



consortiums,  
conferences  
(and other parties I  
have been to)

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28 September 2006

# form of consortium

- professional body
  - IEEE (Institute of Electronic and Electrical Engineers)
- supra-national body
  - ETSI (EU - European Telecommunications Standards Institute)
  - 3GPP (3<sup>rd</sup> Generation Partnership Project - ETSI, TTA, TTA (Korea), ARIB (Jap) )
  - ISO (International Standards Organisation)
- national statutory body
  - TIA (US - Telecommunications Institute of America)
  - SFS (Finland – Finnish Standards Association)
- non-profit company
  - OMA (Open Mobile Alliance)
  - WiMax
- a bunch of guys on a listserv (who sometimes meet in San Diego)
  - IETF



# documentation

- memorandum of association
- bylaws / constitution / articles of association
- membership agreement
- IPR policy
- anti-trust policy
- meeting procedures



# check the documents

- obligations / liabilities / procedures are spread across different documents
- different consortiums have obligations / liabilities / procedures in different places
- need to check all of the documents to check fundamental issues



# issues

- membership rights
- contributions
- specifications
- disclosure of IPR
- IPR licence mechanism
- terms of licence
- surviving obligations



# bylaws

- membership class
- voting rights
  - specification
  - directors
  - winding up of consortium
- directors
  - elections
  - right to appoint
- notice for meetings
- termination of membership

# contributions

- who can contribute?
  - anyone
  - members
  - premium members
- who has access to contributions
  - anyone
  - members
  - working group participants
  - premium members
- liability for contributions
  - indemnity for any IPR infringement
  - “as is”, no liability, no warranty
- rights in contribution
  - contributor retain
  - contributor assign copyright
  - contributor patents must be licensed
- confidentiality of contribution

# specifications

- review process
  - working groups
  - all members
- approval process
  - all members
  - working group + board “rubber stamp”
  - Board
- majority needed for approval
  - simple majority
  - special resolution (75%)
  - consensus
- confidentiality
  - draft specification
  - final specification

# disclosure of patents / patent applications

- in own contribution
- in any contribution
- during review period of draft specification
- within period after specification approval
- only if want to opt-out of compulsory royalty free licence
- only if want to opt out of compulsory licence
  
- make sure have enough resources to check within review deadline!

# IPR licence mechanism

- we just set the standards...no obligations
    - (may be patent pool supporting the specification)
  - members may elect to licence
  - all members required to license unless opt-out
  - all members required to license
- 
- to anyone implementing the specification
  - to members
  - to anyone / members subject to reciprocity

# scope of licence

- Essential patents
- Necessary claims
  
- patents that are necessarily infringed by implementing the specification
  
- necessarily infringed
  - no commercially reasonable alternative
  - no technically reasonable alternative
  - based on state of technology / expertise when specification approved

# terms of licence

- RAND

- reasonable and non-discriminatory terms

- FRAND

- fair, reasonable and non-discriminatory terms

- RF

- royalty free terms

- RF and RAND

- royalty free and otherwise on reasonable and non-discriminatory terms



# surviving obligations

- copyright licence in contributions
- patent licence
  - in specifications approved before withdrawal
  - In contributions
  - in new specifications if participated in working group drafting the new specification
  - in new specifications if withdraw during review period
  - in new specifications that are backwards compatible with specifications approved before withdrawal
- confidentiality
- unpaid membership fees

# further reading

- Design of Patent Pools (Lerner, Strojwas, Tirole)
- Working Paper, Harvard Business School, 2005
- <http://www.people.hbs.edu/jlerner/PatPoolEmpiricalPaper.pdf>
  
- Toward Greater Clarity And Consistency In Patent Disclosure Policies In A Post-Rambus World (Nicos L Tsilas)
- Harvard Journal of Law & Technology Vol 17.2, 2003
- <http://jolt.law.harvard.edu/articles/pdf/v17/17HarvJLTech475.pdf>
  
- Criteria for evaluating patent policy
- GTW Associates
- <http://www.gtwassociates.com/answers/draftIPRcriteria.htm>