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Promoting Compliance with Intellectual Property Rights (IPR) Disclosure Rules

Abstract

The disclosure process for intellectual property rights (IPR) in documents produced within the IETF stream is essential to the accurate development of community consensus. However, this process is not always followed by IETF participants. Regardless of the cause or motivation, noncompliance with IPR disclosure rules can delay or even derail completion of IETF specifications. This document describes some strategies for promoting compliance with the IPR disclosure rules. These strategies are primarily intended for use by area directors, working group chairs, and working group secretaries.

Status of This Memo

This document is not an Internet Standards Track specification; it is published for informational purposes.

This document is a product of the Internet Engineering Task Force (IETF). It represents the consensus of the IETF community. It has received public review and has been approved for publication by the Internet Engineering Steering Group (IESG). Not all documents approved by the IESG are a candidate for any level of Internet Standard; see Section 2 of RFC 5741.

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1. Introduction

The disclosure process for intellectual property rights (IPR) in documents produced within the IETF stream [RFC5741] is essential to the efficient and accurate development of community consensus. In particular, ensuring that IETF working groups and participants have as much information as possible regarding IPR constraints, as early as possible in the process, increases the likelihood that the community can develop an informed consensus regarding technical proposals. Statements to that effect appear in both the second and third revisions of the Internet Standards Process ([RFC1602], Section 5.5, Clause (B) and [RFC2026], Section 10.4, Clause (B)).

However, sometimes IPR disclosures do not occur at the earliest possible stage in the IETF process. There are many reasons why an individual might not disclose IPR early in the process: for example, through a simple oversight, to introduce delay, or to subvert the emergence of consensus.

Regardless of the cause or motivation, noncompliance with IPR disclosure rules can delay or even derail completion of IETF specifications. Disclosure of IPR after significant decisions, such as Working Group Last Call (WGLC), might lead to reconsideration of those actions. As one example, a working group (WG) might change course and use a previously rejected technical proposal with less onerous licensing requirements. Such "course corrections" produce unnecessary delays in the standardization process.

This document suggests some strategies for promoting compliance with the IETF's IPR disclosure rules and thereby avoiding such delays. These strategies are primarily intended for use by area directors (ADs), WG chairs, and WG secretaries.

These strategies are focused on promoting early disclosure by document authors, since late disclosure involving authors has historically caused significant delays in the standardization process. Many of these strategies also promote early disclosure by other IETF contributors.

Naturally, even if ADs, WG chairs, and WG secretaries do not apply the strategies described in this document, IETF contributors are still bound by the rules defined in BCP 79 (see [RFC3979] and [RFC4879]) and BCP 78 (see [RFC5378]). This document does not modify those rules, nor does it normatively extend those rules; it merely provides suggestions intended to aid ADs, WG chairs, and WG secretaries.

By intent, this document does not claim to define best current practices; instead, it suggests strategies that ADs, WG chairs, and WG secretaries might find useful. With sufficient use and appropriate modification to incorporate the lessons of experience, these strategies might someday form the basis for documentation of best current practices.

This document does not consider the parallel, but important, issue of potential actions that can be taken by the IETF itself for lack of conformance with the IETF's IPR policy. That topic is discussed in [RFC6701].

At the time of this writing, the Internet Research Task Force (IRTF) follows the same IPR disclosure rules as the IETF (see <http://irtf.org/ipr>); therefore, the strategies described here might also be appropriate for use by IRTF research group chairs.

1.1. Terminology

This document relies on the definitions provided in Section 1 of [RFC3979].

The term "formal disclosure" refers to an IPR disclosure statement that has been officially submitted by using the IPR disclosure tools currently available at <http://www.ietf.org/ipr/file-disclosure> or by sending a message to ietf-ipr@ietf.org. The term "informal disclosure" refers to a statement that is provided in a less official manner, such as orally during a presentation, in writing within presentation materials, or posted via email to the relevant discussion list before a presentation.

Since this document is purely informational, by intent it does not use the conformance language described in [RFC2119].

2. Background

The responsibilities of IETF contributors regarding IPR disclosure are documented in [RFC3979] and [RFC4879]. These documents do not assign any further responsibilities to ADs, WG chairs, and WG secretaries, other than those imposed by their roles as contributors or participants. However, late disclosure of IPR has a direct impact on the effectiveness of working groups, WG chairs, and ADs.

