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Sanctions Available for Application to Violators of IETF IPR Policy

Abstract

The IETF has developed and documented policies that govern the behavior of all IETF participants with respect to Intellectual Property Rights (IPR) about which they might reasonably be aware.

The IETF takes conformance to these IPR policies very seriously. However, there has been some ambiguity as to what the appropriate sanctions are for the violation of these policies, and how and by whom those sanctions are to be applied.

This document discusses these issues and provides a suite of potential actions that can be taken within the IETF community in cases related to patents.

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1. Introduction

The IETF has developed and documented policies that govern the behavior of all IETF participants with respect to intellectual property about which they might reasonably be aware. These are documented in RFC 3979 [BCP79] and are frequently brought to the attention of IETF participants. This document summarizes and references those policies, but does not replace or stand in for the full statement of the policies found in [BCP79]. Readers and IETF participants need to be aware of the content of [BCP79].

The policies set out in RFC 3979 [BCP79] state that each individual participant is responsible for disclosing or ensuring the disclosure of Intellectual Property Rights (IPR) where all of the following apply:

- they are aware of the IPR
- the IPR is relevant to the IETF work they are participating in
- the IPR is owned by the individual or by a company that employs or sponsors the individual's work.

Conformance to these IPR policies is very important, and there is a need to understand both what sanctions can be applied to participants who violate the policies, and who is in a position to apply the sanctions.

This document discusses these issues and provides a suite of potential actions that can be taken within the IETF community in cases related to patents. All of these sanctions are currently available in IETF processes, and at least two instances of violation of the IPR policy have been handled using some of the sanctions

listed. As explicitly called out in Section 4, a posting rights (PR) action (described in [BCP25] and [RFC3683]) is an applicable sanction for the case of a breach of the IETF's IPR policy.

Note: This document specifies some administrative sanctions that can be imposed by and through IETF administrative processes. In particular, this document does not address or limit other legal sanctions, rights, or remedies that are available outside of the IETF or any of the legal rights or remedies that anyone has regarding IPR.

This document does not consider the parallel, but important, issue of ways to actively promote conformance with the IETF's IPR policy. That topic is discussed in [RFC6702].

2. Description of IETF IPR Policy

The IETF's IPR policy is set out in [BCP79]. Nothing in this document defines or redefines the IETF's IPR policy. This section simply highlights some important aspects of those policies. Additional information on the IETF's IPR policy may be found at [URLIPR] and [URLIESGIPR].

2.1. Responsibilities of IETF Participants and Timeliness

According to RFC 3979 [BCP79], individual IETF participants have a personal responsibility to disclose or ensure the timely disclosure of IPR of which they are aware and which they own or which is owned by a company that employs or sponsors them, and which impinges upon the contribution that they make to the IETF.

A "contribution" is also defined in RFC 3979 [BCP79] and includes Internet-Drafts, emails to IETF mailing lists, presentations at IETF meetings, and comments made at the microphone during IETF meetings. Remote participants as well as those participating in person at IETF meetings are bound by this definition.

The timeliness of disclosure is very important within RFC 3979 [BCP79]. No precise definition of "timeliness" is given in RFC 3979 [BCP79], and it is not the purpose of this document to do so. But it is important to understand that the impact that an IPR disclosure has on the smooth working of the IETF is directly related to how late in the process the disclosure is made. Thus, a disclosure made on a published RFC is very likely to be more disruptive to the IETF than such a disclosure on an early revision of an individual submission of an Internet-Draft.

Third-party disclosures can also be made by anyone who has cause to believe that IPR exists. Such disclosures must be accompanied by the reasons for the disclosures.

It is important to note that each individual IETF participant has a choice under the IETF's IPR policy. If the individual is unwilling or unable to disclose the existence of relevant IPR in a timely manner, that individual has the option to refrain from contributing to and participating in IETF activities about the technology covered by the IPR.

2.2. How Attention Is Drawn to These Responsibilities

The IETF draws the attention of all participants to the IPR policy [BCP79] through the "Note Well" statement that appears on the IETF web pages [URLNoteWell], in presentations at working group and plenary meetings, as well as in the boilerplate text appearing in each Internet-Draft and RFC. Additionally, the Note Well statement is accepted by any person signing up to join an email list hosted at ietf.org.

[RFC6702] suggests a number of additional ways in which the attention of IETF participants can be drawn to the IPR policy.

2.3. How IPR Disclosures Are Made

The procedure for filing IPR disclosures is shown on the IETF's web site at [URLDisclose]. Third-party disclosures can also be made by email to the IETF Secretariat or via the web page.

Note that early disclosures or warnings that there might be IPR on a technology can also be made.

