

INTELLECTUAL PROPERTY AND ICT STANDARDS IN INDIA

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Agenda

- ❑ Types of SDO/SSO in India- Public/ Private
- ❑ Bureau of Indian Standards
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- ❑ GISFI
- ❑ DOSTI
- ❑ National Policy on Open Standards for e-governance
- ❑ Procurement & Competition law issues
- ❑ Concluding remarks



Types of SDO/SSO in India- Public/ Private

- Standards formation scenario in India is dominated by
 - → *Public SDOs* (mostly set-up by statutory acts of the Government), which are well organized; and ➔
 - → *Private SDOs* (mostly public-private partnerships), which are in the nascent stages of formation.

Prominent Public SDOs:

- Bureau of Indian Standards (BIS); and
- Telecommunication Engineering Center (TEC)

GOI has made conscious efforts to build strong SDOs in India ➔

Bureau of Indian Standards (BIS)

National Standards Body of India

- Constituted under the Bureau of Indian Standards Act 1986 as a statutory body and works under the aegis of Ministry of Consumer Affairs, Food and public distribution, GOI.
- Indian Standards (IS) are formed in a transparent manner through *consensus process* by the technical committees (under each DC) comprising of experts from areas such as consumers, producers/manufacturers, R&D centers, NGOs, and regulatory bodies.
- has published more than 18610 standards (4787 are harmonized with ISO/IEC)
- Functions as 'ENQUIRY POINT under WTO-TBT [..mandatory certification and HARMONIZATION]

Most of the Indian Standards developed by BIS are either same as international standards (of ISO/IEC) OR they are equivalents of the international Standards [84% ==TO INT. STD].



Division Councils (DCs) of BIS

BIS has 14 DCs including the Electro-technical (ETDC) and Electronics and Information Technology (LITD) divisional councils

ETDC:

- ETDC has formulated 2817 Indian Standards.
- 668 (of the 2817) are identical to ISO/IEC Standards.
- 1010 (of the 2817) are IS, which are technically equivalent to ISO/IEC.

LITD:

- LITD has formulated 1471 Indian Standards
- 409 (of the 1471) are adapted from ISO/IEC Standards
- 578 (of the 1471) are IS, which are technically equivalent to ISO/IEC.

There isn't enough indication to say that these SDOs have plans to develop Standards that are different from international Standards



IP Policy of BIS

BIS does not have a IP policy of its own. Wherever the IS are equivalent or same as ISO/IEC, the IP Policies of ISO/IEC.

- *Commonly used Technology* (i.e., *without any IP ownership in it*) will only be included in the BIS standards. BIS *does not fix any design (or technology)* in the Standards and, at a very high level, BIS lays down the principles.
- *BIS does not interfere in a transaction* between the manufacturer and the IP owner

BIS has made conscious efforts to not include technology protected by IP into Indian Standards and to deal with IP licensing



Telecommunication Engineering Center (TEC)

A body under Department of Telecommunications (DoT) of GOI and TEC is responsible for setting standards in the telecommunications space.

→ TEC *engages with stakeholders (R&D centers, manufacturers, service providers, academia, users, etc.) to collaborate and channelize R&D activities for development of standards/IPRs for new products and services.*

Some examples:

→ *"Standard for IPV6 conformance and Interoperability" (SD/IPV6-001/01 MARCH.2011) - is based on the International Standards (developed by IETF) rather than deviating from the International Standards.*

→ *National Standards for H.248 (SD/GCP-01/02 AUG.2008) is based on the International standards recommended by ITU.*

Telecommunications Standards are in harmony with the International Standards.

IP Policy of TEC

TEC does not have a IP policy of its own. Wherever the IS are equivalent or same as ISO/IEC, the IP Policies of ISO/IEC.

- TEC develops specifications for equipments for Indian condition and *any technology used in these equipments need to conform to the International Standards (ITU).*
- The *telecommunication Standards developed by TEC comply with the IPR policy of ITU [disclosure and licensing requirement]*
- License terms and such *negotiations are left to the parties and are outside the scope of TEC.*

TEC acknowledges the IP Policy of the International SDOs such as the ITU



Global ICT Standardization Forum of India (GISFI)

An organization formed based on a Private-public partnership (PPP) model.

→ GISFI's focus areas for *standardization includes* ICT and related application areas, such as *energy, telemedicine, wireless robotics, and biotechnology*.

Working Groups include:

- (a) *Security and Privacy;*
- (b) *Future Radio Networks;*
- (c) *Internet of Things (IoT);*
- (d) *Cloud and Service Oriented Network;*
- (e) *Green ICT; and*
- (f) *Spectrum*

First Indian SDO on PPP model



IP Policy of GISFI

Disclosure Requirement:

- *Each member is expected to inform GISFI of essential IPRs in a timely fashion.*
- *Not obligated to conduct IPR searches*

Licensing Requirement:

- *to grant irrevocable licenses on FRAND basis (on availability of licenses)*

If licenses are not available (prior to publication of Standards)

- if a viable alternate technology exists, then such technology is included into the specification after checking the IPR obligations.

If licenses are not available (after publication of Standards)

- May de-recognize the standard.