According to [RFC2418], WG chairs are responsible for "making forward progress through a fair and open process" and ADs are responsible for "ensuring that working groups in their area produce ... timely output"; in addition, because WG chairs can appoint one or more WG

secretaries to help them with the day-to-day business of running the working group (see [RFC2418]), some of the actions suggested in this document might fall to WG secretaries.

IPR disclosure at the earliest possible time is an essential feature of a "fair and open process", and late disclosure can impede timely output since it can cause the WG to revisit previous decisions, needlessly revise technical specifications, and face the prospect of appeals. To better fulfill their responsibilities in the IETF Standards Process, ADs, WG chairs, and WG secretaries might wish to adopt strategies to encourage early disclosure consistent with the responsibilities established in [RFC3979] and [RFC4879], such as the strategies described in this document.

3. Strategies for Working Group Documents

Building upon the framework provided in [RFC3669], this section identifies opportunities to promote IPR disclosure within the document lifecycle for IETF working group documents. These opportunities are typically encountered during initial public discussion, working group adoption, WGLC, and IETF Last Call. WG chairs might also want to make WG participants aware of the importance of IPR disclosure more generally, as exemplified by the sample message provided under Appendix A.1.

The strategies described in this section are primarily implemented by WG chairs. (The exceptions are strategies for IETF Last Call, which would be implemented by ADs.) In cases where the WG secretary creates meeting agendas or initiates consensus calls, the secretary might also implement these strategies.

3.1. Presenting an Internet-Draft at an IETF Meeting

The first opportunity to encourage early IPR disclosure might occur even before a technical proposal becomes a working group document.

When IETF participants wish to promote public discussion of a personal draft in hopes of future adoption by a working group, one common strategy is to request a slot on the agenda at an upcoming face-to-face meeting. Before the community commits resources to reviewing and considering the draft, it is very reasonable for the WG chairs to confirm (often via email) that all IPR disclosures have been submitted. The chairs ought to request confirmation from each of the authors and listed contributors, especially if those individuals are associated with multiple organizations.

If the necessary disclosures have not been submitted, the chairs have a choice: deny the agenda slot unless formal IPR disclosure statements are submitted, or insist on informal disclosure. One factor in this decision could be the number of revisions that have occurred: the chairs might wish to permit presentation of a -00 draft with informal disclosure, but not after a draft has gone through multiple revision cycles. If informal disclosure is allowed, the chairs ought to make sure that the disclosure is documented in the minutes, and ought to encourage submission of formal disclosure statements after the meeting.

In some cases, an IETF participant has not yet submitted an Internet-Draft but might still request a slot on the agenda to discuss a proposal for a new draft, or a new feature for an existing working group document. Here again, it is very reasonable for the WG chairs to confirm, before approving the agenda slot, that all IPR claims have been disclosed (likely in an informal manner as described above, since the participant has not yet made a Contribution as defined by the Internet Standards Process [RFC3979]).

A sample message of the kind that might be sent at this stage is provided under Appendix A.2.

3.2. Requesting WG Adoption

When a technical proposal is considered for adoption by a working group, the chairs have an opportunity to confirm (or reconfirm) IPR compliance with authors and listed contributors. In addition, the chairs might wish to explicitly ask the WG participants if anyone is aware of IPR that is associated with the proposal.

A sample message of the kind that might be sent at this stage is provided under Appendix A.3.

3.3. Requesting WG Last Call

Working Group Last Call is a particularly significant milestone for a working group document, measuring consensus within the working group one final time. If IPR disclosure statements have not been submitted, the judgement of consensus by the chairs would be less than reliable because it would be based on incomplete assumptions. Even if procedures such as those described above have been implemented to promote IPR disclosure during initial public discussion and adoption, features might have evolved in a way that introduces new IPR concerns. In addition, new participants with knowledge of IPR claims might have become active in the working group. Therefore, the WG chairs might wish to reconfirm with each of the authors and listed contributors that appropriate IPR disclosure

statements have been filed, even if they all work for the same organization. The chairs might also wish to include a reminder about the importance of IPR disclosures in any WGLC message communicated to the working group. (Note: If IPR disclosure statements have been filed, the chairs might wish to include a link in the WGLC message to ensure that the consensus call reflects this information.)

A sample message of the kind that might be sent at this stage is provided under Appendix A.4.

3.4. AD Review

After successfully completing WGLC, a working group document is forwarded to the appropriate area director for AD review, with a request that the AD process the document for publication as an RFC. Such a publication request is accompanied by a Document Shepherd Write-Up as required by [RFC4858] using the template found at <http://www.ietf.org/iesg/template/doc-writeup.html>. At the time of this writing, the template asks the document shepherd to answer the following question:

(7) Has each author confirmed that any and all appropriate IPR disclosures required for full conformance with the provisions of BCP 78 and BCP 79 have already been filed? If not, explain why.