2.4. How Working Groups Consider IPR Disclosures

In the normal course of events, a working group that is notified of the existence of IPR must make a decision about whether to continue with the work as it is, or whether to revise the work to attempt to avoid the IPR claim. This decision is made on the working group's mailing list using normal rough consensus procedures. However, discussions of the applicability of an IPR claim or of the appropriateness or merit of the IPR licensing terms are outside the scope of the WG. The IPR situation is considered by working group participants as the document advances through the development process [RFC2026], in particular at key times such as adoption of the document by the working group and during last call.

It needs to be clearly understood that the way that the working group handles an IPR disclosure is distinct from the sanctions that can be applied to the individuals who violated the IETF's IPR policy. That is, the decision by a working group to, for example, entirely re-work an Internet-Draft in order to avoid a piece of IPR that has been disclosed should not be seen as a sanction against the authors. Indeed, and especially in the case of a late IPR disclosure, that a working group decides to do this can be considered a harmful side effect on the working group (in that it slows down the publication of an RFC and might derail other work the working group could be doing) and should be considered as one of the reasons to apply sanctions to the individuals concerned as described in the next two sections.

2.5. The Desire for Sanctions

Not conforming to the IETF's IPR policy undermines the work of the IETF, and sanctions ought to be applied against offenders.

2.6. Severity of Violations

Clearly there are different sorts of violations of IPR policy. Sometimes, a working group participant simply does not realize that the IPR that they invented applies to a particular working group draft. Sanctions (if any) need not be at all severe. However, a working group document editor who waits until near the publication of a document to reveal IPR of which they themselves are the author should be subject to more serious sanctions. These are judgments that can be made by the working group chairs and area director.

This topic forms the bulk of the material in Sections 5 and 6.

3. Who Initiates Sanctions

Any IETF participant can draw attention to an apparent violation of the IETF's IPR policy. This can be done by sending email with a short summary of the relevant facts and events to the appropriate IETF mailing list. Normally, the working group chairs and area directors assume the responsibility for ensuring the smooth running of the IETF and for the enforcement of IETF policies including the IPR policy. Thus, when sanctions are appropriate, working group chairs will be the first actors when there is an active working group involved in the technical work, and area directors will be the first actors in other cases. The first step will usually be the working group chairs or area director to gather the facts and discuss the matter with the IETF participants involved.

Working group chairs are already empowered to take action against working group participants who flout the IPR rules and so disrupt the

smooth running of the IETF or a specific working group, just as they can take such action in the face of other disruptions.

The working group chairs have the responsibility to select the appropriate actions since they are closest to the details of the issue. Where there is no working group involved or where making the decision or applying the sanctions is uncomfortable or difficult for the working group chairs, the responsible AD is available to guide or direct the action if necessary.

4. Available Sanctions

This section lists some of the sanctions available to handle the case of an individual who violates the IETF's IPR policies. It is not intended to be an exhaustive list, nor is it suggested that only one sanction be applied in any case. Furthermore, it is not suggested here that every case of IPR policy infringement is the same or that the severest sanctions may be applied in each case.

In many cases, it may be appropriate to notify a wider IETF community of the violation and sanctions so that patterns of behavior can be spotted and handled.

The sanctions are listed in approximate order of severity, but the ordering should not be taken as definitive or as driving different decisions in different cases. Section 5 provides some notes on fairness, while Section 6 gives some guidance on selecting an appropriate sanction in any specific case.

- a. A private discussion between the working group chair or area director and the individual to understand what went wrong and how it can be prevented in the future.
- b. A formal, but private, warning that the individuals must improve their behavior or risk one of the other sanctions.
- c. A formal warning on an IETF mailing list that the individuals must improve their behavior or risk one of the other sanctions.
- d. Announcement to the working group of the failure by the individuals ("name and shame").
- e. On-going refusal to accept the individuals as editors of any new working group documents. The appointment of editors of working group documents is entirely at the discretion of the working group chairs acting for the working group as explained in RFC 2418 [BCP25].

- f. Removal of the individuals as working group document editors on specific documents or across the whole working group.
- g. Re-positioning of the individuals' attribution in a document to the "Acknowledgements" section with or without a note explaining why they are listed there and not in the "Authors' Addresses" section (viz. the IPR policy violation). This action can also be recorded by the area director in the Datatracker entries for the documents concerned.
- h. Deprecation or rejection of the individual document (whether it be an RFC or Internet-Draft) or cessation of work on the affected technology.
- i. Application of a temporary suspension of individuals' posting rights to a specific mailing list according to the guidelines expressed in [BCP25]. Such bans are applied to specific individuals and to individual working group mailing lists at the discretion of the working group chairs for a period of no more than 30 days.
- j. The removal of individuals' posting privileges using a Posting Rights Action (PR Action) as per [RFC3683]. This is a more drastic measure that can be applied when other sanctions are considered insufficient or to have been ineffective. When a PR action is in place, the subjects have their posting rights to a particular IETF mailing list removed for a period of a year (unless the action is revoked or extended), and maintainers of any IETF mailing list may, at their discretion and without further recourse to explanation or discussion, also remove posting rights.

