an ESSENTIAL IPR for a STANDARD or TECHNICAL SPECIFICATION being unavailable. In achieving this objective, the ETSI IPR POLICY seeks a balance between the needs of standardization for public use in the field of telecommunications and the rights of the owners of IPRs.
- 3.2 IPR holders whether members of ETSI and their AFFILIATES or third parties, should be adequately and fairly rewarded for the use of their IPRs in the implementation of STANDARDS and TECHNICAL SPECIFICATIONS.
- 3.3 ETSI shall take reasonable measures to ensure, as far as possible, that its activities which relate to the preparation, adoption and application of STANDARDS and TECHNICAL SPECIFICATIONS, enable STANDARDS and TECHNICAL SPECIFICATIONS to be available to potential users in accordance with the general principles of standardization.

- **The claim in the conclusion that IPR in standards have not been addressed properly so far is not justified.**
- **Standardization is voluntary and membership driven.**
- **For good reasons IP rights are granted by governments, who set the overall rules for these rights. SSO IPR policies are destined to ensure the availability of licenses for SEPs by defining certain restrictions. They do not create completely different rights compared to other patents.**
- **When developing a product or service, it is very common that access to both SEPs and non-SEPs are essential for a competitive product.**

Thank you!