Shepherds ought to be asking authors that question directly. Additionally, the AD can ask the WG chairs whether they took explicit action to promote disclosure of IPR.

If the answer to the write-up question is not favorable, or if the chairs did not take any of the actions listed above, the AD might choose to contact the authors and listed contributors to confirm that the appropriate IPR disclosure statements have been filed before advancing the document through the publication process.

A sample message of the kind that might be sent at this stage is provided under Appendix A.5.

3.5. IETF Last Call

IETF Last Call is the mechanism used by the AD and the IESG as a whole to gauge IETF-wide consensus. It is critical that the community have easy access to all related IPR statements when considering an Internet-Draft. The current tools automatically include the URL for each IPR statement explicitly linked to the draft when the default IETF Last Call message is generated. If the AD edits this message, the links to IPR disclosure statements ought to be preserved.

4. Strategies for Individual Submissions

This section identifies opportunities to promote IPR disclosure within the IETF document lifecycle for documents that are processed outside the context of a working group (so-called "individual submissions"). In general, these opportunities are encountered during initial public discussion, area director review, and IETF Last Call.

4.1. Presenting an Internet-Draft at an IETF Meeting

When IETF participants wish to promote public discussion of a personal draft not intended for a working group, it is still common to request a slot on the agenda at an upcoming face-to-face meeting. These requests might be made to related working groups or area meetings, or even during plenary time. Before the community commits resources to reviewing and considering the draft, it is very reasonable for the chairs of that meeting (WG chair, AD, IESG chair, or IAB chair) to confirm that all IPR disclosures have been submitted.

The meeting chairs ought to request confirmation from each of the authors and listed contributors, especially if those individuals are associated with multiple organizations. Where the presentation covers a concept that has not yet been documented as an Internet-Draft, the chairs ought to at least request informal disclosure from the authors and listed contributors, as described above.

A sample message of the kind that might be sent at this stage is provided under Appendix A.2.

4.2. AD Review

When considering the possibility of sponsoring an individual submission, an AD ought to confirm that all IPR disclosures have been submitted. The AD ought to require confirmation from each of the authors and listed contributors, even if those individuals are associated with the same organization. As with WG documents, a Document Shepherd Write-Up is also required for AD-sponsored documents, following the template at <http://www.ietf.org/iesg/template/individual-doc-writeup.html>. At the time of this writing, the template asks the document shepherd to answer the following question:

(7) Has each author confirmed that any and all appropriate IPR disclosures required for full conformance with the provisions of BCP 78 and BCP 79 have already been filed? If not, explain why.

A sample message of the kind that might be sent at this stage is provided under Appendix A.6.

4.3. IETF Last Call

As with working group documents, IETF Last Call is the mechanism used by the AD and the IESG as a whole to gauge IETF-wide consensus. It is critical that the community have easy access to all related IPR statements when considering an Internet-Draft. The current tools automatically include the URL for each IPR statement explicitly linked to the draft when the default IETF Last Call message is generated. If the AD edits this message, the links to IPR disclosure statements ought to be preserved.

5. A Note about Preliminary Disclosures

Early disclosures are not necessarily complete disclosures. Indeed, [RFC3979] can be read as encouraging "preliminary disclosure" (e.g., when a new patent application is made), yet a preliminary disclosure might not be updated as new information becomes available later in the standardization process (e.g., when a patent is actually granted). To help prevent early IPR disclosures from becoming stale or incomplete, at important junctures in the standardization process (e.g., at working group adoption, before Working Group Last Call, and before IETF Last Call) WG chairs and ADs are encouraged to request that the Executive Director of the IETF contact those who submitted early IPR disclosures about updating their disclosures.

6. Conclusions

WG chairs and ADs are not expected to enforce IPR disclosure rules, and this document does not suggest that they take on such a role. However, lack of compliance with IPR disclosure policies can have a significant impact on the Internet Standards Process. To support the efficient development of IETF standards and avoid unnecessary delays, WG chairs and ADs are encouraged to look for opportunities to promote awareness and compliance with the IETF's IPR policies. The strategies in this document promote compliance by raising the question of IPR disclosure at critical junctures in the standardization process.

7. Security Considerations

This document suggests strategies for promoting compliance with IPR disclosure rules during the IETF Standards Process. These procedures do not have a direct impact on the security of the Internet.

