

SMPTE Intellectual Property Policy

extracted from

SECTION XIII – ENGINEERING Administrative Practices

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10 Intellectual Property Policy

10.1 Patents

Engineering Documents may include technology that is subject to patent rights, but only if all known patent holders are prepared to agree to licensing terms that are “Reasonable and Non-Discriminatory” (RAND) as defined in the form approved by the Standards Committee. A Committee is entitled to give preference to technologies that are believed to be free of patent rights, or where a compensation-free license will be available, provided any such solution is believed to be technically adequate.

It is important that, wherever possible, Committees are able to make a choice of technology based on all relevant information, including the existence, or potential existence, of any patent claims that may encumber a technology under consideration.

When a draft document is submitted by a Member on behalf of a sponsoring organization, or when a written contribution proposes new content for a draft document, the contribution shall be accompanied by a Patent Statement, using the form approved by the Standards Committee.

This Policy also imposes an obligation on all Committee participants (Participant Members, Observer Members and Guests) to advise the Committee, as early as possible in the development process, if they are aware of patents or patent applications that might contain claims essential to a technology being proposed for inclusion in an Engineering Document. Such advice shall identify as clearly as possible the part(s) of a document believed to be subject to patent rights. A claim is “essential” only if it is necessarily infringed by implementing the normative portion of an Engineering Document, and is “necessarily infringed” only when there is no commercially reasonable non-infringing alternative for implementing the Engineering Document.

The requirement to advise the Committee of knowledge of claims or potential claims that may be essential is an ongoing obligation that begins with becoming a Participant Member or Observer Member of a Committee, or attending a meeting as a Guest, and continues though any form of participation in the work or proceedings of the Committee, including any form of participation by electronic means such as receipt of emails. Any required advice shall be made as soon as practically possible, and in all cases shall be

made within 30 days after the knowledge is obtained, and in advance of any Vote on the Engineering Document. The advice may be in the form of a verbal statement at a meeting, which shall be recorded in the minutes of the meeting, or by email to the Committee Chair. The receipt of such advice shall create an action item for the Committee.

SMPTE recognizes that many companies have extensive patent portfolios, and that searching such portfolios for possible relevance to each document in development is impractical. This Policy does not require any patent search and, specifically, recognizes that sponsorship of a Committee Member does not create any obligation to perform a patent search.

The Policy also recognizes that Committee Members and Guests act as individuals and that obligations imposed by these Administrative Practices apply to the Member or Guest rather than to any sponsoring organization. For this reason the obligation to disclose is created by the actual personal knowledge of the Member or Guest, and applies to any potential encumbrance known to the Member or Guest, whether or not owned by a sponsor. Nothing in the Policy shall impute knowledge of a Committee Member or Guest by reason of employment, sponsorship, or any other association or connection with a patent holder.

This Policy does not require the Member or Guest to form a legal opinion as to the applicability or enforceability of a patent claim, but does require a disclosure if the Member has actual personal knowledge of a patent or patent application that, in the good faith judgment of the Member, is likely to be essential to implementation of the proposed Engineering Document.

It is recognized that on occasions this obligation may conflict with terms of employment or contractual agreements. Members or Guests of a Committee or Subgroup shall use their best efforts to obtain clearance to declare any relevant encumbrance. No Committee member may support the adoption of a Draft document or technology while knowing or believing that undeclared encumbrances exist. A Committee member who cannot obtain clearance to reveal an encumbrance shall cease to participate in discussion of, and withdraw from all ballots concerning, the proposed document.

Following advisement of possible essential claims, the Committee Chair shall contact the owner of the Intellectual Property in question and inquire whether, should a protected technology be incorporated into an Engineering Document, a license would be made available under RAND terms. The Chair may invite the owner of the Intellectual Property to state whether or not compensation would be required for such a license. The Committee may consider any such statement, but there is no obligation for the IP owner to provide it.

10.1.1 Call for Patents

At the start of each meeting the Chair shall read a statement in the form approved by the Standards Committee reminding Members and Guests of the obligations imposed by this Policy.

