

SMPTE Intellectual Property Policy
extracted from
SECTION XIII – ENGINEERING Administrative Practices

Revised 31 October 2008

10 Intellectual Property Policy

10.1 Patent Policy

Engineering Documents may include technology that is subject to Essential Claims (see section 10.1.2), but only if all known patent holders are prepared to agree to terms that are “Reasonable and Non-Discriminatory” (RAND) for all Essential Claims. All Engineering Committees and Groups, as described in section 4 (Committee) are entitled to give preference to technologies that are believed to be free of Essential Claims, or where a free-of-charge license will be available, provided any such solution is believed to be technically adequate. A Committee shall not discuss or otherwise consider specific licensing terms for such technologies.

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 Essential Claims that may encumber a technology under consideration.

This Policy imposes an obligation on all Committee Participant Members and Observer Members (Members) and Guests, in accordance with section 10.1.4, to notify the Technology Committee (TC) Chair, as early as possible in the development process if they are aware, based on their actual personal knowledge, of patents or patent applications that might contain Essential Claims to a technology being proposed for inclusion in an Engineering Document.

10.1.1 Notice to Meetings

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 Essential Claims

An Essential Claim is “essential” to an Engineering Document only if it is necessarily infringed by implementing the Normative Text of that Engineering Document, and is “necessarily infringed” only when there is no commercially reasonable non-infringing alternative for implementing the Engineering Document. Essential Claims to an Engineering Document exclude those essential to enabling technologies, which are those technologies that may be necessary to make or use any implementations but are not expressly set forth in the Engineering Document. Essential Claims to an Engineering Document also exclude claims essential to any Normative Reference included in the Engineering Document.

10.1.3 Patent Statement to Accompany Document Submission

A completed SMPTE Patent Statement is required when a draft document, or a written contribution of Normative Text to a draft document, is submitted to SMPTE, by an individual or any other entity. The Patent Statement shall be made using the form approved by the Standards Committee. The Patent Statement shall identify as clearly as possible the part(s) of a document believed to be subject to Essential Claims.

A Committee may agree by Administrative Vote to consider a draft document, or contribution to a draft document, without a Patent Statement provided assurance is received from the submitter that the Patent Statement will be provided within 45 days. The Committee Chair will notify the parent groups, including the TC, of such decision. If no Patent Statement is received within 45 days of the submission, the TC Chair shall inform the Engineering Vice President, who may suspend work on the submission.

10.1.4 Declaration of Knowledge of Relevant Intellectual Property

This Policy imposes an obligation on all Members and Guests to notify the TC Chair, as early as possible in the development process, if they are aware, based on their actual personal knowledge, of patents or patent applications that might contain Essential Claims to a technology being proposed for inclusion in an Engineering Document.

The requirement to notify the TC Chair of actual personal knowledge of actual or potential Essential Claims 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 through 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 notice shall be made as soon as practically possible, and in all cases shall be made within 45 days after the knowledge is obtained, and in advance of any Vote on the Engineering Document. The notice shall be either in the form of a verbal statement at a meeting, which shall be recorded in the minutes of the meeting, or in written form to the Chair of the responsible TC. The notice shall include all relevant information available to the Member or Guest, such as patent or application numbers(s), owner of the intellectual property, and shall identify as clearly as possible the part(s) of the Engineering Document believed to be subject to Essential Claims.

The receipt of such a notice shall create a TC action item for the Director of Engineering who shall follow the procedures of Section 10.1.5, to solicit a Patent Statement from the reported owner of the intellectual property.

This Policy does not require any patent search and, specifically, recognizes that sponsorship of a Member or Guest does not create any obligation to perform a patent search.

The Policy recognizes that all 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 Essential Claims known to the Member or Guest, whether or not the patent or patent application is owned by a sponsor. Nothing in the Policy shall impute knowledge of a Member or Guest

by reason of employment, sponsorship, or any other association or connection with a patent applicant or holder.