8. References

8.1. Normative References

- [RFC3979] Bradner, S., Ed., "Intellectual Property Rights in IETF Technology", BCP 79, RFC 3979, March 2005.
- [RFC4879] Narten, T., "Clarification of the Third Party Disclosure Procedure in RFC 3979", BCP 79, RFC 4879, April 2007.

8.2. Informative References

- [RFC1602] Internet Architecture Board and Internet Engineering Steering Group, "The Internet Standards Process -- Revision 2", RFC 1602, March 1994.
- [RFC2026] Bradner, S., "The Internet Standards Process -- Revision 3", BCP 9, RFC 2026, October 1996.
- [RFC2119] Bradner, S., "Key words for use in RFCs to Indicate Requirement Levels", BCP 14, RFC 2119, March 1997.
- [RFC2418] Bradner, S., "IETF Working Group Guidelines and Procedures", BCP 25, RFC 2418, September 1998.
- [RFC3669] Brim, S., "Guidelines for Working Groups on Intellectual Property Issues", RFC 3669, February 2004.
- [RFC4858] Levkowetz, H., Meyer, D., Eggert, L., and A. Mankin, "Document Shepherd from Working Group Last Call to Publication", RFC 4858, May 2007.
- [RFC5378] Bradner, S., Ed., and J. Contreras, Ed., "Rights Contributors Provide to the IETF Trust", BCP 78, RFC 5378, November 2008.
- [RFC5741] Daigle, L., Ed., Kolkman, O., Ed., and IAB, "RFC Streams, Headers, and Boilerplates", RFC 5741, December 2009.
- [RFC6701] Farrel, A. and P. Resnick, "Sanctions Available for Application to Violators of IETF IPR Policy", RFC 6701, August 2012.

Appendix A. Sample Messages

This section provides sample messages of the kind that ADs, WG chairs, and WG secretaries can send to meeting presenters, document authors, document editors, listed contributors, and working groups during various stages of the Internet Standards Process. The messages use a hypothetical working group called the "FOO WG", hypothetical WG chairs named "Alice" and "Bob", a hypothetical author named "Nigel Throckmorton", a hypothetical AD named "Christopher", and hypothetical documents about a hypothetical technology called "wiffle"; any resemblance to actual working groups, WG chairs, ADs, or documents is strictly coincidental. The last two messages might be appropriate for sending to individuals who have requested a slot on the agenda during an IETF meeting or who have requested AD sponsorship of an individual submission.

A.1. General WG Reminder

Subject: Reminder about IETF IPR Policy

Dear FOO WG:

As FOO WG chairs, we would like to minimize or hopefully even eliminate late disclosures relating to documents under consideration within the FOO WG. Therefore, you might see us send "reminder" messages in the future to authors or to the FOO WG email list as a whole, asking people whether they know of Intellectual Property Rights (IPR) relating to specific documents. In order to comply with IETF processes and avoid unnecessary delays, document authors and contributors to our discussions in the FOO WG are asked to pay careful attention to these messages and to reply in a timely fashion.

Please note that these messages are only reminders of existing IETF policy, and we are all bound by that policy even in the absence of such reminder messages. Everyone who participates in the Internet Standards Process (whether by posting to IETF mailing lists, authoring documents, attending IETF meetings, or in other ways) needs to be aware of the IETF rules with regard to IPR. These rules are described in BCP 79 and can be referenced through <http://www.ietf.org/ipr/policy.html>. In addition, online tools for filing IPR disclosures can be found at <http://www.ietf.org/ipr/file-disclosure>. Finally, existing disclosures can be searched online at <https://datatracker.ietf.org/ipr/search/>.

Also note that these are personal requirements applying to all IETF participants as individuals, and that these requirements also apply to all participants in the FOO WG.

Thanks,

Alice and Bob

(as FOO WG co-chairs)

A.2. Reminder to Meeting Presenter

Subject: IPR about draft-throckmorton-wiffle-bar

Dear Nigel,

I have received your request to give a talk about draft-throckmorton-wiffle-bar at the next IETF meeting. Before approving this request, I would like to check whether there are any claims of Intellectual Property Rights (IPR) on this document.

Are you aware of any IPR that applies to draft-throckmorton-wiffle-bar? If so, has this IPR been disclosed in compliance with IETF IPR rules? (See RFCs 3979, 4879, 3669, and 5378 for more details.)

Please reply to this email regardless of whether or not you are personally aware of any relevant IPR. I might not be able to approve your request for a slot on the agenda until I have received a reply from you and any listed contributor.

