

EXHIBIT B

ETSI Guide on Intellectual Property Rights (IPRs)

Version adopted by GA#58 on 30 November 2011

Background

The ETSI IPR Policy was adopted by the 21st General Assembly on 23 November 1994 and incorporated in the ETSI Directives as Annex 6 to the ETSI Rules of Procedure.

At a later stage a Technical Body Chairman's Guide on IPRs had been written to help Chairmen and others involved in ETSI's standardization activities to understand and implement the Institute's IPR Policy. That Chairman's Guide on IPR had not been endorsed by the General Assembly or the Board and therefore did not have the same official status as the ETSI Statutes, the Rules of Procedure or the Technical Working procedures. The Technical Body Chairman's Guide on IPRs is now replaced by the present ETSI Guide on IPRs.

In 2002 the ETSI General Assembly #40 identified the need to review the ETSI IPR Policy with a view to addressing and rectifying any uncertainties on the operation of this Policy and on any legal rules and obligations on the membership in order to avoid an incorrect implementation of the ETSI IPR Policy and in order to avoid anti-competitive actions. An ad-hoc IPR group, with a clear mandate to review the implementation of the IPR Policy but not to change the Policy itself, was consequently created and 30 recommendations on the operation of the ETSI IPR Policy were approved by the ETSI General Assembly #42. The present ETSI Guide on IPRs embodies most of these recommendations.

A revised version of the Clause 4.1 of the ETSI IPR Policy was adopted by the 46th General Assembly in November 2005. This revision was induced by the EC DG COMPETITION in its concern to generate a general awareness of the risk of "patent ambush" situation in the standard making process. The EC DG COMPETITION rationale behind the changes is given in section 4.5 of the present Guide.

For the avoidance of any doubt, the changes to the ETSI IPR Policy with respect to software copyright introduced and approved by General Assembly #58 are not intended, and shall not be interpreted, as a shift in the ETSI IPR regime towards a preference for royalty-free licensing. The basic principle of the ETSI IPR regime remains FRAND with no specific preference for any licensing model.

Foreword

Intellectual property plays an important role in standardization, especially in the telecommunications and electronic communications sector. In that context, the likelihood of having Intellectual Property Rights (IPRs) incorporated into ETSI Deliverables became critical after a few years of existence of ETSI. This tension (proprietary nature of IPRs versus wide dissemination of standards) was minimized with the adoption by the ETSI Membership of the ETSI IPR Policy as found in Annex 6 to the ETSI Rules of Procedure.

In the preparation of standards, IPR issues may arise. It is important for all parties involved in the ETSI standards-making process to be aware of their responsibilities and that there is good co-operation between all parties.

This guide is intended to help ETSI Members and any other party involved in ETSI's standardization activities (e.g. Members, Technical Body Chairmen, Secretariat, etc.) to understand and implement the Institute's IPR Policy.

This guide provides explanatory information on how to handle IPR matters in ETSI and does not replace the ETSI IPR Policy which takes precedence in all cases.

This guide has been endorsed by the Board but does not have the same official status as the Statutes, the Rules of Procedure or the Technical Working Procedures.

Should you (the reader) have any difficulty with provisions of this guide or with any practical aspects of the Policy which are not answered by this guide, please do not hesitate to contact the ETSI Secretariat (hereafter called simply "Secretariat").

1 The ETSI IPR Policy

1.1 What is the Purpose of the IPR Policy?

The purpose of the ETSI IPR Policy is to facilitate the standards making process within ETSI. In complying with the Policy the Technical Bodies should not become involved in legal discussion on IPR matters. The main characteristics of the Policy can be simplified as follows:

- Members are fully entitled to hold and benefit from any IPRs which they may own, including the right to refuse the granting of licenses.
- It is ETSI's objective to create Standards and Technical Specifications that are based on solutions which best meet the technical objectives of ETSI.
- 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.
- The IPR Policy seeks to reduce the risk 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.
- Therefore, the knowledge of the existence of Essential IPRs is required as early as possible within the standards making process, especially in the case where licenses are not available under fair, reasonable and non-discriminatory (FRAND) terms and conditions.

The ETSI IPR Policy defines the rights and obligations for ETSI as an Institute, for its Members and for the Secretariat.

The Policy is intended to ensure that IPRs are identified in sufficient time to avoid wasting effort on the elaboration of a Deliverable which could subsequently be blocked by an Essential IPR.

1.2 Where can I find the ETSI IPR Policy?

The ETSI IPR Policy is part of the ETSI Directives and can be found in Annex 6 of the ETSI Rules of Procedures (<http://portal.etsi.org/Directives/home.asp>). This means that the rights and obligations specified by the IPR Policy are an integral part of the ETSI Rules of Procedure and are binding on all ETSI Members.

You can also find a copy of the Policy at Annex A.

1.3 Terminology

The ETSI IPR Policy defines a number of terms; those used in this guide correspond to those used in the Policy.