This Policy does not require the Member or Guest to form a legal opinion as to the applicability or enforceability of Essential Claims, but does require a disclosure if the Member or Guest has actual personal knowledge of a patent or patent application that, in the good faith judgment of the Member or Guest, is likely to include Essential Claims 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 and Guests shall use reasonable efforts to obtain clearance to declare any relevant Essential Claims. No Member may support the adoption of an Engineering Document or technology while knowing or believing that undeclared Essential Claims exist. A Member or Guest who cannot obtain clearance to reveal an Essential Claim shall notify the TC Chair that s/he will cease to participate in discussion of, and withdraw from all ballots concerning, the proposed document.

10.1.5 Inquiry to Possible Patent Holders

Following notice of possible Essential Claims, the Director of Engineering shall perform a Patent Inquiry, which shall consist of contacting the reported owner of the intellectual property in question with the intent of securing a completed SMPTE Patent Statement. The Patent Statement, in a form approved by the Standards Committee, shall identify whether the entity does own or control patents or pending applications containing Essential Claims for implementation or use of the Engineering Document. Further, the Patent Statement will identify whether licensing of any Essential Claims would be available under RAND terms.

If no reply is received within 30 days, the Director of Engineering shall repeat the Patent Inquiry by registered mail. If no reply is received within a further 30 days, the Director of Engineering shall report this to the TC and no further correspondence with the entity shall be required.

10.1.6 Conduct of Ballots, Votes and Audits with Associated IP Statements

When an Engineering Document is balloted for elevation to FCD, the Director of Engineering shall issue, in conjunction with the ballot notification, a "Call for Patents" in a form approved by the Standards Committee. The FCD Ballot shall reference any Patent Statements already submitted with respect to the proposed Engineering Document. If a notice of possible Essential Claims has been made as described in section 10.1.4, the Director of Engineering has not received an affirmative response to the Patent Inquiry described in section 10.1.5, then the Director of Engineering shall post a comment against the FCD Ballot regarding the outstanding Patent Inquiry.

Receipt of a statement in response to a Patent Inquiry shall be noted as a comment response and shall resolve the comment unless the Patent Statement indicates that Essential Claims exist and that there is no RAND assurance. If any entity provides a completed Patent Statement that indicates Essential Claims exist and that there is no RAND assurance, the TC may either revise the Engineering Document to exclude the protected technology or terminate work on the Engineering Document. If the TC considers that the completed Patent Statement may be frivolous or invalid it may choose

to seek the direction of the Standards Committee. If any entity has not responded to a Patent Inquiry and there is no suitable alternative technology, this shall be noted as a comment response and the TC may choose to retain the technology in question by conducting a Disposition Vote on the comment.

All relevant Patent Statements, Patent Inquiries, and Disposition Votes shall be part of the Standards Committee Audit.

10.1.7 Patent Statement in Published Documents

All published Engineering Documents shall include an appropriate statement, in a form approved by the Standards Committee; calling attention to the possibility that implementation of the Engineering Document may require the use of Essential Claims.

10.2 Trademark Policy

Standards and Recommended Practices shall not include proper names, trade names or trademarks of specific companies or organizations (other than SMPTE) or lists of acceptable manufacturers, 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 may include proper names or trademarks if considered necessary, but they should be avoided if possible. 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 TC on the proposal. Upon the Consensus recommendation of the TC, the Standards Committee shall conduct a Ballot and inform the TC Chair of the results.

10.3 Copyright Policy

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 TCs and their subgroups are SMPTE confidential and shall not be disclosed to non-Members without the prior approval of the Engineering Vice President, 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 the prior approval of the Engineering Vice President. Committee correspondence and other work of the TC shall not be shared without the prior approval of the Engineering Vice President. Communications to external Standards Development Organizations shall follow the processes described in the Liaison Section [9](#).

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 purpose other than document development, 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, royalty-free, 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) shall retain ownership to copyright in such materials. The organization submitting the materials may 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 [10.3.5](#). 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.

10.3.4 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.

10.3.5 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 8.3. 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.