Online tools for filing IPR disclosures can be found at <http://www.ietf.org/ipr/file-disclosure>.

Thanks,

Alice

(as FOO WG co-chair)

A.3. Reminder before WG Adoption of an Individual Internet-Draft

Subject: Reminder about IPR relating to draft-throckmorton-foo-wiffle

Dear FOO WG, and Especially Authors and Contributors:

As you can see from the consensus call the WG chairs have sent out, the authors have asked for draft-throckmorton-foo-wiffle to be considered for adoption as a WG document. We would like to check whether there are claims of Intellectual Property Rights (IPR) on the document that need to be disclosed.

Are you personally aware of any IPR that applies to draft-throckmorton-foo-wiffle? If so, has this IPR been disclosed in compliance with IETF IPR rules? (See RFCs 3979, 4879, 3669, and 5378 for more details.)

If you are a document author or listed contributor on this document, please reply to this email message regardless of whether or not you are personally aware of any relevant IPR. We might not be able to advance this document to the next stage until we have received a reply from each author and listed contributor.

If you are on the FOO WG email list but are not an author or listed contributor for this document, you are reminded of your opportunity for a voluntary IPR disclosure under BCP 79. Please do not reply unless you want to make such a voluntary disclosure.

Online tools for filing IPR disclosures can be found at <http://www.ietf.org/ipr/file-disclosure>.

Thanks,

Alice

(as FOO WG co-chair)

A.4. Reminder before Working Group Last Call

Subject: Reminder about IPR relating to draft-ietf-foo-wiffle

Dear FOO WG:

The authors of draft-ietf-foo-wiffle have asked for a Working Group Last Call. Before issuing the Working Group Last Call, we would like to check whether any claims of Intellectual Property Rights (IPR) on the document have not yet been disclosed.

Are you personally aware of any IPR that applies to draft-ietf-foo-wiffle? If so, has this IPR been disclosed in compliance with IETF IPR rules? (See RFCs 3979, 4879, 3669, and 5378 for more details.)

If you are a document author or listed contributor on this document, please reply to this email regardless of whether or not you are personally aware of any relevant IPR. We might not be able to advance this document to the next stage until we have received a reply from each author and listed contributor.

If you are on the FOO WG email list but are not an author or listed contributor for this document, you are reminded of your opportunity for a voluntary IPR disclosure under BCP 79. Please do not reply unless you want to make such a voluntary disclosure.

Online tools for filing IPR disclosures can be found at <http://www.ietf.org/ipr/file-disclosure>.

Thanks,

Bob

(as FOO WG co-chair)

A.5. Reminder to Authors and Listed Contributors of a Working Group
Document before IETF Last Call

Subject: Reminder about IPR relating to draft-ietf-foo-wiffle

Dear Authors and Contributors (Chairs and Shepherd cc'd),

Before proceeding with your request to issue an IETF Last Call on draft-ietf-foo-wiffle, I would like to check whether there are any claims of Intellectual Property Rights (IPR) on the document.

Are you personally aware of any IPR that applies to draft-ietf-foo-wiffle? If so, has this IPR been disclosed in compliance with IETF IPR rules? (See RFCs 3979, 4879, 3669, and 5378 for more details.)

Please reply to this email regardless of whether or not you are personally aware of any relevant IPR. I might not be able to advance this document to the next stage until I have received a reply from you and any listed contributor.

Online tools for filing IPR disclosures can be found at
<<http://www.ietf.org/ipr/file-disclosure>>.

Thanks,

Christopher

(as AD)

A.6. Reminder to Author of an Individual Submission before IETF
Last Call

Subject: Reminder about IPR relating to draft-throckmorton-wiffle-bar

Dear Nigel,

Before proceeding with your request for AD sponsoring of draft-throckmorton-wiffle-bar, I would like to check whether there are any claims of Intellectual Property Rights (IPR) on the document.

Are you personally aware of any IPR that applies to draft-throckmorton-wiffle-bar? If so, has this IPR been disclosed in compliance with IETF IPR rules? (See RFCs 3979, 4879, 3669, and 5378 for more details.)

Please reply to this email regardless of whether or not you are personally aware of any relevant IPR. I might not be able to advance this document to the next stage until I have received a reply from you and any listed contributor.

Online tools for filing IPR disclosures can be found at
<<http://www.ietf.org/ipr/file-disclosure>>.

Thanks,

Christopher

(as AD)

Appendix B. Acknowledgements

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