

# The stakes within diverse global policy deliberations concerning treatment of Intellectual Property related to standard-setting

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At KEI October 27, 2008

# Activities with strategic implications

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**THANKS to KEI for hosting this discussion**

# Compromises and balances of interests produce IP related standards policies, procedures and precedents



A complex balance of interests among stakeholders underpin such policies, procedures and precedents. Most fundamental is the balance of the interests of users of a standard to access and practice the standard without undue burden with the interests of the contributors of intellectual property to the standards setting process to benefit from that contribution

# Activities with strategic implications

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**THANKS to ITSSD for inviting me to serve on  
Advisory Board**

# What is Intellectual Property (IP) related to standards setting?

- **Copyright, ownership & availability of the standards document** (not focus of this presentation, however many issues ... ownership of workproduct, sale vs free, support of standards infrastructure, public right to text in laws/regulations, pirates)
- **Patents & Patent Claims** ..Opportunity for those who wish to implement the standard to have access to a license to a essential patent claim(s) required for compliance with that standard Not a “new issue” **August 17, 1932 (ANSI) Committee on Procedure:** *That as a general proposition patented designs or methods should not be incorporated in standards. However, each case should be considered on its merits, and if a patentee be willing to grant such rights as will avoid monopolistic tendencies, favorable consideration to the inclusion of such patented designs in a standard might be given.*

# Activities with strategic implications

- Copyright of standards and codes referenced in US Laws and Regulations

Recently the organization Public.Resource.Org purchased the official codes and regulations from a number of US cities and states scanned them to create .pdf files and loaded the scanned files to the web. There is no clear path forward except inevitable litigation revisiting the public policy implications and legal questions involved in the Veeck case. The stakes are considerable.

# Activities with strategic implications

- **World Trade Organization Committee on Technical Barriers to Trade**
  - TBT Code of Good Practice does not address patents
  - Decision of the committee on principles for the development of international standards, guides and recommendations with relation to articles 2, 5 and annex 3 of the agreement does not address patents
  - China submissions: *China is of the view that, IPR issues in preparing and adopting international standards have become an obstacle for Members to adopt international standards and facilitate international trade. It is necessary for the WTO to consider negative impacts of this issue on multilateral trade and explore appropriate trade policies to resolve difficulties arising from this issue.*
  - ISO Guide 59 Code of Good Practice contains text addressing patents
    - *Standards should not be drafted in terms that include the use of a patented item unless the use of such an item is justifiable for technical reasons, and the rights holder agrees to negotiated licenses with interested applicants, wherever located, on reasonable terms and conditions*

# Activities with strategic implications

- **World Trade Organization AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)**
  - ***Article 31 Other Use Without Authorization of the Right Holder*** of the WTO TRIPS Agreement addresses uses “*of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government*”
  - Precedents in the case of medicines
  - Case involving compulsory licensing of patents required for manufacturing recordable compact disks



# Activities with strategic implications

World Intellectual Property Organization (WIPO) Excerpt from  
WIPO Report

## Chapter IV TECHNOLOGY DIFFUSION AND THE PATENT SYS

***118. In recent years, the relationship between patent rights and standards has been increasingly debated. This is due, inter alia, to factors such as the greater attention given by companies to patents as important intangible assets, the rising number of standards that involve patented technologies (this being the case at least in certain specific technologies, such as ICTs) and issues relating to the perceived consequences of patents on the development and implementation of standards for consumers, competitors and society in general.***

# Activities with strategic implications

- Internet Governance Forum (IGF) Dynamic Coalition on Open Standards (IGF DCOS) – [<http://igf-dcos.org>] addressing “*most urgent problems related to open technology standards and application interoperability*”
- Third IGF meeting Hyderabad, India December 3 – 6, 2008 [<http://www.intgovforum.org/>]
- 2007-2008 Dynamic Coalition on Open Standards (DCOS) Report [[link](#)] to IGF with Workshop proposals
  - 24. Reforming the International ICT Standardization System [[link](#)] (Sun-sponsored) and
  - 21. Knowledge as a Global Public Good: How Fair Use, Open Source and ICT Standards Can Expand Digital Inclusion [[link](#)] (KEI-sponsored)

# Activities with strategic implications

- Knowledge Economy International (KEI) [<http://www.keionline.org/>] contributed a draft *"Agreement on Procurement and Support for Interoperability and Open Standards"* to DCOS for online discussion leading to DCOS activities at and possible deliverable from third IGF
  - Could be signed by governments, businesses, non-profits and individuals as contracting parties
  - [excerpts version 1 9/24/2008] *procurements ... are based upon open standards that satisfy the following conditions:*
    - (a) *The standard is not effectively controlled by one company.*
    - (b) *The standard can realistically facilitate competition in the market for such programs, for example, by being implemented effectively by multiple vendors on at least the three leading personal computer operating system platforms.*