

유럽, ETSI 제9차 IPR 회의 결과보고



2011년 6월

한국정보통신기술협회

ETSI 제9차 IPR 회의 결과

ETSI/ IPR 제9차회의
(2011. 4. 25 ~ 26)

1. 회의일시 : 2011. 4. 25 ~ 26

2. 장 소 : ETSI/MAIN 빌딩 (Amphi Athena)

3. 주요안건

- 1) DARE Project (DAtabase REstructruing)
- 2) Software Copyright 가이드 개발

4. 주요내용

가. DARE Project (DAtabase REstructuring)

- 새로운 ETSI IPR 온라인 데이터베이스를 '11년 1~2월 테스트를 종료하고 '11년 1월부터 서비스 개시
- 기존 특허권자(이하 'ETSI에 특허선언서를 제출한 자'를 말함)에게 통보한 특허정보의 50%에 대해서만 회신이 옴 → 특허정보의 현행화가 투명성의 관건임을 환기
- ETSI IPR 데이터베이스의 지속적인 개발·진화를 위하여 DARE 프로젝트 중요성 환기

D-IPR09/1	The IPR SC strongly encourages <u>all ETSI members to continue the completion of the normalisation work for the legacy patent declarations transferred into the DARE database</u> as this will help increase transparency of the declared patents for the benefit of the entire industry.
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D-IPR09/2	The IPR SC highlighted the importance of the DARE project for the success of ETSI and the importance in giving the highest priority to maintenance and ongoing development/evolution of the ETSI IPR database application.	
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A-IPR09/1	Director-General (Erik Jansen)	to contact the "big players" who have not yet provided data "normalisation" information to encourage them to respond and help maximise the benefit of the new database.
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○ 후속 일정 (프로젝트 계획, 유저그룹, 우선순위 등)

- ETSI IPR 데이터베이스 적용시 제시된 요구사항을 처리를 위한 DAX그룹 지속 운영, 필요시 2011년도 예산에 반영

D-IPR09/3	The IPR SC decided to maintain the DAX Group and to extend its role to support the handling of evolution requests for the ETSI IPR database application [ETSI/IPR09(11)03]	
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A-IPR09/2	IPR SC members	to provide their comments of the language used in the database screens to Erik Jansen and the DAX group.
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나. S/W 저작권 가이드

○ Drafting Group 결과 보고

- Nick Cunningham(인터디지털) : 소프트웨어 가이드라인 개정안에 대한 회원사가 충분히 이해하고 있는지에 대한 의문 제기, 특히 "소프트웨어 적용 범위"가 분명하지 않음을 지적
- Serena Tierney(Pandion) : 현재 작업 수정안(ETSI/IPR09(11)02 rev.3)이 최적안임을 역설
- Dirk Weiler(노키아 지멘스) : "to the best of its knowledge"(아는 범위내에서 최선의)라는 선의조항 추가 요청. 결국은 법원에서 판사가 판단하도록 할 것을 주장
- Amy Marasco(MS유럽) : 소프트웨어에 대한 분명한 정의 요구
- 이후 논의를 통해 ANSI 소프트웨어 정의를 추가하고 내용을 수

정하여 마련한 수정안(ETSI/IPR09(11)02 rev.4) 채택

D-IPR09/4	The IPR SC endorsed modifications to the ETSI IPR Policy (RoP Annex 6) and the ETSI Guide on IPR with respect to the inclusion of text to ensure the appropriate handling of Software Copyright issues [ETSI/IPR09(11)02 rev.4].
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○ 향후 계획

- 이전의 논의사항을 반영한 최종안(ETSI/IPR09(11)02 rev.5)을 마련하여 IPR SC 멤버에게 2011년 7월 15일까지 의견수렴

A-IPR09/3	Erik Jansen & Julian Pritchard	to prepare a cleaned-up version of document [ETSI/IPR09(11)02] consolidating the changes from revisions 3 and 4 into a new version with any necessary formatting and spelling corrections needed to make the document coherent and suitable for wider distribution. This version will be posted as [ETSI/IPR09(11)02 rev.5] and circulated to the IPR SC members for any final editorial comments to be provided by 15th July.
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- 최종안은 OCG (조정위원회, Operating Co-ordinating Group)를 통해 기술위원회(TB) 의장의 의견수렴 실시
- 의견수렴 중 사무국이 처리하기 곤란한 의견이 제시되는 경우, 오디오 컨퍼런스 실시
- 제58차 총회(2011.11.29~30)에 최종 IPR가이드 개정안 제출 예정