In the ETSI IPR Policy:

an IPR includes:

- COPYRIGHT
- PATENT
- UTILITY MODEL
- REGISTERED DESIGN

- ... and applications thereof.

an IPR does not include:

- TRADEMARKS
- TRADE SECRETS
- CONFIDENTIAL INFORMATION
- RIGHTS RELATING TO GET-UP (packaging)

1.4 Rights and obligations deriving from the IPR Policy

The ETSI IPR POLICY defines rights and obligations for ETSI as an Institute, for its Members and for the Secretariat. Non-Members of ETSI also have certain rights under the Policy but do not have legal obligations.

The following table intends to give a clear overview of the most important rights and obligations of the Institute, the Members, the Secretariat and the rights of third parties as specified under the ETSI IPR Policy. *All references below which are in italics relate to the ETSI IPR Policy.*

	Obligations	Rights
Institute	<ul style="list-style-type: none"> • to inform users of standards about Essential IPRs declared and ensure that this information is publicly available (<i>Clause 7</i>). • to perform IPR searches if the EC and/or EFTA so require and reasonable expenses are met (<i>Clause 6.2</i>). • to grant licenses on ETSI-owned IPRs (other than copyright) on fair, reasonable and non-discriminatory terms and conditions to third parties, free of charge to ETSI Members (<i>Clause 9.3</i>). • to respect confidential information within a Technical Body until publication of the relevant Deliverable. • to include the information in a standard (<i>Clause 10</i>). 	
Members	<ul style="list-style-type: none"> • to inform ETSI about their own, and other people's Essential IPRs (<i>Clause 4.1</i>). • owners of Essential IPRs are requested to undertake to grant licenses on fair, reasonable and non-discriminatory terms and conditions (<i>Clause 6.1</i>). • owners of Essential IPRs who refuse to grant license when no alternative is available, are requested to reconsider their position and provide the Director-General with a justification (<i>Clause 8.1</i>). • to abstain from claiming copyright on standards documentation (text, graphics etc., of the standard itself) on behalf of the member itself and its employees (<i>Clause 9.1</i>). 	<ul style="list-style-type: none"> • no obligation to conduct IPR searches (<i>Clause 4.2</i>). • to refuse the inclusion of own IPRs in standards (<i>Clauses 8.1 and 8.2</i>). • to be granted licenses on fair, reasonable and non-discriminatory terms and conditions in respect of a standard (<i>Clause 6.1</i>). • to make copies of standards documentation (<i>Clause 11</i>) free of charge. • to use IPRs owned by ETSI free of charge (<i>Clause 9.3</i>). • to have confidential information within a Technical Body respected until publication of the relevant Deliverable (<i>Clause 10</i>).

Secretariat	<ul style="list-style-type: none"> the Director-General to contact owners of Essential IPRs having refused to grant licenses on behalf of ETSI (<i>Clauses 8.1 and 8.2</i>). the Director-General to request the owner of an Essential IPR to give within three months an undertaking in writing that it is prepared to grant licenses (<i>Clause 6.1</i>). 	
Third Parties	<ul style="list-style-type: none"> the ETSI IPR Policy is only binding on ETSI Members. Third parties do not have any legal OBLIGATIONS under the Policy. when ETSI is informed that an IPR belonging to a non-Member could be essential for a standard, the non-Member owner is also requested to undertake to grant licenses on fair, reasonable and non-discriminatory terms and conditions (<i>Clause 6.1</i>). 	<ul style="list-style-type: none"> Third parties have certain RIGHTS under the ETSI IPR Policy either as owners of Essential IPRs or as users of ETSI standards or documentation: <ul style="list-style-type: none"> to refuse the inclusion of their own Essential IPRs in ETSI Deliverables (<i>Clause 8.1 and 8.2</i>). To be granted licenses on fair, reasonable and non-discriminatory terms and conditions in respect of a standard at least to manufacture, sell, lease, repair, use and operate, (<i>Clause 6.1</i>) to be granted licenses for ETSI owned IPRs (other than copyright in the standard documentation) (<i>Clause 9.3</i>) on fair, reasonable and non-discriminatory terms and conditions. to have confidential information within a Technical Body respected until publication of the relevant Deliverable (<i>Clause 10</i>).

1.5 "Essential" IPRs

Clause 15.6 of the ETSI IPR Policy gives the following definition of essentiality:

"15.6 *ESSENTIAL as applied to IPR means that it is not possible on technical (but not commercial) grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization, to make, sell, lease, otherwise dispose of, repair, use or operate EQUIPMENT or METHODS which comply with a STANDARD without infringing that IPR. For the avoidance of doubt in exceptional cases where a STANDARD can only be implemented by technical solutions, all of which are infringements of IPRs, all such IPRs shall be considered ESSENTIAL.*"

In simpler terms, an "essential IPR" is an IPR which has been included within a standard and where it would be impossible to implement the standard without making use of this IPR. The only way to avoid the violation of this IPR in respect of the implementation of the standard is therefore to request a license from the owner.

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