GISFI has a well laid out IP Policy and is mostly based on the ETSI IPR policy



Development Organization of Standards for Telecommunications in India (DOSTI)

A private SDO to *develop and promote India-specific requirements*, standardizing solutions for meeting these requirements and contributing *these to international standards*, contributing to global standardization in the field of telecommunications, *safe-guarding the related IPR*.

A **Consensus** based approach is followed towards standards development [involving all stakeholders]

DOSTI follows the principles of Openness, Fairness, Consensus and Due Process.---*Maintains technology neutrality and provide a uniform playing field for all of its members.*

Working Groups include: (a) RAN and Core Network; (b) Energy Efficient Technology and Energy Related Issues; (c) Optical Transport; (d) Customer Premises Equipment Devices Terminal; (e) Telecom Security; (f) M-2-M Communication; and (g) Future Technologies

SDO on PPP model in telecommunications arena. 
Standards landscape is definitely changing in India

IP Policy of DOSTI

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Licensing Requirement:

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If licenses are not available (after publication of Standards)

- May de-recognize the standard.

DOSTI has a well laid out IP Policy, which is similar to that of GISFI in many respects



Policy on open standards on e-governance

Background:

To Make all Government services accessible to a common man in his locality to ensure efficiency, transparency, and reliability of such services at affordable costs.

Challenge:

Government systems are characterized by islands of legacy systems using heterogeneous platforms and technologies and spread across various diverse geographical locations in varying state of automation.

Solution Proposed:

GOI has provided a policy framework for selection of *Standards to facilitate interoperability* between the systems developed by multiple agencies.



IPR Policy in Open Standards for e-governance

Licensing requirement:

GOI has adapted a Royalty Free (RF) approach to licensing in Open Standards.

Mandatory Characteristics of Open Standards:

- the *patent claims necessary to implement the identified Standard* shall be made available *on a RF basis* for the *life time of the Standard*;
- identified Standard shall be *adapted and maintained by a not-for-profit organization*, and
- the identified Standard shall have *a technology neutral specification*.

RF approach and maintenance of such standards by not-for-profit organizations may be a disincentive for IP owners



IPR Policy in Open Standards for e-governance

IF Standards with mandatory characteristics are not available, then:

- An *interim standard may be adapted.*
- selection of such an Interim Standard is based on the functional and technical requirements and the maturity of the interim Standard.

IP Approach to Interim Standards:

- *the royalty requirement is relaxed and a FRAND (Fair, Reasonable, and Non-discriminatory) or a RAND (Reasonable, and Non-discriminatory) terms are adapted.*
- *No requirement of a not-for -profit organization--may allow the IP owners (or licensors of the IP) to adapt and maintain the Interim Standards.*

Additional Standards may be considered in the public interest [May benefit IP owners]

FRAND/RAND approaches for interim standards may incentivize IP owners. But, the interim standards may soon become open standards. 

Procurement and Standards

- No specific law governing government procurement in India (Public Procurement Bill, 2012 pending)
- No specific IP Policy governing the government procurement process.
- Public procurement policy in India can be inferred from the following references:
 - ❖ General Financial Rules 2005 by Dept. of Expenditure, Min. of Finance, GOI.
 - ❖ Internal guidelines/clarifications issued by the Central Vigilance Commission and Directorate General of Supplies and Disposal ('DGS&D').



Cont... Procurement and Standards

The proposed Public Procurement Bill 2012 would create a statutory framework for public procurement which will provide greater accountability, transparency and enforceability of the regulatory framework. The Bill contemplates following:

- ❖ Codifying the fundamental principles governing procurement, essential for achieving economy, efficiency and quality as well as combating corruption.
- ❖ Ensuring that competition will be maximized in procurement in the interests of economy, efficiency and integrity.
- ❖ Providing for adequate flexibility to take into account diversity of needs and types of procuring entities, types of procurement needs and methods of procurement.
- ❖ Providing for a strong framework of transparency and accountability through a public procurement portal and a grievance redressal system in which an independent mechanism, chaired by a retired High Court Judge, would review grievances



SDOs & Competition Law

- Competition Act, 2002, amended in 2007 replaced Monopolies and Restrictive Trade Practices Act (“MRTP”) enacted in 1969.
- Section 3 - prohibits anti-competitive agreements between enterprises (which also covers SDO/SSO) and lists out the conduct which is “deemed” to have an “appreciable adverse effect on competition within India”.
- Section 3- deals with anti-competitive agreements, has made an exception for IPRs registered under Indian IPR Laws. It preserves the rights of the IPR holder to prevent infringement and protect rights, so far the conditions imposed are “reasonable”.
- Section 4- deals with abuse of dominant position, which is prohibited by law. Interestingly there is no exception called out for IPRs under Section 4.



Conclusion

In India,

- Both Public SDOs and private SDOs, are functioning.
- Public SDOs
 - Have adopted International Standards [Harmonized] -84%
 - appears to be inclined to set a standard without including a technology protected by IP *[and it is left to the manufacturers of standards based product to get a license from the IP holder if required]*.
- Open standard policy on e-governance is a landmark policy, [with challenges] -Government's intent clear by opting for royalty free (RF) model on IP involved in the standard.
- Private SDOs,[though few]have well developed IP policies relating to Standards-- they are yet to put the IP policy to test.
- The Competition Act recognizes and acknowledges the rights provided under IPR laws in India.



Thank You

Standards Formulations Process