PR actions are introduced by an area director and are considered by the IETF community and the IESG in order to determine IETF consensus.

Note that individuals who have supplied text that is included in an IETF document (RFC or Internet-Draft) have a right to be recognized for their contribution. This means that authors' names cannot be entirely removed from a document in the event that they violate the IETF's IPR policy unless the text they contributed is also completely removed. But an individual's name can be removed from the front page and even moved from the "Authors' Addresses" section so long as proper acknowledgement of the contribution is given in the "Acknowledgements" section.

4.1. An Additional Note on the Applicability of PR Actions

The applicability of PR actions in the event of IPR policy possibly needs some explanation. According to [RFC3683], a PR action may be considered as a practice for use by the IETF in the case that "a participant has engaged in a 'denial-of-service' attack to disrupt the consensus-driven process".

[RFC3683] further cites RFC 2418 [BCP25] and [RFC3005] for guidelines for dealing with abusive behavior. RFC 2418 is updated by RFC 3934 in this matter (see [BCP25]).

In some cases, ignoring or flouting the IETF's IPR policy may be considered as disruptive to the smooth operation of a working group or of the whole IETF such that the offender might be deemed to be a disruptive individual under the terms of [BCP25] and [RFC3683], and so is liable to be the subject of a sanction that restricts their rights to post to IETF mailing lists as described in bullets h and i of Section 4 of this document.

5. A Note on Fairness and Appealing Decisions

As with all decisions made within the IETF, any person who feels that they have been subject to unfair treatment or who considers that a decision has been made incorrectly may appeal the decision. The IETF's appeals procedures are described in Section 6.5 of [RFC2026] and reinforced in the IESG statement at [URLIESG2026]. Any sanctions described above may be appealed using these procedures.

6. Guidance on Selecting and Applying Sanctions

Whoever is applying sanctions for breaching the IETF's IPR policy will want to be sure that the chosen sanction matches the severity of the offense and considers all circumstances. The judgment needs to be applied equitably should similar situations arise in the future.

If in any doubt, the person selecting and applying the sanctions should seek the opinion of the relevant part of the IETF community or the community as a whole. Furthermore, the person should not hesitate to seek the advice of their colleagues (co-chairs, area directors, or the whole IESG).

This is a judgment call based on all circumstances of each specific case. Some notes on guidance are supplied in Appendix A.

7. Security Considerations

While nothing in this document directly affects the operational security of the Internet, failing to follow the IETF's IPR policies can be disruptive to the IETF's standards development processes and so may be regarded as an attack on the correct operation of the IETF. Furthermore, a late IPR disclosure (or a complete failure to disclose) could represent an attack on the use of deployed and operational equipment in the Internet.

8. Acknowledgments

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9. References

9.1. Normative References

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- [RFC3683] Rose, M., "A Practice for Revoking Posting Rights to IETF Mailing Lists", BCP 83, RFC 3683, March 2004.

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Appendix A. Guidance on Selecting and Applying Sanctions

As discussed in Section 6, the selection of sanctions needs to be a carefully made judgment call that considers all relevant circumstances and events. This Appendix provides a list of questions that might form part of that judgment.

This list of considerations is for guidance and is not prescriptive or exhaustive, and it does not imply any weighting of the considerations.

- How long has the participant been active in the IETF?
- Is there some exceptional circumstance?
- Are there special circumstances that imply that the individual would not have seen or understood the pointers to and content of [BCP79]?
- How late is the disclosure? Is the document already a working group document? How many revisions have been published? How much time has elapsed? Have last calls been held? Has the work been published as an RFC?
- Is the individual a minor contributor to the IETF work, or is the individual clearly a major contributor?
- Is there a reason for the individual forgetting the existence of the IPR (for example, it was filed many years previous to the work in the IETF)?
- Was the individual told by their company that disclosure was imminent, but then something different happened?
- How speedy and humble was the individual's apology?
- How disruptive to the IETF work are the disclosure and the associated license terms? A factor in this will be whether or not the IETF community sees the need to re-work the document.
- Does the large number of patents that the individual has invented provide any level of excuse for failing to notice that one of their patents covered the IETF work?

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