다. 기타사항

- '11. 7. 15, 브뤼셀에서 유럽위원회 "사전 라이선스 조건 검토에 관한 IPR 워크숍" 개최
- '11. 11. 24, 유럽위원회와 유럽특허청 공동으로 "공공정책 및 공공조달에 관한 IPR 및 표준 워크숍" 개최

<붙임> ETSI IPR Policy & Guide 개정안

Annex 6 ETSI Intellectual Property Rights Policy

○ 9. ETSI ownership of IPRs (ETSI의 IPR 소유), 9.2 <신설>

9	ETSI ownership of IPRs
9.1	The ownership of the copyright in STANDARDS and TECHNICAL SPECIFICATIONS documentation and reports created by ETSI or any of its COMMITTEES shall vest in ETSI but due acknowledgement shall be given to copyrights owned by third parties that are identifiable in ETSI copyrighted works.
9.2	In general, absent exceptional circumstances, where SOFTWARE is included in any element of a STANDARD or TECHNICAL SPECIFICATION there shall be no requirement to use that SOFTWARE for any purpose in order for an implementation to conform to the STANDARD or TECHNICAL SPECIFICATION.
9.2.1	Without prejudice to Clause 9.1, any MEMBER contributing SOFTWARE for inclusion in a STANDARD or TECHNICAL SPECIFICATION hereby grants, without monetary compensation or any restriction other than as set out in this Clause 9.2.1, an irrevocable, non-exclusive, worldwide, royalty-free, sub-licensable copyright licence to prepare derivative works of (including translations, adaptations, alterations) the contributed SOFTWARE and reproduce, display, distribute and execute the contributed SOFTWARE and derivative works for the following limited purposes: <ul style="list-style-type: none"> a) to ETSI and MEMBERS to evaluate the SOFTWARE and any derivative works thereof for determining whether to support the inclusion of the SOFTWARE in that STANDARD or TECHNICAL SPECIFICATION; b) to ETSI to publish the SOFTWARE in that STANDARD or TECHNICAL SPECIFICATION; and c) to any implementer of that STANDARD or TECHNICAL SPECIFICATION to evaluate the SOFTWARE and any derivative works thereof for inclusion in its implementation of that STANDARD or TECHNICAL SPECIFICATION, and to determine whether its implementation conforms with that STANDARD or TECHNICAL SPECIFICATION.
9.2.2	The copyright licence granted in Clause 9.2.1 shall also extend to any implementer of that STANDARD or TECHNICAL SPECIFICATION for the purpose of using the SOFTWARE in any compliant implementation unless the contributing MEMBER gives an irrevocable undertaking in writing at the time of contribution that it is prepared to grant an irrevocable copyright licence on fair, reasonable and non-discriminatory terms and conditions for the purpose of using the SOFTWARE in any compliant implementation
9.2.3	Any MEMBER contributing SOFTWARE represents and warrants that to the best of its knowledge, it has the necessary copyright rights to license that contribution under Clause 9.2.1 and 9.2.2 to ETSI, MEMBERS and implementers of the STANDARD or TECHNICAL SPECIFICATION. Other than as expressly provided in this Clause 9.2.3: (1) SOFTWARE contributed for inclusion in a STANDARD or TECHNICAL SPECIFICATION is provided "AS IS" with no warranties, express or implied, including but not limited to, the warranties of merchantability, fitness for a particular purpose and non infringement of intellectual property rights and (2) neither the MEMBER contributing SOFTWARE nor ETSI shall be held liable in any event for any damages whatsoever (including, without limitation, damages for loss of profits, business interruption, loss of information, or any other pecuniary loss) arising out of or related to the use of or inability to use the SOFTWARE.
9.2.4	With respect to the copyright licenses set out in Clause 9.2.1 and 9.2.2, no patent licence is granted by implication, estoppel or otherwise.

○ 15. Definition (정의) 14 <신설>

15 Definitions

14 For the purpose of this IPR Policy, "**SOFTWARE**" generally refers to:

- set of instructions written in any programming language that either directly, or when further compiled, performs a complete function when executed by hardware that manipulates data according to instructions, such as an audio or video CODEC; but also
- ata and stream structure definitions, such as ASN.1, TTCN, or XML data representations; and
- chema examples, such as SDL diagrams and data flow charts;

which can be transformed, either directly, or when further compiled, into usable/implementable code.