10.1.2 Patent Statement to accompany document submission

A written Patent Statement is required when a draft document is submitted to SMPTE, by an individual or any other entity, and when a written input proposes a substantial addition or modification to a draft document. The statement shall be made using the form approved by the Standards Committee.

10.1.3 Patent Statement by other IP owners

Prior to Standards Committee Audit, the Director of Engineering shall attempt to obtain a formal Patent Statement, using the form approved by the Standards Committee, from each known patent holder.

10.1.4 Patent Statement in Published Documents

All published Engineering Documents shall include a Statement, in the form approved by the Standards Committee; calling attention to the possibility that implementation of the Engineering Document may require the use of inventions subject to patent rights.

10.2 Trademarks

Standards and Recommended Practices shall not include proper names, trade names or trademarks of specific companies or organizations (other than SMPTE) or acceptable manufacturer lists, service provider lists, or similar material in the body of a document or in an annex; except with the explicit approval of the Standards Committee. Engineering Guidelines and Registered Disclosure Documents may include proper names or trademarks.

Entries in a Register may include proper names or trademarks when permitted by the Engineering Document that creates the Register.

Where there is reason to believe that a sole source exists for essential equipment, materials, or services necessary to determine compliance with a standard, it is permissible to supply the name and address of the source in a footnote or informative annex as long as the words “or the equivalent” are added to the reference.

Authors desiring an exception to inclusion in a Standard or Recommended Practice are encouraged to seek approval early in the document process. Authors shall first obtain the Consensus of the Technology Committee on the proposal. Upon the Consensus recommendation of the Technology Committee, the Standards Committee shall conduct a Ballot and inform the Technology Committee Chair of the results.

10.3 Copyright

The Society shall own the copyrights of all Engineering Documents and Registered Disclosure Documents, whether in draft or published form. Conditions of use are as specified below.

10.3.1 Draft Engineering Documents

The draft documents, reports, correspondence and all work of the Technology Committees and their subgroups are SMPTE confidential and shall not be disclosed to non-Members without Engineering Vice President approval, except that work in process

documents only may be shared with individual technical experts in the field and with fellow employees for the express purpose of technical review and soliciting comments on the work.

In particular, draft documents shall not be shared with external groups, mail lists, or other Standards Development Organizations without prior Engineering Vice President approval. Committee correspondence and other work of the Technology Committee shall not be shared without prior Engineering Vice President approval. Communications to external Standards Development Organizations shall follow the processes described in the Liaison Section **Error! Reference source not found.**

Electronic or hard copies of in-process documents may be made as necessary for the permitted purposes described above, but members shall employ reasonable efforts to ensure that draft documents are not retained unnecessarily, or used for any other purpose, or in any place or form in which they might be used as a substitute for a published document.

Submission of any document to any Due Process group for consideration for standardization constitutes a grant to the Society of a permanent, irrevocable copyright license, including the right to make derivative works. Submission in this context includes contribution to the online servers, meeting file server, or any mail list managed by the Society. The organization(s) submitting the document(s) may retain the right to make derivative works such as technical papers but must not publish or make available by any means any document being, or purporting to be, an alternative to a Published Engineering Document. If the Society adopts an alternative proposal or technology, not incorporating any substantial part of the original document, such restrictions to the rights of the original copyright owner shall cease to apply.

10.3.2 Published Engineering Documents

No copying or distribution of any Published Engineering Document in electronic- or hard-copy form is permitted except as specifically permitted by a license obtained from the Society.

10.3.3 Registered Disclosure Documents

Submission of a document for adoption as an SMPTE Registered Disclosure Document confers on the Society the right to reproduce and sell (in electronic- or hard-copy form) the final version of the document without any compensation to the submitting entity, as if such a document were a Published Engineering Document. The submitting entity may also publish the final document in electronic- or hard-copy form, provided the document is identical to that adopted by the Society.

The submitting entity may also publish an amendment to the document provided it is promptly submitted to the Society for processing as an addition to or replacement of a portion of the Registered Disclosure Document according to the process defined in section **Error! Reference source not found.** If the Society does not approve publication of the amended version, the Registered Disclosure Document shall be withdrawn, but SMPTE shall retain the right to make the document available according to the policy for withdrawn documents.