Making the Rules:

The Governance of Standard Development Organizations and their Policies on Intellectual Property Rights

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JRC/DG CONNECT Workshop

Brussels

15 March 2019

Joint Research Centre

The European Commission's science and knowledge service

JRC activities in the field

On-going projects in the context of the EC Communication 'Setting out the EU approach to Standard Essential Patents' (COM (2017) 712 final)

1. Open Source Software and Standardisation*:*
'The Commission will work with stakeholders, open source communities and SDOs for successful interaction between open source and standardisation, by means of studies and analysis.' (Final report autumn 2019).

2. Essentiality checks for SEPs:
'The Commission … will launch a pilot project for SEPs in selected technologies with a view to facilitate the introduction of an appropriate scrutiny mechanism.' (Final report spring 2020).

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❑ Duration: 10/2016-12/2018

❑ Team: JRC/Tilburg University/Northwestern University/Utah University /Montreal University

❑ **Objective**: The study aims at achieving a comprehensive overview of the governance of Standard Developing Organizations (SDOs)

❑ With a focus on

- **Effective rule setting and governance**

- **Interplay of intellectual property right systems and SDOs**

- **Public policy perspective (beyond member interests, including consumer-, end-user-, vertical industry interests, transparency)**

❑ Role of the European Commission?

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Project parts

❑ Literature review

❑ Case study report, considering : AFNOR, ANSI, CEN CENELEC, DIN, DVB Forum, ECMA, ETSI, IEC, IEEE-SA, IETF , ISO, ITU-T, JEDEC , SAC, TSDSI, VITA, W3C

❑ Stakeholder survey (autumn 2017)

❑ Stakeholder workshop (22/23 March 2018)

❑ Intensive review process including: steering committee, peer review board, EC: JRC, CONNECT, TRADE, COMP, GROW, RTD

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SDO Governance Issues (1)

Standardisation ecosystem:

- SDOs exposure to geo political tensions?
- Competition vs. collaboration of SDOs?
- Options for standardisation contributors: pick and choose SDO, walk away from SDOs, choose another SDO or found a new one, return options?
- Lock in with certain standards?
- Relevance of IP policies in this context?

Governance architecture:

- Relevance/effectiveness of appeal procedures?
- Different levels of membership?
- Role of mediation/ADR?
- Who should decide what (General assembly vs. working groups vs. special decision bodies)?
- Role of non-SEP holders in IPR related SDO processes?

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SDO Governance Issues (2)

Governance principles:

- Classification of 'openness'?
- How to define 'public interest'?
- How much 'public interest' apart from members' interest? Who decides?
- Co-existence of technical and legal (IPR) issues in SDOs?
- 'Keep commercial issues outside of SDOs'. Possible?

Governance and IPR policies:

- Role of SDOs with patent pool formation?
- IPR policy options for change considering consensus principle?
- Consideration of interests of new players (verticals) in IoT business environment?
- Role of baseline IPR policy?
- Can/should FRAND be further defined?

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Agenda

09:00   Registration

09:30   Welcome remarks by
- Pēteris Zilgalvis (DG Connect)
- Nikolaus Thumm (Joint Research Centre)

10:00   Presentation of the JRC Science for Policy Report 'Making the Rules' by:
- Justus Baron (Northwestern University)
- Jorge Contreras (University of Utah)
- Martin Husovec (Tilburg University)
- Pierre Larouche (Université de Montréal)

10:30   Panel discussion
- Chair: Nikolaus Thumm (Joint Research Centre)
- Knut Blind (Technische Universität Berlin)
- Christian Loyau (European Telecommunications Standards Institute, ETSI)
- Konstantinos Karachalios (Institute of Electrical and Electronics Engineers Standards Association, IEEE-SA)

11:30   Open discussion with all participants

12:20   Concluding remarks by DG Connect and Joint Research Centre

12:30   End of the workshop

12:30-14:30   Hot and cold lunch buffet

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