Annex 2 ETSI Guide on Intellectual Property Rights (IPRs)

○ Background (배경) : 아래 문장 추가

For the avoidance of any doubt, the changes to the ETSI IPR Policy with respect to software copyright introduced and approved by General Assembly #58 are not intended, and shall not be interpreted, as a shift in the ETSI IPR regime towards a preference for royalty-free licensing. The basic principle of the ETSI IPR regime remains FRAND with no specific preference for any licensing model.

○ 2.1.5 Copyrights in ETSI Deliverables (ETSI 문서 저작권) 개정

- ETSI 제안 기고서의 저작권 귀속 및 제안자의 저작권 보유 명시

2.1.5 Copyrights in ETSI Deliverables

As stated in Clause 9.1 of the IPR Policy, the ownership of the copyright in STANDARDS and TECHNICAL SPECIFICATIONS documentation and reports created by ETSI or any of its COMMITTEES (the "ETSI Deliverables") shall vest in ETSI. ETSI Deliverables are considered as "collective work", which shall mean a work created at the initiative of a legal person (i.e. ETSI) who edits it, publishes it and discloses it under his direction and name and in which the personal contributions of the various authors who participated in its production are merged in the overall work for which they were conceived, without it being possible to attribute to each author a separate right in the work as created. Accordingly, such collective work copyrights belong to ETSI.

Hence, Members should be aware that once a technical proposal has been included into ETSI documentation Deliverables, the copyright in these ETSI Deliverables is owned by ETSI, for the purpose of the publication of ETSI documentation. However, the copyright in the individual contribution remains with the contributor.

Further, contributions which are not intended to be a part of the collective work as defined above should be duly acknowledged by ETSI in accordance with Clause 9.1 of the IPR Policy and subject to the applicable provisions of this Guide, in particular Clauses 2.3.5, 2.4.6 and 2.5.

- 2.4.5 Disclose copyright identified in ETSI documentation (ETSI 문서의 저작권 표시) 개정
 - ETSI 저작권 문서 이용권을 강하게 개정 : 반드시 ETSI 서면 허여 요구

2.4.5 Disclose copyright identified in ETSI documentation

The copyright of ETSI documentation, including that produced in its Technical Bodies, is owned by ETSI. The Secretariat shall ensure that the following marking appears in ETSI Deliverables prior to Publication, Member vote, Public Enquiry or National Vote:

~~Reproduction is only permitted for the purpose of standardization work undertaken within ETSI.~~

~~The copyright and the foregoing restrictions extend to reproduction in all media.~~

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- 2.4.6 Acknowledgement of third parties : copyrights (제3자 소유 저작권 확인)

2.4.6 Acknowledgement of third parties' copyrights

Due acknowledgement of copyrights owned by third parties, which are identifiable in ETSI documentation, must be made in the following form:

Some material contained herein is the copyright of, or has been supplied by...(insert name of party in question).

If software is contributed for inclusion into an ETSI Deliverable and the contributing Member has given an irrevocable undertaking in writing at the time of contribution that it is prepared to grant an irrevocable copyright license on fair, reasonable, and non-discriminatory terms and conditions for the purpose of using the software in any compliant implementation, due acknowledgement must be made in the following form:

Some material contained herein is the copyright of, or has been supplied by...(insert name of party in question).

To obtain a copyright license for the software contained in this document to use in any compliant product, please contact the copyright owner(s) as further set out in the relevant Annex to this document.

This legend should appear on the ETSI documents and/or media concerned and should immediately follow the copyright legend(s) referred to above.

In response to the obligation on Chairmen to report to the Secretariat any copyright restrictions in technical proposals adopted by their Technical Body, the Secretariat will inform Chairmen if copyright licenses/assignments are required. If so, then they must be obtained before publication of the document. The Secretariat will determine, with the assistance of the Chairman, which third party copyrights, if any, have to be acknowledged.

If a Member has contributed software to be included into an ETSI Deliverable and has given an irrevocable undertaking in writing at the time of contribution that it is prepared to grant an irrevocable copyright license on fair, reasonable, and non-discriminatory terms and conditions for the purpose of using the software in any compliant implementation in accordance with Clause 9.2.2 of the ETSI IPR Policy, such declaration shall be included in an Annex to the relevant ETSI Deliverable. Where software is placed in an electronic attachment accompanying the ETSI Deliverable, the information on the copyright owner and text of the above declaration should also be contained in such electronic attachment.

