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B. Carpenter
Univ. of Auckland
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Considering availability of free software when evaluating Draft Standards
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Status of this Memo

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Abstract

This draft responds to a request for input by the IPR WG Chair. It proposes that the IETF's criteria for evaluating Draft Standard specifications should preferably include the availability of free software.

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1. Introduction

The IPR working chair has requested input addressing:

- What contributors think has changed since the last IPR WG evaluation of patent policy.
- What changes in overall direction they think the WG should address.
- What the charter for this activity should look like.

This draft is a response to that request, specifically addressing the criteria for advancement of specifications from Proposed Standard to Draft Standard.

2. Changed environment

In recent years, while patent law and the motivations of patent holders have not changed significantly, large sections of the software business have moved towards a free software model based on a variety of open source licenses. Furthermore, there are at least two camps in the IT industry, those who oppose the very existence of such software, and those who have embraced it in their way of developing commercial products and services.

Patent holders therefore offer a wide variety of conditions when it comes to licensing patents alleged to be infringed by software implementing open standards. The available patent licenses vary widely, from essentially free of restriction at one end to traditional royalty-based conditions at the other. Even patent licenses intended to be friendly to open-source software often contain reciprocity clauses (to protect the patent-holder against unreasonable licensing conditions from other patent-holders), or a requirement for all implementors to register their use of the patent in some way.

At the same time, open source licenses vary widely, from saying little or nothing about patents at one end to requiring open source distributors to warrant the absence of royalties at the other.

This range of conditions, both for patent licenses and for open source licenses, makes it essentially impossible for the IETF to devise rules that satisfy all parties:

- patent-holders who stick to a traditional, royalty-based approach to patents and feel threatened by the existence of free software;
- patent-holders who are friendly to open source software but need to defend themselves against others who aren't;

- open source advocates whose basic quarrel is with the existence of patents affecting software in the first place.

The importance of free software and of open source licenses was much less when the current IETF IPR regime was instituted by [RFC2026]. Amendments since then [RFC3979] have not changed anything in this respect. As a result, there is now a recurrent difficulty in IETF discussions of specifications where patent disclosures have been made and there is interest in open source implementations.

3. Possible change in IETF criteria

When [RFC2026] was developed, a key insight was that the IETF should never put itself in the position of making judgements about the applicability of patents or about the reasonable and non-discriminatory nature of patent licenses. Any such judgements are left to the courts; if the IETF made such judgements it would expose itself (and its participants) to court action. Therefore, the IETF process only requires contributors to disclose relevant patents (and applications) reasonably and personally known to them, and requires the IETF to publish those disclosures. The IETF makes use of such disclosures in deciding whether to adopt a particular technology, but without passing judgement on them.

However, there is one point where the IETF indirectly considers whether IPR conditions have had a practical or empirical effect. [RFC2026] says:

4.1.2 Draft Standard

A specification from which at least two independent and interoperable implementations from different code bases have been developed, and for which sufficient successful operational experience has been obtained, may be elevated to the "Draft Standard" level. For the purposes of this section, "interoperable" means to be functionally equivalent or interchangeable components of the system or process in which they are used. If patented or otherwise controlled technology is required for implementation, the separate implementations must also have resulted from separate exercise of the licensing process. Elevation to Draft Standard is a major advance in status, indicating a strong belief that the specification is mature and will be useful.

Thus, the IETF makes no judgement about the merits of patent claims or licenses; it judges by objectively observed results.

A straightforward and robust way to favor free (and presumably open source) implementations of IETF protocols is simply to rewrite the first sentence above as:

> A specification from which at least two independent and interoperable implementations from different code bases have been developed, of which at least one is preferably available as free software, and for which sufficient successful operational experience has been obtained, may be elevated to the "Draft Standard" level.

This leaves open the question of what exactly is "free" software. [I-D.josefsson-free-standards-howto] discusses how IETF documents may be written to favor free software, without attempting a precise definition. The present proposal takes the same approach. By including the word "preferably" it indicates that in making its judgement whether the criteria for Draft Standard status have been met, the IESG should give added weight to the availability of free software, without rigidly defining the term.

This is an extremely simple change to the IETF's empirical approach to advancement along the standards track, which will encourage the provision of interoperable free software, without damaging the IETF's proven methodology and without involving the IETF in legal interpretations of either patent licenses or open source licenses. It does not prevent standards advancing for which there are only proprietary implementations, since it only expresses a preference.

4. Charter objective

A possible IPR WG charter objective to deal with this would be:

- A short document (BCP) updating RFC 2026 to add the requirement that the implementations evaluated for advancement of a specification to Draft Standard should preferably include at least one free software implementation.

The author of this draft does not in fact support this, since a change to the basic standards process of RFC 2026 seems completely out of scope for the IPR WG.

An alternative objective would be a process experiment [RFC3933] to try this change for a while (probably at least two years to obtain significant results).

A final approach would be to conclude that no formal change to RFC

2026 is required, but for the IESG to simply indicate its intention to follow the suggested approach in future.

5. Security Considerations

This document has no direct impact on the security of the Internet.

6. IANA Considerations

This document requests no action by the IANA.

7. Acknowledgements

The basic idea of this draft comes from an email sent by Sam Hartman. It has been modified as a result of useful discussion on the IETF and IPR mailing lists.

This document was produced using the xml2rfc tool [RFC2629].

8. References

8.1. Normative References

[RFC2026] Bradner, S., "The Internet Standards Process -- Revision 3", BCP 9, RFC 2026, October 1996.

8.2. Informative References

[I-D.josefsson-free-standards-howto] Josefsson, S., "Guidelines for Free Standards in the IETF", draft-josefsson-free-standards-howto-01 (work in progress), October 2007.

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[RFC3933] Klensin, J. and S. Dawkins, "A Model for IETF Process Experiments", BCP 93, RFC 3933, November 2004.

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Author's Address

Brian Carpenter
Department of Computer Science
University of Auckland
PB 92019
Auckland, 1142
New Zealand

Email: brian.e.carpenter@gmail.com

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