○ 2.5 Recommendations for Technical Bodies on including Software in ETSI Deliverables (ETSI 문서내 S/W 포함시 권고사항)

2.5 Recommendations for Technical Bodies on including Software in ETSI Deliverables

Technical Bodies should take into account that the inclusion of software in ETSI Deliverables involves generally more complex considerations than the inclusion of plain text, because the inclusion of software may not always be compatible with the basic principles of elaborating standards and licensing models for software are usually more complex and may not always be compatible with the requirements stipulated by the ETSI IPR Policy.

In this respect, Technical Bodies should also be aware that additional issues may need to be considered with regards to the inclusion of software in ETSI Deliverables, such as possible specific restrictions for the use of software, maintenance considerations or an applicable process for enhancements of the software. For instance, if software is included without clarification how the software will be maintained or developed, the use of the software can become difficult and/or impossible in the long term.

Technical Bodies, while including software in ETSI Deliverables, should always take into account that standards provide a description of features from which competing and interoperable implementations - either in hardware, or in software, or a mixture of both - can be developed and should not serve as an endorsement for a specific implementation. Therefore, Technical Bodies should not for example mandate the use of software in object code form or commercially available software packages in ETSI Deliverables.

Further, as stated in Clause 9.2 of the ETSI IPR Policy, where software is included in any element of an ETSI Deliverable, there shall be no requirement to use that software for any purpose in order for an implementation to conform to the ETSI Deliverable.

However, there are exceptional circumstances where this principle shall not prevent the inclusion of software into an ETSI Deliverable, which are cases involving:

- he required use of data and stream structures in an implementation, in which case the software must be :
 - (i) owned by ETSI;
 - (ii) software of which ETSI has the right to permit the use on terms consistent with the first copyright license option in Clause 9.2.2 of the ETSI IPR Policy; or
 - (iii) available under the first copyright license option in accordance with Clause 9.2.2 of the ETSI IPR Policy;

and

- esting and conformance, in which case the software must be available in accordance with Clause 9.2.1 of the ETSI IPR Policy.

Overall, Technical Bodies should always carefully consider the inclusion of copyright software in ETSI Deliverables.

In case that a Technical Body decides to include software into an ETSI Deliverable contributed by a member and such software is not a part of an ETSI Deliverable as a collective work as defined in Clause 2.1.5 of this guide, a copyright license shall be granted by the contributing member in accordance with Clause 9.2.1 of the ETSI IPR Policy for the (i) evaluation, (ii) publication and (iii) to any implementer of the ETSI Deliverable for the evaluation of the software and any derivative works thereof for inclusion in its implementation of that ETSI Deliverable, and to determine whether its implementation conforms with that ETSI Deliverable.

In addition, according to Clause 9.2.2 of the ETSI IPR Policy the contributing Member grants any implementer of the ETSI Deliverable to which the software was contributed, without monetary compensation or any restriction other than as set out in Clause 9.2.1 of the ETSI IPR Policy, the irrevocable, non-exclusive, worldwide, royalty-free, sub-licensable right to use that software in any compliant product, unless the contributing Member has given an irrevocable undertaking in writing at the time of contribution that it is prepared to grant an irrevocable copyright licence on fair, reasonable and non-discriminatory terms and conditions for this specific purpose.

The contributing member shall make such declaration to the ETSI Director General who will provide the declaration to the Chairman of the Technical Body and the declaration shall be noted in the minutes of the meeting and be copied in an Annex to the ETSI Deliverable as stated in Clause 2.4.6 of this guide in order to create transparency about necessary copyright licences.

Overall, the Technical Body should always be aware that this copyright license does not allow any additional restrictions other than as set out in Clause 9.2.1 of the ETSI IPR Policy, such as specific additional requirements on the user of such software or additional automatic obligations, while making use of such software, including without limitation with regards to the granting of licenses for IPRs of the user of the software.

As a consequence, and in order to avoid possible liabilities arising from the representation and warranty provided according to Clause 9.2.3 of the ETSI IPR Policy, the contributing member should contribute identifiable software for inclusion in an ETSI Deliverable only if it is able to grant a copyright license according to Clause 9.2 of the ETSI IPR Policy. Further, contributors to Technical Bodies should always be aware that the simple fact that software is accessible to the public, e.g. through the internet, does not mean that there are not any copyright or patent issues to be considered. Contributors should seek their own legal advice before contributing any software.

